

Friday, January 15, 2010

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

Re: Comments on NOAA's Proposed Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act

Please find below some of the Comments that we submit concerning your Proposed Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act.

Members of the Pacific Whale Watch Association have had the privilege of educating and entertaining passengers since 1992. Our commitment to Education, Research and Responsible Wildlife Viewing has not wavered. We have and continue to work closely with NOAA/NMFS, WDFW, San Juan County and many Environmental Non-Governmental Organizations. Together we are already doing an excellent job on Public Education and "Precautionary Measures".

The time is now to get on with the really difficult work of Salmon Habitat Restoration, Pollution Control and Clean-up. Many of the strongest supporters of these programs are now having their livelihoods and recreational activities put at risk by this proposal of regulations that accidentally damage the Regional Economy. We all want to provide additional protection to the Southern Resident Killer Whales from the possible effects of vessel interactions. We humbly suggest that our options can add more protection than those proposed by NOAA

The Pacific Whale Watch Association has offered some suggestion for modifications to NOAA's Proposed Protective Regulations for Killer Whales in the Northwest Region. We are confident that if our suggested modifications are reflected in the Final Regulations that they can provide strong protection for the Southern Resident Killer Whales without further damaging the economy or the enjoyment of this fabulous marine environment by responsible recreational and commercial boaters.

Thank you for providing us this opportunity to make these comments.

Sincerely, 

Shane Aggergaard
president - pacific whale watch Association

Friday, January 15, 2010

Assistant Regional Administrator

Protected Resources Division

Northwest Regional Office

National Marine Fisheries Service

7600 Sand Point Way NE

Seattle, WA 98115

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

To Whom It May Concern:

NOAA has specifically requested information on:

- a. Alternatives analyzed in the environmental assessment,
- b. Impacts associated with the alternatives,
- c. Scientific and commercial information about the effects of vessel on killer whales and their habitat,
- d. Information on the economic analysis,
- e. Any other relevant information that the agency should consider in developing a final regulation.

Thank you for the opportunity to offer comment on the above mentioned proposed Protective Regulations.

We are fortunate that here in the Pacific Northwest there is consensus that decisions need to be made to foster the Recovery of the Southern Resident Killer Whales.

The staff at the National Marine Fisheries Service (NMFS), members of the Whale Watching Industry, the Scientific Community and other people that love these whales and the Environment that we all inhabit have all displayed their desire, albeit in different manners, to protect these creatures through the process allowed thus far. All should be commended.

(A) Background

The Pacific Whale Watch Association (PWWA), formerly the Whale Watch Operators Association Northwest (WWOANW), is committed to the conservation of the Southern Resident Killer Whales (SRKW's). We represent 32 companies on both sides of the US/Canada border. PWWA was founded in 1992 to pool our collective commitment to Responsible Marine Wildlife Viewing, Education and Research.

PWWA was not founded as an Industry Marketing Group, as we have always let individual companies be responsible for their own marketing. We have and continue to work with individuals, educators, researchers,

Environmental Non-Governmental Organizations (ENGO's) and Government Agencies to upgrade our knowledge of SRKW's and their habitat so that we can then educate, entertain and motivate our passengers.

We applaud the US Government's attention in the Southern Resident Killer Whale Recovery Plan to both the conservation of these killer whales, and of their prey, the salmon. We believe that efforts directed at the long-term stability of salmon populations and their habitats in the Pacific Northwest would significantly contribute to the conservation of the endangered killer whales. This could mean significant changes to salmon fishing quotas within all sectors and enormous challenges are certain if salmon fishing is to be reduced.

However, the equation seems simple as too few fish, likely means too few whales.

(B) Nature of PWWA's Comments

The Comments in this letter are directed at the proposed "Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act".

We understand that this particular stage of the Southern Resident Killer Whale Recovery Plan is aimed at best protecting these animals and their habitat as we wait for the measures to restore Salmon Habitat and recover Salmon Stocks; and as we wait for efforts to clean up pollution and prevent further environmental degradation.

To generate the momentum needed to accomplish the goals of Salmon Habitat Restoration, Salmon Stock Recovery, and Pollution Clean-up and Prevention, we all need to increase our efforts in Public Education to foster better consumer choices and to garner support for the funding that will be needed.

The Pacific Whale Watch Association and our members will continue our efforts, and we appreciate NOAA's recognition of the importance of PWWA's work in educating the Public and creating enthusiastic supporters of expensive Recovery Plans for both Salmon and Killer Whales. We thank you for identifying the need for our continued involvement in both the SRKW Recovery Plan and these Proposed Regulations.

Our Comments, therefore, are aimed at explaining why, despite the fact that we fully support NOAA's Southern Resident Killer Whale Recovery Plan, we are unable to support these particular Proposed Vessel Regulations for the Viewing of Killer Whales, as written.

PWWA also proposes alternative regulations that, from our reading of NOAA's own scientific papers and reports, are fully precautionary and offer significantly increased protection for the Southern Resident Killer Whales than is currently in place, while maintaining the ability of our members to be significant contributors to the long-term Salmon Recovery and Southern Resident Killer Whale Recovery.

Please let it be clear that PWWA proposes these amendments despite the expectation that they will negatively impact the financial positions of our member companies by requiring new expenditures (new equipment and changes in vessel layouts, e.g. purchases of binoculars for all passengers and laser range finders for all vessels) and likely drops in passenger totals or retail prices due to a drop in the perceived value of our trips. We as a association believe that the heavier onus imposed on us by the amendments we suggest are justified by the need for greater potential protection of the SRKW's, especially from well-meaning but sometimes uninformed recreational boaters.

(C) PWWA Suggested Amendments

In the Federal Register Notice (FRN), NOAA states that the prohibitions in the Proposed Regulations are to

“protect killer whales from interference and noise associated with vessels”.

PWWA fully supports these objectives. We have long recognized that there might be possible impact of underwater noise on the ability of SRKW's to find food, communicate or socialize. Although NOAA admits that no long-term effects have been found despite 25 years of research, PWWA has always taken a precautionary approach.

- NOAA selected Alternative 8, which is a combination of Alternatives 3, 5 and 7. Effectively “200 Yard Approach Regulation, Expanded No-go Zone, and Keep Clear of the Whales’ Path”.
- PWWA suggests a combination of Alternatives 2, an expanded version of 6, and 7. In essence, “100 Yard Approach Regulation, Expanded Go-Slow Zone, and Keep Clear of the Whales’ Path”

The major difference between what NOAA has proposed and what PWWA suggests comes down to this:

NOAA believes that 200 yards Minimum Viewing Distance may be imperative to the long-term survival of SRKW's and needs to be implemented almost regardless of any Economic Impact on the Regional Economy or whale watch industry.

PWWA believes that 100 yard Minimum Viewing Distance provides significant protection to the long-term survival of SRKW's, especially as even that distance is Precautionary and that going to 200 yards would add little additional protection but would very likely cause significant negative Economic Impact to the Region and to the whale watch industry, likely putting at least one entity/small business out of business.

Breaking these two positions down into their components, we end up having to answer these three questions:

- Question #1: “Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?”
- Question #2: “Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?”
- Question #3: “Does the difference in protection to the SRKW's afforded by 200 yards vs. 100 yards justify the additional negative Economic Impact, and resultant loss of Education and Public Support, that the greater distance will have?”

(D) Question #1: “Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?”

To answer Question #1 we must break it down into its key components:

First, is there a potential for Disturbance to Killer Whales by Vessels? Clearly, if there is no potential for Disturbance, then it doesn't matter to the SRKW's if a vessel is 2 yards away or 200 miles away.

What kind of “Potential Disturbances” could we anticipate? PWWA believes that we can get a good indication by seeing what we have done to mitigate through precautionary measures in our own “Best Practices Guidelines”, which are and have always been based on the best scientific research available (which

is often that funded by NOAA), and all the subsequent guidelines (Be Whale Wise, SoundWatch, Beam Research, Seattle Aquarium, etc.) and scientific studies that have followed.

So what have PWWA and other organizations designed their guidelines to prevent, or set up their studies to investigate?

- Physical Contact
- Noise
- Proximity

Physical Contact: Potential for serious injury to a whale requires a collision, whether initiated by the whale or the vessel, and very close proximity.

But what constitutes “very close proximity” depends on the speed of travel of the whale and the vessel. If a vessel has its engine(s) off and is not moving, then “very close proximity” may be 5 yards: If a vessel is traveling very fast (30 mph or 50 kph), then 50 yards may be “very close proximity”.

We all agree that there is the risk of potential injury, the harm that could be done by contact.

NOAA in its own submissions indicates that the likelihood or probability of this, a collision between a whale and a vessel, is extremely low. PWWA agrees, but we still incorporated both a distance guideline of 100 yards and a speed guideline of less than 7 knots (about 8 mph or 11 kph) within 400 yards in the presence of whales.

“Speed” is the key component that NOAA has missed in its Alternative #8 (A combo of Alternatives #3, 5 and 7), and that is why our suggestion clearly includes that.

NOAA has expressed concerns about Alternative “6 knots within 400m/ 439 yards” that it could not enforce a speed restriction because it does not have the sophisticated electronic measuring devices necessary to assess speed of a vessel, and that pacing a fast moving vessel that is in and around whales with an Enforcement boat would potentially put the whales at risk from two fast moving vessels, not just one.

This is exactly why PWWA chose 7 knots as its key speed: The vast majority of pleasure and small commercial vessels capable of travelling in excess of 7 knots are partial planning or planning hull vessels: In other words, if a vessel engaged in whale watching is “up on plane” it is almost certain that it is going faster than 7 knots. And if it is one of the small minority of vessels that not “up on plane” because it is a displacement hull, its top speed is very likely no more than 10 to 12 knots.

Remember that both NOAA and PWWA agree that no vessels should park in the path or be underway 400 yards in the path of a whale. So if a vessel is 100 yards away from a whale, traveling at 7 knots or less, and is not in the path within 400 yards of a whale, the chance of a whale/vessel collision approaches zero.

In fact, one of the reasons for our combined suggestion of 100 yard Minimum Viewing Distance AND 7 knots or less within 400 yards is that it affords greater protection for SRKW’s than does the 200 yard and ½ mile No Go Zone if it is applied everywhere that Killer Whales live and year-round.

Noise: Potential for interference with the ability of Killer Whales to use their echolocation to find prey, possible interruption or impairment of vocalizations used for communication about whales, or additional energy expenditure by whales to “talk more loudly”.

PWWA has long recognized the potential impact of Acoustic Masking. Many of our Best Practices, vessel design and our vessel operation procedures are geared towards eliminating our acoustic profile as perceived or received by Killer Whales.

Again, let us remind you that we use the word “Potential” because up to this point all of our efforts are clearly precautionary. We do not have studies that conclude that “Acoustic Masking” does, in fact, prevent Killer Whales from finding and eating prey, only studies that suggest that it “may”. But PWWA takes these precautionary steps because (i) The potential risk to the Killer Whales is high because Salmon Stocks have not recovered, and the Environment is so polluted that small changes in the ability to find food could have negative consequences; (ii) we can use our precautionary steps as a educational tool to inspire passengers to both support funding NOAA’s long-term Salmon Recovery and Killer Whale Recovery Plans and make positive changes in their choices as consumers and in their day-to-day life that will reduce their environmental footprint.

So let’s get effective Killer Whale Viewing Regulations in place and let’s put all of our collective energies into the really important steps of Salmon Stock Restoration and Pollution Clean-up and Prevention. All the houses around us are burning and we are keeping our house safe by spraying the roof and walls with a garden hose.

Back to “Noise”. So PWWA concedes to the “possibility” of an impact from noise, and concedes that under the current sad state of the key prey (Chinook Salmon) returns to the SRKW’s Summer habitat, and the high toxin levels via pollution in that habitat (and therefore by bio-accumulation in the prey and then the fat of the SRKW’s), that the potential reduction in foraging success, extra vocal exertion and reduction in socialization needs addressing.

So what changes in vessel operation can best address these “Noise” issues?

What is needed to provide optimum precautionary prevention of harm from sound is?

- Reduction of the Source, in this case mostly Mechanical Noise (Made up of noise from the Engine, Transmissions and Drive Systems)
- Distancing of the Source (Vessels) from the Recipient (Whales).

Reduction of the Source, in the case of vessels Mechanical Noise (Made up mostly of noise from the Engine):

Without sound being produced or emitted, no sound can be received.

This seems obvious, and many whale watch vessels do exactly that when within 400 yards of a whale: They turn their engines off and sit quietly.

Note: PWWA has, through its Best Practices Guidelines, long discouraged the use of Depth Sounders or “Fish Finders” or any device that might project sound waves into the water.

No Sound = No Potential for Negative Impact from Sound.

In fact, on commercial whale watch vessels, hydrophones are commonly used to listen to the whales. This not only adds to the emotional connection and educational value that passengers get from their marine wildlife viewing experience, but it sets an example for all other boaters and leads to peer pressure on all

other operators to operate as silently as possible.

Very often the loudest sounds are coming from recreational vessels running at speed (over 7 knots, sometime well over) inside the 400 yard 7-knot courtesy slow down zone used by commercial operators.

Scientific Studies, including those funded by NOAA, suggest that the sound received by a whale from an engine pushing a vessel at 7-knots that is 100 yards or more away is negligible. In fact, it is about the same as the background or ambient noise that is almost always present in these waters. An Ambient Level that scientists suggest poses no risk to Killer Whales. In fact, they suggest that this ambient level, equal to what vessels at 7 knots or less produce at 100 yards, is far below the level at which the risk of negative impact from noise is likely to occur.

Does moving to a Minimum Viewing Distance of 200 yards provide more potential protection to the Killer Whales from Noise than does 100 yards? The answer is “Maybe”. Why? Because it all depends on the speed at which the vessel is operating. Greater vessel speed generally requires higher energy expenditure which usually leads to greater Sound from engines.

That is why PWWA is confident that our combination of 100 yards and less than 7 knots within 400 yards affords more potential protection from disturbance than does NOAA’s 200 yard Minimum Viewing Distance.

On P 3-22 Draft Environmental Assessment New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington notes

“Erbe (2002) predicted that the sounds of fast boats (greater than 50 km/h [31 miles/hour]) would be audible to killer whales at distances of up to 16 kilometers (10 miles) and cause behavioral responses within 200 meters (0.12 miles or 219 yards). For boats moving at slow speeds (10 km/h [6.2 miles/hour]), sound would be audible within 1 kilometer (0.62 miles or 1,094 yards) and cause behavioral changes within 50 meters (55 yards).”

NOAA’s own research shows that at 7 knots and 100 yards the sound received by Killer Whales approaches the background or ambient noise levels. So if the sound is already at its lowest possible level, moving boats back another 100 yards to 200 yards will make no additional difference.

On P 3-22 Draft Environmental Assessment New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington notes

Underwater sound levels generally increase with speed (Bain 2002; Erbe 2002). Idling whale watch vessels at 200 meters produce sound levels that are comparable to ambient levels (Hildebrand et al. 2006).

“Erbe (2002) predicted that the sounds of fast boats (greater than 50 km/h [31 miles/hour]) would be audible to killer whales at distances of up to 16 kilometers (10 miles) and cause behavioral responses within 200 meters (0.12 miles or 219 yards). For boats moving at slow speeds (10 km/h [6.2 miles/hour]), sound would be audible within 1 kilometer (0.62 miles or 1,094 yards) and cause behavioral changes within 50 meters (55 yards).”

Alarmingly, under NOAA’s proposal a vessel could be in full compliance with the proposed 200 yard Minimum Viewing Distance, but if that vessel is traveling very fast (>30 knots, > 50 kph) then the sound that a whale receives is significantly louder than a vessel at 100 yards at slow speed (< 7 knots, < 11 kph).

If a vessel is stopped and its engines are off, then there is no sound issue and distance becomes irrelevant.

So if sound really is one of the main potential concerns regarding vessel traffic, then why not choose PWWA suggested amendments of both 100 yard Minimum Viewing Distance and <7 knots within 400 yards as these offer greater protection than a 200 yards Minimum Viewing Distance with no speed restrictions.

Proximity

“Proximity” relates to the concern that some scientists have that the mere presence at the surface of a vessel, whether it is stopped with its engines off or not, still may have a potential impact on Killer Whale behavior.

Now that begs the question of whether the “potential impact” on the Killer Whale Behavior is positive (i.e. Helpful to the whale’s health), neutral or negative.

Scientists have even coined a phrase to describe what whales do at the surface of the water: “Surface Active Behaviors” or SAB’s.

Now let’s be clear. Surface Active Behaviors all describe behaviors that Killer Whales do naturally, whether there are boats around or not. They are not, in and of themselves, harmful to the whale. In fact, many SAB’s are very beneficial to whales as they play important roles in foraging for prey, communicating, play, socializing, celebrating, training calves to hunt, etc.

So all of these studies are trying to determine is (a) Whether the presence of boats causes additional SAB’s that wouldn’t otherwise have happened; and (b) Whether those additional SAB’s are harmful.

(a) Whether the presence of boats causes additional SAB’s that wouldn’t otherwise have happened

This is a really tough question to study or make conclusions on because we don’t really understand what SAB’s are caused by or connected to when there are no boats around, so how can we then somehow identify the ones caused specifically by boats?

The most obvious problem is “Did the whales increase SAB’s because there were boats present?” or “Did boats go over to that location because the whales were starting to exhibit SAB’s and the vessel Captains wanted to show his/her passengers the SAB’s?”

(b) Whether those additional SAB’s are harmful.

Studies that have tried to relate SAB’s and all other possible changes in behavior related to vessel presence have concluded that even if there is causality, the possible impact is an additional 3% increase in energy expenditure. While that seems quite small, PWWA is, as always, willing to take precautionary steps.

That is why we have for many years had in our “Best Practices Guidelines” avoiding being within 400 yards of the path of whales (Their echolocation is mostly directed forward), being 100 yards away, and operating at less than 7 knots within 400 yards.

Conclusion to Question #1: “Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?”

No. In the key areas of Physical Contact, Noise and Proximity, the extension from 100 yards to 200 yards offers little or no additional protection to the Killer Whales, as the proposed 200 yard Minimum Viewing Distance Regulation is not coupled with a Speed Restriction.

The Killer Whales actually get greater protection if you adopt PWWA's suggestion of a 100 yard Minimum Viewing Distance combined with a <7 knot Speed Restriction within 400 yards.

(E) Question #2: "Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?"

As with most questions, "It all depends on whom you ask".

Having said that, when you look at the Impact Review versus Feedback from the Regional Municipal Governments, regional businesses and the Whale Watch Industry it really comes down to a choice between:

- *"It will be negative, but we don't really know how bad"* (NOAA's Impact Review); and
- *"Companies will go out of business and people will be laid off"*. (Feedback from the Regional Municipal Governments, regional businesses and the Whale Watch Industry)

NOAA admits on P 2-13 of the VESSEL TRAFFIC REGULATIONS TO PROTECT KILLER WHALES IN PUGET SOUND Draft Regulatory Impact Review

<http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/upload/Vessel-Prop-Rule-draft-econ-rpt.pdf>

that it does not know the impact of moving to 200 yards as a minimum viewing distance regulation:

"All whale watching vessels not complying with the 100 yard/meter guideline, as well as additional vessels in all categories that are currently complying with the 100 yard/meter approach guideline but not maintaining an approach distance of 200 yards from whales, will likely be affected by an enforceable 200 yard/meter approach regulation. Thus, the number of individuals potentially affected by Scenario 2 is expected to be greater than the number of individuals potentially affected by Scenario 1. Currently, data are not available to determine how many more vessels would be affected by a 200 yard/meter regulation than a 100 yard/meter regulation, or whether the relative proportions of entities/activities affected would remain the same."

Note: NOAA admits that it doesn't know how many more vessels would be affected by the extension from a Minimum Viewing Distance of 100 yards to 200 yards. Since 200 yards is the option that NOAA chose, how can you begin to calculate the Economic Impact if you don't know how many boats will be affected?

NOAA readily admits that it cannot accurately estimate the Economic Impact of its choices, but that it will likely be a negative impact:

P 3-1

3.1 TYPES OF ECONOMIC IMPACTS ASSOCIATED WITH THE POTENTIAL VESSEL TRAFFIC

REGULATIONS

"109. A person's ability to get close to whales, including parking directly in the paths of the

whales, vessel speeds, or ability to access no-go zones may contribute to an individual's willingness to pay to participate in whale watching activities. As such, potential vessel traffic regulations which limit proximity and access may generate negative social welfare impacts to the individuals forecast to be affected in Chapter 2. Further, to the extent that proximity to whales, vessel speeds, or the ability to access no-go zones contribute to an individual's likelihood to participate in whale watching activities, regional economic impacts to industries providing goods and services to the whale watching industry may occur."

P 3-4 "A greater impact to individuals engaged in whale watching activities is therefore expected for Scenario 2 (the Scenario NOAA proposes) than Scenario 1 for two reasons: 1) individuals may be willing to pay less due to the greater minimum approach distance; and 2) impacts are experienced by a greater number of individuals (not only those that are approaching the whales closer than 100 yards/meters, but also individuals approaching whales between 200 and 100 yards/meters)."

Note: PWWA finds it distressing that the "Draft Regulatory Impact Review" would on the one hand say that it cannot make an assessment as the Economic Impact on the Commercial Whale Watch Industry, but earlier it states on page 1-12 that the whale watch industry contribute \$18.4 million annually and 205 jobs to the 19 counties adjacent to the whales' habitat. But this information was through an IMPLAN Analysis based on data from 2001.

This number really doesn't make any sense to PWWA. If the estimated number of annual paying participants in whale watching in this region approaches 500,000 passengers, a number used repeatedly throughout the "Draft Regulatory Impact Review"; and each person is paying an average of \$69 per person, then Revenue of \$34.5 million directly from whale watching far exceeds the "Draft Regulatory Impact Review" estimate of \$18.4 million.

Whether this \$34.5 million direct revenue could, through the multiplier effect, exceed \$100 million remains up for debate, but it does suggest that the "Draft Regulatory Impact Review" greatly underestimates any negative economic impact.

Whether the Regional Economy will be so negatively affected as to require by law that NOAA rethink its Proposed Regulatory changes may be a moot point, as the following reference suggests that the Regulatory Flexibility Act provisions with respect to the likelihood that a small entity will cease operations:

P 3-5 "The WWOANW (now the "Pacific Whale Watch Association" provided comment on the Advance Notice of Public Rulemaking, expressing support for enforcement of the 100 yard/meter guideline for all vessels operating in the Sound, but cautioning that there is unlikely to be a need for increasing that approach distance.¹⁰³ In fact, the WWOANW anticipates that the industry may not survive the establishment of a 200 yard/meter minimum approach distance as it will limit the educational value of the whale watching trips and decrease participation.

Additionally, individual whale watching operators also expressed support for codifying the existing guidelines."

The statements and comments from members of the whale watch industry seem to be at direct conflict with the conclusion stated on page 6 -12 of the *"Draft Environmental Assessment – New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington"*

The economic analysis (IEC 2008) projects no change in revenue for whale watching operations, but rather the potential diminished value of the customers' experience as a result of greater viewing distances. Such losses to individuals engaged in whale watching are not borne

by small entities. NMFS does not expect any small entity to cease operation as a result of any of the alternatives.

Regarding job loss and the possibility that the loss of at least one small entity, PWWA expects at least one of our member companies would be put out of business if the proposed 200 yard Minimum Viewing Distance is imposed. We feel we would lose 30% of our industry over a 3 year period of time. The remaining 70% of survivors may well see a dramatic drop in revenue. All resulting in a large drop in net income and taxes paid.

On P 5-3 of the *“Draft Environmental Assessment – New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington”*

While the analysis presented in Section 4.0, Environmental Consequences, suggests that any economic impacts of these regulations would be minor, they could have cumulative effects when considered with other current and potential future events affecting the whale watch industry. In particular, Washington gasoline prices almost tripled between 2002 and 2007 (Leffler 2007)

PWWA wishes to point out that in that same 2002 to 2007 time period, while fuel prices tripled and many other expenses went up by over 50% (Moorage and dock fees, office rent, wages, maintenance and repair costs, new vessel construction costs), Ticket Prices for whale watching trips did not rise.

And further on the same page

If whale watch operators either have to raise prices to cover fuel costs or operate with smaller profit margins, it is possible that small decreases in the number of passengers could have cumulative effects on whale watch profits.

On P 6-9

Alternatives 3 (200 Yard Approach Regulation) and 5 (Expanded No-go Zone) have the largest uncertainty regarding potential economic impacts

Yet these were two of the three Alternatives chosen by NOAA.

PWWA is very sceptical of the conclusion on P 6-9 to 6-10

While members of the commercial whale watching industry have suggested that viewing from a greater distance could reduce interest in whale watching and result in fewer customers, there is evidence that proximity to whales is not the most important feature of a whale watch experience. An increased viewing distance may not have any economic impact on commercial whale watch trips particularly if the reasons for the increased viewing distance are explained to customers.

Why are we going to such great lengths to point out that we do not agree with the assessment that there will be little or no loss of business if there is an increase from 100 yards to 200 yards as a Minimum Viewing Distance?

Two reasons: First, we are just now after 5 to 7 years of effort, day in and day out, getting to the point where passengers will accept 100 yards as the Minimum Viewing Distance. “How close can we get?” is still one of the three most frequently asked questions by people both as they inquire about booking, or when they

get out on the water. We still lose up to 5% of all potential bookings when we answer 100 m or 100 yards. 5 years ago that was significantly higher, closer to 20%.

Second, many of PWWA's members conducted interviews or gave questionnaires or offered petitions to passengers to get their feedback on if our vessels were at a minimum viewing distance of 200 yards would they have still booked a trip? Although not scientifically accurate surveys, the general response was that 25% to 40% of them said they would not likely book a trip if they would be watching whales at 200 yards.

Conclusion to Question #2: "Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?"

PWWA concludes "Yes". Both the Regional Economy and individual PWWA member companies will suffer.

At least one business entity will likely be put out of business by this change: PWWA would expect to lose 30% of our industry over a 3 year period of time. The remaining 70% of survivors may well see a dramatic drop in revenue. All resulting in a large drop in employment, net income and taxes paid.

The Regional Economy is far more connected to the lifestyle, viewing and celebration of this unique marine environment through whale watching than NOAA has acknowledged. We anticipate that you will receive Comments from a wide range of businesses, individuals and organizations whose livelihood and survival is based on a healthy whale watching industry (Marinas, Fuel Docks, Chandlers/Boat Supply, Restaurants, Hotels, Motels and B&B's. Ferry Services, Pubs and Bars, Counties, Municipalities, Scientific Researchers, Monitoring Groups, ENGO's, Charities, etc.).

Although a portion of the people who might, with this proposed Alternative 8 and its 200-yard Minimum Viewing Regulation, choose not go on vessel-based whale watching trips but might instead go to land-based whale watch parks, we anticipate that the transfer rate will not be anywhere near what NOAA seems to imply will be a 100% rate. In other words, PWWA believes that many people who now choose to come to the San Juan Islands or other parts of this Region to view Killer Whales will simply choose to go elsewhere.

We have already seen this. Many of the passengers who joined us 10 to 15 years ago when the "Stop 'n' Wait" viewing sequence allowed closer than 100 yard viewing as long as our boats were "sitting dead in the water like a log or kayak" will not take repeat trips when we tell them that we will not get closer than 100 yards.

These same passengers get bombarded daily by TV, Newspaper, Magazine and Internet "Pop Up" ads that entice them to "Swim with the whales in Costa Rica", or "Touch whales in Baja", or "Scuba Dive with whales in Antarctica". Or "Kayak next to whales in Belize". **Important:** PWWA does not support or condone any of these behaviors that may disturb whales anywhere. But it is a reality that if we create a "Precautionary Buffer" that is far beyond what the SRKW's require, then many potential visitors will just go elsewhere.

It is almost as if NOAA is saying "Well, if Napa Valley didn't allow visitors access to its vineyards and wine makers, the same volume of vacationers would still go there, and they would still pay the same room rates, restaurant prices, etc..." PWWA does not think that is true, nor do we believe that anywhere near the same volume of vacationers will choose this Region if Alternative 8 is selected.

(F) Question #3: "Does the difference in protection to the SRKW's afforded by 200 yards vs. 100

yards justify the additional negative Economic Impact, and resultant loss of Education and Public Support, that the greater distance will have?"

The Economic Impact Data available from PWWA is limited by the fact, as stated in our "Background" section on page 2 of this document:

"PWWA was founded in 1992 to pool our collective commitment to Responsible Marine Wildlife Viewing, Education and Research."

PWWA was not founded as an Industry Marketing Group, as we have always let individual companies be responsible for their own marketing."

We may be now suffering from our own naivety in thinking that PWWA and its members could function in "The Best Interest of the Whales" and not have to be an association engaged in politics, legal issues, and economic justification of our own existence.

We had hoped that each individual member could make their own independent, small business decisions and that while we worked hard and competed with each other for every possible passenger that we could encourage to come onboard our boats, that we could collectively get our message out that we all must do more to first help Nature repair itself and then protect our environment for many generations to come.

That message of Conservation and Stewardship is the same message each of us tries to get out through education on our vessels. We hope that by entertaining and educating our passengers that we can build the political will and pressure to support long-term efforts like NOAA's Killer Whale Recovery Plan and Salmon Recovery Plan.

PWWA and its members are still committed to those goals and Plans. We suspect that we always will, whether we are still in business and able to get that message out to hundreds of thousands of visitors each year.

This question is clearly a Public Policy Decision. As such, it will be made at a political level based on the legislation and the input received from groups and individuals. The Primary Consideration will, and should be, the long-term health of the Southern Resident Killer Whales.

Pacific Whale Watch Association (PWWA) believes that our suggested Regulations of 100 yard Minimum Viewing Distance and <7 knot year-round Speed Restriction; along with a guideline of No Parking in the Path of Killer Whales within 400 yards of their anticipated line of travel offers more protection than NOAA's proposed Alternative 8.

In addition, PWWA suggests that this greater protection for the SRKW's comes with a much reduced risk of drastic negative Economic Impact on either the Region or PWWA members.

Finally, offering both this increased short-term protection for the SRKW's while maintaining a healthy Regional and Local Economy with active Environmental Education both from watch watch vessels and much of the local community offers the best long-term chances of success with both the Salmon Recovery Plan and Southern Resident Killer Whale Recovery Plan.

Thank you for this opportunity to comment.

Respectfully Submitted,

PACIFIC WHALE WATCH ASSOCIATION

Shane Aggergaard, President

Pacific Whale Watch Association

PO Box 2404, Friday Harbor, WA 98250, USA

These Comments are submitted on behalf of:

Shane Aggergaard, President

Brian Goodremont, Vice President San Juan Islands

Cedric Towers Vice President Mainland

Simon Pidcock, Vice President Vancouver Island

Drew Schmidt , Treasurer/Secretary

James Dale, Executive Director

- and –

PACIFIC WHALE WATCH ASSOCIATION MEMBERS:

<u>Carli Whale Watching</u>	Friday Harbor	United States	Washington
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<u>Deer Harbor Charters</u>	Deer Harbor	United States	Washington
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<u>Eagle Wing Tours</u>	Friday Harbor	United States	San Juan Islands
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<u>Emerald Sea Adventures Ltd.</u>	Friday Harbor	United States	San Juan Islands
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<u>Five Star Whale Watching</u>	Friday Harbor	United States	San Juan Islands
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<u>Great Pacific Adventures</u>	Friday Harbor	United States	San Juan Islands
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<u>Island Adventures Whale Watching</u>	Friday Harbor	United States	San Juan Islands
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<u>Island Mariner Cruises</u>	Friday Harbor	United States	San Juan Islands
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<u>Mayas Westside Whale Charters</u>	Friday Harbor	United States	San Juan Islands
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<u>Mystic Sea Charters</u>	Friday Harbor	United States	San Juan Islands
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		States	
<u>Ocean Ecoventures</u>	Cowichan Bay	Canada	British Columbia
<u>Ocean Explorations Whale Watching</u>	Victoria	Canada	British Columbia
<u>Orca Spirit Adventures</u>	Victoria	Canada	British Columbia
<u>Outer Island Expeditions</u>	Eastsound	United States	Washington
<u>Prince of Whales</u>	Victoria	Canada	British Columbia
<u>Puget Sound Express</u>	Port Townsend	United States	Washington
<u>San Juan Boat Tours</u>	Friday Harbor	United States	Washington
<u>San Juan Excursions</u>	Friday Harbor	United States	Washington
<u>San Juan Outfitters</u>	Friday Harbor	United States	Washington
<u>San Juan Safaris</u>	Friday Harbor	United States	Washington
<u>Seafun Safaris</u>	Victoria	Canada	British Columbia
<u>Springtide Charters</u>	Victoria	Canada	British Columbia
<u>Steveston Seabreeze Adventures</u>			
<u>Sweetwater Wildlife Charters</u>			
<u>Vancouver Whale Watch</u>			
<u>Victoria Clipper</u>			
<u>Western Prince Whale Watching</u>			
<u>Wild Whales Vancouver</u>			

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January 14, 2010

Mr. Barry Thom
Acting Regional Administrator
National Marine Fisheries Service, Northwest Region
7600 Sand Point Way NE
Seattle, Washington 98115

Re: DRAFT ENVIRONMENTAL ASSESSMENT: New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington. Prepared by National Marine Fisheries Service Northwest Regions, January 2009

Dear Mr. Thom:

After reviewing the Draft Environmental Assessment, noted above, to great length, I am extremely disappointed as it shows a blatant disregard for the commercial whale watch industry and the negative economic outfall that will come to it and their respective communities if you proceed with the new regulations. The specific area that this letter will focus on is the economic impact of changing the regulations, with a focus on changing minimum viewing distance from 100 yards to 200 yards.

Along with the Draft Environmental Assessment I have reviewed the following:

- the ANPR (Advanced Notice of Proposed Rule Making) and the 84 comments received, and
- Vessel Traffic Regulations to Protect Killer Whales in Puget Sound: Draft Regulatory Impact Review, October 13, 2008, prepared by Industrial Economics, Incorporated (IEC)

Excerpts (*in italics font*) from these documents pertaining to changing the distance regulation and economics will be presented, followed by my observations and comments. This letter will follow this general outline:

- A. Proposed Actions:
NMFS (National Marine Fisheries Services) and PWWA (Pacific Whale Watch Association)
- B. ANPR - 84 Comments Received
 - (B1.) General Description and Scope of the ANPR
 - (B2.) Presentation of the 84 comments – excerpts
 - (B3.) My Comments
- C. Draft Regulatory Impact Review (IEC 2008) - excerpts followed by my comments.
- D. Draft Environmental Assessment (2009), Socioeconomic Section 4.4 – excerpts followed by my comments
- E. Draft Environmental Assessment (2009), Regulatory Impact Review - excerpts followed by my comments
- F. Conclusions
- G. Recommendations

A. PROPOSED ACTIONS

In this section I will present the proposed changes to whale watching regulations by the NMFS and by the PWWA.

The following excerpt is taken from the Draft Environmental Assessment, 2009, page 1-6:

NMFS is proposing to adopt regulations that would prohibit motorized, non-motorized, and self-propelled vessels in navigable inland waters of Washington from:

- *Causing a vessel to approach within 200 yards of any killer whale*
- *Entering a restricted zone along the west coast of San Juan Island during a specified season*
- *Intercepting the path of any killer whale in inland waters of Washington*

Vancouver Whale Watch supports the suggested changes of the Pacific Whale Watchers Association:

1. *Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA.*
2. *Vessels must avoid the established path of Southern Resident Killer Whales.*
3. *Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out 1/2 mile, except for official law enforcement vessels or vessels engaged in emergency and rescue situations.*

This recommendation is more restrictive than the current state law and is within the spirit of the Marine Mammal Protection Act. This recommendation, in cooperation with the PWWA viewing guidelines provides vessel physical and acoustic presence protection for SRKW's. The PWWA recommendation takes into account sound and proximity issues, foraging, travelling, socialising and resting behaviours, important habitat protection and further reduces the potential for vessel strikes. It is in accordance with the precautionary principles used to date for the whales' protection and does not diminish the important educational elements of commercial whale watching. The PWWA recommendation will not negatively contribute to the economy, and is a fair and reasonable law that is less likely to be challenged and overturned in the future.

B. ANPR – 84 COMMENTS RECEIVED

This section will include an overview of the ANPR, which lists the issues to be commented on by the public, as these comments were taken into consideration by the NMFS when putting together their draft report. This will be followed by a short presentation of the 84 letters received and then by my own comments.

(B1.) General Description and Scope of the ANPR

The following excerpt is taken from the Draft Environmental Assessment, 2009, page 1-5:

1.5 Advance Notice of Proposed Rulemaking

To begin implementing the actions identified in the recovery plan to minimize vessel effects on Southern Resident killer whales, NMFS published an Advance Notice of Proposed Rulemaking (ANPR) on March 22, 2007. The ANPR initiated a public comment period to gather information on whether regulations were needed and, if so, what type of regulations might be appropriate (72 FR 13464) (Appendix A). NMFS also received input on potential measures to address vessel impacts during the ESA listing and throughout the recovery planning process. Based on previous comments received, and regulations implemented for other marine mammals, NMFS developed a preliminary list of options for consideration and comment. Five potential preliminary alternatives were provided in the ANPR:

- *Codify the current guidelines*
- *Establish an approach rule*
- *Prohibit particular vessel activities of concern*
- *Establish time-area closures*
- *Create a permit or certification program for whale watching*

The ANPR invited information from the public on the advisability of regulations, on the preliminary list of options, and on other possible measures that will help the agency decide what type of regulations, if any, would be most appropriate to consider for protecting killer whales in the Pacific Northwest. In particular, information and comments were solicited on the following issues:

- *The advisability of and need for regulations;*
- *The geographic scope of regulations;*
- *Management options for regulating vessel interactions with killer whales, including but not limited to the options listed in the notice;*
- *Scientific and commercial information regarding the effects of vessels on killer whales and their habitat;*
- *Information regarding potential economic effects of regulating vessel interactions; and*
- *Any additional relevant information that NMFS should consider should it undertake rulemaking.*

Comments were submitted by e-mail and by mail. The comment period closed on June 20, 2007. Two public meetings were held during the public comment period, which included a presentation providing an overview of the information in the ANPR. Additionally, NMFS answered questions, accepted written comments, and provided the opportunity for individuals to record oral statements. A total of 84 letters and emails were received during the comment period. Comments were submitted by concerned citizens; whale operators; research, conservation and education groups; Federal, state and local government entities; and various industry associations. All comments received during the comment period were posted on the NMFS Regional web page...

The majority of comments explicitly stated that regulations were needed to protect killer whales from vessel effects. Most other comments generally supported protection of killer whales. Six comments explicitly stated that no regulations were needed. There was support for each of the options in the preliminary list of alternatives published in the ANPR, and many comments supported multiple approaches. Some additional alternatives were also suggested. Suggestions for the geographic scope included the entire United States range of Southern Residents (including coastal waters of Washington, Oregon, and California) and a more limited application in inland waters of Washington. NMFS also received comments supporting regulations that apply to all whales, to all killer whales, and to only the listed Southern Resident killer whales. Comments on what type of vessels should be regulated varied, and some suggested that regulations should apply to all types of vessels (motorized and non-motorized) from both the United States and Canada. Other comments supported regulation of only certain types of vessels, such as commercial whale watchers, or requested exemptions for certain classes of vessels (tankers and shipping, over a certain size, in the course of official duties). In addition, comments were also received supporting regulations to address aircraft.

Public comments were used to identify a range of actions, alternatives, environmental effects, methods of assessment, and mitigation measures to be analyzed in-depth, and assisted in eliminating issues that were not important. The ANPR process also provided an opportunity for active participation from a variety of audiences, including proponents and opponents of vessel regulations.

(B2.) Presentation of the 84 Comments

I have examined all of the 84 public comments submitted in the ANPR and have taken excerpts from these statements that make reference solely to approach distances and economic outfall from regulation changes. The comments are divided into five different categories.

A. Comments by Federal, State and Local Government.

1. United States Department of the Interior, National Parks Services.

- We want to commend responsible whale watch operators for their leadership in protecting orcas during recent years.
- We would like to offer the following specific comments regarding your proposed rule making:
 - 2) Codify the Be Whales Wise guidelines into regulations. The most critical of these is to establish an approach limit of at least 100 yards.

2. Department of Fish and Wildlife, State of Washington

- Although the "Be Whale Wise" guidelines have had some measure of success in educating the public and reducing inappropriate boater behaviour around the whales during the past decade, it seems clear that the guidelines are no longer sufficient. To be clear, continued inappropriate behaviour cannot be punished under the "guidelines".

3. San Juan County Marine Resources Committee

- 1) Codify current 'be whale wise' guidelines: the MRC supports this action. Implementation of voluntary guidelines has resulted in increased boater awareness and improved behaviour by many vessel operators. However, multiple violations are documented every year. The MRC agrees that strengthening the guidelines via legal authority will increase their effectiveness, thereby increasing protection of the orcas.
- 2) Minimum approach rule: the MRC supports this concept, and encourages application of conservative minimum distances to ensure adequate protection.

4. Washington State Department of Transportation

- ...WSF currently uses the Be Whale Wise guidelines to guide vessel operations during Orca encounters.
- List of Options:
 - "Codify the current Be Whale Wise marine mammal viewing guidelines": codifying these guidelines would not likely affect WSF vessel operations
 - "Establish minimum approach rule": If the recommended minimum standards compare to the Be Whale Wise guidelines, WSF does not anticipate any impact on current operations.

5. Port of Seattle

- No applicable comments regarding distance or economic impact

B. Comments by Industry Associations

1. Whale Watch Operators Association Northwest (now known as Pacific Whale Watch Association, representing 35 whale watching companies in the U.S. and Canada)

- Use the Be Whale Wise Guidelines as they currently exist with a minimum approach distance of 100 yards...
- Additionally it should be noted that our industry will not survive if vessels are 200 or more yards from the whales. The very important education element of our tours would be significantly compromised at those distances to the point where they would be ineffectual due to the frustration, as the length of a football field already strains many passengers' patience. Enforcement of the existing 100 yard rule is the most productive step to create a safe buffer, and the new protocol will assist in this regard.
- We encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledgling and promising industry with significant economic impact which has done so much for the conservation of these animals and which has been world leaders in the development of its industry guidelines and which has supported the Be Whale Wise Guidelines from the outset. Increasing the minimum approach zone beyond 100 yards would put all that at risk.

2. Northwest Marine Trade Association ("represents over 850 recreational boating businesses in the Pacific Northwest")
 - We support codification of the Whale Wise guidelines. These guidelines are consistent with boating regulations for Humpback Whales in Hawaii and Alaska.
 - We are very concerned about the economic impacts of significant restrictions for the Washington whale watching industry and recreational boating.
3. Pacific Merchant Shipping Association
 - no applicable comments regarding distance or economic impact
4. Western States Petroleum Association
 - no applicable comments regarding distance or economic impact

C. Comments by Research, Conservation and Education Organizations

1. People of Puget Sound
 - It appears that enforcement of vessel restrictions would be enhanced by turning the guidelines into formal rules and so we support regulations. We strongly support regulations that give attention to vessels beyond the whale watchers per se.
2. Friends of the San Juan
 - a new, greater approach distance to the whales
 - Codify the current Be Whale Wise Guidelines.
The federal rule should incorporate the following: 220 yards or 1/8 mile - no-go zone at all times, on either side, and the distance at which vessels must have their engines disengaged (unless safety prevents them from doing so)
3. The Whale Museum
 - Codify the current 'Be Whale Wise' whale watching guidelines
 - Establish a minimum approach distance: ...in the summer months, we suggest that a distance limit be established of 200 yards.
4. Dr. Rob Williams and Erin Ashe
 - We recommend: Enforcement that focuses on intentional and repeated violation of guidelines, rather than occasional incursions within 100M.
5. David E. Bain, Ph.D.
 - I would suggest that NMFS encourage other Washington counties to adopt rules similar to San Juan's in the near term.
(note: San Juan's rules are the same as the Be Whale Wise guidelines)
6. Jeff Hogan, Executive Director, Killer Whale Tales
 - I highly recommend a 200-400 yard buffer around the region's killer whales to compensate for the inherent difficulty in predicting whale behaviour and to keep all vessels outside an area of possible disturbance of animals.
7. Wild Fish Conservancy
 - Erbe recommended a maximum allowable number of boats following a group not exceed five boats within 400 meters. This recommendation should be combined with regulations requiring that no boats be allowed to approach closer than 100 meters.
8. Orca Relief Citizens' Alliance
 - We believe that a minimum of 400 yards in front of, behind, and to each side of a moving pod of orca and individual killer whale is necessary...

9. American Cetacean Society/Puget Sound Chapter

- ACS Puget Sound supports the current *Be Whale Wise* guidelines and public education campaign. Based on the existing buy-in and awareness of the program with commercial whale watch operators, and to a lesser extent the boating public, we recommend using the existing guidelines as the basis for regulation of vessel activity under the Recovery Plan.

10. Orca Network

- The WWOANW is a good start and have been wonderful in assisting with the creation of *Be Whale Wise* Guidelines,...

11. Amy Carey, South Sound Orca Advocates

- I would suggest that at a minimum a moratorium be placed on whale watching until such time that long term impacts to the Orcas can be properly addressed.

12. Fred Felleman, MSc., WAVE Consulting

- A distance and code of conduct need to be set in which non-permitted boats are allowed to watch the whales. Again, I believe the exact details need to be vetted through a public process, but it should be no closer than 200 yards.

13. John Braden, Director, Seattle Aquarium

- Using a precautionary principle, we believe it is prudent to address vessel interactions by strengthening the voluntary *Be Whale Wise* guidelines to be mandatory. We need clear **enforceable** rules on the water.
- In recent years the behaviour of whale watching companies has improved greatly.

14. Monika Wieland, biology graduate

- I am of the opinion that the dominant impact vessels have on the whales is via sound and not through physical interference. As such, I strongly support the current *Be Whale Wise* vessel guidelines that promote slow vessel speeds around the whales. I also support the guideline that no vessels should be under power within 100 yards of the whales.
- Vessels should be allowed to be within 100 yards of the whales if the whales approach the vessel.

15. Peter Hamilton, Lifeforce Founder

- The present Whale Watch Guidelines are voluntary guidelines. There is growing support for legislation and/or regulations ...

D. Comments by Whale Watch Operators

1. San Juan Safaris, Whale Watching & Sea Kayaking

- While calculating the economic impact of thousands of whale watch visitors to a region is difficult, we do know that they contribute millions of dollars to this non-consumptive industry. The non-direct financial contributions are likely significantly higher, and are spread out over many economic sectors. There are few industries if any that can claim the positive economic impacts without a consumptive component. The watchable wildlife industry has its origins in modeling economic stability combined with ecological sustainability.
- At the recent International Marine Mammal Conference in San Diego, our guidelines were recognized as a good model from which other whale watching industries could learn.

2. Sea Quest Adventures

- After countless hours of travelling along side these animals I feel that the current regulation of 100 yards is more than enough room to ensure that these whales can go about their normal behaviours.
- In conclusion, I feel it is unfair to penalize the whale watching industry by enforcing a new 200 yard encroachment law when science has proven time and again

that the real problem or the number of infractions of private boaters far outweighs the industry operators. As previously mentioned the problem is lack of enforcement not lack of regulations. In my opinion it does not make sense to target the industry that has actually increased awareness and the preservation of these whales.

3. SpringTide Whale Tours

- Regulatory steps taken beyond these recommended will significantly and negatively impact our business and thereby our ability to promote the San Juan Islands and Washington State as a tourism destination, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants, not just in Victoria, but the hotels and transportation carriers of our passengers. ... Additional pressures at this time will result in negative economic impacts on the companies which have taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at.
- We encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals and which has been world leaders in the development of its industry guidelines and which has supported the Be Whale Wise Guidelines from the outset. Increasing the minimum approach zone beyond 100 yards would put all that at risk.

4. Prince of Whales

- Codifying the existing guidelines: ...At our annual meetings, the enforcement agencies actually congratulate us for a job well done despite the uncertainty of the animals' direction or activity.
- Establish minimum approach rule: ...This is further supported by the worldwide agreement that 100 yards is a safe distance to be observing, assuming that the vessel is at rest and possibly with engines off. I do believe the SRKW Recovery team feels that 100 yards is reasonable.
- Regulating the vessel interactions of the commercial whale watching fleet will surely kill the best educational presentation for the SRKW. Even the Canadian vessels contribute to the awareness of the islands of the San Juan County and its surrounding ecosystem. A restriction of the boating activity of watching whales could effectively damage the tourism prospects upon which the coast has built a fine reputation.

5. Clipper Navigation Inc.

- Dan Kukat, President of Whalewatch Operators Association Northwest (WWOANW), estimated eight years ago that the Whalewatch industry (not counting ferry operators like Clipper) carried between 300,000-350,000 passengers a year, and created \$132,000,000 dollars in direct and indirect economic activity. Being conservative and estimating the industry has grown twenty percent since then, this industry serves over 400,000 passengers annually creating \$160,000,000 dollars. It is a major part of the economies of Victoria, Friday Harbor, Anacortes, Port Townsend, and to a lesser extent the coastal communities from Seattle to Vancouver, BC.
- On a smaller level the whalewatch part of our daily trip makes the ferry service between Seattle and Friday Harbor economical. ...This dual use is what justifies the vessel to run at all.
- This whole private transportation system would stop if the eco-tours were restricted or discontinued. We will try to estimate some of the impacts if just the Clipper service stopped. ...Just these items total \$ 4,400,000.
- It is hard to estimate job loss as there are direct and indirect job losses. We will try. For direct job losses Clipper employs two crews of six people each to run the ferry. At least twelve seasonal boat jobs would be lost, one night cleaner, and at least two reservations staff. For the boat if daily labor costs are \$1500 then \$180,000 in wages would be lost. Reservations and dock staff would lose another \$25,000.

Indirect jobs are harder to estimate. Various models are used but if one just estimates that a seasonal job is created for every \$50,000 in economic activity not associated with running the vessel itself, the number of lost indirect jobs would be 1.5 jobs for Seattle and 12.5 jobs for Friday Harbor.

We are providing data for your analysis on an economic level. Over \$4,500,000 in lost economic activity and approximately 30 seasonal jobs would be lost if just this one vessel shut down. If you multiply that on an industry level using the numbers above you can see that a huge loss in economic activity and jobs would result if this industry was restricted. Most of these losses will be borne by small operators who love and want to protect the SRKW.

- Codify existing "Be Whale Wise" guidelines as regulations and existing restricted areas.

6. Vancouver Whale Watch

- Codifying the current Be Whale Wise marine mammal viewing guidelines: This is a good idea and would allow enforcement of these provisions and penalties for violations.
- Establish minimum approach rule: The suggestion of more than 100 yards would make viewing from vessels very difficult.
- Economic studies, such as the 2006 study 'Understanding the Potential Economic Impact of Marine Wildlife Viewing and Whale Watching in California: Executive Summary' by Linwood H. Pendleton, should be reviewed to truly evaluate the economic value that marine mammal viewing has to the economy. As quoted in the Pendleton study, '*Numerous studies have demonstrated the economic value of wildlife viewing, especially whale watching. Whale watching contributes to local economies both in direct revenues (and the jobs these revenues support) and in the overall economic wellbeing of coastal users.*'

7. Victoria San Juan Cruises

- We request that the National Marine Fisheries Service maintain the current regulations of the Marine Mammal Protection Act...

8. Seafun Safaris Whale Watching Inc.

- Establish minimum approach rule: The current guideline of 100yds translates in reality to an average viewing distance of at least 150yds for those operators who take this provision seriously. Beyond 150yds, the viewing experience becomes far more passive and unemotional. I am firmly convinced that the emotional engagement of the many hundreds of thousands of participants each year with these animals is one of their best chances of survival. ... In summary, all current data points to 100yds being adequate.

9. Anna Hall

- On the advisability of, and need for regulations. The current Be Whale Wise guidelines have been internationally developed with input from respected researchers, monitoring groups, managers, enforcement officers and whale watch operators. The respect and commitment to these guidelines should not be discounted. Based on recent discussions, it appears that the sector that is the least informed is the recreational boating community.

If vessel regulations are to be implemented. They should reflect the current Be Whale Wise as they are accepted, based on science and expert opinion, and are now standard operating procedure for commercial operators.

- Economic effects. A large component of commercial whale watching is wildlife education. This can be achieved with the current Be Whale Wise guidelines. Increasing viewing distances will reduce the efficacy of on-board education, especially on smaller boats. This has the potential to significantly impact the economic situation of both company owners, and employees.

10. San Juan Safaris, Brian Goodremont

- If NOAA wants to impose new laws, then let's keep in mind what is working now. The commercial Whale Watch Operators and all the government and NGO's have a working model right now. Let's use the distances from Be Whale Wise, and give money to enforcement for more presence on the water and more public education in critical areas before boaters get close to whales.

11. San Juan Excursions

- It would be a financial disaster for us if any new regulation would require us to maintain a distance of more than the present 100 yd. limit. Please do not do this to our industry because it would put most of us out of business.
- We have carefully read the comments of Shane and Jennifer Aggergaard of Island Adventures, Inc., Cedric Towers of Vancouver Whale Watch, and Dale Martinis of Private Whale Watching. We completely agree with everything they have said and our position on all of these matters is virtually identical to theirs, so please allow us to make their comments ours as well." (See numbers D-6, D-17 and D-18)

12. Eaglewing Tours Ltd.

- Please I encourage you to regulate very carefully, tread lightly and not upset the delicate balance of a fledging and promising industry with significant economic impact which has done so much for the conservation of these animals. ... Increasing the minimum approach zone beyond 100 yards would put all that at risk.
- Use the Be Whale Wise Guidelines as they currently exist with a minimum approach distance of 100 yards, making regulatory allowances for situations in which the SRKW's approach vessels as well as other situations where approach within the 100 yards is not reasonably avoidable.
- Enforce the Be Whale Wise guidelines and establish a baseline of behaviour of all vessels of all types; ... do not encumber the industry due to a lack of enforcement effort;
- Regulatory steps taken beyond these suggested herein will significantly and negatively impact the industry, reduce jobs, and negatively impact the regional tourism industry including hotels, ferries, airlines, buses, restaurants. People travel from all over the world to visit the Pacific Northwest and view the icon of this pristine area, the Killer Whale. Additional pressures at this time while we are at a tipping point will result in negative impacts to an industry which has taken millions of people to see whales in their wild habitat, and thereby raised the SRKW's awareness to the level it is now at.
- As a result of the reduced travel by the general public, partially due to the after effects of 9/11, our industry has seen reductions in the number of vessel trips and the number of vessels in the vicinity of the SRKW's at any given point in time. This has created an economic tipping point which threatens the industry's well being, before any additional adverse impacts, such as undue regulatory impacts;

13. Maya's Westside Whale Watch Charters

- We would like to lend my voice in support of the viewing standards, especially the 100 yard standard, now in place...

14. Five Star Whale Watching

- Five Star Whale Watching supports the general concepts of (i) codifying the current NMFS Regional marine mammal viewing guidelines into regulations;

15. Deer Harbor Charters

- The Be Whale Wise guidelines are, in my opinion, very good and appropriate for commercial and private boaters. However, more enforcement and education of the private boaters is a very important part of the protection of the SRKW.

16. Anacortes Kayak Tours

- The current Be Whale Wise guidelines are more than enough protection for the animals in regards to vessel traffic. If there is in fact a need to 'protect' this population of highly intelligent and very urbanized predators from the effects of vessel traffic, then more enforcement of the current guidelines is far more appropriate than expanding the current 100 yard buffer that is today's global standard for whale viewing. An expansion to 200 yards could actually have a negative effect for the orcas if the whale watch industry was damaged by it. The companies represented by the WWOANW provide a fantastic platform by which the general public can be educated about these wonderful and iconic creatures.

17. Private Whale Watching, Dale Martinis

- As a whale watching captain of the SRKW since 1991, I fail to see any extra protection needed from so called vessel effects for the whales over and above the Be Whale Wise Guidelines. The SRKW seem to go about their daily business just fine year after year.
- Any increase beyond 100 yards will kill my ecotour business from my small vessel.

18. Island Adventures Whale Watching

- The world-wide standard for vessel distance from marine mammals is 100 meters. Any larger distance requirements are scientifically unnecessary..
- We, as an individual company, as well as the whole of the industry, make a large economic impact on the Pacific Northwest. People come from all over the world specifically to see these southern resident killer whales. Sales tax revenue data (Island Adventures, Inc.) can be shared with you, upon request, to prove the positive economic impacts of the whale and wildlife viewing industry. Unnecessary vessel restrictions could negatively impact the economic, and all other aspects, of the sightseeing tour business.

19. Ocean Explorations

- no applicable comments regarding distance or economic impact

E. Comments by Individuals

1. John Boyd

- Regulating Vessel Interaction: YES. Currently the WWOA (**Whale Watch Operators Association**) uses the "Be Whale Wise" guidelines, which have been adaptive since their inception. I think NOAA should continue working with Soundwatch, WDFW, and the WWOA to refine these guidelines even more. The biggest issue is getting the private boaters to also be subject to the same guidelines.
- Economic Effects of Regulating Vessel Interactions: ... And while economics shouldn't trump what is in the best interest of the orcas, it does affect many people. A typical whale watch visitor to the San Juans not only pays for the trip, but usually pays for their ferry trip, buys gas along the trip, usually shops on the island for lunch or stays in a hotel or other lodging. They visit the Whale Museum, restaurants. The owners of the whale watch companies pay their crews, pay taxes, fill their boats locally, purchase other goods and services.

2. Jeanne Hyde

- Codifying the current Be Whale Wise marine mammal viewing guidelines: Yes, to make it a regulation it will then have 'teeth' to it.

3. Caroline Armon

- The "Be Whale Wise" guidelines should be regulatory, not voluntary, and enforced.

4. Christina Davis

- For example, instead of implementing a 100-yard minimum approach rule, use 200 yards to be sure.
- Finally, regardless of the final regulation schemes details, comprehensive enforcement is of the utmost importance.

5. Terry and Jan

- I do not think the Orcas need any more protection

6. Terry Gowler

- Simply stated; Endangered Species should not be viewed by excursion boats or any boat for hire, period. The lively hood of the operators can be off set by island tours, kayak destination tours day lunch cruises and such and not just to let those who can afford, and most likely don't live here, to see the last 80-90 of a resident species of Orcas decline do to these selfish viewing activities.

7. Sorrel North

- Please consider either eliminating or severely restricting whale-watching activity in the San Juan Islands and enacting regulations to prevent other vessels from interfering with orcas as they swim in the Salish Sea.

8. Richard Jack

- I support codifying the current "whale-wise" guideline.

9. Michael F. Sear

- Consider including in the proposed rule making process the "Be Whale Wise" guidelines developed by Soundwatch, a program of the Whale Museum, a 50(C)(3) non-profit organization located in Friday Harbor, Washington.

10. Sharon Grace

- Guidelines should be enacted as rules, except that NMFS/NOAA should extend the 100 yard minimum distance to 200 yards.

11. Brian Glennon

- I feel everyone (commercial and recreational) need a simple set of guidelines that are easy to understand and execute
- As you know there are many who would like to see whalewatching banned because it effects "their" whales and world. Let's not forget that whale watching is the primary source of education in this area regarding marine environmentalism. We teach 100's of thousands of people every year about the sensitivity of our local ecology and the fragility of it. I like to think that my efforts to teach and show locals and visitors have helped our area through education and by operating respectfully around the whales. We have come a long way in our attitudes towards whales in a few short years and I hope that we can continue to share the experience of seeing these great animals in their natural environment.

12. Gretchen Mueller

- Establish a minimum approach rule
- Provide (through NOAA or other agencies) the man and boat power to enforce the regulations, and tough penalties enacted for those who don't follow them.

13. There were 9 individual comments that did not mention specific distances or economic value of whale watching. In general they all agreed upon the need for protective regulations and more enforcement.

14. A group of 15 students from the University of Maryland College Park submitted comments - they were all in favour of protective regulations for Killer Whales, they gave no comments regarding viewing distance or economic value. These comments were only a few lines each.

(B3.) My Comments

After reading the 84 letters, I was able to put together the following summary:

- 37 participants would like to codify and enforce the Be Whale Wise guidelines (keep the current 100 yard rule).
- 10 comments indicated that they want to see the distance increased to a minimum of 200 yards.
- 32 comments wanted to see enforcement of regulations.
- 16 comments indicated that there would be definite negative economic results if the minimum viewing distance was more than 100 yards.

Note that in the NMFS analysis of the 84 comments (please refer to page 3 of this letter), there is, for some reason, no reference to the significant number of comments (19%) expressing concern about the economic downturn that the whale watching industry would experience if the regulations change to more than 100 yards. This omission by NMFS occurred despite the fact that this major concern is mentioned at least 16 times in the 84 comments, and the president of the WWOANW (now PWWA) representing 35 U.S. and Canadian whale watching companies states "it will be the end of this industry". In theory the ANPR provided an opportunity for active participation from a variety of audiences. However, by choosing exactly what the NMFS had deemed important to them and omitting in its report the vital economic impact these changes will have on the commercial whale watching industry they have show an absolute bias that must be challenged.

C. DRAFT REGULATORY IMPACT REVIEW (IEC 2008)

A Draft Regulatory Impact Review (IEC 2008) was prepared for NOAA Fisheries by Industrial Economics, Incorporated in 2008. Titled "Vessel Traffic Regulations to Protect Killer Whales in Puget Sound" this draft was conducted in accordance with Presidential Executive Order (E.O.) 12866, providing a comparative analysis of the costs and benefits of the alternatives under consideration for the proposed action.

The following excerpts are taken from the Draft Regulatory Impact Review and will be followed by my comments.

CHAPTER 1 – INTRODUCTION AND BACKGROUND

2. *The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:*

In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that have maximum net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

3. *E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant." E.O. 12866 defines "significant regulatory action" as an action that is likely to:*

1. *Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;*

The Regulatory Impact Review is intended to assist NMFS in selecting the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

26. *IMPLAN, a regional economic model, was applied to quantify the dollar value of goods and services produced, and employment generated, by consumer expenditures in the whale watching industry. Regional economic modeling accounts for the interconnectedness of industries within a geographic area – that is, industries not only supply goods and services to consumers, but also to each other. ... The current whale watching industry in Puget Sound is estimated to contribute approximately \$18.4 million annually and 205 jobs to the 19 counties adjacent to the whales' habitat area through direct, indirect, and induced expenditures related to the industry.*

MY COMMENTS:

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that have an annual effect on the economy of \$100 million or more. The IEC states that using the IMPLAN (a regional economic model) the whale watching industry only contributes 18.4 million. I feel that this number is grossly underestimated. San Juan County, in a letter to NMFS dated January 5, 2010, estimates the state wide revenue of whale watching to be \$64 million.

In the Draft Environmental Assessment, it has been indicated that NMFS expects Canada to follow suit in changing the regulations. The following excerpt is taken from page 6-4:

A 200 yard approach regulation in U.S. waters would also provide an opportunity for continued coordination regarding protection of killer whales in Canadian waters. Considerable efforts have been made to coordinate the guidelines on both sides of the border for clarity to boaters operating in the waters of both countries. We will continue coordination and provide support for any efforts in Canada to also consider increased approach guidelines or regulations to maintain consistency and provide a benefit to the whales.

There is no question that this is a transboundary issue, as the whales do not recognize boundaries and are continually moving between Canadian and U.S. waters. Canada and the U.S. have coordinated their efforts in the past, with both the U.S. and Canadian whale watching companies working together, supporting Soundwatch and following the Be Whale Wise guidelines. If NMFS anticipates a united effort with Canada in putting forth the new regulations, then should not the industry and economics of whale watching be considered transboundary as well? There is no question that the U.S. and the Canadian whale watching companies will be greatly affected by regulation changes in the U.S., whether Canada follows suit or not. The economic impact of whale watching needs to be looked at as a whole unit, including U.S. and Canadian companies, and not divided economies, as a whole industry could be jeopardized.

The Draft Environmental Assessment provides information regarding the number of whale watching companies, vessels and approximate number of passengers, the following excerpt is taken from page 3-34 of the document:

As described in Subsection 3.4, Socioeconomics, the commercial whale watching industry is the predominant tourism activity focused on the whales. In 2006, 76 active commercial whale watching vessels (22 U.S. and 54 Canadian) from 41 companies (19 U.S. and 22 Canadian) were operating in Haro Strait and approximately 500,000 people participate in commercial whale watching each year (Koski 2007).

The number of Canadian companies equals that of the U.S., therefore if one uses the figure presented by the San Juan county of \$64 million, then one can easily apply that figure to the contribution of the Canadian companies as well (it actually may be more because Canada has more vessels). This puts the contribution of whale watching to the economy at approximately \$128 million.

As noted in the comment provided by the Clipper Navigation Inc. (Presentation of the 84 comments, #D-5) Dan Kukat, President of Whalewatch Operators Association Northwest (WWOANW), estimated eight years ago that the Whalewatch industry (not counting ferry operators like Clipper) carried between

300,000-350,000 passengers a year, and created \$132,000,000 dollars in direct and indirect economic activity. Being conservative and estimating the industry has grown twenty percent since then, this industry serves over 400,000 passengers annually creating \$160,000,000 dollars. It is a major part of the economies of Victoria, Friday Harbor, Anacortes, Port Townsend, and to a lesser extent the coastal communities from Seattle to Vancouver, BC.

E.O. 12866 goes on to state that “*effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs,...*” I would argue that the economic downturn from passenger loss with the increase in viewing distance will have a major impact on the whale watching sector of the economy, along with all the associated tourism, interconnected industries and all the associated jobs. Therefore I would suggest that there will have to be a review by the Office of Management and Budget.

CHAPTER 2 - PARTIES POTENTIALLY AFFECTED BY VESSEL TRAFFIC REGULATIONS

The Draft Regulatory Impact Review used two scenarios to approach regulations.

32. ...

- ***Vessel approach regulations:***

- Scenario 1 – Avoid approaching closer than 100 yards/meters to any whale.*

- Scenario 2 – Avoid approaching closer than 200 yards/meters to any whale.*

33. *Results of this analysis indicate that the parties expected to be affected by potential vessel traffic regulations are individuals engaged in commercial whale watching tours, private vessel-based whale watching activities, kayakers, and, to a lesser extent, commercial fishing vessels traversing these areas of the Sound.*

- *This analysis forecasts that Scenario 1 of the potential approach regulation may affect 15 commercial whale watching trips (carrying 825 passengers), ...Data are not available on the distance of vessels from whales beyond the 100 meters/yards mark identified in the existing guidelines. This analysis is therefore not able to quantify parties potentially affected by Scenario 2 of the approach regulation.*

CHAPTER 3 – POTENTIAL ECONOMIC EFFECTS OF VESSEL TRAFFIC REGULATIONS

107. *Existing research does not allow for the quantification of economic impacts of NMFS' alternatives for minimum approach distance, vessel speed, and vessel path regulations or the establishment of enforceable no-go zones, and primary research is beyond the scope of this analysis. Information provided in this chapter describes the extent to which the potentially affected parties identified in Chapter 2 may be affected by vessel traffic regulations. This chapter first presents a qualitative discussion of the types of economic impacts that may be generated by such regulations (Section 3.1) and then describes how these types of impacts relate to the management alternatives being considered. Finally, this chapter describes recent research related to the valuation of whale watching activities (Section 3.2)*

3.1 TYPES OF ECONOMIC IMPACTS ASSOCIATED WITH THE POTENTIAL VESSEL TRAFFIC REGULATIONS

109. *A person's ability to get close to whales, including parking directly in the paths of the whales, vessel speeds, or ability to access no-go zones may contribute to an individual's willingness to pay to participate in the whale watching activities. As such, potential vessel traffic regulations which limit proximity and access may generate negative social welfare impacts to the individuals forecast to be affected in Chapter 2. Further, to the extent that proximity to whales, vessel speeds, or the ability to access no-go zones contribute to an individual's likelihood to participate in whale watching activities, regional economic impacts to industries providing goods and services to the whale watching industry may occur.*

113. ... For example, if the quality of a whale watching trip is compromised because of an increased minimum approach distance, change in method of whale watching (e.g., parking in the path of whales), or lack of access to particular areas, the amount that patrons are willing to pay for trips may decrease. In this case, they may incur greater costs to travel to another area, or they simply may choose a different way to spend their leisure time. ...
122. The WWOANW provided comment on the Advance Notice of Public Rulemaking, expressing support for enforcement of the 100 yard/meter guideline for all vessels operating in the Sound, but cautioning that there is unlikely to be a need for increasing that approach distance. In fact, the WWOANW anticipates that the industry may not survive the establishment of a 200 yard/meter minimum approach distance as it will limit the educational value of the whale watching trips and decrease participation. Additionally, individual whale watching operators also expressed support for codifying the existing guidelines.

MY COMMENTS:

Throughout this report there is a constant reminder that:

- data is not available on whale watching beyond 100 yards.
- existing research does not allow for the quantification of economic inputs of NMFS alternatives for minimum approach distance.
- proximity to whales may contribute to an individual's likelihood not to participate in whale watching activities.
- regional economic impacts to industries providing goods and services to the whale watching industry may occur.
- patrons may incur greater costs to travel to another area or may simply choose a different way to spend their leisure time.

The only time that the severity of the economic outfall from the regulation change is mentioned in either draft is this one time, when it is stated that WWOANW mentions that the industry may not survive the establishment of a 200 yard approach distance (actually the WWOANW states that the industry will not survive). This information, for some reason is never mentioned in the Draft Environmental Assessment (2009).

3.3 RECENT RESEARCH FOCUSED ON VALUES ASSOCIATED WITH WHALE WATCHING

137. No study was identified that specifically models the relationship between proximity to whales and willingness to pay to participate in whale watching activities, which would allow for quantification of social welfare or regional economic impacts. The following research, however, provides useful information on the value that whale watching participants hold for the activity.
138. The results of four past studies: Duffus & Dearden (1993), Orams (2000), Andersen (2004), and Malcolm (2004) provide data on the factors that lead to an enjoyable or memorable whale-watching tour and how satisfied whale-watch participants are with various aspects of their whale watching tour.
- Duffus and Dearden (1993)
139. Duffus and Dearden (1993) surveyed whale watch participants specifically targeting killer whales in the Johnstone Strait of British Columbia, Canada, in July and August of 1986 and 1989. At the time of the study, voluntary 100 meters/yards approach guidelines existed; however, it is unknown whether the vessels from which whale watch participants were surveyed followed these voluntary approach guidelines....
140. The transferability of the results of this study to the approach regulations under consideration for Puget Sound is limited. The Duffus and Dearden surveys took place over 15 years ago and it is not clear how close the whale watching vessels were to the whales when the survey was undertaken. Further, the study does not provide enough information to derive a functional relationship between proximity to whales and trip satisfaction. The research does suggest, however, that proximity to whales and overall trip satisfaction are related.

COMMENTS:

- the study took place over 15 years ago
- it is not clear how close the vessels were to the whales (only *voluntary* guidelines existed and at that time much of the whale watching took place at less than 100 yards)
- the research does suggest that proximity to whales and overall trip satisfaction are related

Orams (2000)

141. *Orams surveyed whale watch tour participants targeting humpback whales in Tangalooma, Australia, to determine factors that contributed to their satisfaction or dissatisfaction. Whale watching tours in Tangalooma, Australia, are subject to regulations that restrict vessels from approaching whales closer than 100 meters. Thus, the whale-watching tours surveyed by Orams maintain approach distances from whales similar to those that would be maintained by whale watching vessels in the Puget Sound area if the NMFS 100 yard approach guidelines became codified.*
142. *In contrast to Duffus and Deardon, Orams found that proximity to whales ranked relatively low in terms of factors contributing to whale watching tour enjoyment. ... The most common responses were “more spectacular behaviour” (26 percent) and “more whales” (24 percent). “Closer to whales” also got fewer responses than: “less people,” and “boat construction/angle for viewing.” Further, in tours where few to no whales were seen, approximately 30 percent of people said they were dissatisfied to some degree.*
143. *Orams does note, however, that a study conducted by Duffus (1988), which found that killer whale watchers in British Columbia listed proximity to whales as a very important part of their whale watching tour. Given the different findings of Duffus (1988) as noted in Orams (2000) and the fact that the Orams study took place in Australia and focused on a different whale species (humpback whales, which are larger than killer whales and therefore may provide better viewing at greater distances), the applicability of the Orams study to whale watching in Puget Sound is limited.*

COMMENTS:

I believe Oram's study should never have been used.

- It is an Australian study carried out with regulations of 100 meters
- the whales being observed were Humpbacks, an entirely different species, 3 times larger than a Killer Whale and obviously provides better viewing at greater distances.
- It states in the study that the applicability of the Orams study to whale watching in Puget Sound is limited.

Also note that Humpbacks are generally found in smaller groups and their behaviour is very different from Killer Whales, who are typically in larger groups and generally more active. Thus “more spectacular behaviour” and “more whales” may not be as much of an issue when viewing Orcas. Also, it appears that the visibility of the passengers were obstructed due to the number of people and the boat itself, so not being able to see would certainly be more of an issue than the distance from the whales.

Andersen (2004)

144. *Andersen surveyed participants on 15 whale watching tours with two U.S.-based, vessel operating, commercial whale watching companies offering tours from the San Juan Islands, Washington. At the time of the study, both whale watching companies were members of the Whale Watch Operators Association Northwest (WWOANW) and therefore generally followed the “Be Whale Wise Guidelines.” Thus, all whale-watch tours surveyed maintained approach distances of at least 100 meters/yards, similar to the approach distances that would be maintained in Scenario 1 of the potential approach regulation.*

146. Further, when asked, “what was most memorable about your whale watching experience?” seeing killer whales got the highest response rate (39.3 percent). A significant percentage of participants surveyed (30.4 percent) said that specific killer whale behaviour or killer whales’ proximity to the whale-watching vessel was the most memorable part of their tour. However, when asked to rank 14 factors in order from most memorable to least memorable, “distance of boat to the whales” received an average rank of 7.67, making it the most seventh most memorable factor. The lowest ranked factors (i.e., the most memorable factors) were: seeing a whale; seeing whales in their natural environment; the behaviour of whales, and the length of time spent with whales.
147. Finally, when asked if they “were disappointed in any way by their whale-watching tour and if so, how?” no participant surveyed listed “not close enough to killer whales” as a source of disappointment without also stating that they understood that vessels could not get closer to whales because of the “Be Whale Wise Guidelines.”

COMMENTS:

- the study was conducted at a viewing distance of 100 yards.
- a significant percentage (30.4) said that specific killer whale behaviour or their proximity to the vessel was the most memorable part of their tour.
- if no participant listed “not close enough to killer whales” as a disappointment, then just maybe 100 yards is close enough to satisfy the participants and is not an issue.

Malcolm (2004)

148. Malcolm surveyed whale-watch participants in the Johnstone Strait, Clayoquot Sound, and Southern Vancouver Island (SVI) in British Columbia, Canada from June 1 to September 30, 2000 to determine, among other things, participants’ pre-trip expectations and their post-trip satisfaction levels.
149. ...All SVI whale watch participants surveyed participated in whale watch tours conducted by Springtide Charters, which operates out of Victoria, British Columbia, Canada. Springtide Charters is a member of WWOANW. Thus, it follows the voluntary 100 meter/yard approach distance specified in the “Be Whale Wise Guidelines.”
152. In terms of general satisfaction, ... “The distance from which whales were observed” received the fifth (out of 10) highest satisfaction rating among all participants and SVI participants surveyed.
154. More generally, the study implies that whale watchers around SVI are less concerned with getting close to whale as they are with seeing whales in a respectful manner. Thus, the impacts to whale watchers of the 100 yard/meter approach or 200 yard/meter approach guidelines may be minimized if whale watchers understand that such guidelines are designed to benefit the whales by minimizing the negative effects of whale watching on the whales. ...

COMMENTS:

- once again, the study was conducted with the 100 yard regulations – a distance at which passengers are satisfied thus distance is not an issue. Killer Whales are easily identifiable at this distance which is important to passengers
- regarding line # 152, fifth out of ten is a fairly neutral rating, however it does show that there is some slight dissatisfaction with the distance
- nowhere in Malcolm’s study does it mention that whale watching has negative effects on the whales, therefore it should not be mentioned in the implications drawn from the study

SUMMARY OF THE STUDIES: the first thing I would like to point out is that no study was conducted with a minimum distance of 200 yards/meters, or more than 100 yards/meters for that matter. Three of the four studies were conducted at a viewing distance of 100 yards, the fourth study 100 yards or closer. Two of the studies, Andersen (2004) and Malcolm (2004), do show an indication that proximity to the whales influences satisfaction to an average degree, at 100 yards/meters. In the Duffus and Deardon (1993)

study it is mentioned that the research does suggest that proximity to whales and overall trip satisfaction are related. In my opinion the Oram's study of Humpbacks should not have even been considered as data, however it is interesting that Oram does note a study conducted by Duffus (1988), which found that participants watching killer whales in British Columbia listed proximity to whales as a very important part of their whale watching tour. This study is referenced in the Draft Regulatory Impact Review, I have to wonder if this would be a study worth looking at. Two of the studies, Duffus and Deardon (1993) and Oram (2000) were deemed to have limited transferability to the approach regulations under consideration for Puget Sound.

CHAPTER 4 – SMALL BUSINESS ANALYSIS

157. *While operations may be affected to the extent that these regulations are established, the analysis does not project decreases in overall activity levels, but rather describes the potential diminished value that individuals may hold for whale watching as a result. Welfare losses to individuals engaged in whale watching are not borne by small entities.*

COMMENTS:

The statement above is the last in the report. Somehow the writer of the Draft Regulatory Impact Review draws the conclusion that if the viewing distance is increased to 200 yards, impact to the whale watcher will be minimized if he or she understands that the guidelines are designed to benefit the whales. Another conclusion, that is equally bizarre, is that the number of whale watchers will not diminish because of doubling of the viewing distance, from 100 to 200 yards, but that the individual's trip might not be as valuable an experience and there will be no loss of revenue or jobs to the whale watching companies because of this. These are totally unfounded conclusions that have to be challenged

Surveying patrons on a whale watching trip that look at whales at 100 yards or less is much the same as asking spectators in the first 10 to 20 rows at a sporting event whether proximity to the game is the most important part of their experience. They assume everyone being surveyed looks at the game from that distance so it doesn't register as critical. Take the same survey at row 100 to 110 and the response would have a different emphasis, distance and visibility would certainly be more of an issue. Whale watching at more than 100 yards has very little appeal, that is why 100 yards is the worldwide standard.

D. DRAFT ENVIRONMENTAL ASSESSMENT (2009) - Socioeconomic Section 4.4

The following are excerpts taken from the Socioeconomic section of the Draft Environmental Assessment in relations to the 200 yard regulation change, with comments made after each section.

4.4 Socioeconomics

As described in Subsection 3.4, Socioeconomics, commercial whale watching is the only industry targeting Southern Resident killer whales. ...This section therefore focuses on impacts to the commercial whale watch industry and includes information on commercial fishing, shipping, and ferries as appropriate.

4.4.3 Alternative 3: 200 Yard Approach Regulation

Under Alternative 3, NMFS would promulgate a mandatory 200 yard approach regulation, with the same exceptions as under Alternative 2. There are little data available to evaluate how many vessels currently approach within 200 yards, because it is acceptable under current guidelines and incidents are not reported. ...The 19 companies and 22 Canadian companies that make up the whale watching fleet of 76 vessels (Subsection 3.4.2, Whale Watch Industry in Puget Sound) would have to train their personnel to remain 200 yards from the whales. Some slight costs may be associated with such training.

It is possible that a viewing distance greater than 100 yards would hurt the economic viability of the commercial whale watch industry. Viewing whales from a distance of 200 yards may be less attractive to some individuals interested in participating in commercial whale watch trips. However, there is no evidence to support this possibility. There is evidence, however, that the economic viability of the industry would not be affected by an increased viewing distance.

Several studies have assessed the value that whale watching participants have for wildlife viewing and provide data on the factors that lead to an enjoyable or memorable whale watching trip, and how satisfied participants are with various aspects of their trip (Subsection 3.5, Whale Watch Industry in Puget Sound). Survey results of whale watch participants indicate that proximity to the whales is not the most important part of the whale watchers' experience and that seeing whales and whale behaviour was much more important (Subsection 3.5, Whale Watch Industry in Puget Sound). In addition one study found participants were most satisfied with the respect their vessel operators gave the whales; the number of whales, whale behaviour, and learning also received higher satisfaction than the distance from which whales were observed; and the participants strongly agreed with statements related to protection of the whales (Subsection 3.5, Whale Watch Industry in Puget Sound).

Any impacts to the whale watch industry would be small, and based on the information above would not be expected to impact the demand for whale watching, the number of companies or vessels, the jobs associated with the industry, or the overall value on the local economy of the commercial whale watch industry or local tourism in the Puget Sound area, compared to the No-action Alternative.

COMMENTS:

The writer of the Draft Environmental Assessment admits that viewing whales from 200 yards may be less attractive to some individuals interested in going whale watching. The writer then goes on to say there is no evidence to support this possibility and further compounds this falsehood by saying there is evidence to show that the economic viability of the industry will not be affected by the 200 yards. These are indefensible statements. There may be no direct evidence, ie. Studies conducted at 200 yards, however there are 16 comments which clearly state that the whale watching industry will face negative economic consequences if the viewing distance increases to more than 100 yards. The industry has been telling NMFS that they will not survive the increased distance but for some reason NMFS refuses to acknowledge this.

The report states that "*There is evidence, however, that the economic viability of the industry would not be affected by an increased viewing distance*" and "*Several studies have assessed the value that whale watching participants have for wildlife viewing and provide data on the factors that lead to an enjoyable or memorable whale watching trip, and how satisfied participants are with various aspects of their trip*". The so-called 'evidence' and 'several studies' are actually inferences based on only 4 studies reviewed in the Draft Regulatory Impact Review – three of these studies were conducted at 100 yards and one at 100 yards or less, and the transferability or applicability of 2 of the studies to the approach regulations under consideration for Puget Sound were deemed limited. So basically, the whole claim made by the writer that there will be very little impact on the whale watching industry is based on inferences that were made on 2 studies conducted at 100 yards, with no mention of 200 yards to the participants. Once again, 100 yards is a good distance to view the whales, as they can be identified at this distance, which is part of our educational program and allows for an emotional connection.

One of the inferences reached is that the number of whale watchers will not be diminished because of an increase from 100 to 200 yards, but that the individual's trip might not be as valuable an experience and there will be no loss of revenue or jobs to the whale watching companies. These are totally unfounded statements and have to be challenged.

The whale watching industry has been trying for years to work with NMFS to get up to date studies and meaningful research started regarding viewing distances and its effects on passengers. For some reason NMFS refuses to acknowledge this and has chosen not take advantage of information our passengers could have provided. Some of the companies conducted their own surveys last summer and conclusions show exactly what we have been telling NMFS all along: the public is not interested in whale watching from more than 100 yards.

E. DRAFT ENVIRONMENT ASSESSMENT - REGULATORY IMPACT REVIEW

6.1 Introduction

EO 12866 was amended by EO 13422 (September 7, 2007), which required Federal agencies to describe in writing the market failure that gives rise to the need for regulations.

6.3.2 Description of Costs

Commercial Whale Watching

Alternatives 3 (200 Yard Approach Regulation) and 5 (Expanded No-go Zone) have the largest uncertainty regarding potential economic impacts. Both of these alternatives could result in a large portion of the commercial whale watch industry viewing whales from a greater distance than they currently do when operating by the Be Whale Wise Guidelines. The entire fleet would need to adjust their approach to viewing the whales to comply with these new regulations. While members of the commercial whale watching industry have suggested that viewing from a greater distance could reduce interest in whale watching and result in fewer customers, there is evidence that proximity to whales is not the most important feature of a whale watch experience. An increased viewing distance may not have any economic impact on commercial whale watch trips particularly if the reasons for the increased viewing distance are explained to customers. This is consistent with the importance of responsible viewing and respect to the whales valued by whale watch participants. In addition, other methods can be employed to increase the viewing experience from a greater distance including use of larger viewing platforms, binoculars, and telephoto lenses. If an increased viewing distance did affect the willingness to pay of individuals participating in commercial whale watch trips or value, this would have an effect on the consumer surplus rather than the net expenditures for these types of leisure activities (IEC 2008).

6.3.3 Cost/Benefit Conclusions

Any economic burden resulting from the proposed regulation will likely be greatest for the commercial whale watch industry as a result of increased viewing distance, however, as described, there is information that commercial whale watching will continue and regulations could even provide benefits for land-based whale watching activities. Studies have found that it is more important to whale watching participants that they view whales in a respectful, protective manner than that they get within a specific distance. This suggests any negative effects caused by regulations that increase the viewing distance may be minimized if the participants are educated on the reasons for the regulations. The result is likely a small impact borne by the participants and not necessarily an economic impact borne by the commercial whale watch companies.

If the quality of a whale watching trip is compromised by an increased viewing distance, lack of access to a particular area, or changes in methods (i.e., no parking in the path) the amount participants are willing to pay may decrease. In this case they may travel to another area or choose different ways to spend their leisure time which would reduce the consumer surplus (IEC 2008). The overall level of expenditures on leisure activities in the project area, however, is likely to remain constant for a particular individual.

COMMENTS:

These statements are ludicrous and show a complete lack of understanding of the tourism marketplace; if you offer a shoddy product, ie. whale watching at 200 yards, customers will find alternate activities and perhaps travel to alternate areas. Many of our passengers come from all over the world specifically to see killer whales.

I would like to address specifically some of the comments mentioned above:

“While members of the commercial whale watching industry have suggested that viewing from a greater distance could reduce interest in whale watching and result in fewer customers, there is evidence that proximity to whales is not the most important feature of a whale watch experience. An increased viewing distance may not have any economic impact on commercial whale watch trips particularly if the reasons for the increased viewing distance are explained to customers. This is consistent with the importance of responsible viewing and respect to the whales valued by whale watch participants.”

This conclusion by NMFS is based on the inferences derived from the 4 studies reviewed in the Draft Regulatory Impact Review (IEC 2008). Responsible viewing and respect to the whales is as important to whale watch operators as it is to the participants in the studies, that is why in the comments section it is mentioned over and over again by the whale watch companies that there is a need of codification of guidelines and more enforcement. At the time of the studies a minimum of 100 yards was (and still is) determined to be a distance at which responsible viewing can occur and is a distance which respects the whales, therefore in this study these 3 items of importance cannot be separate from each other. I suggest that responsible viewing is more important to the participants than getting closer than 100 yards to the whales, as whales are easily seen by most people at this distance, and it not likely that the participants considered being further away when rating the importance of distance. I don't believe the inferences made by the drafts on the studies can be applied to a minimum distance of 200 yards. 100 yards provides a good foundation at which all other aspects of watching whales can be enjoyed, at 200 yards distance would most likely be listed as more important.

“An increased viewing distance may not have any economic impact on commercial whale watch trips particularly if the reasons for the increased viewing distance are explained to customers.”

I cannot support this statement, as my experience of operating a whale watching company has shown me otherwise. I have answered the questions of our passengers for over 11 years, and one of the most common ones is “How close do we get to the whales?”. Our office and boat staff is trained to let our passengers know that we follow the regulations and view the whales at a distance of 100 meters minimum, we also inform them that this distance provides a comfortable buffer so that we do not disturb the whales. Some people are OK with this right away, some people need to think about it. Last summer our naturalists did their own study on the boat asking their passengers to take note of their viewing experience at 100 yards, then when the vessel was 200 yards away they asked the passengers questions regarding their viewing experience at this distance – almost all of them said that they did not find that distance enjoyable or beneficial, and they would not go whale watching again if that was the minimum distance, nor would they recommend it to others. NMFS fails to understand that passengers want to ‘see’ the whales and hear them if possible and this experience is necessary to motivate subsequent action on the part of the public. Not everyone has good distance vision and our naturalists have often stated that for some passengers 100 yards is a strain, at 200 yards many people may not be able to ‘see’ them at all.

6.4 Determination of Significant Regulatory Action

EO 12866 defines a “significant regulatory action” as one that is likely to result in a rule that could:

- 1. Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities.*

None of the alternatives are expected to have a substantial economic impact on the commercial whale watch industry or other parties. ...Although not anticipated, even if a large portion of the commercial fleet suffered negative economic impacts, the entire estimated value of the industry is \$18.4 million, which is below the \$100 million level considered significant under EO 12866.

6.5 Regulatory Flexibility Analysis

...While operations of the whale watch industry may be affected by the proposed regulation, it is the customers and not necessarily the whale watching operators who may bear the impacts. The economic analysis (IEC 2008) projects no change in revenue for whale watching operations, but rather the potential diminished value of the customers’ experience as a result of greater viewing distances. Such losses to individuals engaged in whale watching are not borne by small entities. NMFS does not expect any small entity to cease operation as a result of any of the alternatives.

COMMENTS:

The statement by NMFS that none of the alternatives are expected to have a substantial economic input on the commercial whale watch industry or other parties sums up their position.

The whale watching industry has attended meeting after meeting with NMFS, we have written comment after comment describing the economic outfall the increased distance will have. Yet, for some reason, they absolutely refuse to acknowledge our prediction. This defies all logic and one can only assume that they do not care. The value of the industry to the economy, as I and other companies have pointed out, is significantly more than \$100 million, and as such will require a review by the Office of Management and Budget.

F. CONCLUSIONS

The scientific arguments for changes by NMFS has been discussed and commented on by Anna Hall (#20090831-1,2,3) and others. The focus of my letter has been strictly related to the proposed change to the minimum viewing distance and its economic impact.

After reviewing the ANPR and all 84 comments, the Draft Regulatory Input Review (IEC 2008), and the Draft Environmental assessment (2009), there are just a few points that should be made:

- The whale watching industry is convinced that it will not survive the change in regulations.
- The economic value that this industry brings to the State of Washington and British Columbia is well over \$100 million. The loss of business, jobs and taxes to the respective governments is immense. As such EO 12866 and amended EO 13422 will require a review by the Office of Management and Budget.
- The whale watching industry considers itself to be a steward of the Southern Resident Killer Whales and has always shown that it will modify its rules if changes can be shown to benefit the whales.
- NMFS has used limited customer studies regarding the importance of distance to whales and economic studies, and cobbled together an assessment that is full of inconsistencies in its analysis.
- By downplaying or omitting the whale watching industry's genuine economic concerns it has show that it is willing to let our industry fall by the wayside.

G. RECOMMENDATIONS

Rather than jeopardize this \$120 million industry NMFS should meet with representatives of the whale watching industry to outline a plan that would over the summers of 2010 and 2011 determine the effects of whale watching at different distances. This could be done simply by surveying passengers pre and post trips. This is something we have been offering to do in concert with NMFS since the ANPR in 2007.

If the economic figures for the industry are in dispute, conduct an in-depth analysis that is agreeable to both the whale watching industry and NMFS.

Sincerely,

A handwritten signature in black ink, appearing to read 'Cedric Towers', with a stylized flourish at the end.

Cedric Towers
President
Vancouver Whale Watch

cc: U.S. Senator Patty Murray
U.S. Senator Maria Cantwell
U.S. Senator Rick Larsen

✓ Donna Darm
Assistant Regional Administration
National Marine Fisheries Services
7600 Sandpoint Way
North East Building
Seattle, Washington 98115
U.S.A.

Paul Cottrell, D.F.O.
M.P. John Cummings



January 4, 2010

YOUR PACIFIC NORTHWEST TRAVEL EXPERTS: *More Destinations. More Adventures. More Fun.*

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

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

To Whom It May Concern:

We thank you for providing an opportunity to offer comment on the above mentioned proposed rule. We firmly believe that there are no bad people involved in this process. There are people with different points-of-view whether based on science, experience or personal beliefs. It is clear that the overall goal is to protect these magnificent creatures.

We own and operate the "Victoria Clipper" vessels which have provided year round unsubsidized service between Seattle and Victoria, British Columbia since 1986. In addition, we own and operate San Juan Express which is certificated by the Washington Utilities and Transportation Commission (WUTC) for the provision of seasonal service from mid-May to mid-September between Seattle and Friday Harbor.

We have operated the San Juan service since 1991. We determined shortly after the inauguration of the San Juan service that we need to supplement our offering with an option for a Marine Sealife and Whale Watching Search. Although we operated a scheduled service, we determined that Friday Harbor as a destination was not sufficient to attract the level of ridership to sustain the service.

As information our company employs between one hundred fifty (150) to two hundred fifty (250) people depending on the season. We also generate sales in excess of twenty-seven million dollars per year for the wide range of products that we provide. The Marine Sealife and Whale Watching Search is an important component in our travel packages.

The vessel we utilize for this service is a one hundred fourteen (114) foot catamaran that has three (3) viewing decks and has interior seating for two hundred thirty seven (237) passengers. Our vessel uses water jets for propulsion as opposed to the traditional exposed propeller.

We are opposed to all three (3) of the proposed restrictions:

1. The two hundred (200) yard approach restriction
2. The one-half mile no-go zone
3. The prohibition against parking in the whale's path

We do not believe that the basis or justification for these proposed rules is supported by science. It is a reactionary response to a perceived threat. Comments to this effect were made time and again by individuals and associations at the public meetings in Anacortes,

Seattle and Friday Harbor. I believe, based on my experience, that the turnout at the above mentioned locations was well beyond what is normally experienced at public meetings. The basis for the attendance was to point out the disagreements with the conclusions reached in preparing the Proposed Rules and to identify the extreme economic hardship that would be imposed on areas already substantially damaged in this recession.

I would like to make some additional points as noted below:

- We, as do our entire fellow whale watching companies, support killer whale conservation. Further, we believe that any laws or regulations must be fair and scientifically meaningful to be effective.
- We are members of the Pacific Whale Watching Association (PWWA) which represents all whale watching companies throughout the trans-boundary region.
- PWWA has worked proactively to provide Whale Watching Guidelines and to work collaboratively with various agencies to ensure the safety and protection of these remarkable animals. This program has resulted in greater adherence to the guidelines each year. Our on-board naturalists are Seattle Aquarium and Friday Harbor Whale Museum trained. Their commitment is to educating the public and ensuring the preservation of the Southern Resident Killer Whales.
- Our whale watching program is educational and has created substantially more advocates for these magnificent animals.
- PWWA and its' members have assisted with on scene monitoring and protection when law enforcement and Sound Watch representatives have not been available. Our company would like to see funding for increased enforcement and educational activities.
- We believe that the efforts required to educate recreational boaters should be increased and we fully support such efforts.
- We believe that the education of sport fish operators is also crucial as this is the sector of the maritime community most likely to overlap in distribution with foraging resident killer whales.

Further, to truly assist the SRKW populations' long term viability, we feel that the proposed rules should address the following:

- Expand the regulations to include Oregon and California with Washington. As the feeding grounds of this population span the waters of all three (3) states the area of protection must do so as well.
- Reduce the 200 yards in the proposed rule to 100 yards. There is no proof that vessel presence has any effect on the whales. The 100 yard proximity limit as named in the MMPA, Washington State law and the self-prescribed guidelines of the PWWA are ample. The additional 100 yards will reduce the educational value of the passengers on board the whale watching vessels which could adversely impact the long term understanding and well being of the whales.
- Replacing the ½ mile no-go zone with a go-slow zone. The proposed "no-go" zone is unrealistic and would be difficult to enforce. By replacing this with a 7 knot speed limit, you have an enforceable rule that would add to the protection of the whales while maintaining the rights of passage, shipping, fishing, kayaking and general recreation.
- Changing the parking in the path law to a guideline. As a law this rule would be difficult to enforce and will only serve the financial coffers of the legal sector of our economy. It would be reasonable if the whales traveled on a directional highway, but they do not. As a guideline it is fair to expect a vessel operator not to park in

the whales known path. It is not fair, however, to make a vessel operator legally responsible for an altered path as chosen by the whale.

- Lack of evidence from research of starvation. More scientific data must be collected to prove or establish that vessel presence is causing starvation in the whales before such extreme measures are taken to eliminate this human/whale interaction.
- Avoidance – Additional studies must be done to weigh both the potential negative and positive effects on the whales by the presence of vessels. Whales are social creatures and quite often make the effort to have a closer interaction with a vessel.
- Need for more federal enforcement dollars. Before or included in the proposed new laws, the Federal Government must have a plan and funding in place for enforcement. The whales would be better served by funded enforcement of the laws currently in place of any additional laws that continue to lack oversight.
- NOAA to fund more public education. Education for the public regarding threats and potential threats to these whales would do more for them than the addition of the proposed rules. Funding for education should be an essential part of the protection plan. There must be increased education of private boaters to mitigate their impacts but there is also a need to offer educational opportunities to all of the public to mitigate their effects.
- Economic effects on companies and communities. This proposed rule does not realistically reflect the potentially adverse economic effect that these rule changes will have in this commercial industry.
- Need for more salmon enhancement. These proposed rules aimed at the commercial whale watching industry are a diversion from the real issue facing the SKRW's lack of prey. The time, effort and money should be spent on salmon enhancement and food stock and not wasted on the politically and optically expedient whale watching community.

The PWWA has suggested replacing the three (3) proposed rules with the following:

- Vessels may not negligently be within 100 meters of Southern Resident Killer Whales
- Vessels must avoid the established path of Southern Resident Killer Whales
- Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out ½ mile.

Please let me know if you have any questions and/or comments. This subject is vitally important to us and our employees.

Yours truly,



Darrell Bryan

President and CEO

Phone: 206.443.2560

2701 Alaskan Way, Pier 69 | Seattle, WA 98121-1199

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Remarks - Public Hearing
Protective Regulations for Killer Whales in the Northwest Region Under
The Endangered Species Act and Marine Mammal Protection Act
Anacortes, Washington
Monday, 24 September 2009

Good Evening and thank you for making yourselves available this evening.

My name is Darrell Bryan and I am the President and CEO for Clipper Navigation, Inc. based in Seattle.

We own and operate the "Victoria Clipper" vessels which have provided year round unsubsidized service between Seattle and Victoria, British Columbia since 1986. In addition, we own and operate San Juan Express, which is certificated by the Washington Utilities and Transportation Commission (WUTC) for the provision of seasonal service between Seattle and Friday Harbor.

We have operated the San Juan service since 1991. We determined shortly after the inauguration of the San Juan service that we needed to supplement our offering with an optional Marine Sealife and Whale Watching Search. Although we operated a scheduled service, we determined that Friday Harbor as a destination was not sufficient to attract ridership.

As information, our company employs between one hundred fifty (150) to two hundred fifty (250) people, depending on the season. We also generate sales in excess of twenty seven (27) million dollars per year for the wide range of products that we provide.

The vessel we utilize for this service is a one hundred fourteen foot catamaran that has three viewing decks and has interior seating for two hundred thirty seven (237) passengers.

I will explain the importance of the whale watching component to our program when I provide our formal submission to the docket. However, in the meantime, I would like to, subject to the time constraints, highlight a few points:

1. We, as our fellow whale watching companies, support killer whale conservation. Further, we believe that any laws or regulations must be fair and scientifically meaningful to be effective.
2. We are members of the Pacific Whale Watching Association (PWWA), which represents all whale watching companies throughout this trans-boundary region.
3. PWWA has worked proactively to provide Whale Watching Guidelines and to work collaboratively with various agencies to ensure the safety and protection of these remarkable animals. This program has resulted in greater adherence each year. Our on-board Naturalists are Seattle Aquarium and Friday Harbor Whale Museum trained. Their commitment is to educating the public and ensuring the preservation of the Southern Resident Killer Whales.
4. Our whale watching program is educational and has created substantially more advocates for these magnificent animals.
5. PWWA and its' members have assisted with on-scene monitoring and protection when law enforcement and Sound Watch have not been available. Our company would like to see funding for increased enforcement and educational activities.

6. Further, we believe that the efforts required to educate recreational boaters should be increased and we fully support such efforts.
7. In addition, we believe that the education of sport fishing operators is also crucial as this is the sector of the maritime community most likely to overlap in distribution with foraging resident killer whales.

I could go on and on, but let me say that although we support the many efforts to preserve and protect the Southern Resident Killer Whales, we would request a measured approach while verifying some of the purported science used in requesting the potentially catastrophic regulation proposed. I will address some of the conclusions identified in my written submission.

We believe that the current guidelines can be codified and matched with greater enforcement to ensure compliance. A great deal of improvement from our sector has been made over the years and we believe that there will, and can be, further improvement.

In conclusion, I have listed some questions wherein the response may be helpful in the preparation of our formal submission to the docket.

1. Why did NOAA recommend scenario 2 over scenario 1? What specific science did NOAA use to make this initial recommendation?
2. Why did NOAA recommend 200 yards, opposed to the global standard of 100 yards, for a viewing distance for Southern Resident Killer Whales? What was the specific science used to make this recommendation?
3. Why do scenarios 1 and 2 state "all whales" as opposed to Southern Resident Killer Whales, as this is a recovery plan for Southern Resident Killer Whales; not Transient Orcas, Humpbacks, Gray Whales, and Minke Whales?
4. How will these new regulations help SRKW's, as there has not been any significant, or negative effects from vessel traffic documented with the science presented to date? Has the recovery plan addressed Salmon Enhancement issues? If yes, how so?
5. Would NOAA consider adding the word "negligently" to its current language "vessels cannot negligently be within 100 or 200 yards from SRKW'S?"
6. If vessels are impacting SRKW's, can you explain why J pod has remained stable since the early 70's? They spend more time around vessel traffic than any other group of Orcas on the planet. How will these newly proposed regulations help SRKW's?

Darrell Bryan

President and CEO

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January 10, 2010

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

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

Dear Assistant Regional Administrator:

As a local whale watching tour company owner I have had the pleasure to share the amazing experience of seeing wild orca whales with visitors worldwide for the past 14 years. (Please see enclosed testimonials) I have also been observing the SRKW's for 17 years here in the San Juan Islands, Puget Sound, and lower BC. We have recorded travel and route data and observed population changes, travel patterns, and interactions with vessels throughout this time period. It is clear to see, after so many years of observation, that there has been little change in the habits of the whales related to vessels, and little to no vessel avoidance. There are a lot more fish and a lot less vessel traffic out in the western part of the Strait, yet the whales choose to inhabit the inland waters during the summer as they have for so many years. There was a period of attrition in L pod, the least watched of the three pods of whales, around the year 1999 but J and K pods have been stable for the last 20 years, actually J pod growing in number for many, many years. Please include population data through 2009 when analyzing population changes. The numbers have been stable overall and it just seems plain crazy to take a snapshot of a few years and use only that snapshot to change federal rules.

In general, the data used in "proving" negative effects from vessels is inconclusive and conducted over a very short term. None of the studies are peer-reviewed and even their conclusions state that more study is recommended. Please do not make rule changes based on modeling and assumptions from the data. The data collected to date is highly biased, gathered by non-objective activist types. Researchers must be objective in order to have a high degree of confidence in findings, which is not the case in any of the studies. Specifically, the Soundwatch data is gathered by volunteers who feel the "need" to "SAVE THE WHALES"; most come into the job with extreme pre-conceived notions about vessels. The Soundwatch Boater and Education Outreach is a great idea, but is often too heavily biased against vessel traffic. You can feel it in their approach to boats that are watching the whales. They act as if they have enforcement authority, approaching vessels at a high rate of speed. I have been on the private boater side of this enough times to know that this is a regular occurrence. Many others have also talked of how disgusted they are with

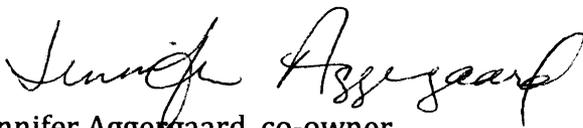
the poor public relation skills of Soundwatch on the water. Soundwatch is a very respected program and represents itself well in meetings, etc but the volunteers are often rude and condescending out on the water, leaving a very bad feeling with folks out enjoying their day. I only include this comment because it has so much to do with biases. The Soundwatch reports are often extremely biased, more so with certain operators. If funding is to continue, PR training would be in order, as well as enrollment in a random drug testing program.

The global standard for whale watching distance is 100 yards/m; there is no data that supports the need for a 200 m distance. The issue of vessel strikes has no bearing in the case of SRKW's and should not be considered in the process. Would there be harm in making the federal law for viewing distance the global standard of 100m, continuing studies on behavior changes & vessels, and reconsidering the 100m distance if in fact negative effects are proven?

Please weigh more heavily the comments coming from those who have the most experience with the whales, such as Ken Balcomb of The Center for Whale Research. His whole life has been dedicated to the study of the SRKW's and he has no loyalties to any group, ENGO, or governmental organization. Even the San Juan County Council, who has been involved in SRKW policies for so many years, agrees with Washington State Law and with the PWWA proposal of 100m viewing distance and a "go-slow" zone on the west side of San Juan.

Don't take the easy way out by enacting strict regulations regarding vessels while ignoring the real issue: food supply. I would bet that the majority of comments regarding this proposal are coming from those who oppose it. If this is the case, I urge you to follow the will of the people, not the will of a few individuals.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Aggergaard".

Jennifer Aggergaard, co-owner
Island Adventures, Inc.
1801 Commercial Ave.
Anacortes, WA 98221

Subject: Fwd: Thanks!

Date: Friday, September 11, 2009 8:01 AM

From: Island Adventures, Inc. <whales@islandadventurecruises.com>

To: Jennifer Aggergaard <aggergaard@comcast.net>

----- Forwarded message -----

From: Chris <cstack@gmail.com>

Date: Thu, Sep 10, 2009 at 10:31 PM

Subject: Thanks!

To: whales@islandadventurecruises.com

I took your 12:00 noon Whale watching Cruise today, and I cannot express how wonderful it was. the crew was very friendly and knowledgeable. the boat was very clean and comfortable. I was recommended to Island Adventures by a friend who took the same cruise last year, and my experience definitely surpassed my expectations. I will be recommending Island Adventures to anyone I know of who travels out to Washington. I have been visiting in Seattle since Sunday, and today was the most relaxing day of my trip so far. The scenery in and around the San Juan Islands was just fantastic, and the wildlife viewing (especially the Orca whales) was top notch. this trip will probably go down as the most memorable part of my trip out to Washington. a heartfelt thanks to you and your crew, for such a fantastic experience.

Thanks,

Chris Stack

Oshkosh, Wisconsin

--

Island Adventures, Inc.

1801 Commercial Avenue

Anacortes, WA 98221

1-800-465-4604

1-360-293-2428

www.islandadventurecruises.com <<http://www.islandadventurecruises.com>>

Subject: Fwd: Way to go!!

Date: Wednesday, September 16, 2009 2:38 PM

From: Island Adventures, Inc. <whales@islandadventurecruises.com>

To: Jennifer Aggergaard <aggergaard@comcast.net>, Carl Williams <captcarlwill@yahoo.com>, Kate Janes <kate.janes@gmail.com>, Mark Kratzer <mckratzer@msn.com>

----- Forwarded message -----

From: MaryM <mlmartin@peak.org>

Date: Wed, Sep 16, 2009 at 1:04 PM

Subject: Way to go!!

To: whales@islandadventurecruises.com

To all of you;

We went on the noon trip Friday, 9/12/09. It was our great fortune to have Captain Carl, Mate Mark and

Naturalist Kate take us on this adventure. What a great team! And what a triple header day! Our "Wow"

factors were turned on high. We just can't say enough about the care, courtesies extended to everyone

and the comforts made available on board.

Tremendous! The energizer, Kate, was such a wonderful

source of information and endeared herself to everyone with her knowledge and love of the

whales we had come to view. She was an unexpected jewel in the package you presented. And, the two young men in the office where we got our tickets were so courteous and pleasant. Our day on tour with your group was outstanding and we would not hesitate to recommend you to anyone, nor would we hesitate to tour with you again. Our compliments on a terrific program. Very well done.

Sincerely,

**Jack and Mary Martin
Albany, Oregon
9/16/09**

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Island Adventures, Inc.
1801 Commercial Avenue
Anacortes, WA 98221
1-800-465-4604
1-360-293-2428
www.islandadventurecruises.com <<http://www.islandadventurecruises.com>>

Robin and I had a great whale watching adventure. It started out cold and wet but when the whales showed up it stopped raining. It was fantastic to watch some many whales, breaching, doing cart wheels and rolling over at one time. We also enjoyed all the other wild life we saw. I will definitely recommend this tour to other people.

Robin and John

I wanted to thank you for your extra efforts and care you gave my son on your 6/5/08 12pm trip..since he uses a wheel chair he isn't always able to enjoy activities that we take for granted...your staff — Captain Mike, Brooke, the other young man (sorry I forget his name) made it easy for him to get on and off the boat and be able to experience that wonderful display of “whale joy”...we had a wonderful family time, and my parents had a 60th wedding anniversary that they will never forget !!!

Mary Balok, Pittsburgh, PA

My husband and I were on our first whale watching tour on June 2, 2008. We have lived in Puget Sound off and on for twenty years but just never seemed to find the time to go.

What a great experience this was and the crew, especially Kate, were fantastic. I really had no idea how much fun watching the whales could be! Kate is without a doubt one of the best tour guides (naturalists) we have had the pleasure of knowing.

Thanks for a great day and I know we'll be doing this tour again.

Judy Healy

My husband, sister and I were on the whale watching tour on May 28, 2008. We absolutely LOVED it! It was easily the highlight of our trip! Thank you SOOO much!!! We will HIGHLY recommend your tour to anyone we know going out there, as well as leave reviews wherever we can! Thank you for the memories!

Kristi Jensen

Absolutely amazing. We're up from San Diego with our 8-year old triplets for their older sister's wedding. The kids have seen many killer whales in San Diego. Beautiful, but only in a tank. This was our best day up here. Unforgettable. Sitting on the bow of a ship, watching Orcas all around and listening to John Denver singing “Calypso” was so surreal. Thanks for a wonderful, well worth the money, experience.

The Hawkins Family, Oceanside, Ca

Just wanted to thank you for a great whale watching experience. My husband and I have lived in Washington for almost 40 years and have never seen a whale in the wild and we saw so many last weekend on your trip. (We had gone on another whale watching trip a few years ago but never saw any whales.) It was also the highlight of my in-laws visit from Chicago. Kate did a great job as our tour guide and I loved her enthusiasm.

SEM Lab, Inc.

I was on your afternoon cruise this past Monday (7/21/08) and just posted a couple of shots on CNN's iReport section for whale watchers! Here they are:

<http://www.ireport.com/docs/DOC-49595>

The whales were so magnificent and beautiful — it brought tears to my eyes. I will be back someday. Thanks for the amazing adventure!

Stacy Manning

Associate Director of Constituent Relations

School of Architecture

The University of Texas at Austin

This is to thank Captain Carl, First Mate Michael, Naturalist Kate, and penultimate coffee purveyor Brooke for the whale-watching cruise of a lifetime. We joined you last Wednesday (10/08) on a picture perfect day (and we took about 100 pictures!) to share in the thrill of sailing in the super-pod (J,K, and L), staring dumbfounded as Mega swam near the ship, viewing three simultaneous breaches, seeing a classic spyhop up close, and enjoying endless other incomparable sights. Our little video-cam captured the audio excitement of everyone on board — especially Kate! We'll have no problem sending friends your way - and perhaps even one of our sons for a summer job! Of special note is that, beyond the beauty and bounty of the wildlife, each of you made our time on board and in the store special and fun — you are consummate professionals and delightful folk — quite simply, you made our whole trip to beautiful Washington state a remarkable vacation. Thanks so much and may fair winds always blow your way,

Randy and Gail Schulte, Landlubbers in Tennessee

Thank you for an unforgettable 4 days at sea, orca-whale watching.

Aloha,

Kay Uyeda & Mona Ho

(Kay and Mona have been cruising with us for the last 10 years or so!)

We had the most wonderful day with Island Adventures. You guys put on a truly

memorable experience — the very professional and hard working crew were quite fantastic. Captain Mike and excellent leader, Kate a fabulously enthusiastic and knowledgeable naturalist, along with Liam and Carl, made up an excellent team. The whales were the final element to a memorable day. We would recommend this tour unequivocally — quite brilliant!

James F. and Family, UK

On Monday, June 16, 2008 I was on the 3:30 tour. I want to commend the crew of that tour; they did everything they could to ensure a successful cruise, and they were indeed successful. I appreciate the extra time and effort they were willing to take to make this the most interesting whale watching tour I've ever been on. Thank you to the crew.

Leta E.

Just wanted to thank you for the wonderful sunset cruise last Saturday (4/26/08). My children and I loved every second of it! Shane, Kate and Brooke were fantastic—so knowledgeable about the wildlife, especially the whales. But more importantly, they were so enthusiastic about what we were seeing. It's hard to believe that they experience these things every day and yet are still so in awe. They gasped and cheered with the rest of us every time those whales surfaced or made a move. We have not stopped talking about it—even my teenagers! We can't wait to come back. Thanks for everything—it was perfect in every way!!!

Judy M. from Frankfort, IL

We had a wonderful time. I wanted to personally thank Kate, our naturalist, though. She was so wonderful. She truly made the trip stand out in my mind from the many I've taken. I've traveled the country (and parts of the world) whale watching, but I'd never experienced a crew as lovely as yours! If it were possible, would you pass this message along to our naturalist in particular? I also plan on joining you in early May to see Pacific Coast resident Orcas for the first time in my life! Thank you all once again!

Tori H.

I went on a cruise today, Saturday (4/5), and just wanted to thank you for such a great trip. I grew up in the Puget Sound area and had never seen a gray whale until today. I got to see at least 4!!!!It was a great trip and I was impressed with the knowledge and friendliness of the crew. I also chose your company because I heard from my friends that you comply with the rules and don't get too close to the whales. You ran a tight ship.

Samantha E. from Seattle, WA

I was on your whale watching tour on September 26, 2007. It was the most incredible day and I would like to extend a big thank you to all your employees. They were fantastic and the day couldn't have been more successful. I have told many people about our experience. They plan on booking with your company in the future.

Sylvia O.

I want to thank you for the wonderful tour my daughter and I took with Island Adventures. Your staff were outstanding and made our tour the highlight of my vacation. We saw J, K and some of L pods. The Orcas gave us a show to remember! We will be back next year. We've already marked our calendars!

Alice V. from St. Louis, MO

Thank you for another wonderful day on the water. What a knockout line up: orcas, a minke, stellar sea lions, harbor seals, eagles, harbor porpoise, turkey vulture. Pretty darn cool. And Captain Shane the naturalist! That was a first for me. What fun.

Annette C.

I am so extremely impressed with your crew. Carl, Captain; Brooke, Snacks; Drew, Naturalist; were absolutely fabulous. We were planning on going with a different charter, but they were filled up.

Coincidentally, I kept getting referred to different charters, who finally got me to you and your company. Honestly, I'm so grateful that all the other charter's were full today, because we will always come back to your company. Tracy in the reservation office was totally awesome. She helped me and my family spend our money in your staff with class and availability of her time. In all honesty, I'm just being funny, she was great. This was my husbands' and my 15th anniversary celebration trip and it couldn't have gone better. We were so impressed with your staff, that we will be back every year at least 1 time. Unfortunately, we live in Portland, Oregon, so it takes us time to get up here, but it will be worth the while. I'm hoping we can stay in Anacortes next time, but we will have to find the best area. Again, thank you for such a great time and a memory that will last a lifetime.

Wayne J. from Portland, OR

Today I went on your 9 am tour and want to tell you a wonderful trip it was. I have lived in the Pacific NW for 18 years and have always wanted to go whale watching, but was "waiting" to go with someone. I decided to give myself a birthday present and went by myself. I went out with a heavy heart. But as I stood at the bow of the boat, almost the

entire trip, my soul was soothed to be out in the open water with the wind, fresh air, beautiful scenery, and of course the wildlife, particularly the whales. They made me squeal like a little girl. Thank you to the crew for an awesome day!!!

Christine R. from Kent, WA

I want to thank Skipper Carl and all the crew that helped us enjoy a terrific day of whale watching yesterday. One of the reasons we always chose Island Adventures is we know they are respected for their adherence to whale watching regulations and have a sound "green" policy. We were first introduced to you by People For Puget Sound, and have been out, always with you, several times since.

Yesterday was a jewel of a day so the scenery was spectacular. Buuuut, watching the group of transient Orcas kill and feast on the Harbor Seal was a notable life-time experience. Thank you Capt'n Carl, for allowing us the time to watch until the whole ritual of killing, playing with, then devouring the Harbor Seal, played out before our eyes (eat your heart out Cap'n Shane!). We brought along a guest and we were confident that Island Adventures would be a great experience....we just didn't know how great.

Thanks for running a terrific operation. Thanks for knowing that being generous with time, when one of nature's great dramas is being played out, is more important than watching the clock. We'll go whale watching again. Will it be with Island Adventures? Emphatically, yes!

Barbara L. from Camano Island, WA

At the request of my two grand kids, I am writing this e-mail. My two grand kids are visiting "Grammy and Grandpa" for a couple of weeks. They live in Reno, Nv. I decided to take them on a whale watching trip. Notice I said "I took them" as Grammy is not comfortable on the water. She would have been fine on this boat.

The boat is super nice and I can't say enough nice things about the whole crew. They were wonderful!!

We saw lots of Orcas. So in the words of my grand kids it was an "awesome" trip.

Thanks to the crew, Captain Karl, Captain Brian, Kate and Tiffany.

Will H.

This is our second cruise this summer. Didn't think the second could be as good as the first. WRONG. It was so different. Different boat, different crew, different whales, different weather...different WONDERFUL caring crew that made each one feel like they were special from the front desk when we checked in (bought jackets for all and Christmas tree ornaments) to the hand shake at the end...again, we WILL be back with

more people...here are some pictures to prove my point...including the note I sent to Brooke whose picture you will see with my sleeping daughter and husband. Thanks again for the great day.

Jan & Norman P.

I just wanted to thank you again for the wonderful whale watching adventure we (myself and two grandsons) had on Friday, June 29th. We went out at Noon and had the opportunity to see many of the J Pod Orcas—they were so beautiful and the crew made the experience overwhelming with their knowledge and abilities...from the information about some of the wildlife we saw on the way to the Pod and then the able way that the Captain moved the boat to get the best views of the Orcas as they moved and all the information that Kate provided about the animals...it was just something spectacular. I have been wanting to go whale watching for so many years and now my dream has come true! I will gladly refer folks to you so that they can have a great experience too. “Thank you” seems inadequate but it is from the heart!

Sue Z. and grandsons

This cruise was the most spectacular day of our vacation. The crew was very helpful, knowledgeable, and kind. And all the scenery was beautiful—the eagles, the harbor seals, and all the whales. Pat and I highly recommend this cruise!!

Steve and Pat from Chiefland, FL

We just wanted to say thank you for the great trip. We got to see the orca's the way nature intended them to be—free—and it was amazing. The crew was wonderful and went out of there way to make sure we saw all wild life. I do not take the best pictures, but I got a great one. It just shows how close you can get and still let them have their space to be orcas. Thank you once again for a life time memory.

Tammy & Dennis from Everett, WA

We want to again express our gratitude for a most wonderful day. The trip was way more than we expected. You went overboard (pun intended) to give everyone the best possible experience. Your staff are great. They made everyone feel that they were the only people on board. You took little side stops so we could all see everything possible. We have spent many summers in the waters from Anacortes to Desolation Sound and have seen many of the animals we saw Monday. You made it all new again. I could go on and on, but by now you get the drift of our feelings. Our family is coming from California this July so we WILL be back in force with you. We want to be on your boat with the same crew as you have totally spoiled us. Thanks so much again for a wonderful day.

Norman and Jan P. from Redmond, WA

I have now returned to Wisconsin and want to thank you for the wonderful time we had whale-watching. Your crew was exceptionally friendly, interesting and helpful. They played a large part in making the trip such a success. I've been on many trips but never felt so comfortable with the providers. Thanks again.

Barbara I. from Wisconsin

I would like to thank you for the awesome trip! Before we set out on our trip from Wisconsin to Washington we had called to book our whale watching trip. Sam had answered the phone, and had informed us not only of Island Adventures but also information of the area, with lodging and restaurant information. He went out of his way to help us. Once we arrived we had a fantastic trip! The captain and other staff on the Island Explorer were accommodating and entertaining. We saw more than promised by your staff, and have wonderful memories. Enclosed is a picture from the November 24, 2006 trip. Please feel free to use the picture. Again Thank You!

Mike & Linda Lee W. from Wisconsin

Wow! What a show! First of all, thank you very much for honoring the fluke pass. The captain and crew were great and so knowledgeable about the local wildlife and orca whales. This was my third time out and on the afternoon trip we seemed to stop in the middle of 3 pods. They were all around the boat. About the Explorer 3—what a great boat. The set up is just perfect. Extra seating all around. Nice snack bar area for the crew and all. At the end of our tour, the captain himself took our picture at the bow of the boat from the dock. I'll have great pictures of my whale watch tour. I thought I would see one—instead we saw so many more. Amazing! Thanks so much. Orca whales do exist!!

Gloria from Mt. Vernon, WA



Pacific Whale Watch Association
PO Box 2404, Friday Harbor, WA 98250, USA

Friday, January 15, 2010

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

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

To Whom It May Concern:

NOAA has specifically requested information on:

- a. Alternatives analyzed in the environmental assessment,
- b. Impacts associated with the alternatives,
- c. Scientific and commercial information about the effects of vessel on killer whales and their habitat,
- d. Information on the economic analysis,
- e. Any other relevant information that the agency should consider in developing a final regulation.

Thank you for the opportunity to offer comment on the above mentioned proposed Protective Regulations.

We are fortunate that here in the Pacific Northwest there is consensus that decisions need to be made to foster the Recovery of the Southern Resident Killer Whales.

The staff at the National Marine Fisheries Service (NMFS), members of the Whale Watching Industry, the Scientific Community and other people that love these whales and the Environment that we all inhabit have all displayed their desire, albeit in different manners, to protect these creatures through the process allowed thus far. All should be commended.

(A) Background

The Pacific Whale Watch Association (PWWA), formerly the Whale Watch Operators Association Northwest (WWOANW), is committed to the conservation of the Southern Resident Killer Whales (SRKW's). We represent 32 companies on both sides of the US/Canada border. PWWA was founded in 1992 to pool our collective commitment to Responsible Marine Wildlife Viewing, Education and Research.



Pacific Whale Watch Association
PO Box 2404, Friday Harbor, WA 98250, USA

PWWA was not founded as an Industry Marketing Group, as we have always let individual companies be responsible for their own marketing. We have and continue to work with individuals, educators, researchers, Environmental Non-Governmental Organizations (ENGO's) and Government Agencies to upgrade our knowledge of SRKW's and their habitat so that we can then educate, entertain and motivate our passengers.

We applaud the US Government's attention in the Southern Resident Killer Whale Recovery Plan to both the conservation of these killer whales, and of their prey, the salmon. We believe that efforts directed at the long-term stability of salmon populations and their habitats in the Pacific Northwest would significantly contribute to the conservation of the endangered killer whales. This could mean significant changes to salmon fishing quotas within all sectors and enormous challenges are certain if salmon fishing is to be reduced.

However, the equation seems simple as too few fish, likely means too few whales.

(B) Nature of PWWA's Comments

The Comments in this letter are directed at the proposed "Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act".

We understand that this particular stage of the Southern Resident Killer Whale Recovery Plan is aimed at best protecting these animals and their habitat as we wait for the measures to restore Salmon Habitat and recover Salmon Stocks; and as we wait for efforts to clean up pollution and prevent further environmental degradation.

To generate the momentum needed to accomplish the goals of Salmon Habitat Restoration, Salmon Stock Recovery, and Pollution Clean-up and Prevention, we all need to increase our efforts in Public Education to foster better consumer choices and to garner support for the funding that will be needed.

The Pacific Whale Watch Association and our members will continue our efforts, and we appreciate NOAA's recognition of the importance of PWWA's work in educating the Public and creating enthusiastic supporters of expensive Recovery Plans for both Salmon and Killer Whales. We thank you for identifying the need for our continued involvement in both the SRKW Recovery Plan and these Proposed Regulations.

Our Comments, therefore, are aimed at explaining why, despite the fact that we fully support NOAA's Southern Resident Killer Whale Recovery Plan, we are unable to support these particular Proposed Vessel Regulations for the Viewing of Killer Whales, as written.

PWWA also proposes alternative regulations that, from our reading of NOAA's own scientific papers and reports, are fully precautionary and offer significantly increased protection for the Southern Resident Killer Whales than is currently in place, while maintaining the ability of our members to be significant contributors to the long-term Salmon Recovery and Southern Resident Killer Whale Recovery.

Please let it be clear that PWWA proposes these amendments despite the expectation that they will negatively impact the financial positions of our member companies by requiring new expenditures (new equipment and changes in vessel layouts, e.g. purchases of binoculars for all passengers and laser range finders for all vessels) and likely drops in passenger totals or retail



prices due to a drop in the perceived value of our trips. We as an association believe that the heavier onus imposed on us by the amendments we suggest are justified by the need for greater potential protection of the SRKW's, especially from well-meaning but sometimes uninformed recreational boaters.

(C) PWWA Suggested Amendments

In the Federal Register Notice (FRN), NOAA states that the prohibitions in the Proposed Regulations are to “protect killer whales from interference and noise associated with vessels”.

PWWA fully supports these objectives. We have long recognized that there might be possible impact of underwater noise on the ability of SRKW's to find food, communicate or socialize. Although NOAA admits that no long-term effects have been found despite 25 years of research, PWWA has always taken a precautionary approach.

- NOAA selected Alternative 8, which is a combination of Alternatives 3, 5 and 7. Effectively “200 Yard Approach Regulation, Expanded No-go Zone, and Keep Clear of the Whales’ Path”.
- PWWA suggests a combination of Alternatives 2, an expanded version of 6, and 7. In essence, “100 Yard Approach Regulation, Expanded Go-Slow Zone, and Keep Clear of the Whales’ Path”

The major difference between what NOAA has proposed and what PWWA suggests comes down to this:

NOAA believes that 200 yards Minimum Viewing Distance may be imperative to the long-term survival of SRKW's and needs to be implemented almost regardless of any Economic Impact on the Regional Economy or whale watch industry.

PWWA believes that 100 yard Minimum Viewing Distance provides significant protection to the long-term survival of SRKW's, especially as even that distance is Precautionary and that going to 200 yards would add little additional protection but would very likely cause significant negative Economic Impact to the Region and to the whale watch industry, likely putting at least one entity/small business out of business.

Breaking these two positions down into their components, we end up having to answer these three questions:

- Question #1: “Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?”
- Question #2: “Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?”
- Question #3: “Does the difference in protection to the SRKW's afforded by 200 yards vs. 100 yards justify the additional negative Economic Impact, and resultant loss of Education and Public Support, that the greater distance will have?”



(D) Question #1: “Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?”

To answer Question #1 we must break it down into its key components:

First, is there a potential for Disturbance to Killer Whales by Vessels? Clearly, if there is no potential for Disturbance, then it doesn't matter to the SRKW's if a vessel is 2 yards away or 200 miles away.

What kind of “Potential Disturbances” could we anticipate? PWWA believes that we can get a good indication by seeing what we have done to mitigate through precautionary measures in our own “Best Practices Guidelines”, which are and have always been based on the best scientific research available (which is often that funded by NOAA), and all the subsequent guidelines (Be Whale Wise, SoundWatch, Beam Research, Seattle Aquarium, etc.) and scientific studies that have followed.

So what have PWWA and other organizations designed their guidelines to prevent, or set up their studies to investigate?

- Physical Contact
- Noise
- Proximity

Physical Contact: Potential for serious injury to a whale requires a collision, whether initiated by the whale or the vessel, and very close proximity.

But what constitutes “very close proximity” depends on the speed of travel of the whale and the vessel. If a vessel has its engine(s) off and is not moving, then “very close proximity” may be 5 yards: If a vessel is traveling very fast (30 mph or 50 kph), then 50 yards may be “very close proximity”.

We all agree that there is the risk of potential injury, the harm that could be done by contact.

NOAA in its own submissions indicates that the likelihood or probability of this, a collision between a whale and a vessel, is extremely low. PWWA agrees, but we still incorporated both a distance guideline of 100 yards and a speed guideline of less than 7 knots (about 8 mph or 11 kph) within 400 yards in the presence of whales.

“Speed” is the key component that NOAA has missed in its Alternative #8 (A combo of Alternatives #3, 5 and 7), and that is why our suggestion clearly includes that.

NOAA has expressed concerns about Alternative “6 knots within 400m/ 439 yards” that it could not enforce a speed restriction because it does not have the sophisticated electronic measuring devices necessary to assess speed of a vessel, and that pacing a fast moving vessel that is in and around whales with an Enforcement boat would potentially put the whales at risk from two fast moving vessels, not just one.

This is exactly why PWWA chose 7 knots as its key speed: The vast majority of pleasure and small commercial vessels capable of travelling in excess of 7 knots are partial planning or



planning hull vessels: In other words, if a vessel engaged in whale watching is “up on plane” it is almost certain that it is going faster than 7 knots. And if it is one of the small minority of vessels that not “up on plane” because it is a displacement hull, its top speed is very likely no more than 10 to 12 knots.

Remember that both NOAA and PWWA agree that no vessels should park in the path or be underway 400 yards in the path of a whale. So if a vessel is 100 yards away from a whale, traveling at 7 knots or less, and is not in the path within 400 yards of a whale, the chance of a whale/vessel collision approaches zero.

In fact, one of the reasons for our combined suggestion of 100 yard Minimum Viewing Distance AND 7 knots or less within 400 yards is that it affords greater protection for SRKW's than does the 200 yard and ½ mile No Go Zone if it is applied everywhere that Killer Whales live and year-round.

Noise: Potential for interference with the ability of Killer Whales to use their echolocation to find prey, possible interruption or impairment of vocalizations used for communication about whales, or additional energy expenditure by whales to “talk more loudly”.

PWWA has long recognized the potential impact of Acoustic Masking. Many of our Best Practices, vessel design and our vessel operation procedures are geared towards eliminating our acoustic profile as perceived or received by Killer Whales.

Again, let us remind you that we use the word “Potential” because up to this point all of our efforts are clearly precautionary. We do not have studies that conclude that “Acoustic Masking” does, in fact, prevent Killer Whales from finding and eating prey, only studies that suggest that it “may”. But PWWA takes these precautionary steps because (i) The potential risk to the Killer Whales is high because Salmon Stocks have not recovered, and the Environment is so polluted that small changes in the ability to find food could have negative consequences; (ii) we can use our precautionary steps as a educational tool to inspire passengers to both support funding NOAA's long-term Salmon Recovery and Killer Whale Recovery Plans and make positive changes in their choices as consumers and in their day-to-day life that will reduce their environmental footprint.

So let's get effective Killer Whale Viewing Regulations in place and let's put all of our collective energies into the really important steps of Salmon Stock Restoration and Pollution Clean-up and Prevention. All the houses around us are burning and we are keeping our house safe by spraying the roof and walls with a garden hose.

Back to “Noise”. So PWWA concedes to the “possibility” of an impact from noise, and concedes that under the current sad state of the key prey (Chinook Salmon) returns to the SRKW's Summer habitat, and the high toxin levels via pollution in that habitat (and therefore by bio-accumulation in the prey and then the fat of the SRKW's), that the potential reduction in foraging success, extra vocal exertion and reduction in socialization needs addressing.

So what changes in vessel operation can best address these “Noise” issues?

What is needed to provide optimum precautionary prevention of harm from sound is?

- Reduction of the Source, in this case mostly Mechanical Noise (Made up of noise from the Engine, Transmissions and Drive Systems)



- Distancing of the Source (Vessels) from the Recipient (Whales).

Reduction of the Source, in the case of vessels Mechanical Noise (Made up mostly of noise from the Engine):

Without sound being produced or emitted, no sound can be received.

This seems obvious, and many whale watch vessels do exactly that when within 400 yards of a whale: They turn their engines off and sit quietly.

Note: PWWA has, through its Best Practices Guidelines, long discouraged the use of Depth Sounders or “Fish Finders” or any device that might project sound waves into the water.

No Sound = No Potential for Negative Impact from Sound.

In fact, on commercial whale watch vessels, hydrophones are commonly used to listen to the whales. This not only adds to the emotional connection and educational value that passengers get from their marine wildlife viewing experience, but it sets an example for all other boaters and leads to peer pressure on all other operators to operate as silently as possible.

Very often the loudest sounds are coming from recreational vessels running at speed (over 7 knots, sometime well over) inside the 400 yard 7-knot courtesy slow down zone used by commercial operators.

Scientific Studies, including those funded by NOAA, suggest that the sound received by a whale from an engine pushing a vessel at 7-knots that is 100 yards or more away is negligible. In fact, it is about the same as the background or ambient noise that is almost always present in these waters. An Ambient Level that scientists suggest poses no risk to Killer Whales. In fact, they suggest that this ambient level, equal to what vessels at 7 knots or less produce at 100 yards, is far below the level at which the risk of negative impact from noise is likely to occur.

Does moving to a Minimum Viewing Distance of 200 yards provide more potential protection to the Killer Whales from Noise than does 100 yards? The answer is “Maybe”. Why? Because it all depends on the speed at which the vessel is operating. Greater vessel speed generally requires higher energy expenditure which usually leads to greater Sound from engines.

That is why PWWA is confident that our combination of 100 yards and less than 7 knots within 400 yards affords more potential protection from disturbance than does NOAA’s 200 yard Minimum Viewing Distance.

On P 3-22 Draft Environmental Assessment New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington notes

“Erbe (2002) predicted that the sounds of fast boats (greater than 50 km/h [31 miles/hour]) would be audible to killer whales at distances of up to 16 kilometers (10 miles) and cause behavioral responses within 200 meters (0.12 miles or 219 yards). For boats moving at slow speeds (10 km/h [6.2 miles/hour]), sound would be audible within 1 kilometer (0.62 miles or 1,094 yards) and cause behavioral changes within 50 meters (55 yards).”



NOAA's own research shows that at 7 knots and 100 yards the sound received by Killer Whales approaches the background or ambient noise levels. So if the sound is already at its lowest possible level, moving boats back another 100 yards to 200 yards will make no additional difference.

On P 3-22 Draft Environmental Assessment New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington notes

Underwater sound levels generally increase with speed (Bain 2002; Erbe 2002). Idling whale watch vessels at 200 meters produce sound levels that are comparable to ambient levels (Hildebrand et al. 2006).

"Erbe (2002) predicted that the sounds of fast boats (greater than 50 km/h [31 miles/hour]) would be audible to killer whales at distances of up to 16 kilometers (10 miles) and cause behavioral responses within 200 meters (0.12 miles or 219 yards). For boats moving at slow speeds (10 km/h [6.2 miles/hour]), sound would be audible within 1 kilometer (0.62 miles or 1,094 yards) and cause behavioral changes within 50 meters (55 yards)."

Alarming, under NOAA's proposal a vessel could be in full compliance with the proposed 200 yard Minimum Viewing Distance, but if that vessel is traveling very fast (>30 knots, > 50 kph) then the sound that a whale receives is significantly louder than a vessel at 100 yards at slow speed (< 7 knots, < 11 kph).

If a vessel is stopped and its engines are off, then there is no sound issue and distance becomes irrelevant.

So if sound really is one of the main potential concerns regarding vessel traffic, then why not choose PWWA suggested amendments of both 100 yard Minimum Viewing Distance and <7 knots within 400 yards as these offer greater protection than a 200 yards Minimum Viewing Distance with no speed restrictions.

Proximity

"Proximity" relates to the concern that some scientists have that the mere presence at the surface of a vessel, whether it is stopped with its engines off or not, still may have a potential impact on Killer Whale behavior.

Now that begs the question of whether the "potential impact" on the Killer Whale Behavior is positive (i.e. Helpful to the whale's health), neutral or negative.

Scientists have even coined a phrase to describe what whales do at the surface of the water: "Surface Active Behaviors" or SAB's.

Now let's be clear. Surface Active Behaviors all describe behaviors that Killer Whales do naturally, whether there are boats around or not. They are not, in and of themselves, harmful to the whale. In fact, many SAB's are very beneficial to whales as they play important roles in foraging for prey, communicating, play, socializing, celebrating, training calves to hunt, etc.



So all of these studies are trying to determine is (a) Whether the presence of boats causes additional SAB's that wouldn't otherwise have happened; and (b) Whether those additional SAB's are harmful.

(a) Whether the presence of boats causes additional SAB's that wouldn't otherwise have happened

This is a really tough question to study or make conclusions on because we don't really understand what SAB's are caused by or connected to when there are no boats around, so how can we then somehow identify the ones caused specifically by boats?

The most obvious problem is "Did the whales increase SAB's because there were boats present?" or "Did boats go over to that location because the whales were starting to exhibit SAB's and the vessel Captains wanted to show his/her passengers the SAB's?"

(b) Whether those additional SAB's are harmful.

Studies that have tried to relate SAB's and all other possible changes in behavior related to vessel presence have concluded that even if there is causality, the possible impact is an additional 3% increase in energy expenditure. While that seems quite small, PWWA is, as always, willing to take precautionary steps.

That is why we have for many years had in our "Best Practices Guidelines" avoiding being within 400 yards of the path of whales (Their echolocation is mostly directed forward), being 100 yards away, and operating at less than 7 knots within 400 yards.

Conclusion to Question #1: "Does 200 yards provide so much more protection than does a 100 yard Minimum Viewing Distance that it must be implemented?"

No. In the key areas of Physical Contact, Noise and Proximity, the extension from 100 yards to 200 yards offers little or no additional protection to the Killer Whales, as the proposed 200 yard Minimum Viewing Distance Regulation is not coupled with a Speed Restriction.

The Killer Whales actually get greater protection if you adopt PWWA's suggestion of a 100 yard Minimum Viewing Distance combined with a <7 knot Speed Restriction within 400 yards.

(E) Question #2: "Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?"

As with most questions, "It all depends on whom you ask".

Having said that, when you look at the Impact Review versus Feedback from the Regional Municipal Governments, regional businesses and the Whale Watch Industry it really comes down to a choice between:

- *"It will be negative, but we don't really know how bad"* (NOAA's Impact Review); and
- *"Companies will go out of business and people will be laid off"*. (Feedback from the Regional Municipal Governments, regional businesses and the Whale Watch Industry)



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NOAA admits on P 2-13 of the VESSEL TRAFFIC REGULATIONS TO PROTECT KILLER WHALES IN PUGET SOUND Draft Regulatory Impact Review

<http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Killer-Whales/ESA-Status/upload/Vessel-Prop-Rule-draft-econ-rpt.pdf>

Published October 13, 2008 that it does not know the impact of moving to 200 yards as a minimum viewing distance regulation:

“All whale watching vessels not complying with the 100 yard/meter guideline, as well as additional vessels in all categories that are currently complying with the 100 yard/meter approach guideline but not maintaining an approach distance of 200 yards from whales, will likely be affected by an enforceable 200 yard/meter approach regulation. Thus, the number of individuals potentially affected by Scenario 2 is expected to be greater than the number of individuals potentially affected by Scenario 1. Currently, data are not available to determine how many more vessels would be affected by a 200 yard/meter regulation than a 100 yard/meter regulation, or whether the relative proportions of entities/activities affected would remain the same.”

Note: NOAA admits that it doesn't know how many more vessels would be affected by the extension from a Minimum Viewing Distance of 100 yards to 200 yards. Since 200 yards is the option that NOAA chose, how can you begin to calculate the Economic Impact if you don't know how many boats will be affected?

NOAA readily admits that it cannot accurately estimate the Economic Impact of its choices, but that it will likely be a negative impact:

P 3-1

3.1 TYPES OF ECONOMIC IMPACTS ASSOCIATED WITH THE POTENTIAL VESSEL TRAFFIC REGULATIONS

“109. A person's ability to get close to whales, including parking directly in the paths of the whales, vessel speeds, or ability to access no-go zones may contribute to an individual's willingness to pay to participate in whale watching activities. As such, potential vessel traffic regulations which limit proximity and access may generate negative social welfare impacts to the individuals forecast to be affected in Chapter 2. Further, to the extent that proximity to whales, vessel speeds, or the ability to access no-go zones contribute to an individual's likelihood to participate in whale watching activities, regional economic impacts to industries providing goods and services to the whale watching industry may occur.”

P 3-4 “A greater impact to individuals engaged in whale watching activities is therefore expected for Scenario 2 (the Scenario NOAA proposes) than Scenario 1 for two reasons: 1) individuals may be willing to pay less due to the greater minimum approach distance; and 2) impacts are experienced by a greater number of individuals (not only those that are approaching the whales closer than 100 yards/meters, but also individuals approaching whales between 200 and 100 yards/meters).”

Note: PWWA finds it distressing that the “Draft Regulatory Impact Review” would on the one hand say that it cannot make an assessment as the Economic Impact on the Commercial Whale Watch Industry, but earlier it states on page 1-12 that the whale watch industry contribute \$18.4



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million annually and 205 jobs to the 19 counties adjacent to the whales' habitat. But this information was through an IMPLAN Analysis based on data from 2001.

This number really doesn't make any sense to PWWA. If the estimated number of annual paying participants in whale watching in this region approaches 500,000 passengers, a number used repeatedly throughout the "Draft Regulatory Impact Review"; and each person is paying an average of \$69 per person, then Revenue of \$34.5 million directly from whale watching far exceeds the "Draft Regulatory Impact Review" estimate of \$18.4 million.

Whether this \$34.5 million direct revenue could, through the multiplier effect, exceed \$100 million remains up for debate, but it does suggest that the "Draft Regulatory Impact Review" greatly underestimates any negative economic impact.

Whether the Regional Economy will be so negatively affected as to require by law that NOAA rethink its Proposed Regulatory changes may be a moot point, as the following reference suggests that the Regulatory Flexibility Act provisions with respect to the likelihood that a small entity will cease operations:

P 3-5 "The WWOANW (now the "Pacific Whale Watch Association" provided comment on the Advance Notice of Public Rulemaking, expressing support for enforcement of the 100 yard/meter guideline for all vessels operating in the Sound, but cautioning that there is unlikely to be a need for increasing that approach distance.103 In fact, the WWOANW anticipates that the industry may not survive the establishment of a 200 yard/meter minimum approach distance as it will limit the educational value of the whale watching trips and decrease participation. Additionally, individual whale watching operators also expressed support for codifying the existing guidelines."

The statements and comments from members of the whale watch industry seem to be at direct conflict with the conclusion stated on page 6 -12 of the *"Draft Environmental Assessment – New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington"*

The economic analysis (IEC 2008) projects no change in revenue for whale watching operations, but rather the potential diminished value of the customers' experience as a result of greater viewing distances. Such losses to individuals engaged in whale watching are not borne by small entities. NMFS does not expect any small entity to cease operation as a result of any of the alternatives.

Regarding job loss and the possibility that the loss of at least one small entity, PWWA expects at least one of our member companies would be put out of business if the proposed 200 yard Minimum Viewing Distance is imposed. We feel we would lose 30% of our industry over a 3 year period of time. The remaining 70% of survivors may well see a dramatic drop in revenue. All resulting in a large drop in net income and taxes paid.

On P 5-3 of the *"Draft Environmental Assessment – New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington"*

While the analysis presented in Section 4.0, Environmental Consequences, suggests that any economic impacts of these regulations would be minor, they could have cumulative effects when considered with other current and potential future events



affecting the whale watch industry. In particular, Washington gasoline prices almost tripled between 2002 and 2007 (Leffler 2007)

PWWA wishes to point out that in that same 2002 to 2007 time period, while fuel prices tripled and many other expenses went up by over 50% (Moorage and dock fees, office rent, wages, maintenance and repair costs, new vessel construction costs), Ticket Prices for whale watching trips did not rise.

And further on the same page

If whale watch operators either have to raise prices to cover fuel costs or operate with smaller profit margins, it is possible that small decreases in the number of passengers could have cumulative effects on whale watch profits.

On P 6-9

Alternatives 3 (200 Yard Approach Regulation) and 5 (Expanded No-go Zone) have the largest uncertainty regarding potential economic impacts

Yet these were two of the three Alternatives chosen by NOAA.

PWWA is very sceptical of the conclusion on P 6-9 to 6-10

While members of the commercial whale watching industry have suggested that viewing from a greater distance could reduce interest in whale watching and result in fewer customers, there is evidence that proximity to whales is not the most important feature of a whale watch experience. An increased viewing distance may not have any economic impact on commercial whale watch trips particularly if the reasons for the increased viewing distance are explained to customers.

Why are we going to such great lengths to point out that we do not agree with the assessment that there will be little or no loss of business if there is an increase from 100 yards to 200 yards as a Minimum Viewing Distance?

Two reasons: First, we are just now after 5 to 7 years of effort, day in and day out, getting to the point where passengers will accept 100 yards as the Minimum Viewing Distance. "How close can we get?" is still one of the three most frequently asked questions by people both as they inquire about booking, or when they get out on the water. We still lose up to 5% of all potential bookings when we answer 100 m or 100 yards. 5 years ago that was significantly higher, closer to 20%.

Second, many of PWWA's members conducted interviews or gave questionnaires or offered petitions to passengers to get their feedback on if our vessels were at a minimum viewing distance of 200 yards would they have still booked a trip? Although not scientifically accurate surveys, the general response was that 25% to 40% of them said they would not likely book a trip if they would be watching whales at 200 yards.

Conclusion to Question #2: "Does moving back to 200 yards likely have a dramatically greater negative Economic Impact on the Region and the whale watch industry than does a 100 yard Minimum Viewing Distance Regulation?"



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PWWA concludes “Yes”. Both the Regional Economy and individual PWWA member companies will suffer.

At least one business entity will likely be put out of business by this change: PWWA would expect to lose 30% of our industry over a 3 year period of time. The remaining 70% of survivors may well see a dramatic drop in revenue. All resulting in a large drop in employment, net income and taxes paid.

The Regional Economy is far more connected to the lifestyle, viewing and celebration of this unique marine environment through whale watching than NOAA has acknowledged. We anticipate that you will receive Comments from a wide range of businesses, individuals and organizations whose livelihood and survival is based on a healthy whale watching industry (Marinas, Fuel Docks, Chandlers/Boat Supply, Restaurants, Hotels, Motels and B&B’s. Ferry Services, Pubs and Bars, Counties, Municipalities, Scientific Researchers, Monitoring Groups, ENGO’s, Charities, etc.).

Although a portion of the people who might, with this proposed Alternative 8 and its 200-yard Minimum Viewing Regulation, choose not go on vessel-based whale watching trips but might instead go to land-based whale watch parks, we anticipate that the transfer rate will not be anywhere near what NOAA seems to imply will be a 100% rate. In other words, PWWA believes that many people who now choose to come to the San Juan Islands or other parts of this Region to view Killer Whales will simply choose to go elsewhere.

We have already seen this. Many of the passengers who joined us 10 to 15 years ago when the “Stop ‘n’ Wait” viewing sequence allowed closer than 100 yard viewing as long as our boats were “sitting dead in the water like a log or kayak” will not take repeat trips when we tell them that we will not get closer than 100 yards.

These same passengers get bombarded daily by TV, Newspaper, Magazine and Internet “Pop Up” ads that entice them to “Swim with the whales in Costa Rica”, or “Touch whales in Baja”, or “Scuba Dive with whales in Antarctica”. Or “Kayak next to whales in Belize”. **Important:** PWWA does not support or condone any of these behaviors that may disturb whales anywhere. But it is a reality that if we create a “Precautionary Buffer” that is far beyond what the SRKW’s require, then many potential visitors will just go elsewhere.

It is almost as if NOAA is saying “Well, if Napa Valley didn’t allow visitors access to its vineyards and wine makers, the same volume of vacationers would still go there, and they would still pay the same room rates, restaurant prices, etc...” PWWA does not think that is true, nor do we believe that anywhere near the same volume of vacationers will choose this Region if Alternative 8 is selected.

(F) Question #3: “Does the difference in protection to the SRKW’s afforded by 200 yards vs. 100 yards justify the additional negative Economic Impact, and resultant loss of Education and Public Support, that the greater distance will have?”

The Economic Impact Data available from PWWA is limited by the fact, as stated in our “Background” section on page 2 of this document:



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“PWWA was founded in 1992 to pool our collective commitment to Responsible Marine Wildlife Viewing, Education and Research.

PWWA was not founded as an Industry Marketing Group, as we have always let individual companies be responsible for their own marketing.”

We may be now suffering from our own naivety in thinking that PWWA and its members could function in “The Best Interest of the Whales” and not have to be an association engaged in politics, legal issues, and economic justification of our own existence.

We had hoped that each individual member could make their own independent, small business decisions and that while we worked hard and competed with each other for every possible passenger that we could encourage to come onboard our boats, that we could collectively get our message out that we all must do more to first help Nature repair itself and then protect our environment for many generations to come.

That message of Conservation and Stewardship is the same message each of us tries to get out through education on our vessels. We hope that by entertaining and educating our passengers that we can build the political will and pressure to support long-term efforts like NOAA’s Killer Whale Recovery Plan and Salmon Recovery Plan.

PWWA and its members are still committed to those goals and Plans. We suspect that we always will, whether we are still in business and able to get that message out to hundreds of thousands of visitors each year.

This question is clearly a Public Policy Decision. As such, it will be made at a political level based on the legislation and the input received from groups and individuals. The Primary Consideration will, and should be, the long-term health of the Southern Resident Killer Whales.

Pacific Whale Watch Association (PWWA) believes that our suggested Regulations of 100 yard Minimum Viewing Distance and <7 knot year-round Speed Restriction; along with a guideline of No Parking in the Path of Killer Whales within 400 yards of their anticipated line of travel offers more protection than NOAA's proposed Alternative 8.

In addition, PWWA suggests that this greater protection for the SRKW’s comes with a much reduced risk of drastic negative Economic Impact on either the Region or PWWA members.

Finally, offering both this increased short-term protection for the SRKW’s while maintaining a healthy Regional and Local Economy with active Environmental Education both from watch vessels and much of the local community offers the best long-term chances of success with both the Salmon Recovery Plan and Southern Resident Killer Whale Recovery Plan.

Thank you for this opportunity to comment.

Respectfully Submitted,

PACIFIC WHALE WATCH ASSOCIATION

Shane Aggergaard, President



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These Comments are submitted on behalf of:

Shane Aggergaard, President
 Brian Goodremont, Vice President San Juan Islands
 Cedric Towers Vice President Mainland
 Simon Pidcock, Vice President Vancouver Island
 Drew Schmidt , Treasurer/Secretary
 James Dale, Executive Director

- and -

PACIFIC WHALE WATCH ASSOCIATION MEMBERS:



Carli Whale
Watching

Friday
Harbor

United
States

Washington



Deer Harbor
Charters

Deer
Harbor

United
States

Washington



Eagle Wing
Tours

Victoria

Canada

British
Columbia



Emerald
Sea
Adventures
Ltd.

Sidney

Canada

British
Columbia



Five Star
Whale
Watching

Victoria

Canada

British
Columbia



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	<u>Great Pacific Adventures</u>	Victoria	Canada	British Columbia
	<u>Island Adventures Whale Watching</u>	Anacortes	United States	Washington
	<u>Island Mariner Cruises</u>	Bellingham	United States	Washington
	<u>Mayas Westside Whale Charters</u>	Friday Harbor	United States	Washington
	<u>Mystic Sea Charters</u>	Anacortes	United States	Washington
	<u>Ocean Ecoventures</u>	Cowichan Bay	Canada	British Columbia
	<u>Ocean Explorations Whale Watching</u>	Victoria	Canada	British Columbia



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Orca Spirit
Adventures

Victoria

Canada

British
Columbia



Outer Island
Expeditions

Eastsound

United
States

Washington



Prince of
Whales

Victoria

Canada

British
Columbia



Puget
Sound
Express

Port
Townsend

United
States

Washington



San Juan
Boat Tours

Friday
Harbor

United
States

Washington



San Juan
Excursions

Friday
Harbor

United
States

Washington



San Juan
Outfitters

Friday
Harbor

United
States

Washington



San Juan
Safaris

Friday
Harbor

United
States

Washington



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Seafun
Safaris

Victoria

Canada

British
Columbia



Springtide
Charters

Victoria

Canada

British
Columbia



Steveston
Seabreeze
Adventures

Richmond

Canada

British
Columbia



Sweetwater
Wildlife
Charters

Friday
Harbor

United
States

Washington



Vancouver
Whale
Watch

Richmond

Canada

British
Columbia



Victoria
Clipper

Victoria

Canada

British
Columbia



Western
Prince
Whale
Watching ...

Friday
Harbor

United
States

Washington



Wild Whales
Vancouver

Vancouver

Canada

British
Columbia



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Notes and Summaries

**Related to the Department of Commerce NOAA
Federal Register Notice**

**“Protective Regulations for Killer Whales In the
Northwest Region Under the Endangered Species
Act and Marine Mammal Protection Act”
50 CFR Part 224**

Compiled by

Anna Hall, Zoologist

September 16, 2009

Prepared under contract to the Pacific Whale Watch Association
#20090831 – 2a

Vessel Interaction Science Documents Continued

This is the second in a series of three documents that are being prepared for the Pacific Whale Watch Association membership in order to evaluate the scientific basis for the proposed rule changes with regard to whale watching in the inland waters of Washington State.

The goal of this document is not to determine the merit of the proposed rule changes, but to determine if the highlighted science provides a foundation for the proposed changes. It is to be abundantly clear, that the author (AH) is in support of killer whale conservation in all aspects including vessel operation and proximity. However, it is the opinion of the author that as with any legislation, the laws pertaining to the Southern Resident Killer Whales must be fair and biologically meaningful to be effective. Any laws must also be in the best interest of the Southern Resident Killer Whales social, biological and ecological well-being, be based on sound scientific knowledge, and be applicable to all sectors of the marine environment.

This series of reports concludes with Report #20090831-3 which provides additional supporting information that is relevant to the operation of vessels in the vicinity of Southern Resident Killer Whales.

Submission of written comments about the proposed rule changes in the Federal Register Notice (50 CFR Part 224) requested by the National Oceanic and Atmospheric Administration of the United States must be made by 5 pm Pacific Time on October 27, 2009.

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Note: There are a few symbols used throughout this text, these are define as:

- n is sample size,
- $<$ is less than,
- $>$ is more than,
- SRKW are Southern Resident Killer Whales, and
- NRKW are Northern Resident Killer Whales.

Part II of Section 4 (Section 1 in Report #20090831 – 1)

Section 4 Continued. Vessel Interaction Science Documents

Section concludes the review of the findings of vessel interaction studies that were used as reference material as they pertain to commercial whale watching with Southern Resident Killer Whales, and includes the following studies:

D. Bain, Effects of Vessels on Behavior of SRKW 2003

D. Bain, Effects of Vessels on Behavior of SRKW 2003 - 2004

D. Bain, Effects of Vessels on Behavior of SRKW 2003 - 2005

R. Williams and E. Ashe, NRKW Responses to Vessels.

The referenced acoustic studies review will be presented in Part B of this report (#20090831 – 2B).

1. D. Bain, Effects of Vessels on Behavior of SRKW 2003

Contract report for land-based southern resident killer whale vessel interaction study - referenced as D, Bain 2003, but there are three authors David Bain, Jodi Smith, and Rob Williams.

Goal

This was not clearly outlined in the text but it appears the authors intended goal was to “measure the effects of boat traffic on southern resident killer whales, and to put any potential effects in the context of other known threats”.

Methods

- I. Land based observation July 28 – Sept 27, 2003.
- II. Two sites: 1) adjacent to Lime Kiln State Park, 2) Mt Finlayson (southeast corner of San Juan Island).
- III. Observation techniques: one observer recorded activities of all the whales, while the rest of the team simultaneously collected fine scale data of a single animal (focal sampling). This focal animal is later referred to as a group. My interpretation is the observations were of single animals or groups, but it is not clear in the methods text.
- IV. The authors defined their whale behaviour categories clearly in the text.
- V. Data collected from 6am - 10am, and then throughout the day on an unspecified schedule until 6pm. Effort was spent to “maximize time spent observing whales in the absence of boats”.
- VI. The number of whale-oriented and non whale-oriented boats was recorded with distances within 100m, 400m, and 1000m estimated visually. Checks were done with the theodolite “when possible”.

- VII. Theodolite tracking was done by one team, which moved between the two sites, and recorded boat and whale positions, and activity.

Results

- I. The three key variables that are examined are **preceding behaviour**, **succeeding behaviour** and **boat presence**.
- II. The goal was to see if the **preceding behaviour** was different or the same as the **succeeding behaviour** based on the **boat presence**.

Scan Sampling Results

- a. "This sample size did not allow testing for the effect of boat presence on spacing behavior."
- b. "The effect of boat presence in the vicinity of the focal whales was difficult to assess due to small sample size."
- c. "Using log-linear analysis we could not detect any effect of boat presence within 100m of the whales, even though some non-significant trends could be detected."

Whale Behaviour Results

- III. Whales at their study sites spent most of their time feeding, followed by rest, travel and socializing.
- IV. The authors mention finding non-significant behavioural trends but don't give specific details. They do state: "that the likelihood to stay feeding when a group was feeding was decreased by the boat presence". Interestingly, the statistics that are given indicate that this is not statistically defensible. They give a p value of 0.15, to be statistically significant this value must be less than 0.05 at a 95% probability that the

observed events did not occur by chance. There is quite a bit of statistical background to this that I won't go into here, but suffice it to say that with the details given, my understanding is that this result is not statistically significant. This does not mean that no effect is there, it just means that the data set does not provide the means to detect the effect.

- V. The results of the theodolite tracking also had low sample sizes.
- VI. Due to the low sample size, and inability to conduct meaningful statistical analyses, the researchers stated that they decided to meet with the National Marine Fisheries Service (the funding agency). The outcome was that they reallocated the data analysis and report writing money to an additional 2004 field season to increase the sample size, and allow for statistical analyses.

Conclusions (summary)

- I. "Feeding seemed to be reduced with boat presence." This statement is made several times, but is not supported by the data presented or analysis.
- II. Main findings: "the main findings of this study warrant an extension of the data collection to assess whether these preliminary results can be replicated with a larger sample size."
- III. They go on to say that with a larger sample size they may be able to determine the point at which boats could approach whales.

My Comments

- I. A glaring omission from this study was the documentation of boat behaviour. The authors' key variable was presence.
- II. No indication of how they selected which whale to observe in the sampling sessions.
- III. There is no analysis presented that looks at whale behaviour changes throughout the day. Perhaps they do feed more in the morning, resting, travelling and socializing later in the day. This trend is observed in many animals: eat first, with everything else second.
- IV. The outcome of this report was that the sample sizes were too small to analyse effectively.
- V. Final conclusion: more data must be collected to determine if vessels have an effect on whales.

2. D. Bain, Effects of Vessels on Behavior of SRKW 2003 - 2004

Effects of vessels on behaviour of southern resident killer whales (*Orcinus orca spp.*) D. Bain 2003 – 2004. Again, although referenced as David Bain, the authors are David Bain, Jodi Smith, Rob Williams and David Lusseau.

Goal

To address the relationship between the behaviour of killer whales and the presence of vessels.

Note: It is stated in the introduction that there are a variety of vessels that SRKW are exposed to throughout a 24 hour period. The authors state that commercial whale watching runs from 0900 – 2100 in the summer, and until sunset in the fall and spring.

Methods

- I. Land based observation: July 28 – Sept. 30, 2003, May 1 – August 31, 2004 (same sites as 2003 study). It is interesting that in this report there are 3 extra days at the end of September that are not noted in the first report.
- II. The details of the methods were summarized in the 2003 notes.
- III. This is essentially a second field season of the 2003 project.
- IV. Again vessels counted within 100, 400, 1000m of focal whale or focal group.
- V. Whale activity also recorded – same categories as before.

VI. Collected data every 15 minutes (same as before).

Results

Results of Scan-sampling of Focal Groups: boats within 100m of focal whales affected their behavioural transitions and that whales behaved differently at the two study sites.

- I. The authors then go on to say that in the following analyses they ignored this site difference and pooled the data from the 2 sites, then determined that whales travel more when boats were within 100m as compared to no boats within 100m. To me the pooling of data here is inappropriate as they clearly state a difference exists between the two study sites.
- II. According to their results, whales spent more time travelling near Limekiln and more time foraging near Salmon Bank.
- III. Again it is stated that analyses were hampered by small sample sizes. They could not assess whether the whales behaviour changed in response to vessels at 400m or 1000m distances from either sampling site. Nevertheless, they went ahead and pooled data from the two sites to evaluate the 400m distance. In their own words:

“Given that the site effect was found to affect the activity budget in previous analyses, the following results need to be interpreted with caution.” They could not find an effect of vessel presence within 400m.

- IV. They then went on to look only at the data from the North site (near Limekiln) and from this reduced sample size they came up with a statistically significant result. For a statistic to be considered significant, the general convention is of a p value of less than 0.05 at a 95% confidence that the observed results did not occur due to chance. Theirs p value = 0.047, which is marginal. But their conclusion is “the previous analysis most likely suffered from sampling bias and that boat presence within 400m of the whales is highly likely to be affecting the whales activity budgets as well.”

- V. Again using only the North site (Limekiln) data, the presence of boats was only significant at the 100m distances, but the data sets were small to allow analysis of the 400 and 1000m distances. Nevertheless, statements are made: “The probability to stay foraging when boats were at 1000m was significantly greater than when boats were within 100m.”

- VI. They did not find a behavioural response based on pod, indicating all pods react to vessels the in the same way.

Results of Theodolite tracking of Focal Whales

- a. **Directness Index:** whales tended to travel in more direct paths when vessels were absent than when they were present.

According to the authors, the variables that were deemed important in the evaluation of the directness of the path taken by the whales included boats within 1000m, site location, pod identity and individual whale age were important.

- b. **Deviation Index:** Whales made slightly larger course changes when vessels were present than when vessels were absent.

According to the authors, the whales had smoother paths at the south site than the north site, and the whales had smoother paths when fewer boats were within 100m.

- c. **Breathing Patterns:** The average time between breaths was significantly longer in the presence of boats than in their absence.

According to their mathematical modeling exercise, dive times were shorter when no boats were within 400m, and increased as the number of boats increased to ~6-7 boats, >7 boats no relationship was found.

- d. **Surface Active Behaviour:** SAB was significantly more frequent in the present of vessels than in its absence.

They also noted that the bouts of SAB occurred in widely separated time intervals, so they then calculated an average of number of SAB/h. They found that young animals perform more SABs, that SABs occur when <10 boats are within 200 - 400m, and that SABs occur more in the late afternoon and evening. They also stated that the variables including current, site, month, age and sex may influence Surface Active Behaviours.

- e. **Swimming Speed:** No significant difference in swimming speed due to vessel traffic, but they did find that older whales swim more

slowly than young whales, and that all whales tended to swim more slowly as the season progressed.

Conclusions (summary)

Even the authors stated at the beginning of their **Conclusions** section that they did find that the site location was significant in analyzing the whales' behaviour, and as such they analysed each site independently. In their own words, "Such results cannot be extrapolated to a large portion of the range, and such reanalysis needs to be pursued cautiously."

- I. SRKW behaviour differed between the two sites with more foraging occurring near Salmon Bank and more travelling near Limekiln.
- II. Boats within 100m affected the whale's activity budgets similarly at both sites.
- III. No difference in data between sampling years.
- IV. Whales are displaced by short distances by the presence of vessels.
- V. Pod identity did not influence the behaviour as related to boat presence.
- VI. Boats within 100m had an effect on the whales, and boats out to 400m also had an effect but they are unsure as to whether this is true for the whole range or just portions. Nevertheless, they go on to say: "These results suggest the zone of influence of vessel in this area exceeds the 100m radius in current guidelines, and that more extensive guidelines such as those developed by the **Whale Watch Operators Association Northwest (2003)** or those proposed by **Orca Relief Citizens Alliance (2005)** will be necessary to completely prevent harassment."

- VII. Their modeling exercises concluded “that boats exerted a small but significant effect on behaviour of southern resident killer whales in 2003 and 2004, but that the relationships were complex and often non-linear.”
- VIII. In their recommendations section, they state: “ since it has proven difficult to demonstrate significant difference in behavioural responses to currently accepted practices and no disturbance, it could be expected to take carefully controlled experiments or many years of observation to compare the implications of proposed guidelines to current guidelines.”
- IX. One of their final statements is that the presence of vessels inhibited foraging behaviour.

My Comments

- I. Similar results and conclusions are not a surprise as the data collection, analytical techniques, and authors are the same as the 2003 study. It would be interesting to know if these results are repeatable with different authors. These authors are also referencing each other so the validity argument appears to be quite strong until the literature is examined and then it becomes a clear that the references are circular. Additionally, most studies have small sample sizes and most often the strong conclusions are based on models.
- II. Although they report the proportion of time spent in any behavioural state, they do not report the actual numbers. This is important because the same proportion is reported for small samples and for large (*i.e.* 40% could be 4 observations out of 10, or 40 observations out of 100 and so on. The higher the total number, the more confidence I'd have in the meaningfulness of the proportion).

- III. Their conclusion in **Results IV** is a stretch at best in my opinion based on what they have presented. There is no discussion of group dynamics or social interactions.

- IV. All of this assumes that subsurface whale behaviour can be accurately described without any subsurface observations and that surface behaviours are directly related to subsurface behaviours.

- V. This study treated all vessels as equal. It did not take into account any variation in vessel behaviour.

- VI. The outcome of this study is limited by the small sample sizes as indicated by the authors. Their results are interesting, but in my opinion should not be used as the basis for efforts aimed at the conservation of killer whales with regard to vessel traffic. It seems most useful to use these results as guidance for further study or to be used as part of a larger study.

- VII. The authors state in the final pages of the report that the killer whales
“spent over 20% of their time with at least one vessel closer than the 100 metres allowed under current guideline, and over 75% of the time within a quarter mile of vessels.”

Assuming this is true, this means that only 25% of the time could have been allotted to no boats or boats within ~400 metres. That also means that of their total reported effort was a combined field season of 178 days, with whales present on 98 of those days, that leaves only 24.5 days to collect the data of no boats or boats within 400 m out of the total 178. This does not appear to be representative of the entire field season. As the spread of the no-boat time was not presented it is impossible to know. Maybe it was all between 6-7am, and

does that reflect the full 24-hour day of a southern resident killer whale behavioural repertoire?

3. D. Bain, Effects of Vessels on Behavior of SRKW 2003 - 2005

Effects of Vessels on Behavior of Southern Resident Killer Whales (*Orcinus* spp.) 2003 – 2005. Again, although referenced as David Bain, the authors are in fact David Bain, Jodi Smith, Rob Williams and David Lusseau.

Goal

Their stated goal was to address relationships between vessel activity and Southern Resident killer whale behaviour.

Note the subtle difference: 2004 was vessel presence, 2003 was to measure effects of boat traffic and put this into context with other potential threat effects, now it is stated as vessel activity.

Methods

- I. This is a continuation of the previous work by these authors. The previously mentioned field seasons were augmented with another set of observations collected from May 15 – July 31, 2005.

- II. Variables examined: Year, Day, Time, Tide, Current, Site, Pod, Age, Sex, Distance to Closest Boat (called Point of Closest Approach), Total Number

of Boats, Number of boats within 100m, Number of Boats within 400m and Number of Boats within 1000m.

- III. See the above reviews for more details on their methods as they are the same as previous years.

Results

- I. Whales behave differently between their North and South study sites.
- II. Boats within 100m from the focal whales affect the whales' behaviour as noted by the whales changing their behaviour from one state to another.
- III. Whales spent more time travelling and less time foraging when boats were within 100m.
- IV. Whales spent more time socializing at the North Site.
- V. J, K and L pods do not appear to react differently to boats.
- VI. Again they were not able to assess whether there was a difference in behaviour at the North and South sites with boats at 400m and 1000m because their sample sizes were too small.
- VII. They did analyse whether boats at 400m affected the whales, though they disregarded the potential influence of the year of data collection or the location of data collection. They did find a difference with whales spending more time travelling and less time foraging, but this was found to be a site difference as well and this was not accounted for in the analysis. They clearly state these results need to be interpreted with caution.
- VIII. They also go on to state that the "likelihood to stay foraging when foraging increased as the distance between the focal group and boat present in the study area increased but not significantly." This means that the potential

for this observation to have occurred due to chance could not be discounted.

IX. **Directness Index:** whales traveled in more direct paths when vessels were absent.

X. **Deviation Index:** the degree to which courses were changed was insignificant with vessels present and absent, and smoother paths were observed at the South site, than at the North site. There were also strong confounding effects of Tide and Current that according to the authors own words:

“suggest that there may be something of biological importance, perhaps foraging activity, reflected in these data, and warrants further attention.”

XI. **Breathing Patterns:** average time between breaths was significantly longer in the presence of vessels.

XII. **Surface Active Behavior:** SAB was significantly more likely to occur but was insignificantly more frequent in the presence of vessels. Again, it was stated that the SAB events were widely separated in time, so once again they “normalized” the data and averaged these events to number of SABs per hour. Several analyses were conducted and found that Pod and Age were important in Surface Active Behaviours.

XIII. **Swimming Speed:** No significant difference with boat presence or absence.

Conclusions (summary)

- I. Behavioural sequences differ between the study sites.
- II. Behavioural sequences differ with the presence of vessels.
- III. Whales use the Limekiln and Salmon Bank areas differently.
- IV. Boats within 100m have an effect on whale behaviour.

V. Vessels inhibited foraging behaviour.

My Comments

- I. These three reports by Bain et al (2003, 2004, 2005) are very similar, especially the latter two. It seems irresponsible to count these as three separate studies in light of the fact that the authors have combined the data such that sample sizes became sufficient for the desired analyses. To me, this is better represented as one study with three field seasons.
- II. I also believe that, their results are better described as in relation to vessel presence/absence, not vessel activity, and this was not clearly put "in the context of other known threats" (Bain et al 2003). These authors did not account for vessel activity – there is no information on the behaviour of the vessels in proximity to the whales.
- III. Again, these authors were looking at the probability of a whale remaining in the same behavioural state. That is, they were looking to see if a whale that was determined to be foraging with no boats around would stay foraging when boats were present.
- IV. The fact that these authors have determined over 3 years that these whales use different habitats differently is extremely interesting. However, their analyses are repeatedly hampered by small sample sizes. Making regulatory changes based on this work is expecting too much from the data as it stands. This is not a definitive study and in my opinion should not be treated as such. There are interesting aspects in these results, and perhaps lend to further research in habitat use and killer whale behaviour.

- V. Given that the authors indicate many results need to be interpreted with caution, I believe it is reckless to use them as a basis for legislative change.
- VI. It does not make much sense to me that whales travel in more direct paths when vessels are not present, but that there is no difference in the degree to which the course is changed (See **Results IX** and **X**). This seems especially difficult to evaluate in light of the amount of time indicated by the authors that these whales are in the vicinity of vessel traffic while in the inland waters near San Juan Island.
- VII. It seems difficult to understand how whales make longer dives in the presence of boats, when these animals are exposed to vessels much of their lives. Even the authors had difficulty acquiring No Boat data. This to me indicates that there may be something else going on that wasn't measured or included – something biological perhaps?
- VIII. In terms of Surface Active Behaviour data and the presence of boats, these (and other) authors completely disregard the fact that whale watch operators communicate with each other, and that if one boat has breaching whales, they are likely to communicate this fact with other captains. As such the probability of more boats arriving at that particular group increases. The behaviour of the whale watch captains has been disregarded entirely.
- IX. Also, their comment that Surface Active Behaviour includes agonistic behaviours and may include stress is certainly possible, but so is the fact that it may include play, sexual activity, and hunting. These could all potentially be stress release. Their literature cited includes dolphin

references, which may or may not be relevant to cold-temperate water Southern Resident Killer Whales.

- X. Even after 3 years of data collection they still describe their data set as “sparse”. To me this indicates that either more fieldwork is required, or a revised data collection protocol, or both.

- XI. In light of their findings that whale behaviour can change with the presence of vessels, it seems appropriate to study whale behaviour as it relates to vessel behaviour and to amend whale watch guidelines as necessary.

- XII. Using the **Directness** and **Deviation Indices** as a basis for vessels altering whale behaviour excludes all other factors. Any whale watcher knows that Southern Residents do not always swim in straight lines, which is what this suggests. The results do not take into account any other factors including salmon behaviour and social interactions amongst whales.

- XIII. The fact that several studies have found similar results may be due to the study design and authors. It would be interesting to see if other sampling designs and other authors determined the same results.

- XIV. Much of the presented results of Bain et al. 2003, 2004 and 2005 are based on modeling exercises and are therefore dependent on the variables included in the model design. A model relationship does not guarantee biological or ecological relationships.

XV. These authors state that during their study, killer whales were within 1000m of vessels 75% of the time, and 25% of the time with vessels closer than 100m. This may mean that the importance of the habitat and the species such as salmon that are within it exceeds the importance of vessel presence, as the southern residents have not avoided the west side of San Juan Island and continue to use this area. This is not a *carte blanche* for unlimited vessels and unregulated behaviour, but this science does not support the changes that have been proposed for vessel activity along the west side of San Juan Island.

XVI. Furthermore, it is abundantly clear to me that it is not vessel presence but vessel behaviour, which is the key to minimizing this aspect of human impact on southern residents. The inland waters of Washington have not been without vessels for over a century. This exceeds the life span of these animals, and as such, vessels are a part of the animals habitat, and are likely to be for the foreseeable future.

a. In my opinion, the most important aspect is not that the vessels are there, but how they are operated in the presence of the Southern Resident Killer Whales, as well as other marine wildlife, and how cleanly they run. Greater conservation value will come from recreational boater education and training, and continued training of commercial captains as new behavioural information becomes available.

XVII. In their concluding remarks the authors say that “surface active behaviour is largely composed of threat displays, so a relationship to vessel traffic is not unexpected.” This makes the assumptions that killer whales are threatened or frightened by vessels. I question the validity of this

statement as superpods are interpreted to be key social events and have a large number of SABs, and juveniles typically are more surface active than older animals. Juvenile animals tend not to be the most aggressive, or demonstrators of threat displays. I believe there are alternative explanations that have not been discussed or tested.

4. R. Williams and E. Ashe, 2006 - NRKW Responses to Vessels

Northern Resident Killer Whale Responses to Vessels Varied with Number of Boats – referenced as R. Williams and E. Ashe

Goal

The primary goal was test whether resident killer whales responded differently to experimental approach by few boats than many. This hypothesis comes directly from Williams et al. 2002a, which was based on Williams 1999.

Their secondary goal “was to describe whale behaviour opportunistically - across a wider range of traffic conditions, accounting for potentially confounding effects, and with a larger sample of individuals than could be obtained practically using experimental approaches.”

Methods

The authors stated that the NRKW were used as a proxy for SRKW because it had been deemed difficult to work with SRKW as there is little time or opportunity to collect data under a ‘no-boat’ scenario. This was based on a statement in a 2002 DFO Proposed Regulatory Amendments – Marine Mammal Bulletin December 2002 that “in 2001, the M3 program that observed an average of 18 vessels (commercial and private) around whales at any time in the Victoria/Haro Strait area from dawn to dusk”, and that “[u]p to 50 vessels actively viewing the whales have been observed in the Victoria/Haro Strait area at any one time.”

Experimental Procedure Summary

- I. Data collected July 1 – September 11, 2004.
- II. Land based observations – West Cracroft Island in Johnstone Strait.
- III. Focal animals appear to have been those that were easier to identify, though an effort was made to select evenly from all matriline. Males were preferentially chosen because previous work had indicated that sex based differences existed (Williams et al. 2002a) and that they are easier to identify.
- IV. They were also selected based on mid-strait position (allowing for 40 minutes of continuous observation) and greatest distance from boats.
- V. The path of the whale was then tracked using a theodolite.
- VI. Positions of boats and whale behaviour were also recorded. For each surfacing all boats within 100m, 400m and 1000m were counted. The maximum number was used in computation (MAX100, MAX400 and MAX1000), and was the minimum distance between the boats and whales (Point of Closest Approach – PCA).
- VII. Track - defined as 20 minutes of continuous observation.
- VIII. Data collected: Inter-breath interval, average swimming speed determined from total surface distance and total observation time for each track, directness index (*i.e.* how straight the path of travel was), deviation index (*i.e.* how smooth the path was, it is an average of all the angles between adjacent dives), and surface active behaviours (SABs) (spyhopping, tail-slapping or breaching). The SABs were noted based on the number of breaths, so for instance if a whale did 3 tail-slaps on a surfacing, that was recorded as 1 bout, but if a whale breached 3 times in a row, that was recorded as 3 bouts because it was assumed to breathe once on each breach.

- IX. The researchers asked the whale watch community to stay away from the focal whale for 20 minutes (control data), and then approach using typical procedures for 20 minutes (experimental data).
- X. Only commercial whale watchers were included. All other vessel traffic proceeded as normal, but was included in the vessel counts.

Opportunistic Procedure Summary

- I. Opportunistic observations were made with an attempt to select from all matriline.
- II. Data collected “under conditions that offered no ability to manipulate traffic around the focal whales.”

Boat Criteria

- I. Few boats = 1 – 3 boats.
- II. Many boats >3 boat.

Results

- I. 72 days of potential observation.
- II. Whales present on 60 days for at least part of the day.
- III. Fog and rain on 11 days – no data collection.
- IV. Search effort reported as 792 hours, but the analysis is based on 73.8 hours of continuous observation (the tracks that were greater than 20 minutes in length) of focal animals using the theodolite.
- V. This included a period of 10 days during a commercial fishing opening with “hundreds of commercial fishing boats at a time were within the study area”.

- VI. It was also noted the data collection was hampered by the fact that the commercial operators chose groups of whales that were well away from the Robson Bight Reserve, where the study was being conducted, when the opportunity arose.
- VII. The opportunity to collect experimental data was reported as “so rare that we decided to restrict our trials to males.”
- VIII. Total = 16 experimental trials.
- IX. ‘focal animals were approached within 1000m, by 1-3 boats on 8 occasions, and 4 – 17 on the remaining eight”.
- X. **Inter-breath Interval** - “any apparent change in dive time did not vary with respect to number of boats approaching within 1000m.”
- XI. **Speed** – “any apparent increase in swimming speed did not vary with respect to number of boats approaching within 1000m.”
- XII. **Directness Index** – “whales showed significantly different responses to experimental approach by few versus many boats. Those approached by few boats adopted paths that were less direct than paths observed previously. Those approached by many boats adopted paths that were significantly more direct than previously observed.”
- XIII. **Deviation Index** – “any apparent difference in the way that whales responded by altering their deviation index did not differ with respect to number of boats approaching within 1000m.”
- XIV. **Surface Active Behaviour (SAB)** – SAB was observed only twice (n=2), and occurred during no-boat sessions. This was interpreted as “an interesting anecdote that in both cases where many boats approached surface active animals within 1000m, surface activity ceased. This may be due entirely to chance.”

A second set of analyses of these data was conducted looking at approach by any number of boats (rather than the above analyses with the few vs. many criteria). This is effectively an absence of boats vs. presence of boats analysis.

- I. **Inter-breath Interval** - "This difference was not statistically significant".
- II. **Speed** – "This difference was not statistically significant."
- III. **Directness Index** – "This difference was not statistically significant."
- IV. **Deviation Index** – "This difference was not statistically significant."
- V. **Surface Active Behaviour (SAB)** – "The proportion of observations in which surface activity occurred was unrelated to the presence or absence of boats."

Important Note: Please see my comments below regarding these results.

Opportunistic Observations

These results are based on a Generalised Additive Model (GAM) fitting exercise that looks at the relationships between a variety of variables. Variables tested included: traffic related - PCA, MAX100, MAX400, MAX1000, and traffic unrelated – Month, Time, Sex, Age. (Note: This is the same type of model fitting exercise done in the Bain et al. 2004, 2005 reports).

- I. **Inter-breath Interval** – The average inter-breath interval was found to vary significantly with the MAX1000, and month, time, sex and age. In general males had longer dive times than females.

- II. **Speed** – The average swimming speed was found to vary significantly in conjunction with PCA, MAX400 and MAX1000, and the sex of the whale. In general males swam faster than females. “Generally, whales had a weak tendency to swim more slowly as number of boats increased within 400m, but more quickly as number of boats within 1000m increased. This apparent inconsistency may reflect sample size.” Also, “whales tended to swim slowly when the nearest boat approached closely (<50m) and quickly when boats stayed approximately 100m or farther from the whale”.

- III. **Directness Index** – “Path directness was found to vary significantly in conjunction with a variety of traffic-related (MAX400, MAX1000) and traffic unrelated variables (Month and Age).” ... “In general, paths became more direct as the season progressed. Paths also became more direct as number of boats within 400m increased.”

- IV. **Deviation Index** – “Deviation index was found to vary significantly in conjunction with all four candidate traffic-related variables (PCA, MAX100, MAX400, MAX1000) and three traffic unrelated variables (Sex, Month and Time).” ... “in general, paths showed a weak tendency toward erratic

paths as the season progressed, and males tended to show slightly more jagged paths overall than females.” ...”In general, whales tended to show jagged, zigzag paths as boat approached closely (within approximately 200m). When the point of closest approach was greater than that, whale paths tended to be smooth. Relationship between boat number and path directness showed similar trends. When number of boats within 1000m of the whales was two or fewer, paths tended to be jagged. When approximately 3 – 5 boats approached, paths tended to be smooth.

- V. Surface Active Behaviour (SAB)** – “Analysis of surface active behaviour was problematic, due primarily to its rarity of occurrence.” ... “Ultimately, the data were not sufficient to assess how vessel traffic affects surface active behaviour.”

Conclusions (summary)

After all those results, the conclusions start with the following statement:

“Our results add to a growing body of experimental and opportunistic studies that suggests that northern resident killer whales show a suite of stereotyped responses to boat traffic.”

They then go on to say that whales approached by experimental boats tended to adopt less predictable paths than those observed during the preceding control phase.

There are a number of conclusions that stem from this work; I have selected the most definitive statements from the text in relation to the data collection.

I. Inter-breath Interval – “Mean dive time, then, seemed to be largely unrelated to boat traffic, and only weakly related to temporal variables in this study. This is the third study on northern resident killer whales to suggest that they are not using vertical avoidance tactics to evade boats (Williams et al 2002 a and b).” ...”This finding points to the need to recognize this issue as inherently multivariate.”

- a. “In summary, no consistent pattern between boat traffic and whale diving patterns was observed in our study. However, we recognize that several other analytical tools could have been used. The analyses used here might have resulted in our failure to detect a real effect.”

II. Swimming Speed and Deviation Index – Their summary is as follows:

“a reasonable summary of the result of four analyses of whale swimming speed and path smoothness (deviation index) would indicate that whales appeared to swim faster and more erratically when a few boats approach closely than when many boats stayed far away.”

- a. “swimming speeds tended to be highest when boats approached to within approximately 100m of the whale. When boats were much farther than 100m, or when they stayed approximately 200m from the whale, whale swimming speed tended to be relatively slow.”
- b. “Whales adopted more erratic paths on average when boats approached within 100m that when they stayed farther away”

III. Directness Index – “Whales approached by many boats adopted a path that was straighter than that observed during preceding, control

conditions. This increase in path directness when 4 – 17 experimental boats approached resulted in a 16% reduction in the distance a whale would have to swim in order to travel 100m, when compared with the preceding control phase.” They then go on to say “Our observed responses of killer whales to few boats, then, may be considered loosely analogous to a predator-prey interaction.” And that, “This adds increasing evidence to our earlier suspicion (Williams et al. 2002a) that an irregular path may be useful avoidance tactic with a single boat but ineffective with more than one. In a multiple-vessel scenario, a dive that takes a whale farther from one boat may bring it closer to another.”

- IV. In the concluding sections Williams and Ashe propose an interesting idea: “perhaps whales behave “normally” when they experience well-behaved whale watching, but react differently when boats get very close.”

- V. They do go on to say that they have demonstrated convincingly that northern resident killer whales did react differently to approach by many boats than by few boats, but later admit that their “ability to make concrete conclusions with confidence is strongly hampered by our lack of information on what animals are doing below the surface.”

- VI. They also say “Our inability to monitor post-treatment recovery of whale behaviour strongly hinders our confidence in extrapolating from northern to southern resident killer whale vessel impacts.”

My Comments

Results Comment

- I. The experimental component had a very small sample size (n=16), which was further reduced, in analytical classification based on the few vs. many classification (n=8 for few and n=8 many boats). For each of the experiments with between 4 – 17 boats, only 1 trial was run, therefore the results should be not taken as definitive. Do not use these data as evidence that the approach of boats does not affect the whales – the sample sizes are too small. However, the converse is also true. The results of this study should not be used, as a basis for anything other than a study with a larger sample size to determine is there a difference in whale response between few and many boats, and what other potential sub-surface stimuli are involved. Anything other than this is irresponsible in my opinion.
- II. The approaches used here are not the same as the guidelines the PWWA currently uses therefore no direct correlation can be made.

General Comments

- III. This is another NOAA contract report (contract AB133F04SE0736), however it was also published in the Journal of Zoology as Killer Whale Evasive Boat Tactics Vary with Boat Number 272(4): 390-397.
- IV. In the introduction there is the following statement: “A body of evidence is mounting to suggest that northern resident killer whales, on average, display stereotyped responses to evade boats.”
- V. The studies this statement is referring to are Williams et al. 2002a, Williams, 1999, and Williams et al. 2002b.

- a. Williams, R. 1999. Behavioural responses of killer whales to whale-watching: opportunistic observations and experimental approaches. Unpublished MSc thesis, University of British Columbia, Vancouver, BC, Canada. Available from www.marinemammal.org/pub.htm.

- b. Williams, R. Trites, A.W. and Bain, D.E. 2002a. Behavioural responses of killer whales to whale-watching traffic: opportunistic observations and experimental approaches. *Journal of Zoology*. 256: 255-270.

- c. Williams, R., Bain, D. Ford, J.K.B. and Trites, A.W. Behavioural responses of male killer whales to a 'leapfrogging' vessel. 2002b. *Journal of Cetacean Research and Management*. 4(3): 305-310

VI. The Williams 1999 study used a predator-prey model to define the work biologically. The killer whales were the prey and the boats were the predators. This seems like an inappropriate model to me, as killer whales are in fact the predators, not the prey. However, this was a Masters thesis, so had to have a strong biological component. Though the biological ideas are interesting, it is unclear if they are appropriate.

VII. There was no "no-boat" component as the authors noted their observation times included a selection of fishing boats, ferries, cruise ships, recreational boaters and kayakers within 100m of the focal whales. Their field season also overlapped with a 10-day commercial fishing opening.

VIII. Much of the work that relates to the path of the whale implies that a straight path is the most efficient path for the whale to take. This does not take into account any social variables, or even the fact that a more circuitous path may increase the number of potential prey the whale encounters. This to me is an over simplification of the three-dimensional habitat of the whale and the multi-dimensional aspects of killer whale daily lives. Furthermore, this is based on the assumptions that a straight path is the best path and that vessels within 1000m are key factors in the route taken by whales.

IX. Lastly, many of the statistically significant results were based on opportunistic observations. This type of data is very important, but care must be taken when interpreting the results as the results and conclusions were not based on a standardized sampling method. The difference becomes apparent if we tried to evaluate the total number of killer whales in Washington State by accepting counts made by a resident of the west side of San Juan Island. If we extrapolated their counts made from the living room arm chair on the west side of San Juan, to the entire coastline of Washington, we would generate a highly biased number of the total number of killer whales. Alternatively, if we counted killer whales along the entire coast, running the vessel or airplane in a grid pattern, we'd get a much more accurate estimate of the true number of killer whales. The first example is opportunistic data collection, whereas the second is systematic.

Subject: Comments on NOAA's Proposed Protective Regulations for Killer Whales

From: Western Prince Whale & Wildlife Tours <inquire@orcawhalewatch.com>

Date: Thu, 14 Jan 2010 19:25:06 -0800

To: Orca.Plan@noaa.gov

Hello,

Please find attached my comments regarding NOAA's proposed regulations.

Thank you,

Ivan Reiff

Owner & Captain

Western Prince Whale & Wildlife Tours

This body part will be downloaded on demand.

NOAA Proposed Rulemaking Comment.doc	Content-Type: application/msword Content-Encoding: base64
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Part 1.3	Content-Type: text/plain Content-Encoding: 7bit
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January 13, 2010

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

FROM: Ivan Reiff
Owner & Captain
Western Prince Whale & Wildlife Tours
PO Box 418, Friday Harbor, WA 98250

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

Let me start by saying that I appreciate the amount of effort that went into creating NOAA's proposed vessel regulations and I appreciate the opportunity to comment on them. This is an extremely difficult issue to try to deal with in a comprehensive manner. I would also like to say that while I recognize that potential vessel affects on SRKW is not necessarily the most important issue needing to be addressed to ensure the long term survival of SRKW, it is the easiest (relative) to deal with and should be addressed and put behind us so that we can all focus on Salmon restoration efforts and long term pollution issues.

I must admit, however, I am disappointed that what NOAA is proposing is to simply increase what is already in place (i.e. guidelines and WA State law). As if to say, we'll take what isn't working very well now and make it bigger.

What is needed is a true management plan. I feel that what is being proposed is a set of regulations that will make it look like something is being done, when very little will change for the whales themselves. The proposed regulations will do nothing to decrease the amount of noise emitted by commercial shipping traffic, which often drowns out just about every other sound in the area. They will do little to decrease the number of boats operating near the whales. But most importantly, they will do nothing to help address the most important recovery issue, Salmon. In fact, by pushing the commercial vessels out further, thus moving whale watching passengers further away as well, these regulations may damage the public support needed to properly address the larger issues of Salmon restoration and pollution.

This brings me to the issue of permits. While I understand NOAA's hesitancy, the only way to truly deal with the vessel issue is through a limited entry permit system. I am very disappointed to hear NOAA disregard this solution because of lack of infrastructure when a properly managed permit system would in fact help fund and create that very infrastructure. A permit system would also help provide funding for enforcement. Lack of enforcement is the primary reason why the current guidelines and regulations aren't working as well they should.

I am not schooled in the writing of regulations so the following proposal is, admittedly, oversimplified. Yet, once fully developed and refined, a permit system would provide a way to limit the number of vessels around the whales, provide a very strong incentive to

operate in a manner that limits impact to SRKW, and ensure that commercial vessels engaged in whale watching are in fact providing educational information regarding the recovery needs of SRKW.

Permit Proposal:

Development of Permit System:

A cross border committee would be created with the purpose of creating a comprehensive permit system. Members of the committee would at a minimum include: NOAA, DFO, PWWA, and Soundwatch.

Issuing of Permits:

Initially, permits would be issued to existing whale watch operators. However, to be renewed each year companies must abide by whale watching regulations and must prove that they are providing educational content within their tours (e.g. tour curriculums and continuing education for staff).

In order to reduce the number of vessels actively engaged in whale watching, a system would be put in place to reduce the number of vessels each company operates. For example, over a period of 5-10 years, permitted companies could be required to reduce the number of vessels operated to 2 per company. Meaning companies could still grow and compete in a free market by increasing the size of their vessels, but the overall number of vessels engaged in whale watching would be reduced.

Permit Regulations:

Permitted vessels must maintain a 100 yard viewing buffer (normally resulting in a 150 to 200 yard actual viewing distance) from SRKW. All non-permitted vessels must maintain a 300 yard viewing buffer from SRKW.

All vessels must operate at a reduced speed of 7 knots or less when within ½ mile of SRKW in order to reduce propulsion noise within the proximity of the whales.

All vessels would be limited to no more than 30 minutes of viewing time (within 400 yards) of SRKW per trip.

Fees:

Permitting fees would be based upon whale watching operators passenger carrying capacity, as defined by US and Canadian Coast Guard regulations. The larger the company and the more money that is made from whale watching, the more money put into the permitting fund by that company.

Enforcement:

Companies which are repeatedly found to be in noncompliance with permit regulations would have their permits revoked permanently, providing a very strong incentive to operate within the regulations.

I understand that there are many difficult issues that would need to be addressed in order to implement a cross border permitting system and that it could take several years to bring to fruition. However, it is the best way to deal with the vessel issue long term. The whales are worth it.

With that said I also understand that a short term, “bridge” if you will, solution is probably needed in the meantime. For the short term I support the following in regards to the current proposed regulations:

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

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

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

There is little proof that vessel presence alone has any effect on the whales. Because of the inherent unpredictability of whales paths, commercial vessel operators routinely have to maintain 150 to 200 yard buffers to comply with the 100 yard rule. If the proposed rule of 200 yards went into effect vessel operators would have to maintain a 250 to 300 yard buffer to stay within compliance. The real issue is lack of enforcement. Enforce the 100 yard rule before pushing it out to 200 yards.

The 200 yard approach rule adds little to help SRKW, but dramatically reduces the emotional connection with nature that passengers seek. It is that same emotional connection that acts as a catalyst for voters to push for action and funding necessary to complete the critical steps of the SRKW Recovery Plan that require Salmon habitat restoration, pollution clean-up and pollution prevention.

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

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

(4) Change the “parking in the path” law to a guideline.

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

(5) Provide NOAA with more federal enforcement dollars.

The whales would be better served by funded enforcement of the laws currently in place than by additional laws that continue to lack oversight. I find it extremely frustrating to witness wanton violations (primarily by uneducated recreational boaters) of existing laws because of the limited number of enforcement officers on the water.

(6) Provide more funds geared towards public education.

Additional education for the public about how we can all reduce or eliminate threats and potential threats to these whales would do more for them than the addition of these proposed rules. Funding for education should be an essential part of this protection plan. There must be increased education of private boaters to mitigate their impacts and increased support of commercial operators in educating the thousands of highly receptive passengers that come out on whale watching vessels everyday.

Thank you for your time, effort, and consideration.

Ivan Reiff
Owner & Captain
Western Prince Whale & Wildlife Tours

Subject: RE: Docket No. 070821475-81493-01, RIN 0648-AV15 – Protective Regulations for Killer Whales in the Northwest Region
From: "James H. Dale" <execdir@pacificwhalewatch.org>
Date: Fri, 15 Jan 2010 17:05:05 -0800
To: Orca.Plan@noaa.gov

Friday, January 15, 2010

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

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

Please find attached Comments that we submit concerning your Proposed Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act.

Members of the Pacific Whale Watch Association have had the privilege of educating and entertaining passengers since 1992. Our commitment to Education, Research and Responsible Wildlife Viewing has not wavered. We have and continue to work closely with NOAA/NMFS, WDFW, San Juan County and many Environmental Non-Governmental Organizations. Together we are already doing an excellent job on Public Education and "Precautionary Measures".

The time is now to get on with the really difficult work of Salmon Habitat Restoration, Pollution Control and Clean-up. Many of the strongest supporters of these programs are now having their livelihoods and recreational activities put at risk by this proposal of regulations that accidentally damage the Regional Economy. We all want to provide additional protection to the Southern Resident Killer Whales from the possible effects of vessel interactions. We humbly suggest that our options can add more protection than those proposed by NOAA

The Pacific Whale Watch Association has offered some suggestion for modifications to NOAA's Proposed Protective Regulations for Killer Whales in the Northwest Region. We are confident that if our suggested modifications are reflected in the Final Regulations that they can provide strong protection for the Southern Resident Killer Whales without further damaging the economy or the enjoyment of this fabulous marine environment by responsible recreational and commercial boaters.

Thank you for providing us this opportunity to make these comments.

Sincerely,

James H. Dale
Executive Director
Pacific Whale Watch Association
PO Box 2404,

Subject: Prince of Whales Submission - Comments on Orca Watching Regulations
From: Alan McGillivray <alanmcgillivray@shaw.ca>
Date: Fri, 15 Jan 2010 17:03:03 -0800
To: Orca.Plan@noaa.gov

CONFESSIONS OF A WHALE WATCH OPERATOR

EXECUTIVE SUMMARY

I am a member of the Pacific Whale Watch Operators Association and support their position as follows:

1. Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA.
2. Vessels must avoid the established path of Southern Resident Killer Whales.
3. Vessels must obey a 1/2 mile go slow zone (7 knots) from Eagle Point to Mitchell Point, along San Juan Island.

This is a codification of much of the Be Whale Wise Guidelines that we helped to develop and have been practising for several years. This verifies our support for rules that protect the the animals from any real or perceived disturbance.

I do not support the proposed regulations as presented by NOAA.

In the absence of any prosecutions in the past three years on both sides of the border, I suggest that the Guidelines are having the desired positive effect and boater education is improving.

INTRODUCTION

I am the proud owner of Prince of Whales Whale Watching in Victoria and Vancouver, B.C.

Since 1995, we have enjoyed 15 full seasons of whale watching starting with a single 12 passenger vessel growing into a fleet of 10 zodiacs (12 passengers each) and two 74 passenger Ocean Magic cruisers. Our company alone has taken out over 300,000 passengers since inception.

Due to overcapacity and recession we now only operate 7 zodiacs in peak July and August months and tend to emphasize the benefits of the larger platform. This is our sense of business evolution.

Being in a capital intensive business that relies on substantial marketing and reputation, switching to large boats and mothballing smaller boats is not an easy option overnight. Also, many days there are only enough customers at one time to run 12 passenger boats so we have the flexibility to accomodate our customer's time constraints. This is also very true during the shoulder seasons when traffic is light.

Needless to say we are a significant participant in the whale and wildlife watching industry.

I am a Professional Engineer by training and have a Masters in Business. Over the past 15 years, I have had the pleasure of meeting most researchers, competitors, government agents, enforcement officers, NGO leaders and many other individuals that are concerned about the Orcas. Many are recreational boaters and others are just customers. If you are reading this, I consider you one of my peers, by virtue of our common interest.

Like all commercial operators our first concern is safety, second is education, third is entertainment. Yes, we are very much in the entertainment business since people on holiday or time off are looking to have a satisfying and enjoyable

experience out on the ocean.

If we are successful at these objectives then the passengers will spread the word that whale watching in the Pacific Northwest was a world class experience and recommended as the highlight of their visit to our region.

INDUSTRY ANALYSIS

The industry in aggregate on both sides of the border is equally split in terms of revenues.

The companies all spend approximately 50% of our time in the each other's waters. A true trans boundary partnership.

We all work closely together as a peer group on the water and more formally as the Pacific Whale Watch Association. We have an Executive Director, Jim Dale, a lawyer by training, and 15 years experience in the industry.

Approximately 300,000 customers per year are taken out on the ocean by our industry.

Our industry employee count is about 300 people in each country, so 600 in total at peak July and August months.

Most companies are closed mid October to Mid April.

Annual revenues are in the range of 25 to 30 million per year.

We already pay numerous taxes through sales tax, fuel taxes, employee contributions, income taxes (if ever profitable again).

The industry represents a responsible educational tool for all those that want to be more informed about the status of the Orca. The industry also serves as an excellent practicum teaching platform for marine biology students who may continue into research or university paths.

Why would NOAA, an agency of the Department of Commerce, want to jeopardize such a valuable and fragile industry that is the main source of Orca awareness? We are not perfect but we work extremely hard to build the public's respect for the ocean and its wildlife.

Many of the news casts about the Orcas are derived from whale watch activity on the water, for example, the sightings of new babies born or other unusual anecdotes about the wildlife.

WHY RULE CHANGES THREATEN THE WHALE WATCHING INDUSTRY

The whale watch operators are experts in their field of commercial marine tourism and wildlife viewing. Our overwhelming opinion that has been voiced loudly and passionately is simple.

The customer base will suffer a huge decline if the viewing regulations are increased to 200 yards.

Since the inception of the Be Whale Wise Guidelines, our industry and the general public understand the goals of the initiative. The next logical step is to codify those basic rules so that a vessel operator will give themselves a margin of error from the 100 yards. This in itself will increase our practices of viewing distances. No operator wants to be negligently offside.

Likewise the 1/2 mile area off of San Juan that is proposed as a No-Go zone would actually put our vessels up to 800 yards from Orca close to shore. This is a sure industry killing distance.

The industry collaborated in 1998 to initiate the 1/4 mile zone and the 1/2 mile bubble around Lime Kiln for the purposes of providing the residents of the West Side more privacy. This has worked very well for the industry and we have never

complained about this guideline.

We are pleased to endorse the 7 knot, 1/2 mile GO - SLOW zone from Mitchell Point to Eagle Point. This will surely reduce the risk of private boaters speeding along the west side. With all the boats transiting between Friday Harbour and Roche Harbour, this is a logical approach to reduce the chance of a vessel strike.

The Parking in the Path rule always works fine when the whales are travelling in a straight path transiting long distances. However, it seriously falls apart when you are watching a whale at any designated safe distance and the whale changes course swimming under water and surfaces closer to the vessel. OOPS, that whale did not read the rules!

Possibly the whales you were watching at the designated safe distance have a friend that was not seen behind your back who then surfaces near the vessel putting you legally offside. Remember these whales have the ability to swim under water much more than the safe viewing distance and could be in pursuit of an erratic salmon trying to escape.

Imagine trying to keep track of the whale locations on a super pod day of 88 whales spread out all over the countryside!

Thus, NOAA runs the risk of trying to implement a simple solution to a complex circumstance. I can only imagine a judge would have trouble when the whale's actions are completely out of the vessel operators control.

I believe the Parking in the Path Rule as well intentioned as it is will have to remain a guideline.

YEARS OF DISCUSSION WITH NOAA

Over at least 15 years we have had positive discussions with NOAA over the Be Whale Wise Guidelines. We were expecting to have them codified at some point but never was it indicated that such draconian measures would be brought into place.

We all know that there is no reproducible research that links commercial whale watching with any evidence of disturbance to Orcas in Washington or B.C.

There have been no charges laid by enforcement agencies for three years.

Soundwatch has spent all these years building a case against our industry and yet relies on the Friday Harbour Whale Museum for support. This summer it became thoroughly evident that Soundwatch has been biased against the whale watching industry and has taken any opportunity to report us so that we become their statistical evidence of further funding needed.

In this light, I have lost much confidence in the reporting of this organization, as I feel they have besmirched our fine reputation through their unprofessional approach.

Land based whale watching at Lime Kiln has less than a 5% chance of success versus 95% chance of vessel based marine sightings. I fear that with the imminent demise of the whale watching businesses, that San Juan Island will surely take the rap for Banning Whale Watching.

This would really be financial suicide for the San Juan Island Tourism Industry.

I think the recommended decision for NOAA at this time would be to take the PWWA recommendations and try them out for the 2010 and 2011 season.

NOAA ALLOCATION OF BUDGET MONEY TO PROTECT KILLER WHALES

The education budget needs to be directed at the Marina departure points since all vessels leave from known ports. If the GO - SLOW ZONE is implemented then obviously a small vessel with one person will be needed at each end of the strip to act as a traffic constable. This is where Soundwatch has the opportunity to give guidance to recreational boaters. Their time should be considered as a preventative education

measure to instruct vessels entering the zone to go slow or stay outside.

The current approach of racing around yelling at people on the radio and in person is the wrong way to present the educational message. This should have happened back in port.

Any infractions we can report to Soundwatch so that they can intercept the vessel when they leave the zone again. It may even be a suggestion to have a whale advisory radio channel.

RESEARCH CHOICES FOR FURTHER ANALYSIS

I am 100% supportive of further genetic testing of all the animals so that the family relationships are better understood.

I am not in favour of anecdotal studies of behaviour of the whales since I do not believe that having a less than 2 % visual connection with these animals at the surface provides much real information and undoubtedly leads to much imagination to think of what is going on under the water.

I think it is great that the scat has been picked up for the few days they are feeding in the summer time to confirm they are eating salmon, however, too much is unknown about their diet in the off season. I just finished reading Operation Orca by Daniel Francis and Gil Hewlett. They reported that Luna was happily eating pilcher (sp?) in Nootka Sound.

It seems common sense that if an Orca likes the taste of salmon then they would not be adverse to eating what a salmon eats also, i.e. herring and other feed. After all that is the primary source of the protein and fat.

The experiments to detect hormone increases when boats are present is a crazy one since the research boat is following close to the whale with a sniffer dog barking at him. My hormone levels would go up under that pressure also!

I have a lot of respect for Val Veirs research as I believe he understands the bigger picture of the sound discussion. I have no confidence in the suggestion that whales raise their "voices" due to boats. I am quite sure they raise and lower their voices to suit the distance that they are trying to communicate across. A whale vocalizing to another whale five miles away will possibly call louder than to a young calf in close proximity. The activity they are engaging in could cause different sound levels since they might get more (or less) excited about a large salmon kill versus having sex.

The notion that a researcher can measure a whale swimming off a straight line and using elementary principles of physics to determine that an Orca was affected by a passing vessel is much the work of a researcher that assumes he knew where the whale was swimming to in the first place. These types of studies should be given very low confidence levels as I do not believe the results can ever be duplicated under scientific method.

I do think research should be done on the behaviour of Orcas around large ferries, cruise ships and freighters. There are many instances where Orcas swim either in the wake, on the bow, or right under the immediate vessel possibly to play in the propeller wash or "draft" up the coast as has been witnessed behind cruise ships travelling at 30 knots up Johnstone Strait.

I am obviously a huge supporter of all salmon initiatives and cleaner water studies. This is where the smart money would be placed.

CONCLUSION

I truly look forward to continuing doing the best we all can to protect the Orcas in our area and fully support the individuals that are tasked with spending hard earned tax money to come up with responsible research projects that will have a meaningful contribution to the well being of the Orcas.

Thank for considering my submission.

Respectfully yours,

Alan McGillivray
Prince of Whales Whale Watching
Victoria and Vancouver
www.princeofwhales.com

Subject: Commentary

From: John Boyd <john.boyd@centurytel.net>

Date: Fri, 28 Aug 2009 14:15:11 -0700

To: Orca.Plan@noaa.gov

I am writing in regards to the proposed regulations for orca whales in the San Juans. One component that I feel was overlooked and should be added to the proposed regulations is in regards to commercial whale watch vessels and permitting. As it stands now, there are no permits required for operating a whale watch vessel. Any regulation of these vessels as it stands now is pretty much self-regulation and observations/feedback from Soundwatch.

Permitting of commercial boats would put a standard upon the industry for better adherence to the Be Whale Wise Guidelines. Vessels wishing to operate in local waters as a commercial whale watch vessel should be REQUIRED to operate under a permit. The permits would be effective at:

1. Limiting the number of commercial vessels on-scene with whales. A component of the permitting system could be to limit any company to no more than say two, three or four vessels on scene at a time.
2. Vessels wishing to maintain their permitted status would adhere to the guidelines. Incidents or violations of the guidelines would incur points, much like a drivers license. After a certain accumulation of points, a warning would be issued to the offending company. Should more points accrue, that company could lose their license to operate. Licenses could not be traded or sold to other companies. Those companies that are doing the right thing (and trust me, there are companies that are doing whale watching the right way!) will easily maintain their permitted status.
3. Each company would be required to display their permit number prominently. This would also allay the confusion of multiple boats from the same company (each number would be clearly displayed making identification of said vessel accurate from a distance). This would also allow the boat to be more easily identifiable, and most likely would increase adherence to the guidelines. Example: ABC Company operates 8 vessels. Their displayed permit would be something like ABC09-A, ABC09-B, etc. Meanwhile, Joe's Whale Watch (with only one boat) might be JWW09-A. The letters would ID the company, the number the year the permit was issued, the following letter for each vessel.
4. Each company wishing to be licensed would also be required to demonstrate their educational platforms, perhaps through an auditing system. Western Prince is currently in the process of developing a pilot program for measuring the level of education of their passengers post-trip.

By including a license component, the whale watch industry would be able to either rise to the level of expectations set forth in the permit guidelines, or be removed from the equation through continual non-compliance. I suppose that a similar program could be instituted for the kayaking companies, but instead of placards, they would have to have some sort of color-coded flagging on the bows of every vessel that could be seen from a distance. ABC kayaking might have neon green, XYZ kayaking would have neon orange, etc.

In regards to the other components of the proposed regulations, several of them would not affect the operations of some companies (ours for example routinely watch whales from 200 yards or greater a majority of the time). I will be greatly interested in seeing how the 1/2 mile exclusionary zone will be implemented, whether whales are present or not. I'm sure you will have plenty of more informed commentary on that issue than I can offer.

Thank you for your time and consideration. If you have any questions for me, please do not hesitate to contact me.

John Boyd

Commentary

SSAMN Marine Naturalist (Western Prince Wildlife & Whale Watch)
Soundwatch Volunteer
Land-based whale watcher
Volunteer Research Assistant

Subject: 1/2 mile no-go zone
From: Lynn <islandlynx@aol.com>
Date: Wed, 05 Aug 2009 11:52:32 -0400
To: Orca.Plan@noaa.gov, Lynne.Barre@noaa.gov

Dear Lynne,

I started a whale watch company with vessels, along with a kayak tour company in 1994; San Juan Excursions. I was also a founding member of the Whale Watch Operators Association NW in 1995, representing both operators from Canada and the US. I have watched this industry grow, prosper but more importantly take full responsibility for their actions around the whales. We funded Soundwatch to monitor boating activity around the whales and produced our own self imposed guidelines for non-invasive behavior around the whales over 10 years ago. It has been expanded to include all marine wildlife, porpoises, seals, sea birds etc.

The whales are not impacted by the whale watch industry; or kayakers they are impacted by loss of salmon habitat and lack of a consistent food source, sonar testing and massive pollutants in the water.

The whale watch industry educates the public about the whales and encourages an appreciation of the amazing creatures that they are. The whale watch vessels set a standard of behavior around the whales, for private boaters to learn from and they also pass out wildlife viewing guidelines. They are an active voluntary enforcement element throughout the San Juans.

The ½ mile no-go zone off San Juan Island's west side is a non-effective strategy, it will accomplish nothing as far as protecting the whales because they travel many places around the islands not just the West side. It will however have a major impact on the Kayakers one of our regions primary recreation activities. Our commercial operators provide essential revenue to both the County Park and our community as a whole. Studies have shown that whales do not change their behavior around Kayakers. Enforcement will be costly and very difficult at best

If NOAA really does want to help the whales, please get involved in improving damaged salmon stream beds and encouraging permitting for Mariculture, using native stocks like in Alaska's Prince William Sound as opposed to Aquaculture. Do not choose to damage with ineffective expensive regulation a viable environmentally responsible industry like whale watching and sea kayaking.

Sincerely,

Capt. Lynn Danaher

Pacific Islands Research Institute
PO Box 2627
Friday Harbor, WA 98250
360-378-6692

Subject: san juan island...solutions

From: Lynn <islandlynx@aol.com>

Date: Wed, 02 Sep 2009 16:57:57 -0400

To: Lynne.Barre@noaa.gov, Orca.Plan@noaa.gov, maryk@co.san-juan.wa.us, maria_cantwell@cantwell.senate.gov, rankerka@leg.wa.gov, quall_da@leg.wa.gov, morris_je@leg.wa.gov, senator_murray@murray.senate.gov

Please read, share and respond

Lynn Danaher
Pacific Islands Research Institute
PO Box 2627
Friday Harbor, WA 98250
360-378-6692

Limited_entry.doc	Content-Type: application/msword Content-Encoding: base64
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salmon_enhancement_program.doc	Content-Type: application/msword Content-Encoding: base64
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the_west_side_issue.doc	Content-Type: application/msword Content-Encoding: base64
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Lynn Danaher
Pacific Islands Research Institute
PO Box 2627
Friday Harbor, WA 98250
4islandlynx@gmail.com

Proposed Salmon Enhancement Program per NOAA proposal

As used in this chapter, State of Wa. RCW 77.95 "enhancement project" means salmon propagation activities including, but not limited to, hatcheries, spawning channels, rearing ponds, egg boxes, fishways, fish screens, stream bed clearing, erosion control, habitat restoration, net pens, applied research projects, and any equipment, real property, or other interest necessary to the proper operation thereof.

Finfish farming is defined as growing or cultivating finfish in captivity. Ocean ranching, on the other hand, involves releasing young fish into public waters and being available for harvest by the public, fishermen and Orcas upon their return to San Juan waters as adults.

Alaska Salmon hatcheries, called ocean ranching, play a critical role in supplying salmon to the marine environment.

- Alaska boasts the world's largest salmon hatchery, among a network of 34 private nonprofit, state, and federal salmon hatcheries.
- In 2005, hatcheries accounted for 14 percent of the state's overall commercial harvest, valued at \$39 million.
- Of all salmon harvested by commercial fishermen in 2005, hatchery-produced salmon accounted for 47 percent of chums, 33 percent of pinks, 19 percent of cohos, 8 percent of chinooks, and 4 percent of sockeyes.

The **Alaskan salmon fishery** was saved due to strict mitigation measures and the implementation of policies. Alaska's successful conservation of their salmon resources is reflected in recent healthy and abundant salmon runs.

Currently, the harvest in Alaska represents about 80% of the total wild-caught North American harvest of salmon, harvests from Canada representing about 15%, and harvests from Pacific Northwest states representing about 5%.

One such explanation is the enhancement of salmon due to the start of the hatchery program in 1971. Modern salmon hatcheries in Alaska were developed in response to record low wild-stock runs in the 1970s. Initially conceived as state-run systems, most Alaskan hatcheries are now run by private sector corporations.

Alaska now has 33 production hatcheries in a balanced program designed to enhance fisheries while maintaining healthy wild stocks. Some hatcheries release

Respectfully submitted,
Lynn Danaher

Lynn Danaher
Pacific Islands Research Institute
PO Box 2627
Friday Harbor, WA 98250
4islandlynx@gmail.com

Limited Entry per San Juan Island NOAA proposal

Whale watch boats are an important resource for Orca recovery and protection. They have the capacity to be the primary enforcement vehicle. Consider them as an ally. The whale watch boats behavior around the Orcas, sets a standard for the thousands of private boaters each season for proper whale watch viewing. They know the rules have the proper equipment on board, loud hailers, radar etc to track, measure, record photograph and notify violators, its in their best interest and at absolutely no cost to the public. This enables them to continue to earn a livelihood, expand their educational programs on board and aid in providing the necessary enforcement

One doesn't have to reinvent the wheel there is plenty of precedence available to draw from. The Magnuson Act is complemented by other federal and state laws, including the Marine Mammal Protection Act, the Endangered Species Act, the Coastal Zone Management Act, and the National Marine Sanctuaries Act. International agreements and organizations, such as the International Convention for the Conservation. All of this can be found at;
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101 | Portland, Oregon 97220
www.pcouncil.org | Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299

St of Virginia

In addition to a US Coast Guard license, the regular VA charter boat license, and a guides license, a charter boat captain may be required to obtain additional no-cost permits. Such permits are usually set up to ensure that charter captains are aware of rules associated with special management programs for a species and to facilitate proper reporting.

St of Alaska has a limited entry program for fishing and there is a limited entry program for whale watchers in Maui County. Kayak operators could also be qualified in a limited entry program for kayaks specific with a IPQ, individual passenger quota. This could effect consolidation of the operators as IPQ and Limited entry permits could be transferable.

Permits would have an annual fee that would go towards salmon enhancement.

Some possible criteria could be:

1. been in business for 3 years or more
2. have a significant investment
3. be a county resident, pay taxes and are registered to vote
4. show a history of economic necessity

All of the criteria and rules would have to be worked out along with an international agreement with the Canadian boats. Remember the whales spend a lot of time in Canadian waters as well as San Juan County. I believe this program could be a palatable alternative to the shutting down of the west side corridor by putting a cap on whale watch vessel numbers. This idea is long overdue.

Sincerely, Lynn Danaher

Subject: orca recovery pla input
From: christy carli <cmcarli@hotmail.com>
Date: Mon, 24 Aug 2009 04:12:50 +0000
To: Orca.Plan@noaa.gov

Hello NOAA
Orca Whale Recovery

August 23, 2009

Dear Sir/Madam

This is the second letter that I am sending you regarding the Orca Whale recovery plan. I have lived on San Juan Island for the last twenty four years and I am an avid sailor, fisherman and now for the last four years owner and operator of Captain Carli Whale Watch Tours out of Friday Harbor. I am very concerned with the new regulations that may become law and how they will impact our industry but even more so how they might impact the whales. Many people feel that the Whale Watch boats are harassing the Orcas and having a negative impact on them. In my twenty four years of boating around here I strongly dis-agree with this philosophy. Every driver and owner that I know loves the whales and we would never do anything to harm them. Even Ken Balcomb whose name I am sure you know told me that the whales are so use to boats that normal, safe-boating operations do not impact them.

The problem that I see from being on the water seven days a week is the “mom and pop” boats that race through the whale pod with no regard for the animals, people who have no idea of the guidelines or worse just don’t give a damn. All that is on the water at present to help keep these dummies away from the whales is Soundwatch, and Straighwatch (The Canadian version of Soundwatch). That’s it. Two small boats that hardly have enough money in their budget to buy fuel. They can not even come close to doing the job that they are trying to accomplish. You can have three different groups of whale’s miles apart from each other on the same day. However on the water everyday with the Orcas are the Whale Watch boats and WE are the people blasting our horn, standing on the deck of our boats or calling on the radio for all the dumb “mom and pop” boats to slow down or change course. WE really are an asset out on the water for the whales!

I understand that there is political pressure to show that you are doing something to protect the Orcas but please, if you limit us in what we do best you will make it harder for us to keeps idiot boaters away from the whales, you will create more laws that cannot be enforced because the man power will never be there, you will limit the public’s ability to enjoy these magnificent animals and I believe you will cave into political pressure that is based on emotion not science.

Lastly if you really want to help these animals STOP the navy from blasting their sonar. It kills marine mammals and is so loud that it basically for lack of a better word completely freaks out the Orcas and this is documented on video if you wish to see the result of Navy sonar testing.

Sincerely

William F. Carli
P.O. Box 2569
Friday Harbor, WA 98250
1-360-378-0302

Subject: Orca Recover Plan
From: christy carli <cmcarli@hotmail.com>
Date: Wed, 13 Jan 2010 17:28:09 +0000
To: Orca.Plan@noaa.gov

Dear Sir/Madam

I have lived on San Juan Island for the last twenty five years and I have been actively boating most of those years. I have had many encounters with the Orca Whales and never once have I ever seen any activity on their part that made me think I was disturbing them. I have had the Orcas go out of their way to come "visit" me(I use visit because I can not think of another word that would be better to use). I have been forced to stop my vessel while they seem to inspect me, maybe even breach then continue. The Orca whales in Puget Sound have been around boats and interacted with people for over one hundred years. They are an intelligent, curious mammal that at times seems to enjoy inter action with humans on boats. This current rule change proposed by NOAA I think is nothing more then feel good politics with no science behind it. What good will it do? Nothing. How will it be enforced? It can't. We all want to do what ever we can to help protect the Orcas. As Ken Balcomb (who I respect more than any other Orca whale researcher)said "It's all about food on the breakfast table."

I support any and all options that will help the Orca whales of Puget Sound, however making a no go zone on the west side of san juan island or changing the distance boats can get to the whales from 100 yards to 200 yarrrds accomplishes nothing.

Lastly, I want to tell you that I am a whale watch operator and I think we do an EXCELLENT job out on the water in regards to obeying our Be Whale Wise guidelines. Also something that you should know, is that we help "police" the many dumb mom and pop boats that would race through the whales. We whale watch operators are the ones out there day in and day out calling boats on the radio, flagging them down, standing on our decks screaming at them to slow down or stop. Somehow we have become perceived as part of the problem with the Orca whales and I beg to differ, we are not. Give them enough to eat and they will do just fine.

Sincerely

William Carli
Captain Carli's Whale Watch Tours
Friday Harbor

Subject: 200-Yard SRKW Clearance Proposal

From: Bryan DeBou <bryandebou@telus.net>

Date: Fri, 15 Jan 2010 22:47:44 -0800

To: Orca.Plan@noaa.gov

CC: 'Roger Obayashi' <info@whalesvancouver.com>, 'Vancouver Whale Watch' <info@vancouverwhalewatch.com>, 'Steveston Seabreeze Adventures' <seabreezeadventures@hotmail.com>, "'Island Adventures, Inc.'" <whales@islandadventurecruises.com>, urabeck@comcast.net

Please find attached some comments regarding NOAA's 200-yard SRKW clearance proposal.

Thank you,

Bryan DeBou
Captain, Wild Whales Vancouver

200 Yard Proposal.doc

Content-Type: application/msword

Content-Encoding: base64

The 200-yard Proposal -- Some thoughts from a Whalewatching Captain

A 200-yard clearance will severely hamper whale identification and information transfer.

The identification of individual whales has formed the basis of much whale research, not to mention public understanding of, and fascination with, the orca. In a very immediate practical sense, orca identification is also an extremely useful tool for those of us in the business of whalewatching.

Whale identification allows whalewatching captains to track specific whales. That in turn greatly aids us in keeping our distance from them. Viewing whales from 200 yards will make it much more difficult to identify individual whales. Whalewatching captains are continuously informing other whalewatching captains by radio when there are whales in their vicinity. Being able to pass on an ID to another captain is a very useful part of that information. It can also assist in identifying groups that are traveling together, or that have traveled together recently and might be expected to come together at some point. Undermining the captain's ability to identify whales will make tracking whales and whale groups a much more difficult task, and perhaps even increase the risk of too-close encounters.

At 200 yards it will at times even be difficult to ascertain if an orca is a resident or a transient. Since residents and transients exhibit very different behaviors and travel patterns, a 200-yard clearance requirement will make it that much more difficult to predict where the whale or whales may surface.

When abeam of a whale traveling on a fairly consistent path, determining that whale's next surfacing location is generally not a problem. But when a small boat is in line, or nearly in line, with a whale's longitudinal axis, whether behind or in front, it can be much harder to ascertain whether the whale is traveling towards the boat or away from the boat. At 200 yards that determination will again be much more difficult, and will again affect our ability to predict the location where the whale will surface.

Whalewatching's contribution to enforcement will be compromised at 200 yards.

Whalewatching vessels have been shown to be useful partners in enforcement. Soundwatch and Straitwatch will have to admit that their first knowledge of a violating vessel is often via a radio alert from a whalewatching captain. Whalewatching captains are not only orca enthusiasts who are concerned about whale welfare, they are also well informed about whale guidelines and regulations. Whalewatching vessels are also generally located throughout the full extent whalewatching scenes, some of which can extend for miles. As such, they cover a much larger area than a limited number of enforcement vessels could ever expect to cover on their own.

The ability of whalewatchers to assist regulators will be watered down at 200 yards. Their ability to estimate an offending vessel's speed, its proximity to a whale, to offer full descriptions including distinctive markings and vessel names, will be very compromised at the greater distance.

Whalewatching vessels contain staff and passengers loaded with camera equipment -- equipment that is in constant use and which is almost always directed at whales. Photos and videos taken from whalewatching vessels have resulted in charges being laid on violating recreational and commercial boaters on both sides of the border. Forcing whalewatching vessels to locate further away from whales will result in photographic evidence that may not be nearly as useful to enforcement officials, and often that is the only evidence of a violation. Its quality can be critical to successful prosecution.

In short, commercial whalewatching vessels have in the past played a very useful role in assisting enforcement. Compromising that role could be detrimental to effective enforcement and prosecution, and ultimately to the whales welfare.

A 200-yard clearance will undermine the function of whalewatching boats as “markers”.

Whalewatching boats that are moving slowly or stopped are generally a sign that orca are in the vicinity. As such, whalewatching boats act as visible markers indicating the presence of whales to non whalewatching vessels. With whalewatching vessels 200+ yards away from the whales it will be much more difficult for other vessels to determine where the whales actually are. This applies equally to recreational vessels attracted to whalewatching, and to non-whalewatching commercial vessels that might wish to avoid a whalewatching scene.

Recreational boaters who encounter commercial whalewatchers, and who have an interest in viewing whales, almost never make contact by radio asking for whale information. Similarly they seldom respond to our caution calls, whether by radio or by hailer. Those boaters simply recognize whalewatching vessels on scene and approach them hoping for a close whale encounter. What’s worse, many of them do so at inappropriately high speeds. Those fast and close approaches may be especially hazardous to the whales when it’s unclear where the whales actually are.

On the other hand, non-whalewatching commercial vessels may more actively try to *avoid* whale watching scenes once any new laws are in place, enforcement is stepped up and charges start to flow. Avoiding whales will be more difficult when whalewatching boats are spread out over a larger area and are located farther from the whales, making active avoidance by non whalewatching commercial vessels more difficult.

With a 200 yard clearance requirement, all mariners will have less information about where the whales are. As a result the potential for too-close interactions, perhaps even for whale strikes, could actually increase.

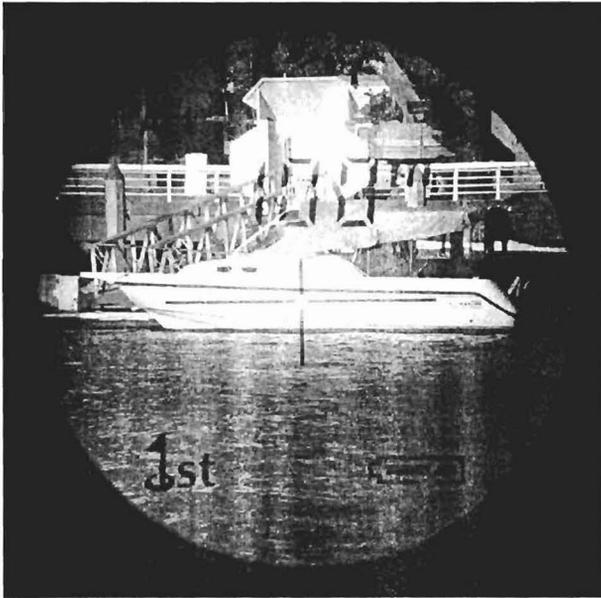
My experience leads me to question some of the behavioral studies.

Better and much more scientific minds have addressed this topic in depth. I will only say that, from my experience, increasing the clearance requirement to 200 yards seems unwarranted and I feel it will do nothing to help the whales. There appears to be no solid proof that SABs (Surface Acting Behaviors) are any indication that any real harm is being done to the whales.

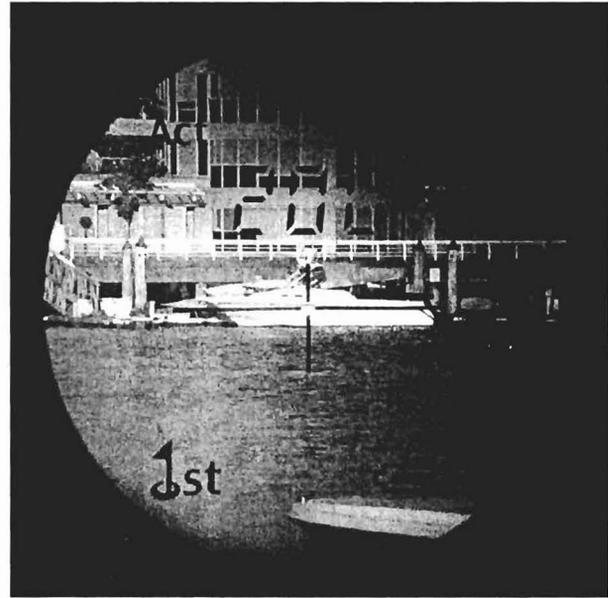
On the other hand, anyone who has spent years watching orca will tell you that when orca encounter an extremely large and fast vessel, such as an approaching 20+ knot container ship, that whale doesn’t breach, spy hop or tail lobe. Rather, it’s more likely to immediately sound. I imagine that’s because such an aurally-sensitive creature wants not only to escape the noise, but it’s also undoubtedly aware that a very large, deep, fast hull, driven by huge propellers, represents immediate physical danger.

After removing itself from the depth and path of that ship, those orca will often reappear many hundreds of yards away. I’ve only witnessed this deep-diving / distant-surfacing behavior in the past when animals are foraging, something it’s very unlikely they are doing when in the vicinity of a noisy and dangerous ship. To me such behaviors, as opposed to the much more subtle SABs which are virtually indistinguishable from normal social behavior, represent actual real stress to the orca, and a clear distraction from social and feeding activities

At 200 yards the commercial whalewatching industry -- and orca welfare -- will be undermined.



~30' vessel viewed ~100 yards away thru a 6X rangefinder



Same vessel viewed ~200yards away thru same 6X rangefinder

I think the above photos demonstrate that there is a substantial difference between viewing an object at 100 yards and viewing it at 200 yards, be it boat or animal.

Passengers basically come to commercial whalewatching vessels for one reason -- to share an intimate first-hand moment with a magnificent creature. They will be much less likely to continue riding in whalewatching boats when they find that intimacy has been severely watered down by a 200-yard clearance requirement. Whale enthusiasts will soon realize that they could have a more intimate whale experience -- at a fraction of the cost -- by riding on a ferry which is maintaining its course and speed right through a pod of whales. If they insist on a small vessel experience then I suspect they will opt to travel to any of the multitude of other jurisdictions where the 100-yard clearance is still in place. Or perhaps they may even decide to visit a Seaworld-type operation where they can have a very intimate experience, but at the expense of a whale's freedom and natural behavior. In short, with a 200-yard distance requirement, I believe the future of ocean-based commercial whalewatching in this area will be very dim.

We are more than professional whalewatchers, we are all whale enthusiasts. We don't spend our evenings poring over photo ID catalogues and charts to impress passengers with our knowledge. We do it because it helps us to look out for, to understand, and to help educate our passengers about, these wonderful animals which we care deeply about. I don't think any professional whalewatching captain could continue in their job if they honestly thought they were doing harm to a whale.

This proposal will devastate an industry that has done more to help the whales than any other. It has raised public awareness and enthusiasm for the whales to unparalleled levels, and fostered a strong sense of whale stewardship. I believe the 200-yard proposal will clearly undermine the viability of the local whalewatching industry, and as such, will undermine that industry's valuable role in promoting orca understanding and welfare.

Thank you for the opportunity to comment.

Bryan DeBou, Wild Whales Vancouver

Subject: Confused...

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Thu, 27 Aug 2009 14:35:58 -0700

To: Orca.Plan@noaa.gov

Regarding NOAA's proposed vessel regulations

After reading the recovery impact review, the environmental assessment and the recovery plan for southern resident killer whales, I am still very confused. Why has NOAA suggested scenario 2 opposed to the very precautionary scenario 1? Scenario 1 codifies the global standard for whale watching, as well as Washington state law. Scenario 1 is also fair to all user groups, providing a quarter mile sanctuary zone from Mitchell point to Eagle point along the west shore of San Juan island, and a half mile zone around Lime Kiln when whales are present. I feel scenario 1 to be very precautionary. Scenario 2 would effect too many people and do nothing to aid in the recovery of the SRKWs.

I am also confused why NOAA would include ALL whales in scenario 1 or 2 when the Recovery Plan, the Environmental Assessment and the Regulatory Impact Review are addressing only SRKWs. Gray, Minke and Humpback whales should be addressed separately, opposed to being grouped into the Recovery Plan for SRKWs.

In the Recovery Plan Part 2, page 110 states, "The potential impacts of whale watching on killer whales remain controversial and inadequately understood. Although numerous short-term behavioral responses to whale-watching vessels have been documented, no studies have yet demonstrated a long-term adverse effect from whale watching on the health of any killer whale population in the northeastern Pacific."

It also states, "The recent decline of the Southern Resident population does not appear to follow a simple cause and effect relationship with the expansion of whale watching."

It also states, "Bain (2002) speculates". Dr. David Bain has had many theories that have proven not to hold water (Dr. David Bain also has served on the board of directors for the activist group orca relief). I feel NOAA should only be using long-term, peer-reviewed science when creating legislation which will stand for many decades.

Also on page 110, in the same paragraph, it states, "...the fact that the most often watched pod (J pod) has shown an overall increasing trend in numbers since the 1970s and is currently at its highest recorded number. In contrast, L pod is considered the least viewed pod but is the only one to undergo a substantial and continuing decline since 1996."

Could someone please explain to me why scenario 2 is necessary when there is no long or short term negative effects from vessel traffic on SRKWs. The commercial whale watching industry is committed to research, education and responsible wildlife viewing. We feel the existing state law, PWWA guidelines and Be Whale Wise continue to work well on the water. We believe in boater education and outreach programs and continued enforcement by NOAA and WDFW of the existing laws. Doubling the distance and creating a no-go zone will only hurt the educational benefits that people receive on commercial whale watch vessels.

Confused...

Shane Aggergaard
President of Pacific Whale Watch Association
Owner & General Manager of Island Adventure Cruises

Island Adventures, Inc.
1801 Commercial Avenue
Anacortes, WA 98221
1-800-465-4604
1-360-293-2428
www.islandadventurecruises.com



***SPECIAL* Remarks: Public Hearing**
Protective Regulations for Killer Whales in the Northwest Region
Under
The Endangered Species Act and Marine Mammal Protection Act
Seattle, Washington
Wednesday, 30 September 2009

To the Presiding Officer: I am by no means an expert on the requirements of the federal Administrative Procedures Act, but that important law sets out the requirements for an agency to follow when it is developing an enforceable rule. Does it not require that the agency base its decision *only* on materials officially submitted to the regulatory docket? That's why I was so distressed about how the Anacortes (Washington) hearing was conducted. There was no transcript of the meeting made. As such, how will the agency take into account the oral statements that were made at the Anacortes hearing when there is no official record of them? And not everyone who came to the meeting intending to speak was able to do so; especially after the announced agenda and procedure was changed *after* the hearing began.

Also, the official docket for most federal rulemakings is posted at www.regulation.gov. As a result, one is able to read all of the comments and documents submitted to the agency. Why is NMFS not following this procedure with this proposed rule? How can I as a citizen conveniently review the comments to the docket submitted thus far?

I am disappointed that the agency seems to be "lax" with respect to the process of this proposed rulemaking, and I wonder if, by doing so, the agency is leaving its rule open to legal challenge.



Remarks: Public Hearing
Protective Regulations for Killer Whales in the Northwest
Region Under
The Endangered Species Act and Marine Mammal Protection Act
Seattle, Washington
Wednesday, 30 September 2009

Good Evening and thank you for making yourselves available this evening.

My name is Darrell Bryan and I am the President and CEO for Clipper Navigation, Inc., based in Seattle.

We own and operate the "Victoria Clipper" vessels which have provided year round unsubsidized service between Seattle and Victoria, British Columbia since 1986. In addition, we own and operate San Juan Express which is certificated by the Washington Utilities and Transportation Commission (WUTC) for the provision of seasonal service between Seattle and Friday Harbor.

We have operated the San Juan service since 1991. We determined shortly after the inauguration of the San Juan service that we needed to supplement our offering with an option for a Marine Sealife and Whale Watching Search. Although we operated a scheduled service, we determined that Friday Harbor as a destination was not sufficient to attract ridership.

As information, our company employs between one hundred fifty (150) to two hundred fifty (250) people depending on the season. We also generate sales in excess of twenty seven (27) million dollars per year for the wide range of products that we provide.

The vessel we utilize for this service is a one hundred fourteen (114) foot catamaran that has three viewing decks and has interior seating for two hundred thirty seven (237) passengers. In addition, our vessel uses water jets as propulsion rather than the traditional exposed propeller.

I would be remiss at this point if I didn't address some of my dissatisfaction with the Public Hearing process experienced last week in Anacortes.

1. It was clear that NOAA did not anticipate the large turnout and was unprepared to accommodate the attendees.
2. The warehouse, with its high ceilings and wood decking, would make it difficult under the best of circumstances to hear the speakers. The absence of a P/A system detracted greatly from Lynne Barre's presentation as well as the public's questions and comments.
3. The proceedings, including Lynne Barre's opening remarks, should have been recorded.
4. There should have been a podium for oral comments by the public.
5. Regardless of intent – the Public Hearing should not have been adjourned for forty (40) minutes thirty (30) minutes after convening the meeting.
6. The Public Hearing could have been better controlled or facilitated if the normal process for Public Hearings had been followed by NOAA.

I will explain the importance of the whale watching component to our program when I provide our formal submission to the docket. However, in the meantime I would like to, subject to the time constraints, highlight a few points:

1. We, as our fellow whale watching companies, support killer whale conservation. Further, we believe that any laws or regulations must be fair and scientifically meaningful to be effective.
2. We are members of the Pacific Whale Watching Association (PWWA) which represents all whale watching companies throughout this trans-boundary region.
3. PWWA has worked proactively to provide Whale Watching Guidelines and to work collaboratively with various agencies to ensure the safety and protection of these remarkable animals. This program has resulted in greater adherence each year. Our on-board Naturalists are Seattle Aquarium and Friday Harbor Whale Museum trained. Their commitment is to educating the public and ensuring the preservation of the Southern Resident Killer Whales.
4. Our whale watching program is educational and has created substantially more advocates for these magnificent animals.
5. PWWA and its' members have assisted with on scene monitoring and protection when law enforcement and Sound Watch have not been available. Our company would like to see funding for increased enforcement and educational activities.
6. Further, we believe that the efforts required to educate recreational boaters should be increased and we fully support such efforts.
7. In addition, we believe that the education of sport fish operators is also crucial as this is the sector of the maritime community most likely to overlap in distribution with foraging resident killer whales.

I could go on and on, but let me say that although we support the many efforts to preserve and protect the Southern Resident Killer Whales, we would request a measured approach while verifying some of the purported science used in requesting the potentially catastrophic regulation proposed. I will address some of the conclusions identified in my written submission.

We believe that the current guidelines can be codified and matched with greater enforcement to ensure compliance. A great deal of improvement from our sector has been made over the years and we believe that there will, and can be, further improvement.

In conclusion, we believe that the overwhelming majority of whale watching companies have made significant improvements and the experience of the past few years has, in fact, reflected those improvements. There is little doubt that further improvements can be made by each sector of the marine industry. Our company supports the following recommendations proffered by the Pacific Whale Watching Association (PWWA):

1. Vessels may not negligently be within one hundred (100) meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit as issued by NOAA.
2. Vessels must avoid the established path of Southern Resident Killer Whales.
3. Vessels must obey a seven (7) knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out one half (1/2) mile, except for official law enforcement vessels or vessels engaged in emergency and rescue situations.



Remarks: Public Hearing
Protective Regulations for Killer Whales in the Northwest Region Under
The Endangered Species Act and Marine Mammal Protection Act
Friday Harbor, Washington
Monday, October 05, 2009

Good Evening and thank you for providing this opportunity for input.

My name is Darrell Bryan and I am the President and CEO for Clipper Navigation, Inc., based in Seattle.

We own and operate the "Victoria Clipper" vessels which have provided year round unsubsidized service between Seattle and Victoria, British Columbia since 1986. In addition, we own and operate San Juan Express which is certificated by the Washington Utilities and Transportation Commission (WUTC) for the provision of seasonal service between Seattle and Friday Harbor.

We have operated the San Juan service since 1991. We determined shortly after the inauguration of the San Juan service that we needed to supplement our offering with an option for a Marine Sealife and Whale Watching Search. Although we operated a scheduled service, we determined that Friday Harbor as a destination was not sufficient to attract ridership.

As information, our company employs between one hundred fifty (150) to two hundred fifty (250) people depending on the season. We also generate sales in excess of twenty seven (27) million dollars per year for the wide range of products that we provide.

I will be submitting our formal response to the docket later this month. In the meantime, I am here to support the proposed Marine Mammal Viewing Regulations put forward by the Pacific Whale Watching Association.

The recommendations are as follows:

- (1) Vessels may NOT negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA.
- (2) Vessels must avoid the established path of Southern Resident Killer Whales.
- (3) Vessels must obey a seven (7) knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out one half (1/2) mile except for official law enforcement and rescue situations.

We believe that there are too many questions about the science proffered in the support of these regulations to warrant such potentially catastrophic impact to our businesses.

Subject: Full Support for Option #1

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Sun, 09 Aug 2009 11:22:02 -0700

To: Orca.Plan@noaa.gov

In the Draft Regulatory Impact Review, under Vessel Traffic Management Options, there are two scenarios listed. Island Adventures, Inc., of Anacortes, WA, strongly agrees with scenario #1 and adamantly opposes scenario #2.

After 15 years of whale watching in the San Juan Islands and sharing this experience with nearly 200,000 people, we feel that 100 yards is very precautionary and matches the global standard for whale watching. After reviewing nearly all of the science, we do not see any benefit to the Southern Resident Killer Whales if the viewing distance was doubled. It would only hurt the educational benefit that guests receive on our tours.

SRKW's were listed as endangered due to their unique population status and the potential risk from oil spills and other natural disasters in the area. Under the Washington State law, Be Whale Wise, and PWWA viewing guidelines, SRKW's have been increasing in numbers for many years. The J-Pod and K-Pod populations have been stable since the early 70's. L-Pod, the largest group of animals, has seen more swings in population due to food supply. A prime example is the 1999 and 2000 winter season, where the animals saw their lowest winter food supply in recent history. This population adjustment was not due to vessel impact as many of the animals in L-Pod disappeared in the winter months, out off the coast where there is little to no vessel traffic.

During this process we ask NOAA to remain focused on food supply issues and to continue to monitor threats from pollution and disease. We are doing everything in our power to help create awareness of these issues and to share the most recent science with our guests. Commercial whale watching is the number one educational tool that exists today. The language in scenario #2 is unnecessary and will hurt the educational efforts made by our company and many others. If the science should show actual impact from vessel traffic engaged in responsible viewing (in accordance with all laws and guidelines) scenario #2 may be appropriate. But at this point, we feel scenario #1 is very conservative and precautionary. Again, our recommendation, is to start with scenario #1 which states a 100 yard viewing distance from all whales and codifies our existing voluntary foraging zone along the west shore of San Juan Island. We also strongly agree with the 400 yard buffer in the path of the whales.

We do not believe doubling the distance is necessary if the current viewing distance is enforced. There should be more money allocated to an enforcement presence and less money allocated to NGO's who have proven to not be consistent on the water with their educational efforts. The commercial whale watching vessels set the example for recreational vessels watching whales. They should be held to a higher standard and, as professional operators, are fully capable of maintaining 100 yards.

We applaud NOAA's efforts in recent years to conduct real research on SRKW's. Prior to the listing, much of the research available had been skewed. We would like to see long-term studies to accurately assess what's best for SRKW's as well as other whales in our region. At this point, much of this research regarding vessel traffic is still in it's infancy. Without long-term peer reviewed science, scenario #2 is unnecessary. It has been proven that SRKW's will adjust to their carrying capacity based on the food supply. We will continue to educate our guests everyday in order to create more food supply and healthier water for years to come.

Thank you for considering this comment as well as others that we will continue to send in.

Team Island Adventures:

Sam Cole

Tracy Cole

Carl Williams

Naomi Williams

Michael Colahan

Kate Janes

Jami Nagel

Julie VanQuickenborne

Mark Kratzer

Brooke McKinley

Bart Rulon

Vicki Kirkland

Graham Oakley

Tyson Reed

Liam Gallagher

Caitlin Schlegel

Becky Aggergaard

Jennifer Aggergaard

Shane Aggergaard

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Subject: Vessel Effects, Still Searching

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Mon, 10 Aug 2009 17:13:02 -0700

To: Orca.Plan@noaa.gov

Today I received a letter from the Acting Regional Administrator, Barry A. Thom. Also included was a disc with the Draft Impact Regulatory Review and other documents. Fortunately I had already reviewed most of these but I appreciate the distribution. I was a little surprised with the language in the cover letter stating "actions to protect killer whales from vessel effects in inland waters of Washington." This was stated twice in a 4 paragraph letter. I believe it should have said potential vessel effects. As I've been very close to this issue for over a decade and have yet to see any long term or short term vessel effects on Southern Resident Killer Whales from vessel traffic engaged in whale watching in accordance with Washington State law and existing guidelines.

What vessel effects are you referring to?

The sound studies that have been done have shown that Orcas raise their vocalization levels when there is more noise in the water, regardless of the source of the noise. In creasing the viewing distance from 100 yards to 200 yards would have no significant effect on the noise level in the water. Vessels engaged in parallel viewing at low speeds emit less noise than the ambient sound of rain on the water. Vessels moving at high speeds a mile away emit more noise in the water than vessels engaged in whale watching in accordance with PWWA guidelines. Moving the viewing distance to 200 yards would not affect the noise levels experienced by SRKW's. Creating a 1/2 mile sanctuary zone on the west shore of San Juan Island would also not significantly change the noise level in the water coming from cargo vessels passing by and the currents that exist every day in Haro Strait.

SRKW's have never shown signs of avoiding areas of high vessel traffic and high noise levels (with exception of the Shoup incident which was isolated and we all hope will never happen again). Field biologists often operate their vessels for extended periods of time within 10 meters of these animals, and record very few takes and changes in behavior. With a 100 yard closest point of approach law in place, in most cases vessels engaged in whale watching are actually 150 to 200 yards, on average, to the closest whale, putting the rest of the pod at an even greater distance, in order to stay in compliance with the current laws (this is not a guess as we are on the water with range finders everyday). We feel that 100 yards is precautionary and in the best interest of Southern Resident Killer Whales.

The surface behavior study has a limited sample and is non peer reviewed science. Unpublished science that has not been through peer review should not be used to create legislation which will last for decades. I am a strong advocate for scenario #1 (100 yards and 1/4 mile) and for continuing long term studies that will preserve and protect SRKW's for the foreseeable future. NOAA could easily move to scenario #2 in the future, if it's deemed necessary to help SRKW's, after the science validates this action. Starting with scenario #2 would only hurt the educational benefit of whale watching tours and limit the number of people who want to look at the real issues facing the whales such as salmon enhancement and toxins. I do want to remind anyone who will listen about the indisputable fact, the number of whales has been increasing for many years under our current state laws and existing guidelines. Scenario #1 would help to codify the existing guidelines and match the global standard for whale watching.

The stress hormone work done with fecal follows, also a very limited sample, is a short term study and

inconclusive.

I am still searching for the effects that Barry is talking about in his cover letter. I'll continue to search.

Shane Aggergaard
Whale Watch Captain

--

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Subject: Survey of whale watching participants
From: Vancouver Whale Watch <info@vancouverwhalewatch.com>
Date: Wed, 19 Aug 2009 12:52:20 -0400
To: "lynne.barre@noaa.gov" <Lynne.Barre@noaa.gov>

To Lynne Barre

Re:Draft Environmental Assessment

I keep seeing reference to the studies that have assessed the value that whale watching participants have for wildlife viewing. The survey results show that the proximity to the whales is not the most important part of the whale watchers' experience. I need to get a copy of the survey questions. This survey seems to have a huge bearing on your analysis of the fact that there will be very little affect to the whale watching industry if we go to the 200 yard rule. One cannot scientifically conduct a survey with the participants experiencing a whale watch at the 100 yard regulation and then use the results that show proximity to the whales having a low value without having the participants experiencing the same whale watch at 200 yards and asking the same set of questions. This distance increase is not just an increase of 10 or 20 % this is an increase of 100%. This is just basic science. We have been asking the above question to our guests on our trips and have been told by many that if we went to the 200 yard rule and we actually show them whales at 200 yards many say they probably would not bother going. Whales cannot be properly identified at that distance and the educational value is totally lost.

What I propose is that we get copies of this survey in question and distribute them to all the WWV companies and get proper results for the 200 yard regulation. At least at that point you could draw proper conclusions for the 200 rule and just not extrapolate it from your initial survey.

Sincerely

Cedric Towers
President

**VANCOUVER WHALE WATCH
CELEBRATING 10 YEARS**

info@vancouverwhalewatch.com
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m. 604.220.4763

Subject: Orca Plan
From: Ecotours <bill@ecotourscanada.com>
Date: Wed, 26 Aug 2009 15:22:34 -0700
To: Orca.Plan@noaa.gov

Pictures missing on previous email now attached.

Wednesday, August 26, 2009

Regarding the NOAA proposals for whale watching.

I have been involved with whale watching for some 20 years as a tour operator and captain. I assisted Green Peace in their "Save the Whales" endeavors in the 70's.

Although I admire the efforts of people to help the Southern Resident Killer Whales the proposed regulations are not feasible to operate, have no scientific basis and will harm the work that whale watching companies do to educate thousands of people a year not only about the whales but about the other sea life in the region.

In addition I am concerned that these regulations are the result of political pressure generated by, possibly concerned citizens, whose real agenda is to remove whale watchers from their view or who are acting out of ignorance. It is interesting that the people who complain have never gone on a whale watching tour and are locals. The tourists, about 95% of our customers, are in awe of the whales and consider it a world class attraction.

The 200 yard limit/ half mile limit. This is not necessary and would be untenable to enforce. If the whales are spread out from Turn Point to Salmon Bank and right across Haro Strait no vessel can remain 200 yards from a whale. If the whales are in a feeding mode they may cover several square miles of water and move in an erratic fashion. No vessel can anticipate where a whale in such circumstances might surface next. The 100 yard limit works well as a GUIDELINE, not a regulation, and has for sometime.

Lynne Barre, NOAA, states that people can look through binoculars and telephoto lens. This would be impossible and dangerous in anything over a one foot sea. I'd like her to envision some 50 people standing on a rocking vessel with binoculars in their hands. It won't work. You can't see the whales properly. We have tried it.

What people really respond to is close encounters with these whales which happen if the whales elect to swim close to the boats. They do this regardless of any 100 or 200 yard limit. You can try and restrict the boats but you can't restrict the whales from going where ever they want. They often do that. I have had them come from more than 100 yards away and bring a fish they caught right to the boat. They have also caught fish right beside the boat. They bring their babies by to teach them about boats. They mate beside boats. They play beside boats. They are social animals and at times seem to enjoy the interaction. If the boat is shut down in the water they don't seem to be bothered.

These whales grew up in one of the most populated marine areas in the world. They are very vessel educated and in fact return year after year and actually go to Seattle or Vancouver to fish. There appears to be no scientific nor empirical evidence that the boat traffic affects the whales feeding

habits. They regularly travel through large sport and commercial fishing fleets. The other day they were feeding amongst some 50 sport fishermen off San Juan Island, see picture. They live in one of the busiest freighter traffic zones. The regularly encounter ferries and I have seen them playing in the wake.

Remember, if it wasn't for whale watch companies it is very unlikely anyone would give a damn about them because they certainly didn't before the companies started up some 20 years ago. In fact they were shot at, rammed and captured.

Imposing unworkable regulations on whale watching will not help the whales or the whale watching industry. 95% of infractions of the GUIDELINES are made by recreational vessels. Therefore it would be much more effective to educate the boating public on how to behave around all whales, seals, sea lions and birds than to try to impose unworkable regulations. Most boaters would be happy to follow guidelines if they knew them.

200 yards or half mile is not the answer. 100 yards is the worldwide standard. The answer is to improve our decimated fishing stocks, reduce the pollution in the ocean and the fish they and we feed on and to educate the public.

You will do more harm than good if you bring in these regulations.

Proud to be a Whale Watching Captain

Bill Day
PO Box 8159
Victoria, BC, V8W 3R8
Bill@ecotourscanada.com
250-888-0508

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Subject: NOAA Orca Plan

From: Ecotours <bill@ecotourscanada.com>

Date: Wed, 26 Aug 2009 15:16:56 -0700

To: Orca.Plan@noaa.gov

CC: 5 Star Charters <orcas@5starwhales.com>, whales@islandadventurecruises.com, tours@oceanecoventures.com

Wednesday, August 26, 2009

Regarding the NOAA proposals for whale watching.

I have been involved with whale watching for some 20 years as a tour operator and captain. I assisted Green Peace in their "Save the Whales" endeavors in the 70's.

Although I admire the efforts of people to help the Southern Resident Killer Whales the proposed regulations are not feasible to operate, have no scientific basis and will harm the work that whale watching companies do to educate thousands of people a year not only about the whales but about the other sea life in the region.

In addition I am concerned that these regulations are the result of political pressure generated by, possibly concerned citizens, whose real agenda is to remove whale watchers from their view or who are acting out of ignorance. It is interesting that the people who complain have never gone on a whale watching tour and are locals. The tourists, about 95% of our customers, are in awe of the whales and consider it a world class attraction.

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You will do more harm than good if you bring in these regulations.

Proud to be a Whale Watching Captain

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Subject: 2004 Guidelines

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Thu, 27 Aug 2009 13:45:20 -0700

To: Orca.Plan@noaa.gov

Regarding the NOAA proposed vessel regulations

I've been operating commercial whale watch vessels in the San Juan islands since 1992. In this time we've seen a lot changes in respect to guidelines; county, state and now proposed federal law, regarding viewing practices on southern resident killer whales. In reviewing the recovery plan, part 2 page 110 sites data provided by Soundwatch: "Commercial operators are more likely to park in the path than other types of boats" (this information came from the year 2004). I would like to point out the fact in 2004 it was legal to engage in a stop and wait sequence which today is known as parked in the path.

I do not feel the commercial whale watching industry should be penalized today for engaging in an activity that was legal in 2004. In 2004 you could not approach whales within 100 yards, but if you were stopped with your engines off and the whales happened to swim by this was legal.

Today stop and wait sequences must maintain 100 yards from southern resident killer whales even if the vessel is shut down. Any vessel within 100 yards of a southern resident killer whales is in violation of Washington state law. You will notice the parked in the path incidents recorded by Soundwatch have dropped significantly as this technique is no longer condoned by the pacific whale watch association.

My point is when you are comparing data from the past make sure you understand what the laws and guidelines stated during the time period this data was collected.

Captain Shane Aggergaard

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Why?

Subject: Why?

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Sun, 13 Sep 2009 18:08:42 -0700

To: Orca.Plan@noaa.gov

If NOAA/NMFS manages all marine mammals at the federal level, why does the proposed vessel regulation only include Washington waters? SRKW's spend much of their time off the Oregon and Northern California coasts during the winter months. If we're creating legislation to protect SRKW's, it makes sense to include all of their range.

If NOAA/NMFS is using the endangered status of SRKW's to create new legislation as a part of the recovery plan, then why does the newly proposed vessel regulation include **all whales** in Washington Waters? The research being done in this process is dealing specifically with SRKW's. To create "one size fits all" legislation which is so extreme, makes no sense. Humpbacks, Minkes, Grays, Transient Killer Whales, Off-Shore Killer Whales, Fin Whales, and other whales that could possibly enter this area should not be lumped together into the recovery plan for SRKW's.

Creating a 200 yard viewing distance is the equivalent of cutting the speed limit in half on Interstate 5.

During the creation of Washington State House Bill 2514, the Pacific Whale Watch Association strongly supported specific language which was not adopted. If the state law said that you could not negligently be within 100 yards it would make the law reasonable. I believe NOAA should consider this language if it is considering lumping large baleen whales with long down-times into the same category as SRKW's. This language recommendation was originally suggested by a WDFW enforcement officer. It would still be enforceable as establishing intent is what they're trained to do. Asking a sport fisherman to stay 200 yards from a Minke Whale while fishing for halibut at Hein Bank is unreasonable. If the law was written as originally proposed, many people would be in violation of a law that they had no intention of being guilty of.

It is your duty to create a law that is fair and reasonable and will not eventually be challenged and overturned. This would not be in the best interest of SRKW's - lets get it right the first time and consider the word "negligently" when drafting new legislation.

Captain Shane Aggergaard

President and General Manager, Island Adventure Cruises, Inc.

President, Pacific Whale Watch Association

--

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Subject: Docket No. 070821475-81493-01, RIN 0648-AV15
From: "Island Adventures, Inc." <whales@islandadventurecruises.com>
Date: Tue, 15 Sep 2009 14:41:37 -0700
To: Orca.Plan@noaa.gov

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

Dear Assistant Regional Administrator:

Since 1996 very few people have spent as much time with Southern Resident Killer Whales as I have. One of my observations that I have made over the years is the change from year to year regarding social behavior, as being documented in the surface activity study, amongst these animals. We have had seasons where the SRKW's will be consistently pushing fish around on their rostrums apparently for their own entertainment. And then we will go many years before seeing the same behavior. Other years I have seen juvenile whales lifting the kelp out of the water attempting to get the bulbous end of the kelp in the notch of their tail. This also appears to be a game. When the animal is successful they seem to loose interest and move on. These various behaviors as well as others have been observed day after day over a course of a particular season and then not seen for many years, if at all. There are many other examples of behavior changes such as these that we have documented. The point is you need to observe these animals for long periods of time apposed to using inconclusive short-term studies and modeling.

An activist group on San Juan Island used modeling in the late 1990's to show that the whales would be extinct within 3 years and there were many people who bought into this irresponsible rhetoric. Today there are more SRKW's than there were ten years ago. They are increasing in numbers and have been for the past 8 years. If you modeled the last 8 years there will be hundreds of SRKW's in the Salish Sea a decade from now. I am sharing my observations of changing surface behavior to show that SRKW's will display different behaviors from year to year. Modeling on a short-term study would not give you an accurate prediction of the future.

I question the use of modeling in this process that will create legislation that will last for decades and will affect so many people. Long-term peer reviewed science should be weighed heavily and short-term inconclusive studies and speculation should be disregarded.

Sincerely,

Capt. Shane Aggergaard,

Island Explorer 3

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Subject: BC Proposes 100 Yards for SRKW's
From: "Island Adventures, Inc." <whales@islandadventurecruises.com>
Date: Tue, 08 Dec 2009 13:50:17 -0800
To: Orca.Plan@noaa.gov

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

At the 17th annual BC Marine Mammal Symposium on November 28th, 2009, Paul Cottrell of the Department of Fish and Oceans Canada, announced they would have a required viewing distance for SRKW's in 2010. He stated that it would be 100 yards. The exact language was not available at this time but the footage distance would be 100 yards.

The proposed 100 yard law from DFO would match the global standard for whale watching and takes into account all available science regarding SRKW's.

BC's 100 yard proposed regulation also concurs with the Pacific Whale Watch Association's recommendation to NOAA.

As the owner/operator of a whale watch company since 1993, I agree and fully support DFO's proposed viewing distance for SRKW's.

At the same conference, there was another guest speaker named Simon Laing, from the U.K., who believes that compliance with any new regulation would be higher if the people affected by the new regulation felt that the new law was necessary and in the best interest of the animals. The whale watching industry will obviously comply with all state and federal law while engaged in whale watching but the general public may be a different story

I fully support the PWWA recommendation as it is a fair and reasonable option for all boaters.

Our recommendation for the new proposed vessel regulations is a combination of Scenario #1 and Scenario #2 from the Draft Environmental Assessment, and an additional element which is supported by the available vessel/killer whale science that we have seen to date.

The PWWA recommends:

- Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA.
- Vessels must avoid the established path of Southern Resident Killer Whales.

- Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out 1/2 mile, except for official law enforcement vessels or vessels engaged in emergency and rescue situations.

This recommendation is more restrictive than the current state law and is within the spirit of the Marine Mammal Protection Act. This recommendation, in cooperation with the PWWA viewing guidelines provides vessel physical and acoustic presence protection for SRKW's. The PWWA recommendation takes into account sound and proximity issues, foraging, travelling, socializing and resting behaviors, important habitat protection and further reduces the potential for vessel strikes. It is in accordance with the precautionary principles used to date for the whales protection and does not diminish the important educational elements of commercial whale watching. The PWWA recommendation will not negatively contribute to the economy, and is a fair and reasonable law that is less likely to be challenged and overturned in the future.

Captain Shane Aggergaard
President
Island Adventures, Inc.

--

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Subject: Whale Watching

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Mon, 03 Aug 2009 18:12:15 -0700

To: Lynne Barre <Lynne.Barre@noaa.gov>

CC: Orca.Plan@noaa.gov

Lynne,

I am curious if you have ever been on a commercial whale watching tour in the San Juan Islands. If yes, with whom and how long ago? I would like to invite you, and anyone else involved in the process of evaluating the public comments, and anyone responsible for the eventual adoption of new regulation regarding vessel impacts on Killer Whales, to join Island Adventures aboard one of our regularly scheduled tours. I don't think it's right to pass judgement on the industry until you experience what we do and how it affects people from around the world. Guests develop a connection for Orca Whales that will last them a life time. With the 100 yard state law in place, we are often watching whales at a very respectful 150 - 200 yards presently. If this distance was doubled, it would push our viewing distance out to 250+ yards, and if the whales are in the proposed sanctuary, it would be up to 500 yards. The educational benefit and personal connection would be greatly diminished. This personal connection between Orca Whales and humans throughout the world directly influences the choices humans make daily - recycling, farm raised salmon, carbon footprint, pesticide use, salmon spawning habitat and home site selection, impervious surface, etc., and the cumulative impact of these eco-friendly choices is truly what is going to help preserve the Orca Whales.

After reading all the science, which seems inconclusive, I still don't understand how doubling the viewing distance would aid in the recovery efforts of Southern Resident Killer Whales. Under the existing laws and guidelines, SRKW's have been increasing in numbers over the last 8 years and there are more whales today than there were 10 years ago. 100 yards is the global standard for whale watching and after conducting over 2,500 tours with SRKW's, I've yet to see any vessel impacts, long term or short term.

In 2009, it's been an incredible whale watching season in the San Juans and I feel it would be hypocritical for anyone to pass judgement or pass new legislation that would affect the commercial industry, without first taking a tour with us or any other PWWA member company. I invite you as my guest - you can come anonymously if you wish as we have nothing to hide, only an amazing experience to share.

I am also submitting this as a public comment - I don't feel that riding aboard a research vessel, Soundwatch, or a ride-a-long with WDFW is the same experience. Anyone involved in the process of creating this legislation should experience this trip with a 100 yard state law before doubling the distance unnecessarily.

Captain Shane Aggergaard

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Island Adventures, Inc.
1801 Commercial Avenue
Anacortes, WA 98221
1-800-465-4604

Fwd: Today's whale watching tour

Subject: Fwd: Today's whale watching tour
From: "Island Adventures, Inc." <whales@islandadventurecruises.com>
Date: Fri, 07 Aug 2009 10:01:12 -0700
To: Orca.Plan@noaa.gov

I feel we have the best staff on the west coast, if not the entire world. Some of our staff was trained in-house for many years and others have been recruited from outside the area. They are very knowledgeable in all aspects of our tours - whales, other wildlife, natural history, and of course, passenger safety. I fear that if the new proposed rules were put in place, it would negatively affect the financial viability of the industry, making it difficult to retain quality staff. A quality staff ensures the educational benefit for the consumer which will help the long term survival of the SRKW's.

Shane Aggergaard, Owner and General Manager
Island Adventure Cruises
Anacortes, WA

----- Forwarded message -----

From: Gary L. Allen <st.tmp.1979@verizon.net>
Date: Sat, Aug 1, 2009 at 5:24 PM
Subject: Today's whale watching tour
To: whales@islandadventurecruises.com

Hello!

We took a remarkable tour with Captain Carl, Mark, Kate and Caitlin today. The trip was spectacular! They crew are professional and entertaining. Kate's enthusiasm for wildlife, especially the local birds and Orcas, reminds me of a kid in a candy store. I can't tell you how completely refreshing that is. She is also quite knowledgeable and yet remains curious about the animals and their behavior. We had an excellent discussion about the use of Sonar and its interference with whale communications and navigation, and on their safety. That curiosity, concern and willingness to discuss her passion will go down as one of the trip's highlights for me today. The other highlight was simply being on the water in such a nice boat.

This was my second tour with Island Adventures and I will take more of them. I deeply appreciate the crew, the intensity of enthusiasm from Kate and the time on the water. I will be sure to look for that crew on future tours (the whole crew were excellent).

Quite Sincerely,
-Gary Allen
Product Safety Test Engineer
Mukilteo, WA

--

Island Adventures, Inc.
1801 Commercial Avenue

Fwd: Today's whale watching tour

Anacortes, WA 98221

1-800-465-4604

1-360-293-2428

www.islandadventurecruises.com

Fwd: Wonderful Experience!

Subject: Fwd: Wonderful Experience!
From: "Island Adventures, Inc." <whales@islandadventurecruises.com>
Date: Fri, 07 Aug 2009 08:44:43 -0700
To: Orca.Plan@noaa.gov

The commercial whale watching industry has had a positive influence on the economic climate in Washington State for years. If the newly proposed regulations are passed as written, it will affect many people, both inside and outside the industry. (Hotels, restaurants, fuel, etc.)

Island Adventure Cruises
Happily contributing to a positive economic climate in Washington State

----- Forwarded message -----
From: Des <ogata005@hawaii.rr.com>
Date: Sun, Aug 2, 2009 at 10:37 PM
Subject: Wonderful Experience!
To: whales@islandadventurecruises.com

Hello You All,

I just wanted to extend my thank you to all the wonderful staff and crew of your operation. Our whale watching adventure on 07/21/09 was a treat for us visitors from Hawaii. This was our first family trip to the Northwest and thought this was something we could do and not have to be watching Wildlife adventures on the TV. My wife, son, & daughter all enjoyed the awesome excitement of searching for the Orcas on the water. In Hawaii, we have had opportunities to see the migratory Humpbacks but it wasn't as exciting seeing the Killer whales in action. Naturalist Bart Rulon was top notch providing us all the information about the wild mammals and sea birds during the trip. In fact Capt Carl provided us the best opportunities of seeing the whales and appreciate his expertise and knowledge on the seas. Teamwork of both Capt and Naturalist worked to our visitors viewing pleasure.

We also loved the wonderful, rightly priced snacks down in the galley. Our family was so hungry after driving down from Whistler, BC and food was the first item on our agenda as the boat left the dock at 3:30. We would highly recommend this adventure as our whole family will remember the opportunity to see the Orcas in their natural habitat. They are not seen in the warm waters off Hawaii at all. Thank you all for your excellent service and courteous staff on the boat, in the gift shop, and everyone else too.

The Ogata Family, Honolulu, Hawaii.

--

Island Adventures, Inc.

Fwd: Wonderful Experience!

1801 Commercial Avenue
Anacortes, WA 98221
1-800-465-4604
1-360-293-2428
www.islandadventurecruises.com

Subject: Fwd: Whale Fan
From: "Island Adventures, Inc." <whales@islandadventurecruises.com>
Date: Fri, 07 Aug 2009 08:23:49 -0700
To: Orca.Plan@noaa.gov

People from around the world follow the Orca Whales through our blog and many of these people have formed a connection to the orcas by taking a tour. This connection would be greatly diminished if the viewing distances were doubled.

The current state law has vessels maintain 100 yards at all times from SRKW's, therefore putting the normal distance maintained by our company at 150 - 200 yards, in order to stay in compliance. If the viewing distance was doubled the educational aspect of our tours and the connection people have to our endangered Southern Resident Killer Whales would be diminished.

Island Adventure Cruises
Anacortes, WA

----- Forwarded message -----

From: T S KIMSEY <kimsey3250@bellsouth.net>
Date: Thu, Aug 6, 2009 at 8:13 AM
Subject: Whale Fan
To: whales@islandadventurecruises.com

I am from the Atlanta, GA area and I just wanted to say I read your Whale Watch report each and every morning! It's become part of my daily routine! My daughter and son-in-law live in Oak Harbor and when I was out visiting the end of May this year while on one of your excursions, I finally was able to fulfill a life long dream of seeing whales swimming in the wild. Unfortunately, the resident orcas were no where to be found, but I was able to see a gray whale and a couple of minke whales. My goal is still to take a trip where I get to see the majestic orcas swimming and frolicking in the open water!

I thoroughly enjoyed our experience with Island Adventures. Every single staff member we came in contact with was friendly and very knowledgeable, from the people who checked us in, to the staff on board the boat, to those working in the gift shop when we returned! My goal is to someday move out to WA where I can be closer to my daughter and I hope to be a regular customer of Island Adventures. You all are the best! And please keep the Whale Reports coming. They start my morning off with a smile and wishing I was on every trip you all take!! The pictures are magnificent and just make me want to come back for more!

Tammi Kimsey

--

Island Adventures, Inc.
1801 Commercial Avenue
Anacortes, WA 98221
1-800-465-4604
1-360-293-2428
www.islandadventurecruises.com

Fwd: attention: Shane

Subject: Fwd: attention: Shane

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Fri, 07 Aug 2009 08:09:33 -0700

To: Orca.Plan@noaa.gov

Whale watching inspires many people in the region.

Island Adventure Cruises, Anacortes, WA

----- Forwarded message -----

From: <kayecart@comcast.net>

Date: Fri, Aug 7, 2009 at 6:58 AM

Subject: attention: Shane

To: whales@islandadventurecruises.com

Shane

Just wanted to show you a glass project I did with you guys in mind. It is because of the influence the whales made on me over the many year I have been going whale watching with you guys. This is my 2nd fused glass project I have done.

I will see you today because I am once again going with you guys.

Remember me???? Kaye Cartwright-Lissa

--

Island Adventures, Inc.

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orcawhaleglasskaye1.JPG

Content-Type: image/jpeg

Content-Encoding: base64

Kaye Cartwright-Lissa



Subject: Comment on Vessel Regulation
From: OnBoard Tours <onboardtours@yahoo.com>
Date: Fri, 15 Jan 2010 22:29:26 -0800 (PST)
To: "Lynne.Barre@noaa.gov" <Lynne.Barre@noaa.gov>

Additional Comments to NOAA Proposed Vessel Regulation

January 15, 2010

NOAA should consider that the public is not as aware of what the Recovery Plan for the SRKW Community is doing for salmon recovery and clean up of toxins in Critical Habitat, as they are aware of vessel effects concerns. Information regarding this should be easily accessed and available, perhaps through the Orca Listserve, education, and other media.

My anecdotal observations of 10 years, NOAA's own research, and Dr. Rob Williams research, all show the proposed 'no go' zone off the Westside of San Juan Island, is not the geographic area where the SRKW primarily forage and feed. The most utilized foraging and feeding area is from Salmon Bank to Hein Bank to False Bay, San Juan Island. So I question why that proposed 'no go' area?

I support a whale watching vessel permit fee system, i.e. NOAA's East Coast "SENSE" program. A permit might also be issued based on locality of vessel, adherence to regulations and guidelines, limited number of vessels and time with SRKW, and vessel speeds.

Vessel Regulation implementation and enforcement could be funded through vessel permit fees and tourist whale watching fees.

The commercial whale watching fleet have numerous hours of observation and experience with the SRKW, and NOAA should cultivate the opportunity to include and utilize those vessels and participants in research, education, and enforcement.

Thank you for your consideration,

Caroline Armon
Marine Naturalist

vessel restrictions regarding Orca, West side of San Juan Island.eml

SRKW comment.eml

Subject: From: Clark Casebolt, Outdoor Odysseys Kayak Tours
From: ceekayaker@aol.com
Date: Fri, 15 Jan 2010 20:10:59 -0500
To: Lynne.Barre@noaa.gov

Hi Lynne,

I wanted to follow up with the letter that was sent earlier today by the San Juan Kayak Association to you and Donna. This is a slightly shortened version of that letter with an emphasis more on what we have been working on as a kayak association in an effort to alleviate our whale interactions on the west side.

As mentioned, this letter is a collaborative effort of the San Juan Island Kayak Association (SJIKA) with members including Discovery Sea Kayaks, Outdoor Odysseys, Crystal Seas Kayaking, and San Juan Outfitters.

As a newly formed association, we would first like to state that we all support efforts to recover the Southern Resident Killer Whale (SRKW) Population. As owners of outdoor companies we care deeply about the Salish Sea marine ecosystem. As we meet and discuss issues some common themes have emerged that we feel NOAA could take as alternate actions to protect SRKW:

- Enforce the current state laws, which have not been adequately enforced to date. It is our belief that strong enforcement of the current state laws would eliminate 90% of the “potential disturbance” from vessels. According to data collected from Federal, State, and local officers, there were only 38 days where enforcement officers were monitoring/patrolling in the vicinity of SRKW.
- Instead of a “no go zone”, we support a “go slow zone” for a ½ mile not “only” on the west side of San Juan Island, but wherever the whales travel. There is strong evidence that the current proposed “no go zone” is only one of many critical areas, and a proactive step would be to keep speeds around Killer Whales slow wherever they travel.

As you may have heard from Kari Koski, The San Juan Island Kayak Association has recently sat down with San Juan County Parks, and representatives from Sound-watch and The Whale Museum to discuss how we can work together to address the concerns regarding the whales. We are in the process of developing strategies to educate the public prior to entering critical habitat, specifically from San Juan County Park.

Here are some of the components...

- All Commercial Kayak companies will have additional terms in their permit requiring any guide leading guests into SRKW habitat (from San Juan County Park) to be required to undergo third party Park approved training. The training program this spring will be developed in conjunction with Kari Koski and the Soundwatch program, and the SJIKA. The training will emphasize the KELP guidelines, and the SJIKA association guidelines which go beyond the KELP guidelines. Once the training program has been approved by the parks, and guidelines finalized, The SJIKA will provide NOAA with details.

Commercial companies will check in with park staff (or 3rd party staff) prior to launching, to check off that guides have emphasized conduct/behavior in sensitive areas, specifically with regards to Killer Whales. Commercial Permits holders that have been issued warnings or citations from law enforcement will be reviewed by parks, and may be revoked.

- All non commercial kayak users launching into the sensitive SRKW habitat (county park) will be required by permit to participate in an education process by 3rd party prior to launching. We strongly support the

Soundwatch program through The Whale Museum as the education coordinator. The SJIKA will take a leadership role in helping develop this education process, as we will be setting the standard on the water. The summer of 2010 will be a trial period to see what processes and education systems work. The SJIKA will review this program with San Juan County Parks and The Whale Museum in the fall of 2010. Based on that trial period, SJIKA proposes to make permanent this education process and would work with NOAA, The Whale Museum, and SJCP to develop an educational video that may be viewed from any entry point into SRKW critical habitat. Our hope is that it will become a standard in the region, and potentially worldwide.

All commercial guides unable to participate in professional guide training will be required to participate in the public education process with their guests.

SJIKA will support monitoring of commercial companies by clearly marking all guides and kayaks. This will help identify commercial kayakers as setting the standard for appropriate behavior around SRKW and other wildlife.

Our current guidelines make clear that it is never our intention to place ourselves in the path of Killer Whales, and to move to shore at all times to avoid this type of interaction. We also recognize that even with our best efforts to avoid being in the path and following all guidelines (even when stationary in a Kelp Forest) we may find ourselves in "violation" of current state laws if the whales come to us. In keeping with our guidelines, it is never our intention to intentionally place ourselves in these situations and certainly a pattern of these accidental encounters would be addressed by law enforcement, which would trigger the permit review at the parks. So, we have tried to put a system in place to address these issues.

The SJIKA feels the system outlined above is a great alternative system to the current proposed rules. It allows a sustainable industry to continue operating, while acknowledging the need for SRKW critical habitat. There is a monitoring component in place and a system for reviewing access in cases of law violations.

We are deeply appreciate of NOAA efforts to extend the comment period as well as listening to our concerns about having another season on the water to continue implementing the new provisions outlined above. We look forward to partnering with NOAA to help recover SRKW, and developing strategies for maintaining a low impact/educational and sustainable industry.

Sincerely,

Clark Casebolt Owner - Outdoor Odysseys
Richard Swanson Owner - Discovery Sea Kayaks
Jason Gunther Owner - Discovery Sea Kayaks
Johannes Krieger Owner - Crystal Seas Kayaking
Brian Goodremont Owner - San Juan Outfitters

2009 recipient of National Geographic Adventure Travel Magazine's "200 Best Adventure Travel" Outfitter's Award. We have been offering quality hand-crafted kayak tours for 22 years.

Outdoor Odysseys, Inc.
12003 23rd Ave NE
Seattle, WA, 98125
206-361-0717 or 800-647-4621
e-mail: ceekayaker@aol.com
web: www.outdoorodysseys.com

Comment on Vessel Regulation.eml

Subject: Potentially Biased Data

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Tue, 08 Dec 2009 14:19:39 -0800

To: Orca.Plan@noaa.gov

To:

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

After reading the Draft Regulatory Impact Review, The Environmental Assessment, and the majority of the science used in this evaluation process, I am skeptical of the credibility given to short term and non peer reviewed work. I am also skeptical of the influence certain NGO's and ENGO's have had in NOAA's recommendation for proposed regulation change regarding SRKW's. I am also surprised at the lack of credibility that has been awarded to groups such as the Center for Whale Research and the Pacific Whale Watch Association.

The Whale Museum's Soundwatch Program has provided valuable data used in this process. Unfortunately it is the only data of its type available. I feel it would be irresponsible to use this data as credible peer reviewed fact when there is a huge potential for bias in their work. I believe that if you divided the Soundwatch data by individual Soundwatch drivers, you would see many inconsistencies. Individual drivers use their own judgement when assessing violations against commercial and recreational vessels alike, which tends to create misleading data. If the Soundwatch data is going to be used in this process it should be analysed by someone other than Soundwatch, which to my knowledge has not been done to this point. This data has been used as indisputable fact and unfortunately may be misleading if not interpreted correctly. I recommend NOAA have a local consultant review this data.

How can NOAA dismiss the opinions of Ken Balcomb and the Center for Whale Research and give such credibility to the recommendation by the Whale Museum and others? This makes me question the fairness of the process. Any new regulations should be based on science, not personal agendas.

Shane Aggergaard

Island Adventures, Inc.
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Subject: Vessel Avoidance

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Sun, 13 Sep 2009 17:04:32 -0700

To: Orca.Plan@noaa.gov

I would like to follow up on a previous comment that I had submitted entitled "vessel effects." In this comment I stated that SRKW's have never shown any signs of avoidance of vessels with the exception of the Shoup incident. I've been giving this some thought and would like to expand on my vessel effects comment.

Many animals will show signs of avoiding areas when disturbed. Whether this disturbance originates from humans, predation, or the animals' environment, they will avoid an area when it becomes uncomfortable for them or they cannot feed or live comfortably. Southern Resident Killer Whales have not been back to Penn Cove since the captures in the early 70's (there have been Orcas in Penn Cove but they were transients, not residents). The furthest north SRKW's have been in Saratoga Passage according to my records is Baby Island. I believe this to be an example of avoidance. I have also noticed SRKW's avoiding the proposed no-boat zone when there are many commercial fishing nets in the water. This was true this year over the Labor Day weekend and days after. The whales that were in the area on these days stayed off-shore as they have on other commercial fishing openers in the past. **Why would these boats be exempt in the no-boat zone?** We have also been collecting route data on SRKW's since 1996. Our data and personal experience shows an annual pattern change on October 1st, which happens to be the same day that commercial crabbing season starts - this has happened too many times to be a coincidence. This may be the first that you're hearing of this as most researchers and other whale watch companies' seasons have ended by this time. Island Adventures continues to run whale watching tours from Anacortes through November and into December. When the whales are southbound from the Fraser River, they normally come past Point Roberts and travel along a 90 foot depth ring between Point Roberts and Point Whitehorn, on an ebb tide. In this area after October 1st, there will be thousands of crab pots in the water along this line. After October 1st we have observed the whales turning at the west end of Point Roberts and traveling straight toward East Point, on Saturna Island (picture thousands of crab pot lines in the water - it must be like walking through a bamboo forest). I do not feel either of these activities affect the success and viability of SRKW's, but all three examples are signs of avoidance.

This demonstrates that SRKW's will avoid areas of disturbance.

Under normal conditions of vessel traffic in the San Juan Islands - including the commercial whale watching industry, recreational boaters, sea kayakers, sport and commercial divers, cargo ships and oil tankers, commercial and Naval air traffic, and others, I have not seen any research nor have had any personal observations of SRKW's avoiding areas such as the proposed no-boat zone, even under extreme circumstances such as derby weekends or the Fourth of July (the Fourth of July avoidance rumor in the SJI's is a myth - we have had Orca sightings 5 of the past 7 years on the Fourth of July). I have also not seen any research that would justify doubling the global standard for whale watching (100 yards).

Any fisherman will tell you that there are more Chinooks and bigger Chinooks west of Race Rocks and up the west side of Vancouver Island than there are in the SJI's. Anyone who has spent time in this area will also tell you that there is a fraction of the vessel traffic - the limited traffic west of Race Rocks often does not stop and engage in whale watching. This area is only 30 miles from the proposed

no-go zone. If the SRKW's were being disturbed by vessel traffic and were not finding enough food, they would spend more time, if not all of their time, in this area. To imply that these whales need a sanctuary zone away from vessel traffic, or have no where else to go, is ridiculous.

30+ years of observation by the Center for Whale Research will support my comment that SRKW's do not avoid normal SJI vessel traffic, including commercial whale watching at 100 yards.

This comment is based on twenty years of observation, over two-thousand whale watching tours, and over one-thousand days of sport fishing between Anacortes and Port Renfrew.

Experience levels should be weighed heavily when evaluating comments during this process. Please consult the researchers and enforcement officers who have spent extensive time on the water before implementing regulation which will stand for decades. Incomplete, non peer-reviewed research should not be used in your evaluation process.

Captain Shane Aggergaard
P/V Island Explorer 3
President, Island Adventure Cruises

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Island Adventures, Inc.
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Anacortes, WA 98221
1-800-465-4604
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Subject: Comment on NOAA's Proposed Regulation Change

From: Jill Payette <jpayette@sunlink.net>

Date: Sun, 13 Sep 2009 12:24:12 -0600

To: Orca.Plan@noaa.gov

I feel that NOAA's proposed regulation changes to safeguard Puget Sound's Endangered Orca Whales are warranted and should be enacted. One concern I have is that commercial fishing boats and tugs are exempt from the proposed half-mile sanctuary zone off of the West side of San Juan Island from May to September.

Orca pods are currently feeding among the purse seiners on a variety of salmon such as Pinks on the West side of San Juan Island in the proposed sanctuary area. This is contrary to the statistic that the Orca's diet comes from 95% Chinook. As hungry as the Orcas are, my common sense feels that they are and will continue eating other types of Salmon and do in fact switch to Chum in the fall. I also feel that it is the responsibility of NOAA to allow this opportunity to exist regardless of science and logic, which means...

The point of making these new regulation changes is ultimately for the protection of Endangered Orcas, not commercial fishing boats and tugs. We need to to sustain the Orca's ability to get enough food by giving them undisturbed places to feed . The West Side of San Juan Island is naturally one of those places. Please add commercial fishing boats and tugs to the list of excluded vessels in the proposed half-mile sanctuary zone off the West side of San Juan Island, and extend the time to at least October, as it is still feeding season there.

Sincerely,
Jill Payette
Blaine County, Idaho

Home of the Endangered Sockeye who through massive efforts are finally returning to the Headwaters of the Salmon River and Redfish Lake.

Subject: Comments and suggestions on proposed vessel regs
From: Joan Lopez <joan.lopez@live.com>
Date: Mon, 05 Oct 2009 09:33:12 -0600
To: Orca.Plan@noaa.gov

I have attached a word file that details my comments on your proposed vessel regs and orca recovery plan. This document has also been distributed to the members of the whale watch association. I will also submit a printed copy at the San Juan Island meeting.

Sincerely

Joan Lopez
Naturalist
Vancouver Whale Watch

Faster Hotmail access now on the new [MSN homepage](#).

NOAA comments.doc	Content-Type: application/msword Content-Encoding: base64
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Comments on Proposed Vessel Regulations

I am an onboard naturalist working for Vancouver Whale Watch. I have been employed in this capacity since 2003. During that time, I have seen a huge change in the way vessels operate around the whales, and increasing compliance with the current viewing guidelines by commercial operators. I believe a perusal of the recent Soundwatch records will confirm this. In many instances, private boaters also follow our lead and voluntarily follow the guidelines, whether they know they are doing this or not. Perhaps a good start would be increased education for boaters at marinas, as well as on the water. Suggest to mariners that they use the presence of stopped or slow-moving commercial whale watch vessels, most of which are conspicuously marked, as an indication that whales may be present. This is one more method to incorporate commercial whale watching as part of the solution for the SRKW, and other marine mammals as well.

I recognize that you are attempting to protect the SRKW, and have their interests central to your proposal. Passengers and crew on commercial whale watch vessels are also irked by blatant disregard for the welfare of the animals by the actions of a minority of boat operators, both private vessels and large vessels such as ferries and freighters. There is a state regulation that should be publicized and could be enforced on a wider basis to reduce such conflicts. The whale watch community is not the enemy of the SRKW. We also have their interests at heart, and an educational conservation message is central to the whale watching experience on our vessels, as I'm sure it is on the majority of commercial vessels.

I am also a Marine Biologist, with a degree from the University of British Columbia (B.Sc. 2000). I have been employed at the Vancouver Aquarium in the Education Dept, and have also volunteered for the Vancouver Aquarium in a variety of positions. This winter, I will be volunteering with the Cetacean Sightings Network, located in the Cetacean Research lab.

I have read your entire proposal and also looked over most of the information in your recovery plan. After doing so, I am convinced that you are acting on incomplete information, and hastily drawn conclusions.

Your proposal and recovery plan suggests that the west side of San Juan Island is the core area for the SRKW during the summer season. This is based on sightings from the whale hotline operated by the Whale Museum. This only tells half the story. All of our sightings are reported to the Cetacean Sightings Network, which operates out of the Vancouver Aquarium and is in cooperation with the DFO. The sightings are available on a request basis to researchers and to other government agencies. Over the summer months, we frequently see the SRKW in the Strait of Georgia, and particularly in the areas adjacent to the Fraser River and its estuaries. The orcas will often spend many hours, even entire days, in this area when the salmon are plentiful, as they were this year. Foraging is the most common activity we observe when the SRKW are around the Fraser River. As the Fraser is known as the largest salmon river in the world, the activity of the resident pods in this area should not come as a surprise. There is almost no research effort occurring in this area by American or Canadian scientists, leaving a vacuum of information. When the whales arrive at the river during the afternoon and are still in the vicinity the next morning, we believe they have spent much of their time foraging, although there is little observational data that can prove this. We do not conduct "sunset" tours of the whales, nor early morning trips, so the SRKW generally have no whale watching

boats with them from approximately 5 or 6 PM until perhaps 9:30 or later the next day. There are relatively few private vessels travelling along the Fraser River estuaries, and extremely few locations where whales might be sighted from land. While there is definitely foraging activity along the west side of SJI, it is likely a "snack bar" compared to the buffet available in the areas of the Strait of Georgia near the Fraser River. Other important foraging areas in the southern Strait of Georgia include Cherry Point and Alden Bank. Even the area north and west of Vancouver's English Bay becomes important in August as the whales access runs of Chinook heading to the Capilano and Seymour River, both of which have hatcheries. In your Recovery Plan, an obvious lapse in information is evident when, on page II-29, the document states that L Pod does not use Swanson Channel and Active Pass to access the Strait of Georgia. As I have photographic evidence to the contrary, this statement cannot be accepted as true or well-informed.

A certain amount of your sightings data should be corrected for "effort". As there are numerous locations throughout the San Juan Islands where whales can be sighted from land, the whale hotline results are likely skewed due to sightings being possible in all weather conditions, and from many land-based points. There also may be a more enthusiastic group of sightings reporters on SJI when compared to other regions. In addition, information on the activities of the whales when in these areas should also be considered, rather than just that they were there. When on the west side of SJI, the whales are frequently resting, travelling or exhibiting social behaviours not associated with foraging.

At the end of your vessel regulations proposal, there is a long list of references. Many of these are documents prepared for particular government departments and few are published in peer-reviewed journals. Of those that are published, many are quite old (pre-dating the Be Whale Wise guidelines), are from other locations (ie: Hawaii) and for other species than are being considered here (ie: Stellar Sea Lions, Spinner Dolphins). Very few of the cited references were relevant, current and published in peer-reviewed journals. The science may be fine, but it has not been held accountable by the scientific community.

Dawn Noren's research aimed to show that the SRKW changed their behaviour when boats were in the vicinity, particularly with vessels within 100 m/yds. Her results that surface active behaviours (SABs) increase with fast-moving boats in close proximity would rarely apply to commercial whale watching vessels, as they are slow-moving or stopped when in the presence of whales - 7 knots or less at 400 m/yds. The majority of the incidents observed were likely from private boats with drivers either ignorant of the viewing guidelines and WA state laws, or drivers who simply do not care. Again, education at marinas might be a key part of the solution.

Further to the SAB issue, there is no indication of the percentage of incidents observed where the whales exhibit SABs with vessels at a 100 m distance, versus the percentage of "no change" in behaviour with vessels at a 100 m distance. In biological science, proving your hypothesis is rarely possible, so disproving your nul hypothesis has become a normal practise. A suggested nul hypothesis might be "SRKW exhibit no change in behaviour with boats at a 100 m distance." Records would have to be kept of the change in behaviour, ie: SABs, change in direction, change in breathing patterns, change in foraging activity, alongside the record of no change in these behaviours. A statistical analysis of the findings would then be more meaningful. As this work has not yet been published, the methods and statistics have not been available for public scrutiny to determine if the science used was

sound, and showed a statistically significant result. Studying biological beings requires statistics as there is always the possibility of variations simply due to living beings not behaving or responding in predictable patterns. Biological studies are not as simplistic as mathematical equations that respond identically every time. Our observations reveal that the SRKW will continue with their activities in the majority of instances, with few changes, when boats are at 100m distance. David Bain's earlier work showed only a small percentage of change in direction with boats closer than 100 m and operating at a variety of speeds. I believe the percentage was 3-4%. That is NOT a significant result in any Stats course I have ever taken.

I have personally observed K25 (Lobo) nab a fish out of the wake, directly behind a BC Ferries vessel - wish I had a photo of that one! I have also observed J pod continuing with their resting behaviour as a container ship passed within 100 m of them. The point I am trying to make is that these are very complex animals, and our assumptions as to why they might be behaving in the manner they are is likely over-simplifying the range of the behaviour, and their mental capacity. SABs occur as part of socializing, which in your Recovery Plan, on pg II-23, is reported to take up approx 12-15% of the whales' time. SABs may also occur as a result of changes in the water conditions - ie: tidal currents, ferry or freighter wake, change of water temperature. They also appear to occur as the whales approach shorelines where people gather to watch, such as Lime Kiln State Park or Thieves Bay Marina on N. Pender Island. I refer to this as the "grandstand effect", where the whales appear to be responding to their adoring fans on shore. I don't believe anyone has studied this particular cause of SABs. I would argue that slow-moving or stopped boats at 100m, or even less distance in the case of those little sport fishers or kayaks, do not cause any significant change in the behaviour of SRKW.

Katherine Ayers' results from several seasons of sampling for stress hormones and nutrition indicators showed that stress hormones for SRKW are lower during July and August than in other months of the year. July and August are also the months with the highest boater traffic, and with the highest whale watching hours. It is also the time when their food is present or increasing in availability. Ms. Ayers results have so far not implicated vessel traffic as a major stress for the SRKW.

J Pod is by far the most observed pod of the SRKW, as they spend more months in inshore waters than K and L Pods, yet they have the lowest mortality in recent years and have also exhibited overall growth in their population in the past 7 years.

Have the demographics of the individual pods been seriously considered as a factor in whether or not growth is likely? L Pod, with a high ratio of mature bulls, is less likely to show population growth than is J Pod and K Pod. I am not one of your paid researchers, yet I had this one figured out several years ago. There are entire matriline in L Pod that are reproductive dead-ends. To have a certain percentage growth in L Pod as one of your recovery goals may simply be impossible to attain.

So what would help this population to grow? The obvious answer is food. Without increased salmon stocks, this population may be at or near carrying capacity. Anything that can enhance wild salmon stocks would benefit the SRKW, as well as numerous other animals that share the ecosystem. Hatcheries may not be the solution in the long term, but in the meantime, they do increase the overall salmon

stocks and should be supported. I am told that sport fishing licenses in WA state help to support hatcheries.

Any activity that reduces wild salmon stocks should be curtailed - dams on salmon rivers, deforestation - particularly in riparian zones, degradation of salmon habitat by livestock, open net cage salmon farms - the list goes on and on. Each of these measures on their own may not recover salmon, but they are things we CAN do something about quickly, as opposed to grand scale issues like climate change. In your recovery plan, on pages II-84 & 85, you dismiss the effect of open net cage salmon farms in BC as being insignificant, or contradictory evidence. Independent research conducted by Dr. Lawrence Dill, a professor at Simon Fraser University, and by grad students of Dr. Daniel Pauly, a world-renowned fisheries expert from the University of British Columbia, is conclusive and published. Numerous private citizens, NGO's, university researchers and first nations peoples have mounted opposition to this method of salmon farming. Perhaps NOAA's request for cooperation from Fisheries and Oceans Canada should include a request for recognition and support of independent study of open net cage salmon farms. There are well over 100 Norwegian-owned open net cage salmon farms currently operating in British Columbia, and they are trying to expand. British Columbians rarely consume farmed fish. The biggest market for this product is the United States, California in particular. A simple solution exists - closed containment salmon farms.

The salmon to feed the SRKW also has to be of good quality. At the workshop in Port Townsend, Sandra O'Neill reported that Puget Sound Chinook are smaller, by weight, than Fraser River Chinook (1.7 PS Chinook = 1 Fraser River Chinook), but approximately 7 times more contaminated with PCBs as Skeena River Chinook. Puget sound has to clean up its act.

In the proposed regulations document, major oil spills are listed as the #1 risk to extinction for the SRKW. There are 3 oil refineries located on the WA state mainland adjacent to the southern Strait of Georgia, in an area frequented by these whales. Has anything been done to assess and reduce this threat?

I am proposing that NOAA maintain the status quo with whale watch vessels. A 1/2 mile zone along the west side of San Juan Island is too much. It would have little benefit to the whales, as they do not use this area for any unique activities, and really only benefits the few people who are fortunate to live along that shore. The negative effect on many businesses and private recreational fishers, as well as on passengers on whale watch vessels, should be more heavily weighted. Viewing from 100 yds/m and greater should also remain. This is at minimum a football field between the whales and vessels, the majority of which are stopped or moving very slowly and therefore should not incite SABs. Whenever possible, the SRKW are voluntarily given a 1/4 mile (400m) boundary along any shoreline, not just the west side of San Juan Island.

I am not arguing this for my own sake. I have excellent long distance vision, I am skilled with binoculars, even on a moving platform, and I photograph with a 300 mm zoom lens. My passengers, on the other hand, may not share my good fortune of excellent eyesight, binocular skills and photography equipment. Children and seniors often have difficulty spotting the Orcas at even 100 yds/m. Doubling the distance means even less chance that some passengers will have a meaningful experience. Against a dark shoreline, at 1/4 mile, I often have difficulty Id'ing individual animals. I can't expect inexperienced passengers to observe those unique details of the

animals, or to observe the tiny nuances of behaviour that set the Orca apart from other mammals.

It has been said that people will only care about things and beings that they have had an opportunity to experience and learn about. Our passengers come from all points on the globe, and whale watching on a commercial vessel provides a perfect opportunity to spread an educational message about the SRKW, and their environment, all over the world. Every passenger learns that the SRKW are endangered, that we keep a 100m distance so as to minimize disturbance for them, that their food is contaminated with organic toxins and so therefore, so are they. They learn that there are issues with availability of good quality prey and the growing evidence that open net cage salmon farms are having a negative effect on wild salmon that the Resident type Orcas, and many other animals, depend upon for nutrition. They also learn that the problems may have started for the SRKW when a large number of them were captured for display in aquariums, no doubt disrupting the population for many years after. What a sad turn of events it would be for Orcas worldwide if people could no longer view them in the wild and demand for captive Orcas resurfaced. The passengers also learn that the Orcas are intelligent, social and have family bonds that rival or even surpass those of humans. I know that the educational message is better received if the passengers have had a memorable and meaningful experience, and have had the opportunity to observe the family ties and complex behaviours of the Orcas. We endeavour to do our best to minimize disturbance for the Orcas and the other wildlife we observe, while educating our passengers about these magnificent animals and the issues they face.

During the workshop in Port Townsend in March of 2009. Lynn Barre stated that commercial whale watching was part of the solution for the SRKW because of the high educational value. Don't betray us now. Let us continue to be part of the solution.

Thank you for considering these comments and suggestions.

Joan Lopez
Naturalist
Vancouver Whale Watch

Subject: San Juan Outfitters
From: Brian Goodremont <brian@sanjuanislandoutfitters.com>
Date: Tue, 13 Oct 2009 16:15:02 -0700
To: Lynne.Barre@noaa.gov, Orca.Plan@noaa.gov

To: Mrs. Barre and Mrs. Darm,

Brian Goodremont with San Juan Outfitters writing. I recently participated in both the Anacortes and Seattle Public Hearing regarding proposed rules for SRKW. I was unfortunately out of town for the Friday Harbor public hearing, as well as the PWWA and Kayak Association meeting.

I wanted to share with you both some recent dialogue I've had with fellow PWWA members, as well as Kayak Association members. There is concern that our current opposition to the proposed rules may overshadow our overall support for the recovery of SRKW. I feel very strongly that the PWWA will be a strong supporter and partner in action to recover SRKW, particularly with salmon recovery, toxin issues, and general protection of SRKW.

I have submitted public comments previous to this email with my concerns regarding the current proposed rules. Please let me know if you'll be holding any stakeholder meetings after the October 27th deadline expires, to discuss my personal position and the PWWA position on the rules. I have had several long discussions recently with Kari Koski on what a workable plan would look like on the water next summer with consistent enforcement. I will articulate this plan in writing prior to October 27th as an official comment.

I thought the Seattle public meeting was much more productive than Anacortes, and my understanding is that Friday Harbor was similar. My apologies Anacortes had to be a learning experience.

Sincerely,

Brian Goodremont
San Juan Outfitters
www.sanjuanislandoutfitters.com
866-810-1483
US VP PWWA
Founding Member SJIKA

Subject: Comment

From: Jason <jason@discoveryseakayak.com>

Date: Mon, 05 Oct 2009 16:16:38 -0700

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

I am writing due to my concerns about misinterpretations of cited research NOAA has used in the Orca Recovery Plan. There are various cited scientific papers used to create the Orca Recovery Plan which as written by the scientist at NOAA. During a minimal investigation of the papers cited pertaining to the inclusions of kayaks as a category of banned vessels and possible disturbances that they may cause. I could not find a correlation between a cited statement and the actual research article. This is alarming to me, as a citizen who is suppose to allow agencies such as NOAA to create regulations and laws that could have far reaching effects on people and public lands. Trust in the competence of the professionals employed to interpret data correctly in paramount. Any breach in this trust causes the public to be leery of any possible recommendations by NOAA.

The very first statement that is in the paragraph used to explain or justify why kayak have been included in the vessel list for the no go zone, is incorrectly stated or cited.

" While kayaks are small and quiet, they have the potential to disturb whales as obstacles on the surface, and they may startle whales by approaching them without being heard (Mathews 2000)."

I contacted Elizabeth Mathews of the University of Alaska Southeast about the statement that was cited from her 2000 report, which was a study of Pinnipeds, not Orcas. She reported that she did not make this statement in the cited work used in the NOAA Orca Recovery Plan. She went a step further and wrote a letter to Lynne Barre of NOAA as a notice of the incorrect statement or misinterpretation of her 2000 report.

The flowing statement is from Beth Mathews.

"The first sentence in the passage above is incorrectly credited to me (Mathews 2000) as I did not make any inferences about kayakers and whales in that 2000 report which is about Steller sea lions whales were not a part of that study except that some occurred close to the haulout. I'm not sure where the author of the proposal got this information, but they may have confused a statement I made about our observations of pinnipeds being sometimes startled by an approaching kayaker, particularly if the paddler had been quiet while drifting in close and then had made a sudden noise.

For the record, I would like to have the citation to my report in that first sentence removed or the sentence amended to accurately reflect what is in the 2000 report."

How is NOAA expecting to create regulations or laws if they cannot even correctly interpret scientific information correctly? Furthermore how is NOAA going to gain the trust of the communities affected by NOAA regulations and laws if they do not address the inconsistencies and present a proper report that does not have miscitations and misinterpretation?

I do not feel it is my job or others in the community to police NOAA by reading every cited research article to look for possible mistakes in interpretation of scientific data. This is the job in which the scientists at NOAA have been charged with. The public only wishes for a correct and consistent document to be presented as a Recovery Plan before laws are put in place based on misinterpretation of the scientific data.

--

Jason Gunter

Comment

Discovery Sea Kayaks
PO Box 2743
Friday Harbor, WA 98250

www.discoveryseakayak.com
(360) 378-2559

"A venturesome minority will always be eager to get off on their own, and no obstacle should be placed in their path; let them take risk, for God sake, let them get lost, sun burnt, stranded, drowned, eaten by bears, buried alive under avalanches-that is the right and privilege of any free American." --Edward Abbey-

PUBLIC SUBMISSION

As of: February 01, 2010
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Tracking No. 80a75bec
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-0038

Comment from Darrell Bryan

Submitter Information

Name: Darrell E Bryan

Address:

2701 Alaskan Way
Pier 69
Seattle, WA, 98121

Email: dbryan@victoriaclipper.com

Phone: 206-443-2560

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Organization: Clipper Navigation Inc.

General Comment

Please see the attached letter regarding Docket Number 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

Attachments

NOAA-NMFS-2008-0327-DRAFT-0038.1: Comment from Darrell Bryan



January 4, 2010

YOUR PACIFIC NORTHWEST TRAVEL EXPERTS: *More Destinations. More Adventures. More Fun.*

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

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

To Whom It May Concern:

We thank you for providing an opportunity to offer comment on the above mentioned proposed rule. We firmly believe that there are no bad people involved in this process. There are people with different points-of-view whether based on science, experience or personal beliefs. It is clear that the overall goal is to protect these magnificent creatures.

We own and operate the "Victoria Clipper" vessels which have provided year round unsubsidized service between Seattle and Victoria, British Columbia since 1986. In addition, we own and operate San Juan Express which is certificated by the Washington Utilities and Transportation Commission (WUTC) for the provision of seasonal service from mid-May to mid-September between Seattle and Friday Harbor.

We have operated the San Juan service since 1991. We determined shortly after the inauguration of the San Juan service that we need to supplement our offering with an option for a Marine Sealife and Whale Watching Search. Although we operated a scheduled service, we determined that Friday Harbor as a destination was not sufficient to attract the level of ridership to sustain the service.

As information our company employs between one hundred fifty (150) to two hundred fifty (250) people depending on the season. We also generate sales in excess of twenty-seven million dollars per year for the wide range of products that we provide. The Marine Sealife and Whale Watching Search is an important component in our travel packages.

The vessel we utilize for this service is a one hundred fourteen (114) foot catamaran that has three (3) viewing decks and has interior seating for two hundred thirty seven (237) passengers. Our vessel uses water jets for propulsion as opposed to the traditional exposed propeller.

We are opposed to all three (3) of the proposed restrictions:

1. The two hundred (200) yard approach restriction
2. The one-half mile no-go zone
3. The prohibition against parking in the whale's path

We do not believe that the basis or justification for these proposed rules is supported by science. It is a reactionary response to a perceived threat. Comments to this effect were made time and again by individuals and associations at the public meetings in Anacortes,

Seattle and Friday Harbor. I believe, based on my experience, that the turnout at the above mentioned locations was well beyond what is normally experienced at public meetings. The basis for the attendance was to point out the disagreements with the conclusions reached in preparing the Proposed Rules and to identify the extreme economic hardship that would be imposed on areas already substantially damaged in this recession.

I would like to make some additional points as noted below:

- We, as do our entire fellow whale watching companies, support killer whale conservation. Further, we believe that any laws or regulations must be fair and scientifically meaningful to be effective.
- We are members of the Pacific Whale Watching Association (PWWA) which represents all whale watching companies throughout the trans-boundary region.
- PWWA has worked proactively to provide Whale Watching Guidelines and to work collaboratively with various agencies to ensure the safety and protection of these remarkable animals. This program has resulted in greater adherence to the guidelines each year. Our on-board naturalists are Seattle Aquarium and Friday Harbor Whale Museum trained. Their commitment is to educating the public and ensuring the preservation of the Southern Resident Killer Whales.
- Our whale watching program is educational and has created substantially more advocates for these magnificent animals.
- PWWA and its' members have assisted with on scene monitoring and protection when law enforcement and Sound Watch representatives have not been available. Our company would like to see funding for increased enforcement and educational activities.
- We believe that the efforts required to educate recreational boaters should be increased and we fully support such efforts.
- We believe that the education of sport fish operators is also crucial as this is the sector of the maritime community most likely to overlap in distribution with foraging resident killer whales.

Further, to truly assist the SRKW populations' long term viability, we feel that the proposed rules should address the following:

- Expand the regulations to include Oregon and California with Washington. As the feeding grounds of this population span the waters of all three (3) states the area of protection must do so as well.
- Reduce the 200 yards in the proposed rule to 100 yards. There is no proof that vessel presence has any effect on the whales. The 100 yard proximity limit as named in the MMPA, Washington State law and the self-prescribed guidelines of the PWWA are ample. The additional 100 yards will reduce the educational value of the passengers on board the whale watching vessels which could adversely impact the long term understanding and well being of the whales.
- Replacing the ½ mile no-go zone with a go-slow zone. The proposed "no-go" zone is unrealistic and would be difficult to enforce. By replacing this with a 7 knot speed limit, you have an enforceable rule that would add to the protection of the whales while maintaining the rights of passage, shipping, fishing, kayaking and general recreation.
- Changing the parking in the path law to a guideline. As a law this rule would be difficult to enforce and will only serve the financial coffers of the legal sector of our economy. It would be reasonable if the whales traveled on a directional highway, but they do not. As a guideline it is fair to expect a vessel operator not to park in

the whales known path. It is not fair, however, to make a vessel operator legally responsible for an altered path as chosen by the whale.

- Lack of evidence from research of starvation. More scientific data must be collected to prove or establish that vessel presence is causing starvation in the whales before such extreme measures are taken to eliminate this human/whale interaction.
- Avoidance – Additional studies must be done to weigh both the potential negative and positive effects on the whales by the presence of vessels. Whales are social creatures and quite often make the effort to have a closer interaction with a vessel.
- Need for more federal enforcement dollars. Before or included in the proposed new laws, the Federal Government must have a plan and funding in place for enforcement. The whales would be better served by funded enforcement of the laws currently in place of any additional laws that continue to lack oversight.
- NOAA to fund more public education. Education for the public regarding threats and potential threats to these whales would do more for them than the addition of the proposed rules. Funding for education should be an essential part of the protection plan. There must be increased education of private boaters to mitigate their impacts but there is also a need to offer educational opportunities to all of the public to mitigate their effects.
- Economic effects on companies and communities. This proposed rule does not realistically reflect the potentially adverse economic effect that these rule changes will have in this commercial industry.
- Need for more salmon enhancement. These proposed rules aimed at the commercial whale watching industry are a diversion from the real issue facing the SKRW's lack of prey. The time, effort and money should be spent on salmon enhancement and food stock and not wasted on the politically and optically expedient whale watching community.

The PWWA has suggested replacing the three (3) proposed rules with the following:

- Vessels may not negligently be within 100 meters of Southern Resident Killer Whales
- Vessels must avoid the established path of Southern Resident Killer Whales
- Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out ½ mile.

Please let me know if you have any questions and/or comments. This subject is vitally important to us and our employees.

Yours truly,



Darrell Bryan

President and CEO

Phone: 206.443.2560

2701 Alaskan Way, Pier 69 | Seattle, WA 98121-1199

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Subject: Killer Whale Proposed Rules

From: Brian Goodremont <brian@sanjuanislandoutfitters.com>

Date: Thu, 17 Sep 2009 18:37:27 -0700

To: Orca.Plan@noaa.gov

CC: Lynne.Barre@noaa.gov

Dear NOAA Representatives,

This public comment is the second I've submitted in response to current events on San Juan Island, and the due process our local community is participating in for the purpose of making suggestions to the you (NOAA) regarding the new proposed rules for Killer Whales.

It is clear that part of the public comment that will be submitted to NOAA on behalf of San Juan County will be a huge concern about the science that NOAA relied on to make these new proposed rules. I do not want to diminish the work of your scientists, and I do want the government to act on the precautionary principal. However today another prominent whale scientist Ken Balcolm made the public comment on the record that the current proposed rules will not help the whales. To my knowledge Ken has not spoken out regarding the current proposed rules. As he has stated in the past, the issue is not boats, it is the lack of fish.

My previous public comment was a response to the presentation as at the Whale Museum by NOAA scientist Dawn Noren, whose work was inconclusive regarding vessel effects and Killer Whales. I have also taken the time to review other studies cited in the proposed rules which are also controversial.

I think we need to take a step back and fund the current state law, which has not yet been funded. In order to prevent the harassment of the whales, whether the law is 100 or 200 yards, and ¼ mile or ½ mile off the west side of San Juan Island, you must have two NOAA enforcement boats with trained professionals (Kari Koski has publicly volunteered to train drivers and the PWWA and SJIKA agrees) 1-3 miles in front of and 1-2 miles to the rear of the moving killer whales. A significant public education campaign regarding the new state law would also notify boaters to look for the enforcement boats so they know when whales are present. This could be accomplished through vessel registration in Washington and Oregon. This could also be done through the local media.

I support any action that helps recover SRKW, but I have to make it clear that the current proposed action will not help SRKW. The experts agree. This proposed rule seems overreaching, and not sufficiently backed by best science. If these rules are based on the precautionary principal, then I would argue that the current regulations are already acting on the precautionary principal. Enforce the current law and you will see a huge increase in compliance. I operate my commercial whale watch vessel respectfully. There is 5% of our industry who make the other 95% look bad. Enforce the current law and you will see the 5% comply. You will take care of the private boaters who are responsible for the majority of aggressive violations.

Thanks for listening and weighing this comment. Today's public comment from Ken Balcomb only reinforces the lack of science behind the current proposed rules. The whales are doing well right now, so let's slow the process, increase enforcement, and work on the lack of fish variable before you close down the west side of San Juan Island and push responsible operators further from the whales.

Thanks,

Brian Goodremont
San Juan Outfitters - Owner
VP Pacific Whale Watch Operators

Founding Member San Juan Island Kayak Association
360-472-0582

Subject: Comment on Vessel Regulation
From: OnBoard Tours <onboardtours@yahoo.com>
Date: Fri, 15 Jan 2010 22:29:26 -0800 (PST)
To: "Lynne.Barre@noaa.gov" <Lynne.Barre@noaa.gov>

Additional Comments to NOAA Proposed Vessel Regulation

January 15, 2010

NOAA should consider that the public is not as aware of what the Recovery Plan for the SRKW Community is doing for salmon recovery and clean up of toxins in Critical Habitat, as they are aware of vessel effects concerns. Information regarding this should be easily accessed and available, perhaps through the Orca Listserve, education, and other media.

My anecdotal observations of 10 years, NOAA's own research, and Dr. Rob Williams research, all show the proposed 'no go' zone off the Westside of San Juan Island, is not the geographic area where the SRKW primarily forage and feed. The most utilized foraging and feeding area is from Salmon Bank to Hein Bank to False Bay, San Juan Island. So I question why that proposed 'no go' area?

I support a whale watching vessel permit fee system, i.e. NOAA's East Coast "SENSE" program. A permit might also be issued based on locality of vessel, adherence to regulations and guidelines, limited number of vessels and time with SRKW, and vessel speeds.

Vessel Regulation implementation and enforcement could be funded through vessel permit fees and tourist whale watching fees.

The commercial whale watching fleet have numerous hours of observation and experience with the SRKW, and NOAA should cultivate the opportunity to include and utilize those vessels and participants in research, education, and enforcement.

Thank you for your consideration,

Caroline Armon
Marine Naturalist

Subject: Proposed NOAA Orca regulations
From: james maya <captjim@interisland.net>
Date: Mon, 11 Jan 2010 15:05:28 -0800
To: Orca.Plan@noaa.gov

January 11, 2010

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

To whom it may concern:

I have waited till the end of the public comments window to write this letter. After listening and reading a great deal, I would like to enter the following comments and my qualifications for enter those comments.

I have over 14000 hours experience watching Orcas and other wildlife on the waters of the Salish Sea, since 1988, primarily on the West Side of San Juan Island. I also live on the West Side of San Juan Island with a water view. I personally have watched Orcas and whale watch boats interact in the company of neighbors on many a West Side deck. I also have been a naturalist for most of my 70 years. I remember well my mother often taking my Cub Scout Pack bird watching in Indiana youth, and my aunts taking me "tracking" on old lumber roads in Michigan to look for critters. All my summers from 1943 to 1964 were spent at my grandparents cottage on Michigan's Lake of the Woods. Those summers were spent on the water, fishing and looking at wildlife. In the mid 50's I was the Nature Counselor at our Boy Scout Camp on the St. Joseph River in Michigan, taking younger Scouts on nature walks and teaching them about the flora and fauna of the area. My wife and I bought property on San Juan Island in '94 because of the serenity and the Orcas. All my life I have loved wildlife deeply. In my retirement after 35 years as a public school teacher, we started a whale watch company because I love wildlife and love to teach. I will continue to take people out for as long as I can. I love what I do.

I mention all of this as a background to comments that follow. This is the first of several letters. Too many thoughts and opinions for just one letter.

My first thought is this very basic. In all my hours out with Orcas, I have only once seen Orcas truly disturbed on one time by a vessel. That was the infamous incident when the USS Shoup came charging north up Haro St. in '94 or '93. I was there and watched them. They were truly frantic! And the Navy tried to blame the whale watch boats as we sat more than a 1/4 mile off shore, engines off, with our passengers freaking out over the sounds that they could hear above water in the boat! J Pod was there that day. J Pod continues to thrive, and it is the pod that gets the overwhelming preponderance of viewing from boats.

In my judgement after years of observation, I do not believe that commercial whale watch boats fundamentally disturb Orcas. It certainly has not been proven scientifically. "Vessels may disturb Orcas" seems to be the operative phrase. So, if something "may" be harmful, even though many respected experts believe its not, like Ken Balcomb and Bob Otis, we are going to enact new, more restrictive laws? Where is the reasoning in that? Swimming may disturb humans, and cars certainly disturb them, so I guess we should ban cars and/or restrict their use even more. Scientists, some very hostile toward whale watching boats, like David Bain, have been trying for years to come up with the smoking gun. I have no idea how much money has been spent on these efforts, and all they can come up with is ... "boats may disturb Orcas"? If boats other than Shoup-like craft bother them, that would be the few private boaters that follow too closely or speed through the Pods.

What bothers Orcas is lack of food and pollution. Everyone agrees on that. All this money and effort that NOAA has put forth in their efforts to further regulate boats should have been better spent on enforcement, restoration of the salmon runs and pollution cleanup and prevention.

I support the go slow zone off the West Side of SJI.

I support full time enforcement of existing laws.

I oppose increasing the distance that boats now under the law must maintain.

I oppose the 1/2 mile no boat restriction on the West Side. You have made a mockery of the whole process by including kayaks in your proposal.

Sincerely,

Captain Jim Maya
210 Madrona Dr.
Friday Harbor, WA 98250
San Juan Island
360-378-7996

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

From: james maya <captjim@interisland.net>

Date: Tue, 12 Jan 2010 15:21:22 -0800

To: Orca.Plan@noaa.gov

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

To whom it may concern:

I have waited till the end of the public comments window to write this letter. I've listened and read a great deal.

I also have over 14000 hours experience on the waters of the Salish Sea, since 1988, primarily on the West Side of San Juan Island. I also live on the West Side of San Juan Island, and personally have watched Orcas and whale watch boats interact in the company of neighbors on many a West Side deck. I also have been a naturalist for most of my 70 years. I remember well my mother often taking my Cub Scout Pack bird watching in Indiana youth, and my aunts taking me "tracking" on old lumber roads in Michigan to look for critters. All my summers from 1943 to 1964 were spent at my grandparents cottage on Michigan's Lake of the Woods. Those summers were spent on the water, fishing and looking at wildlife. In the mid 50's I was the Nature Counselor at our Boy Scout Camp on the St. Joseph River in Michigan, taking younger Scouts on nature walks and teaching them about the flora and fauna of the area. My wife and I bought property on San Juan Island in '94 because of the serenity and the Orcas.

All my life I have loved wildlife deeply. In my retirement after 35 years as a public school teacher we started a whale watch company because I love wildlife and love to teach. I will continue to take people out for as long as I can. I love what I do.

I mention all of this as a background to comments that follow. This is the first of several letters. Too many thoughts and opinions for just one letter.

This is my second letter. This letter addresses concerns I have about the well funded attacks on whale watching by many persons and organizations that I consider irresponsible, emotional and lacking in any practical or scientific experience and knowledge. In fact, on many occasions I have personally asked whale watching critics to come out on my boat fee, and have always been turned down. How open-minded of them! I have often been with persons who live and the West Side of San Juan Island, and have witnessed their outrage at how close they perceived the whale watch boats were to the Orcas. Being a professional captain, with my experience, the boats looked much closer that 100 yds. I have many times called the boat in question, and asked them how close they were to the Orcas. Understand these are friends of mine and would tell me the truth. Many times they were 150-200 yds from the whales. The captains often test their range finders, and even to us the distances are really deceptive. I've had people call me from shore to check distances. I often ask passengers how far away from shore they think we are, and they almost always guess that we are much closer that we are. These misperceptions, documented on many occasions by Dr. Bob Otis, has led to the 1/2 mile limit around Lime Kiln Light House.

I mention the above because I feel that a lot of letters generated by this process, often honestly well intended, are from incorrect sightings from shore.

I support full time enforcement of existing laws.

I support the slow-go zone off the West Side of SJI.

I oppose increasing the distance that boats now under the law must maintain.

I oppose the 1/2 mile no boat restriction on the West Side.

Sincerely,

Captain Jim Maya
210 Madrona Dr.
Friday Harbor, WA 98250
San Juan Island
360-378-7996

Subject: Proposed regulations for the west side of San Juan Island
From: Crystal Seas Kayaking - Angie <angie@crystalseas.com>
Date: Tue, 06 Oct 2009 09:42:33 -0700
To: Crystal Seas Kayaking - Angie <angie@crystalseas.com>

Whale watching tours present an opportunity for humans young and old from around the world to see orcas in their natural habitat and take back an environmental message to their country –like to Japan and Norway who still engage in whaling. Whale watching shows that there are better alternatives to whaling. – Which is “Appreciate whales in their natural habitat instead of killing them or sending them off to water parks”.

At one point in our history, the military used the orca pods as target practice and then in the 1970's a large number of young orcas were kidnapped from their pods and sent to water parks. Those babies would be at reproductive age right now if they were still here. So now we have a gap in the reproductive cycle. This is NO FAULT of the whale watch operators or kayakers.

We should not support orcas in captivity because their quality of life is poor and their life span is greatly reduced by more than half and it breaks up their family bonds. Whale watching tours show the world the greatness of orcas in their wild, natural habitat. Since orcas are found in EVERY ocean around the world, we believe our message is an extremely important one.

The information that NOAA used regarding kayakers was not based on orca research; it was based on sea lions. It's not the same.

Vessel strikes are simply not a problem or an issue for the southern residents.

J pod has been steadily increasing in population since the 1970's AND they are the most looked at pod by boats and kayaks while L pod had a decrease in population in the late 1990's and is the LEAST looked at pod. L pod is also the least researched pod. This tells whether the whales are being effected by boats and the answer is no.

Whale watching and kayaking owners give back to the community on many levels and those who oppose them by calling them greedy are simply not aware of how much they support this community. Kayakers and whale watching are the bread and butter of San Juan Island. Not farming, not fishing, not industry....simply kayaking and whale watching.

I am a very liberal citizen. I recycle everything, carpool, and contact my politicians on a regular basis for environmental reasons and my husband and I don't have kids. I am 35 years old. We do kayak eco tours for our careers to contribute to saving the planet. We just finished our 16th season so this has been my life's work. This process has been so unfair and it makes me sad that this has hardened the hearts of people who may have voted more liberal but now they will vote republican because their livelihood is being taken away unfairly by the government. SAD SAD SAD!!!!

People who go into whale watching or kayaking as a career, do so because of the enormous positive environmental message it brings to the world. They are living environmentalism every day.

Yes to enforcement of the already established state rules.

Yes to impose a \$200 fine for violators. Use the money from fines to pay for the enforcement.

Angie Krieger
Crystal Seas Kayaking
-Sea Kayaking
www.crystalseas.com
877-732-7877
360-378-4223

Subject: Comments SRKW Guidelines
From: jeff wonnenberg <sidneywhalewatch@gmail.com>
Date: Fri, 15 Jan 2010 06:20:27 -0800
To: Orca.Plan@noaa.gov

Please see attached, thanks for your time.

--

Cheers,

Jeff Wonnenberg
Emerald Sea Adventures Ltd.
250.893.6722
9807 Seaport Place
Sidney, BC V8L 4X3
www.emeraldsea.ca

Please consider the environment before printing this email.

EmeraldSea_SRKW_Guidelines_Comments.doc
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January 14, 2010

Mr. Barry Thom
Acting Regional Administrator
National Marine Fisheries Service, Northwest Region
7600 Sand Point Way NE
Seattle, Washington 98115

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

I am an owner/operator of a small whale watching/gift shop operation in Sidney, BC. I started working in the industry in 1997 for various companies in the Victoria Inner Harbour. I speak for all commercial whale watching boat operators that passion and love of whales and wildlife is the main reason for their occupation. There is an automatic respect and sense of privilege to be able to view these creatures in the wild.

Please take these considerations regarding the proposed regulation changes.

- (1) Our major concern is salmon. Chinook species should be regulated off Oregon and California
- (2) More emphasis and funding on salmon enhancement. Not only fishing regulations but a focus on preserving the salmon's habitat, hatcheries and keeping the water's clean and natural especially major river's such as the Skagit, Columbia, Nooksack, Stillaguamish, Chehalis, Snake and Elwah.
- (3) Science has proven these animals' toxic levels are dangerously high. We need to put more efforts and attention to "cleaning up" these animals environment through tougher regulations on the discharging and spreading of chemicals (PBDE's, Mercury, and PCB's) that can leach into the animal's environment.
- (4) After 13 years and over 5000 trips encountering Southern Resident Killer whales, I can honestly say my boat has never seemed to produce any adverse behaviour characteristics when in the proximity of these whales. I support the 100 meter buffer with engines off.
- (5) To minimize our footprint on the water (i.e.: fumes, noise, moving objects on the surface) I recommend all motorized vehicles have their engines and propulsion off within 200 meters of the Southern Resident Killer Whales.
- (6) I support a 7 knot "go-slow" zone within 1/2 mile of all Cetaceans. Science has proven at these speeds vs. faster reduce the Acoustic Masking that may hamper the animals from echo locating and thus finding prey.

(7) Cetaceans and especially the Southern Resident Killer Whale population do not swim in straight lines, thus they do not have a "Path". Changing the parked in the path law to a guideline allows those operators of vessels that are doing their best to stay 100 yards from the animals to make smaller alterations to avoid these situations rather than hard, fast propulsion alterations thus doing more harm than good.

(8) More public education funding by NOAA. This can be done by encompassing whale viewing guidelines to recreational boater certifications and prevalent resources throughout marine industry locations (i.e.; marine stores, fuel docks etc).

(9) More enforcement vessel's on the water and for enforcement vessel's to work closer with the Commercial whale watch operators. They act as protection of the whales and to target certain boaters who exhibit bad behaviour around the whales.

Thanks for your time.

Sincerely,
Jeff Wonnenberg
Owner/Operator
250.893.6722
jeff@emeraldsea.ca

Subject: San Juan Island Kayak Association - Public Comment

From: ceekayaker@aol.com

Date: Sat, 16 Jan 2010 00:10:00 -0500

To: Orca.Plan@noaa.gov

January 15, 2010

Assistant Regional Administrator

Protected Resources Division

Northwest Regional Office

National Marine Fisheries Service

7600 Sand Point Way NE

Seattle, WA 98115

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

To: Donna Darm, and Lynne Barre

Thank you for the opportunity to offer comments on the above proposed rule. This letter is a collaborative effort from the newly formed San Juan Island Kayak Association (SJKA) based in Friday Harbor Washington. The current members include Discovery Sea Kayaks, Outdoor Odysseys, Crystal Seas Kayaking, and San Juan Outfitters.

As a newly formed association, we would first like to state that we support all efforts to recover the Southern Resident Killer Whale (SRKW) Population. We care deeply about our marine ecosystem, and as outdoor education professionals, make efforts in our daily lives to better our environment.

In light of the many public comment letters we've reviewed, there is an overwhelming agreement amongst regional organizations that the current proposed rules:

- Will have extraordinary negative impacts on local and regional economies (kayak industry estimates by the San Juan County Economic Development Council now surpass 6 million in direct revenue, and the ripple through the rest of the economy would make that figure look small). This is just kayak companies.
- Over emphasize our region as the only critical habitat, and as a result any proposed rules target the lives and economies of the San Juan Islands
- Do not address the need for more enforcement, instead of new laws
- Are not supported by "Best Available Science"

All of these concerns are echoed in comments submitted by organizations from all over the spectrum. We have reviewed comments from, and spoken with representatives from: San Juan County Council, San Juan County Marine Resource Committee, The Whale Museum and Sound-Watch Program, San Juan County Sheriff, People for Puget Sound, The Center for Whale Research, Pacific Whale Watch Association and others.

Through discussions with these groups and others, and review of their public comment, some common themes have emerged. We feel NOAA should take alternate actions to protect SRKW:

- Enforce the current state laws, which have not been enforced. It is our belief that strong enforcement of the current state laws would eliminate 90% of the “potential disturbance” from vessels. According to data we’ve collected from Federal, State, and local officers, there were only 38 days where enforcement officers were monitoring/patrolling in the vicinity of SRKW
- Instead of a “no go zone”, we support a “go slow zone” for a ½ mile not only on the west side of San Juan Island, but wherever the whales travel. There is strong evidence that the current proposed “no go zone” is only one of many critical areas, and a proactive step would be to keep speeds around Killer Whales slow wherever they travel.

As with many organizations, we also feel there has been undue emphasis on the “vessel effects” variable with regards to the recovery strategy. The Endangered Species listing states that vessel effects are not well understood, and are still only a potential threat. We are well aware of variables that are threats that need to be directly addressed with more emphasis, and the SJIKA intends to be a partner with other local/regional groups (including NOAA) to emphasize these issues:

1. Salmon Recovery on the California, Oregon, Washington, and British Columbian Coast
2. Clean up and restoration of Puget Sound Basin
3. Regulation of tankers and container ships inside Puget Sound, to prevent potential Oil Spills
4. Educate the public about critical habitat and sensitive areas before they enter

The San Juan Island Kayak Association has recently sat down with San Juan County Parks, and representatives from Sound-watch and The Whale Museum to discuss how it can help in these efforts. We have first developed strategies together to educate the public prior to entering critical habitat, specifically from San Juan County Park. Here are some of the preliminary details:

1. All Commercial Kayak companies will have additional terms in their permit, requiring any guide leading guests into SRKW habitat (from San Juan County Park) will be required to undergo third party Park approved training. The training program this spring will be developed in conjunction with Kari Koski and the Soundwatch program, and the SJIKA. The training will emphasize the KERP guidelines, and the SJIKA association guidelines which go beyond the KERP guidelines. Once the training program has been approved by the parks, and guidelines finalized, The SJIKA will provide NOAA with details.
2. Commercial companies will check in with park staff (or 3rd party staff) prior to launching, to check off that guides have emphasized conduct/behavior in sensitive areas, specifically with regards to Killer Whales.
3. Commercial Permits holders that have been issued warnings or citations from law enforcement will be reviewed by parks, and may be revoked
4. All non commercial kayak users launching into the sensitive SRKW habitat (county park) will be required by permit to participate in an education process by 3rd party prior to launching. We strongly support the Soundwatch program through The Whale Museum as the education coordinator. The SJIKA will take a leadership role in helping develop this education process, as we will be setting the standard on the water. The summer of 2010 will be period of time to see what processes and education work best, and the SJIKA will review this program with San Juan County Parks and The Whale Museum in the fall of 2010. Based on the successes, SJIKA proposes to make permanent this education process, and will work with NOAA, The Whale Museum, and SJCP to develop an educational video that may be viewed from any entry point into SRKW critical habitat. Our hope is that it will become a standard in the region, and potentially worldwide.
5. All commercial guides unable to participate in professional guide training will be required to participate in the public education process with their guests.
6. SJIKA will support monitoring of commercial companies by clearly marking all guides and kayaks. This will help identify commercial kayakers as setting the standard for appropriate behavior around SRKW and other wildlife.
7. Our current guidelines make clear that it is never our intention to place ourselves in the path of Killer Whales, and to move to shore at all times to avoid this type of interaction. We also recognize that even with our best efforts to avoid being in the path and following all guidelines

(even when stationary in a Kelp Forest), that we may find ourselves in "violation" of current state laws. While we do excuse ourselves from these laws, we are asking NOAA and enforcement bodies to take into consideration the "potential" impacts of kayaks as very small based on the "Best Available Science" to date. In keeping with the spirit of our guidelines, it is never our intention to be in these situations, and certainly a pattern of these accidental encounters would be addressed by law enforcement, which would trigger the permit review at the parks. So there is a system to address violations.

The SJIKA strongly feels the system outlined above is a great alternative system to the current proposed rules. It allows a sustainable industry to thrive, while acknowledging the need for SRKW critical habitat. There is a monitoring component in place, and a system for reviewing access in cases of law violations. The educational impact on our guests cannot be underestimated in SRKW, albeit difficult to measure.

Once again, the SJIKA association appreciates the opportunity to comment on the Proposed Rules for Killer Whales. We look forward to partnering with NOAA to help recover SRKW, and developing strategies for maintaining a low impact/educational and sustainable industry.

Sincerely,

Clark Casebolt Owner - Outdoor Odysseys

Richard Swanson Owner - Discovery Sea Kayaks

Jason Gunther Owner - Discovery Sea Kayaks

Johannes Krieger Owner - Crystal Seas Kayaking

Brian Goodremont Owner - San Juan Outfitters

2009 recipient of National Geographic Adventure Travel Magazine's "200 Best Adventure Travel" Outfitter's Award. We have been offering quality hand-crafted kayak tours for 22 years.

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206-361-0717 or 800-647-4621
e-mail: ceekayaker@aol.com
web: www.outdoorodysseys.com

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

From: Johannes - Crystal Seas <johannes@crystalseas.com>
To: 'Brian Goodremont' <brian@sanjuanislandoutfitters.com>; ceekayaker@aol.com;
jason@discoveryseakayak.com; swanson_dick@yahoo.com
Sent: Wed, Jan 13, 2010 10:29 pm
Subject: RE: SJIKA - Public Comment

Great job Brian. I made a couple minor changes (grammar, spacing...). I have attached it. Looks good to me. Who is e-mailing it off?

Thanks,
Johannes

From: Brian Goodremont [<mailto:brian@sanjuanislandoutfitters.com>]
Sent: Wednesday, January 13, 2010 9:17 AM
To: ceekayaker@aol.com; johannes@crystalseas.com; jason@discoveryseakayak.com;
swanson_dick@yahoo.com
Subject: SJIKA - Public Comment

Gentlemen,

I've attached a public comment draft letter. I've been extremely busy trying to get out of town this evening, so I will NOT be able to receive your edits and revise this letter. I have not even had time to re-read it myself currently.

My hope is that it reflects the concerns we have, and the direction we would like to go with SJIKA.

Please feel free to use edit this letter as much as you'd like, and submit it as a letter representing the SJIKA. Edit as much as you'd like. Add, subtract, edit, whatever.

I'll be out of town starting this evening, so good luck with comments. Please send as many as possible.

Brian Goodremont

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Checked by AVG - www.avg.com

Version: 8.5.432 / Virus Database: 270.14.132/2610 - Release Date: 01/09/10 19:35:00

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Subject: From: Clark Casebolt, Outdoor Odysseys Kayak Tours

From: ceekayaker@aol.com

Date: Fri, 15 Jan 2010 20:10:59 -0500

To: Lynne.Barre@noaa.gov

Hi Lynne,

I wanted to follow up with the letter that was sent earlier today by the San Juan Kayak Association to you and Donna. This is a slightly shortened version of that letter with an emphasis more on what we have been working on as a kayak association in an effort to alleviate our whale interactions on the west side.

As mentioned, this letter is a collaborative effort of the San Juan Island Kayak Association (SJKA) with members including Discovery Sea Kayaks, Outdoor Odysseys, Crystal Seas Kayaking, and San Juan Outfitters.

As a newly formed association, we would first like to state that we all support efforts to recover the Southern Resident Killer Whale (SRKW) Population. As owners of outdoor companies we care deeply about the Salish Sea marine ecosystem. As we meet and discuss issues some common themes have emerged that we feel NOAA could take as alternate actions to protect SRKW:

- Enforce the current state laws, which have not been adequately enforced to date. It is our belief that strong enforcement of the current state laws would eliminate 90% of the “potential disturbance” from vessels. According to data collected from Federal, State, and local officers, there were only 38 days where enforcement officers were monitoring/patrolling in the vicinity of SRKW.
- Instead of a “no go zone”, we support a “go slow zone” for a ½ mile not “**only**” on the west side of San Juan Island, but wherever the whales travel. There is strong evidence that the current proposed “no go zone” is only one of many critical areas, and a proactive step would be to keep speeds around Killer Whales slow wherever they travel.

As you may have heard from Kari Koski, The San Juan Island Kayak Association has recently sat down with San Juan County Parks, and representatives from Sound-watch and The Whale Museum to discuss how we can work together to address the concerns regarding the whales. We are in the process of developing strategies to educate the public prior to entering critical habitat, specifically from San Juan County Park.

Here are some of the components...

- All Commercial Kayak companies will have additional terms in their permit requiring any guide leading guests into SRKW habitat (from San Juan County Park) to be required to undergo third party Park approved training. The training program this spring will be developed in conjunction with Kari Koski and the Soundwatch program, and the SJKA. The training will emphasize the KELP guidelines, and the SJKA association guidelines which go beyond the KELP guidelines. Once the training program has been approved by the parks, and guidelines finalized, The SJKA will provide NOAA with details.

Commercial companies will check in with park staff (or 3rd party staff) prior to launching, to check off that guides have emphasized conduct/behavior in sensitive areas, specifically with regards to Killer Whales. Commercial Permits holders that have been issued warnings or citations from law enforcement will be reviewed by parks, and may be revoked.

- All non commercial kayak users launching into the sensitive SRKW habitat (county park) will be required by permit to participate in an education process by 3rd party prior to launching. We strongly support the

Soundwatch program through The Whale Museum as the education coordinator. The SJKA will take a leadership role in helping develop this education process, as we will be setting the standard on the water. The summer of 2010 will be a trial period to see what processes and education systems work. The SJKA will review this program with San Juan County Parks and The Whale Museum in the fall of 2010. Based on that trial period, SJKA proposes to make permanent this education process and would work with NOAA, The Whale Museum, and SJCP to develop an educational video that may be viewed from any entry point into SRKW critical habitat. Our hope is that it will become a standard in the region, and potentially worldwide.

All commercial guides unable to participate in professional guide training will be required to participate in the public education process with their guests.

SJKA will support monitoring of commercial companies by clearly marking all guides and kayaks. This will help identify commercial kayakers as setting the standard for appropriate behavior around SRKW and other wildlife.

Our current guidelines make clear that it is never our intention to place ourselves in the path of Killer Whales, and to move to shore at all times to avoid this type of interaction. We also recognize that even with our best efforts to avoid being in the path and following all guidelines (even when stationary in a Kelp Forest) we may find ourselves in "violation" of current state laws if the whales come to us. In keeping with our guidelines, it is never our intention to intentionally place ourselves in these situations and certainly a pattern of these accidental encounters would be addressed by law enforcement, which would trigger the permit review at the parks. So, we have tried to put a system in place to address these issues.

The SJKA feels the system outlined above is a great alternative system to the current proposed rules. It allows a sustainable industry to continue operating, while acknowledging the need for SRKW critical habitat. There is a monitoring component in place and a system for reviewing access in cases of law violations.

We are deeply appreciate of NOAA efforts to extend the comment period as well as listening to our concerns about having another season on the water to continue implementing the new provisions outlined above. We look forward to partnering with NOAA to help recover SRKW, and developing strategies for maintaining a low impact/educational and sustainable industry.

Sincerely,

Clark Casebolt Owner - Outdoor Odysseys
Richard Swanson Owner - Discovery Sea Kayaks
Jason Gunther Owner - Discovery Sea Kayaks
Johannes Krieger Owner - Crystal Seas Kayaking
Brian Goodremont Owner - San Juan Outfitters

2009 recipient of National Geographic Adventure Travel Magazine's "200 Best Adventure Travel" Outfitter's Award. We have been offering quality hand-crafted kayak tours for 22 years.

Outdoor Odysseys, Inc.
12003 23rd Ave NE
Seattle, WA, 98125
206-361-0717 or 800-647-4621
e-mail: ceekayaker@aol.com
web: www.outdoorodysseys.com

Subject: Proposed Rules SRKW - Public Comment
From: Brian Goodremont <brian@sanjuanislandoutfitters.com>
Date: Thu, 03 Sep 2009 11:25:08 -0700
To: Orca.Plan@noaa.gov
CC: Lynne.Barre@noaa.gov

To Whom it May Concern,

First thank you for reading this public comment.

I attended a presentation by Dawn Noren yesterday evening regarding her research on Surface Active Behaviors, as they relate to both the proximity, behavior, and number of vessels present.

Having a similar education and research background to Dawn, I found some of her premises, methods, and results suspect. In addition, while Dawn did not draw any firm conclusions from her data, it is clear that she feels boat behavior alters whale behavior in a negative, especially in conjunction with other variables in the environment (lack of salmon, toxins in their bodies). I feel a strong responsibility as former scientist, now whale watch and kayak operator to debunk any poorly conducted research on SRKW.

First, it is clear that Dawn's research does not have a control group, which would be the easiest way to determine if vessel proximity and number have a causal relationship to Surface Active Behaviors. Without a control group to understand how often whales display SAB's when no boats are present, the experiment overall has less credibility. Getting data sets with no vessels present is not difficult. I regularly observe SRKW during the summer months from shore with no vessels present. I also noticed Dawn had a significant number of data sets collected when she was the only boat present. The bottom line. With no control group, the current data is not valid.

Secondly, the difference in data sets between 2005 and 2006 cannot be assumed to be the result of the voluntary whale watch guidelines changing. This could be completely arbitrary. The difference between the two years is significant, which means the only conclusion we can draw is that the interaction between vessels and SAB's is simply understudied, and misunderstood.

Next, and perhaps the most important point I'll make next to the need for a no boat control data set. I could take the same data and present the premise that whales display more SAB's when boats more boats are closer because they are interacting with the vessels in a positive way! There is just as much evidence to support that SRKW's display SAB's to interact with vessels in a positive way, as there is a that SAB's are a waste of energy on behalf of the whales. There are far too many ways to interpret this data, including SAB's are a positive interaction with boats.

A study was cited in Dawn's work that I have always found convoluted, and difficult to understand. I'm not the only one. I have presented this data to prominent marine mammal scientists who said not only do they not understand the work, but they could not replicate the methods. This is David Baine's work. Whatever the methods, it's my understanding that David's "significant" findings mean that a whale travels an additional 18 inches for every 30 meters they normally travel? This may be statistically significant, but it doesn't mean there are real world energetic repercussions or validity.

As an island resident, whale watch operator, and kayak outfitter, I find NOAA's reliance on this type of data to be irresponsible. Without a control group, there is no reliable or valid experiment with data to draw assumptions from. It is also arrogant to assume Surface Active Behaviors are a negative occurrence. The whales could be perfectly happy expending that energy, and could be enriching their lives.

While I agree with the precautionary principal, it is irresponsible to propose further restrictive laws based on this science, in particular when the existing laws are not being enforced. NOAA needs to fund the enforcement of the current state law, which will eliminate vessels motoring within 100 yards of whales, which is the biggest issue at hand. Adding another law when the current law is not even being enforced is not acting on the precautionary principal. It is punishing industries unnecessarily, ruining our small island economy, and will not help the whales.

As an executive member of the PWWA, and founding and executive member of the newly forming San Juan Island Kayak Association, I am willing help shape our guidelines to reduce vessel effects. If that means having larger "slow" zones, increased distances for slowing to idle speeds when engaging in viewing SRKW, and continuing to be open to valid science. I don't see in the current proposed rules science that justifies the proposed changes.

Let's fund two NOAA boats to be present May 1 through September 30. Prevent vessels from entering the current no go zone as written by the state law. Continue funding valid science. Develop a broader education platform for all user groups: commercial fishers, sport fishers, rec boaters, kayakers (commercial and private), whale watch operators. Let's dedicate more money to salmon restoration, and then re-evaluate the data once we've enforced the current laws in place. Please call me any time to participate in discussions on SRKW proposed rules or Recovery Plan as it relates to our industries.

Thank you,

Brian Goodremont
San Juan Outfitters
VP PWWA
Founding Member SJKA
360-472-0582

Subject: NOAA proposed rule change. (Resident Orcas)

From: "Ocean Explorations - Whale Watching - Victoria, BC, Canada - "
<info@oceanexplorations.com>

Date: Fri, 15 Jan 2010 13:50:46 -0800

To: Orca.Plan@noaa.gov

NOAA:

As the new owner of a well established Whale Watching Company that has prided it self on following the existing rules when observing the resident orcas I find it hard to believe that the proposed changes to the rules will do nothing but hurt the Whales and the Industry.

A huge drive for tourism in both The San Juan Islands and Gulf islands is ORCA TOURISM. The majority of people who choose to go Whale Watching become enlightened and educated on our tours and leave our vessels with more respect and passion for conserving the natural habitat of the Resident Orcas. I feel that if the existing rules are changed it will kill peoples desire to go and view the Resident Orcas and will take them out of the lime light. Slowly the real problems (Salmon Stocks, Toxins in the Water..... etc.) will continue to hurt the population and Whale Awareness brought about by the whale watching industry will slip by the wayside.

We as Whale Watchers need to keep the tourists and the general public enthused and excited about The Resident Orcas. The rules below developed by the PWWA help us do so in a responsible and respectful manner.

1. Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA.
2. Vessels must avoid the established path of Southern Resident Killer Whales.
3. Vessels must obey a 1/2 mile go slow zone (7 knots) from Eagle Point to Mitchell Point, along San Juan Island.

By restricting and tightening these rules any more than they are I feel will only hurt Resident Orca awareness and the tourism industry as a whole in both Washington State and BC.

David Beswick, President

Ocean Explorations

Reservations: 250 383 6722 toll free: 1888 442 6722 Can/USA Email: info@oceanexplorations.com
www.oceanexplorations.com

"proud to be responsible whale watchers"

Subject: Regulations

From: Graham Oakley <javacat500@yahoo.com>

Date: Sat, 01 Aug 2009 08:14:10 -0700 (PDT)

To: Orca.Plan@noaa.gov

Hello, I have worked in the whale watching industry for 2 seasons now, and I can say that I am against the proposed regulations. The 200 yard distance from whales is what most of the decent companies maintain now. The no-go zone around San Juan island is preposterous. That is a prime area for fishing, recreational boating and yes, whale watching.

That area has got to remain assessable to the public and to companies that depend on that area. If that section was off limits it would force commercial and private vessels into the shipping lane, thus creating a very real safety hazard.

This is my opinion which is shared by my colleagues.

Graham Oakley

Employee of Island Adventures whale watching in Anacortes WA

Subject: Half Mile Sanctuary Zone

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Wed, 05 Aug 2009 14:39:25 -0700

To: Orca.Plan@noaa.gov

If the 1/2 mile no boat zone is adopted, who will enforce this law? The special agents from National Marine Fisheries (who are skilled investigators, not patrol officers), or WDFW who's currently understaffed and under budgeted? San Juan County seems to be pretty busy enforcing the laws on terra-firma and the Coast Guard seems pretty busy securing our borders and also with the safety of boaters in the region. Soundwatch could patrol the 1/2 mile zone for 5 months, 24/7, and yell "Stop! Or we'll say stop again."

The commercial whale watch industry adheres to all county, state, and federal law, as well as Be Whale Wise and their own set of guidelines. If the 1/2 mile sanctuary zone is adopted, hopefully we will think heavily about a way to enforce it and how to fund this enforcement.

To quote the former Governor of Minnesota, Jessie "The Body" Ventura, 'If we have laws in the books, they must be enforced or removed.' It's crazy to add a law that is so difficult to enforce without the scientific justification.

The commercial whale watching industry has been observing a voluntary 1/4 mile zone along the west shore on San Juan Island for many years. We have seen no change in the SRKW's travel patterns or respiration rates since this was put in place. How would a 1/2 mile sanctuary zone help the recovery of a group of animals that is currently increasing in numbers already?

SRKW's have never shown any sign of avoiding high traffic areas, or normal vessel activity areas, in the region. I feel a 1/4 mile no boat zone, when whales are present, is very precautionary. Anything more takes too many recreational opportunities away from the people who live and vacation in the area.

Shane Aggergaard
Owner, Island Adventure Cruises
Anacortes, WA

Subject: Vessel Strikes

From: "Island Adventures, Inc." <whales@islandadventurecruises.com>

Date: Fri, 07 Aug 2009 16:13:36 -0700

To: Orca.Plan@noaa.gov

Buried in the Federal Register, it alludes to the risk of vessel strikes to the endangered SRKW's. I have personally run over 2,500 whale watching tours, held two terms as president of the whale watching association, and two terms as vice-president. My Nextel has over 150 whale-related contacts and I know what's going on on the water all the time. There have been hundreds of thousands of whale watching tours run in this area and there has been 1 documented contact between whale and vessel. It was actually the whale that hit the boat, not the boat that hit the whale. Everyone reading this email is very aware of the Eaglewing incident (we were all very happy that there was no serious injury to the animal). The Canadian vessel was engaged in a legal stop and wait sequence and through no fault of the driver, the whale bumped the boat. This can be verified by the Centered for Whale Research as they were watching from the house. Since Washington State adopted House Bill 2514, the stop and wait sequence does not occur any longer. I strongly support the 400 yard law that has been proposed regarding being in the path of the whales. This will minimize any risk of this happening in the future.

I also believe that 100 yards to the closest whale, while engaged in a parallel viewing sequence, creates a level of safety for the whales that is very precautionary. With a 100 yard law in place, commercial whale watching vessels engaged in parallel viewing hold an average of 150 yards to the closest animal, so the majority of the pod is at a greater distance yet, as our existing guidelines encourage all vessels to be on one side of the group whenever possible.

The risk of a vessel strike to a SRKW while following PWWA guidelines, state, and federal law is virtually zero. To quote Ed Abbey, 'The environment is bad enough, you don't have to lie about it.' (Or stretch the truth to mislead any potential decision-makers on this issue).

Captain Shane Aggergaard

--

Island Adventures, Inc.
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Anacortes, WA 98221
1-800-465-4604
1-360-293-2428
www.islandadventurecruises.com

Subject: Proposed regulations for the west side of San Juan Island

From: Crystal Seas Kayaking - Angie <angie@crystalseas.com>

Date: Sun, 02 Aug 2009 11:03:32 -0700

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

As a kayak tour operator, the proposed NOAA regulations did not take us into consideration at all. Our public kayaking areas are soon going to be gone. The only place left where we will be able to launch from is Jackson's Beach. Everything else around here is privately owned by people who live near the waters edge and who have made enough noise to force us out because they don't want the beaches to be used by kayak companies (example Rueben Tarte, Turn Point, Eagle Cove...). So it is illegal to commercial kayak from any other public places on San Juan Island. Kayaking is one of the biggest revenues for our island and an environmentally friendly educational forum. We don't pollute, we don't make noise, we don't kill wildlife. We educate people. But we - kayakers are getting the worst of this. We don't paddle a half mile off shore for one reason; safety. We paddle the coastline. But these regulations don't take us into consideration whatsoever so we obviously don't support it as it stands right now. Humans have been kayaking and canoeing this area where the whales are for thousands of years. We all know that orca whales use echo location and know exactly what is in front of them. They are able to see prey from great distances including any random logs, etc. Humans have been paddling the San Juan Islands for thousands of years

We believe the west side should be regulated by Soundwatch and they should receive federal authority and funding so that they can have more Soundwatch boats and days on the water to patrol our local waters. They should be able to give out more on the spot tickets like traffic violations which would help fund Soundwatch. Soundwatch knows the area and is financially efficient compared to federal authorities. Also, we could benefit from a permit system for whale watching boats and kayak operators similar to Hawaii.

Without being able to use the west side, we will all feel it on San Juan Island because the whales are what bring people to kayak San Juan Island vs. going to Anacortes, Lopez or Orcas. Studies have been done that state that the San Juan Island kayaking industry feeds about \$10 million per year into our local economy from accommodations, shopping, touring, dining out, groceries...etc. This will affect how much money gets spent in the community; \$10 million is a lot to lose for a small town. We already don't have enough money for our students to play sports. The trickle down effect will be felt by all. San Juan County Park, which is already struggling, generates a huge portion of their revenue from commercial kayakers. This revenue pays for the rest of the parks around the county and it will soon be gone if this passes. It is not that easy to ask us to go someplace else.

Whale watching probably won't go out of business because of these regulations but kayaking businesses will and that is just not right. Our company is a huge supporter of buying locally, hiring locally and donate to many local organizations. I am so proud to say that most of our kayak guides are local young people from hard working island families. This will affect them and their parents. They are proud to be from the island and working at an environmentally friendly job.

These regulations are like a bad dream for all of us kayakers...commercial or not...kayakers want to save the orcas but we know that the only way to truly save the whales is to clean up Puget Sound of pollution and to restore Chinook habitat. If tourists weren't trapped in the seat of a kayak next to one of our naturalist guides and forced to listen to our message while watching the whales pass by on the west side, they might not take the time to listen and then they would never know why they should save the Puget Sound and the Chinook salmon. So please, don't shoot the messenger.

I hope that you will support us.

**Angie Krieger
Crystal Seas Kayaking**

www.crystalseas.com

877-732-7877

360-378-4223

Subject: No-Go Zone Proposal
From: Dash One Charters <jay@dashonecharters.com>
Date: Wed, 30 Sep 2009 15:47:00 -0700 (PDT)
To: Orca.Plan@noaa.gov

From: Captain Jay Field

1613 Seventh Street

Anacortes, WA 98221

To: Lynne Barre

SUBJECT: NOAA Proposed Regulations

As a concerned citizen, charter boat Captain, business owner (restaurant & bar in Anacortes), past Pres. Fidalgo Chapter of Puget Sound Anglers and Chairman of the Anacortes Salmon Derby; I am very concerned that the Federal Government through NOAA is proceeding to make Federal Law that will eliminate public access to navigable waters of Washington State.

The basis for NOAA rulemaking on this matter includes grossly inaccurate and misleading data prepared by special interest groups and environmental activists. The proposed restrictions go far beyond Washington State law that already provides protections for the southern resident Orcas whales, reference RCW 77.15.740. There is no scientific data that identifies eliminating public access to navigable waters is necessary to protect marine mammals. It should be obvious that the economic impact to this State, its agencies, and businesses will be significant. The restrictions will eliminate business, programs, and monies that support conservation and provide salmon recovery that benefit marine mammals.

A company in Massachusetts performed economic studies of the proposed restrictions for NOAA. The report concludes the economic impact of the restrictions will be negligible. It should be obvious to all reasonable people that this conclusion is wrong. None of the stakeholders effected by the proposal were consulted. This report also includes grossly inaccurate and misleading data prepared by special interest groups and environmental activists. State and Local Government, its agencies, communities, businesses, recreational associations, and the good citizens of this State were, apparently, not important enough to have been contacted, or seriously considered regarding the impact this Federal Law will impose upon the future of the State of Washington.

I attended the NOAA public meeting in Anacortes Washington, September 24, 2009. The venue of the meeting and presentations by yourself, lead me to believe that it is already decided the restrictions will be placed into Federal law and their representatives are simply going through the motions to make it appear a formal process was followed. Based on your presentation, and your reluctance to answer direct questions, I believe that your agency intends to extend no-go zones throughout the Puget Sound, Straits of Juan de Fuca, and the coastal waters of Washington State.

I testified at that meeting that: the SRKW's did not exhibit avoidance behavior in the presence of recreational fishing vessels. Small boats with auxiliary motors do not pose an acoustical risk to the

whales. These whales are social animals, and engage small boats with curiosity and interest.

State and Local government jurisdiction over 'all navigable waters of Washington State' must be successful. Federal government intervention in this area is unnecessary and unwarranted. NOAA could be far more effective addressing the interstate and international aspects of the southern resident Orcas issue. For example, actions and recommendations to address the two greatest threats to Orcas;

- 1) Provide greater return of salmon to the waters of Washington State
- 2) Eliminating pollution that threatens the health of everyone.

I suggest you re-visit your data (or lack thereof), before you arrive at a conclusion that will have far reaching effects on recreational anglers, who in fact, are excellent stewards of the resource - and friends of the whales.

Respectfully,
Captain Jay Field

Subject: Public Comment - San Juan Is. Closure
From: Dash One Charters <jay@dashonecharters.com>
Date: Fri, 15 Jan 2010 20:07:15 -0800 (PST)
To: Orca.Plan@noaa.gov

Please see the attached ...

Jay Field

NOAA Jan. 11, 2010.docx	Content-Type: application/vnd.openxmlformats-officedocument.wordprocessingml.document Content-Encoding: base64
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DASH ONE Charters, LLC

PO Box 1199
Anacortes, WA 98221



January 11, 2010

Attn: Ms. Donna Darm
NW Regional Office
National Marine Fisheries Service

Subject: Proposed Regulations for SRKW's

Dear Ms. Darm,

My name is Jay Field. I am the owner/operator of Dash One Charters – an Anacortes based Salmon Charter operating in the San Juans. I also own a restaurant and bar in Anacortes; member of the Fisherman's Coalition; am a board member and past president of the Fidalgo Chapter of the Puget Sound Anglers; and chairman of the Anacortes Salmon Derby – a charitable fundraiser for the purpose of awarding scholarships which benefit young adults pursuing careers in fisheries and related science.

I attended all three of the public hearings, and was surprised by the large turn-outs at each venue. I also want to thank you for extending the public comment period – giving interested parties more time to research the issues.

It would be a great disappointment to me, personally and professionally - if a prime piece of navigable water on the west side of San Juan Island; much prized by recreational anglers, were closed for reasons that are not supported by science, economic studies and personal experience.

I can support an alternative plan (as proposed by the Fisherman's Coalition) which would create a *Go Slow Zone* between Mitchell Point and Eagle Point, May through September – extending offshore one half mile. I do think that current State law as provided by in RCW77.15.740 is adequate to protect the SRKW population if properly enforced by WDFW and other government agencies. More extreme measures are overly burdensome and completely unnecessary, and I do discourage you from engaging enforcement efforts by non-governmental organizations.

Per my previous testimony, I have no reason to believe that recreational salmon anglers cause behavioral changes in the whales. I do believe that recreational anglers are good stewards of the resource, and as a group, contribute more to habitat restoration and other salmon enhancement causes than any other group. I, along with other recreational fishers in this state

feel protective of the whales. These social beings grace us with their presence on a regular basis. To arbitrarily close a piece of water to select user groups is unfair and un-supported by your data.

I urge you to reconsider you original proposal ... and consider a *Go Slow Zone* in conjunction with existing State laws.

Thank you for the opportunity to submit my comments. As a stakeholder, I would be available to work with your organization in furthering protection policy for SRKW's.

Sincerely,

Capt. Jay Field

Subject: RE: Orca Regulations
From: Dan Kukat <Dan@SpringTideCharters.com>
Date: Wed, 13 Jan 2010 13:00:06 -0800
To: 'NOAA Orca Recovery Plan' <Orca.Plan@noaa.gov>

To: NOAA
RE: Orca Regulations
January 13, 2010

We feel compelled to re-emphasize a message we have been sending for a good number of years, namely that:

- The population of whales which are watched the most is the healthiest in terms of quantity, namely J-Pod.

And now they are on a trend of producing more babies.

Using the "science" quoted to date, one now concludes that the more the orcas are watched, the more offspring they will have, and hence the healthier the population will be.

Have you researched the possibility that these social animals are provided an additional social aspect, the presence/interaction of/with whale watching boats, which the other pods cannot produce as frequently and that this is resulting in a healthier J-Pod population? There is much evidence in research on humans, namely that positive social interaction is physically healthy. Should this not be researched in another highly intelligent animal species?

It also seems that you are making decisions based on data collected five years ago which is currently not valid do to new state regulations in place.

Additional funding for enforcement presence is required, and:

1. Vessels may not negligently be within 100 yards of the Southern Resident Killer Whales (SRKW)
2. Vessels must avoid the established path of SRKW
3. Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out ½ mile

Anything imposed on the whale watching industry over the above, is not supported by science, isn't rational and would be over reaching with no up side for the orcas.

Thank You,
Dan

*Captain Dan Kukat, BComm., CA
President, SpringTideVictoria Whale Tours
Past President & Chair, Whale Watch Operators Association NW
Director, Greater Victoria Harbour Authority
Vice-President & Director, Victoria Marine Tour Operators Association
Director, Victoria / Esquimalt Harbour Society*

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RE: Orca Regulations

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250-658-2778

Dan@SpringTideCharters.com

www.SpringTideCharters.com

www.VictoriaWhaleTours.com

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Subject: Orca Recovery Plan

From: James Maya <captjim@interisland.net>

Date: Wed, 13 Jan 2010 13:10:59 -0800

To: NOAA Orca Recovery Plan <Orca.Plan@noaa.gov>

So, J Pod, the pod with more boat contact by far than the other two pods, keeps having calves. Why is that? Let's see...More boat traffic and they don't go to Monterey Bay every year. It seems obvious to me that the boats have nothing to do with the decline in numbers.

I support present laws, with increased enforcement. I support the go slow zone to 1/2 mile.

Let us use common sense and not hysteria to form regulations.

Capt. Jim Maya
210 Madrona Dr.
Friday Harbor, WA

Subject: Proposed Orca regs.
From: james maya <captjim@interisland.net>
Date: Fri, 15 Jan 2010 15:49:08 -0800
To: Orca.Plan@noaa.gov

One final letter...

I have been saddened by a personal byproduct of this whole process. NOAA's proposed Killer Whale Viewing Regulations have increasingly polarize already fractured communities...The whale lovers community, the Friday Harbor/San Juan Islands community, the Orca scientific community, and the Whale Museum supporters community, among others. People are not talking to each other and are now judging others based solely on their stance on whether they support the 200 yd. limit or not. They are not judging the whole person.

I find myself doing the same thing. There is a bumper sticker that says, "LET'S NOT LOVE OUR WHALES TO DEATH". (No Orca was ever loved to death! They have been polluted to death and starved to death.)

Some people now assume that if you go out and watch orcas for a living, you are killing them. They are calling us whale killers.

(The continued strength of J Pod seems to show that they are not being hurt by boats, but as a commercial whale watch captain who sees infractions by recreational boaters I would like to see more Enforcement of existing guidelines and laws.)

The public meetings left me disheartened. I felt as though I was at a tea party protesting health care reform. So many people grandstanding. I know the public meetings were probably required by law, but really! Is this really creating law by seeing who can holler the loudest?

Am I too naive in thinking that anything that I send to NOAA might change preconceived beliefs, or the direction that NOAA is heading with this process? Has all the hollering and letter writing made a difference?

I, for one, hope that we come to our senses and remember that all of us are so emotionally worked up because we all want the best long-term future for the Southern Resident Killer Whales. Here's hoping that we don't let our emotions lead us into decisions that make no sense for whales or humans. I think we all deserve better.

*Capt. Jim Maya
210 Madrona Dr.
Friday Harbor, WA 98250*

Subject: Behavior changes when vessels are present
From: Roger Obayashi <info@whalesvancouver.com>
Date: Thu, 10 Sep 2009 17:01:34 -0700
To: Orca.Plan@noaa.gov

Regarding NOAA's proposed vessel regulation

We have closely studied the propositions and and feel there are some inaccuracies and misinterpretations. Specifically, on page 1-2 of the 'Background' detailing pattern changes and surface behavior when vessels are present, the writers list a number of behavior changes and assume that they are all negative reactions to the presence of boats. Some of the whale's reactions that are mentioned include shorter and longer diving times, swimming faster and adopting less predictable travel paths. This logic assumes that the movements of whales are predictable such that, in the absence of boats, their swimming patterns are always in a straight line with uniform breathing intervals. We suggest that these uneven behavior patterns exist with or without the presence of vessels. Noren et al. 2007 states that during the majority of focal follows when vessels were present, there were no surface activities observed (74.8%). When they did display various surface behaviors it was again assumed to be a negative reaction to vessel presence. In our experience whales swimming on their backs slapping their tails or breaching with complete abandon are interpreted as happy, care free displays. Additionally these behavior patterns are displayed in both the absence and presence of boats.

We believe that the writers of orca plan are interpreting normal behavior, subjectively putting a negative spin on it and blaming the whale watch industry. If alternative 3, 5 and 7 are adopted you would be crippling or possibly killing a thriving industry employing hundreds of people and with absolutely no proven benefit to the whales at all. Because of the numerous vessels that would be exempt from the regulations the supposedly negative impact of vessel interactions would still exist. We believe that the truly intrusive and potentially harmful activities remain, such as research vessels following whales in order to take breath samples. The whales would still be subject to vessels in close proximity going about their business (fishing, cargo carrying, ferrying etc.) with absolutely no regard for the whale's space. Most whale watch vessels employ the use of hydrophones which promotes low noise levels, we prefer shutting our engines down. We also have in place and follow industry-wide "Be Whale Wise" guidelines that allow for respectful viewing distances.

In your press release relating to the proposed changes you state that " 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". As a colleague aptly put it, it is like saying " While the patients are also threatened by lung cancer and starvation, biologists have known for years that too many visitors and well wishers MAY be tied to their untimely death". We feel that you are proposing very drastic steps that will result in no real benefit to the whales but will very negatively effect everyone that is out on the water. To ensure proper management of these precious natural resources our opinion is that NOAA should adopt Alternative 1, maintaining the guidelines that we now have in place. According to Ken Balcomb, a pioneer in cetacean research in the Pacific Northwest and the lead scientist at the Whale Museum, vessels on the water are not the reason for the decline in SRKW numbers, which are actually on the rise (since the low of 79, that your report uses). Please carefully consider the importance of the upcoming decisions, the impact can be enormous to every single person on the water and will be irreversible for decades to come. Thanks for your time.

Yours truly,

Carol Baisley
Nicole Cann
Suzanne Charest

Behavior changes when vessels are present

Cayley Coulbourn
Bryan DeBou
Thomas Egli
Dennis Nakatsuru
Roger Obayashi
Andrea Powell
Elesha Schroh
Ewan Sheard
Gary Sutton

Wild Whales Vancouver

Subject: vessel restrictions
From: Roger Obayashi <roger.obayashi@gmail.com>
Date: Thu, 14 Jan 2010 15:44:13 -0800
To: Orca.Plan@noaa.gov

To Whom It May Concern,

You may have already received this but I wasn't certain that it was sent out so will try again as an attachment.

noaa.doc	Content-Type: application/msword Content-Encoding: base64
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Roger Obayashi
Wild Whales Vancouver
1806 Mast Tower Road,
Vancouver, BC, Canada
V6H 4B6

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

January 8, 2010

To Whom It May Concern,

This letter is in response to the proposed new regulations regarding vessel behavior in the presence of resident and transient orcas in Washington State.

My name is Roger Obayashi and I own and manage a whale watching company based in Vancouver, Canada. We have been operating for 6 years and have 15 employees. Our concern is that if these proposals become law we will lose a large part of our business, which may be enough to put us and others under.

I was a commercial salmon fisherman for 30 years. Approximately 15 years ago the federal fisheries biologists here in Canada determined that the decline of salmon on the west coast was due to overfishing, mainly from the commercial sector. Instead of putting their efforts into habitat restoration, changing forestry practices and monitoring the impact of fish farms, they took the easy route and slowly cut back on the commercial salmon fishery along the British Columbia coast. Today, we are faced with a critical decline in salmon stocks and the certain demise of that fishery. Even with no commercial fishery, salmon stocks are at their all time low. Fishery and Oceans' tactic of eliminating a user group and not addressing the core reasons of salmon stock decline has led us to this point, where the return of any healthy runs are decades away, and that is mainly wishful thinking on their part.

Now I am in the whale watching business, and again am faced with the prospect of being pushed out of making a living, because some of you think that by applying a 200 yard viewing distance and other vessel restrictions is the best way to help orcas with their recovery. I see a similar pattern here. Instead of addressing the core reasons, food supply and clean waterways, you are going after whale watchers and vessels in general. We know that "J" pod is doing better than the others as far as increasing numbers, this in spite of the fact that they spend more time amongst the vessels and traffic that you think are contributing to their endangered status. How do you account for that? If interactions with boats are harmful to orcas shouldn't "J" pod be the least productive? I don't believe

that you're so called 'science' ads up, it doesn't make sense. I believe that you are taking the easy route and that your recommendations will not help the orcas at all. Unless you are willing to tackle the real reasons, food supply and habitat, these orcas will be in the same sad state as our salmon stocks.

I suggest that the Be Whale Wise guidelines be made into law and that most of the time, effort and money be spent on salmon enhancement and educating the public. We would be happy to contribute in all of these areas and believe that with all parties working together, we will see a gradual increase in SRKW's numbers. They seem to be doing quite well, as it is, but we do need to ensure that their food supply is plentiful and available. I can not stress that enough.

Sincerely,

Roger Obayashi
Wild Whales Vancouver

January 5, 2010



Dear Orca Friends,

Recently it was suggested that our website had photos depicting us violating our own whale watch guidelines.

Please enjoy the three whale photos attached. In all three of these photos our boat is shut off. Please note that our captains can be seen away from the helm watching the whales with our guests.

In addition, all three photos are taken with a telephoto lens, which makes the whales seem closer to our boat. Also note that the orca shown with its large dorsal fin is a transient whale i.e.: not endangered and is in Canadian waters. Again note that the boat is shut down and is more than 100 yards from the whale.

There are some even advocating that it's not politically correct to have a whale and a boat in the same photo. If you love orcas, give thanks for those half million people who see whales from commercial whale watching vessels each year because they insist on orca protection.

It is also important to note that our orcas were blessed with five new calves in last season alone. Soundwatch reports that commercial whale watches were only involved in 12 % of the observed guideline infractions in 2009 which is the lowest ever in twenty years and shows the industry's commitment to compliance.

More good news: Another new orca calf was spotted January 4, 2010 in Puget Sound by a research crew headed by Brad Hanson of the National Marine Fisheries Service. Ken Balcomb of the Center for Whale Research designated the calf as J-47. Balcomb said "This newborn looks robust and healthy."

There is an old Yiddish saying "If you want to beat a dog, you are sure to find a stick". It is apparent to me there are those out there who simply do not want people watching whales from boats and chose to ignore history, science and common sense.

Here are two direct quotes from the Killer Whale Recovery Plan from NOAA:

"Although numerous short-term behavioral responses to whale watching vessels have been documented, no studies have yet demonstrated a long-term adverse effect from whale watching on the health of any killer whale population in the northeastern Pacific." And "Further confounding the matter is the fact that the most often watched pod (J pod) has shown an overall increasing trend in numbers since the 1970's and is currently at its highest recorded number."

Our southern resident killer whales have been coming back to the Salish Sea for hundreds of years. They have been interacting with boats since the early 1900's. According to scientists, there were 9 times more salmon in the rivers back in those years then there are now.

Hopefully, we can stop beating this dog "people watching whales from boats" and move on to the serious issue of restoring the primary food source for the Southern Resident Killer Whales— **salmon**.

Sincerely,
Bill Wright
San Juan Safaris



Subject: SRKW

From: San Juan Safaris-Whale Watching Wildlife Tours FUN! <fun@sanjuansafaris.com>

Date: Thu, 10 Dec 2009 15:43:19 -0800

To: NOAA Orca Recovery Plan <Orca.Plan@noaa.gov>, San Juan Safaris
<fun@sanjuansafaris.com>

December 10, 2009

Recently it was suggested that our website had photos depicting us violating our own whale watch guidelines.

Please enjoy the three whale photos attached. In all three of these photos our boat is shut off. Please note that our captains can be seen away from the helm watching the whales with our guests.

In addition, all three photos are taken with a telephoto lens, which makes the whales seem closer to our boat. Also note that the orca shown with its dorsal fin is a transient whale i.e.: not endangered and is in Canadian waters. Again note that the boat is shut down and is more than 100 yards from the whale.

There is an old Yiddish saying “If you want to beat a dog, you are sure to find a stick”. It seems to me there are those out there who simply do not want people watching whales from boats and they will find any excuse to complain.

Our southern resident killer whales have been coming back to the Salish Sea for hundreds of years. They have been interacting with boats since the early 1900’s. According to scientists, there were 90% more salmon in the rivers back in those years then there is now.

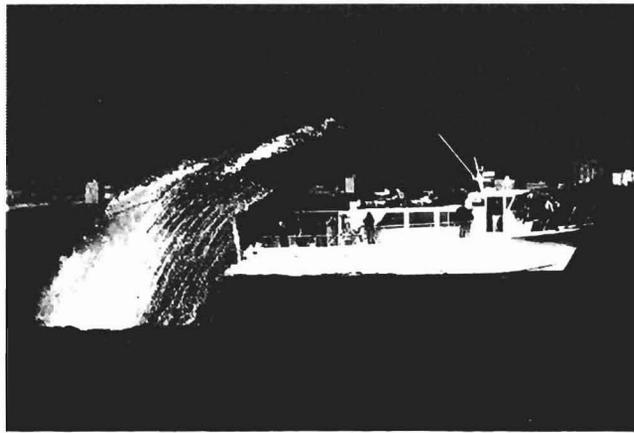
Hopefully, we can stop beating this dog “people watching whales from boats” and move on to the serious issue of food – **salmon**.

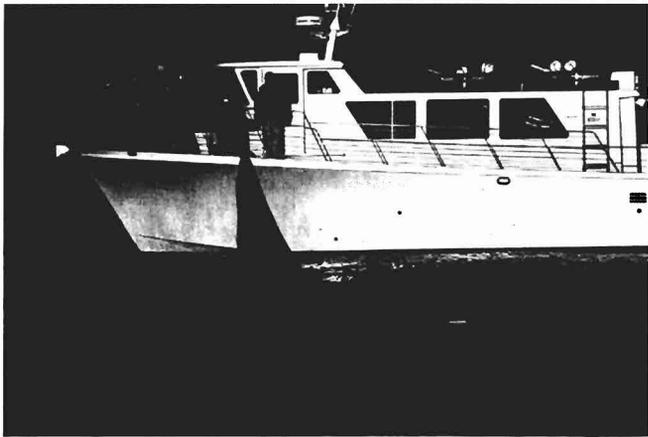
To paraphrase James Carville “**It’s the salmon stupid!**”

Sincerely,
Bill G Wright
San Juan Safaris-



Owner, San Juan Safaris
Whale Watch & Wildlife Tours
www.SanJuanSafaris.com
Fun@SanJuanSafaris.com
800.450.6858





Subject: Recovery Plan

From: San Juan Excursions - Whale and Wildlife Tours <sanjuanex@watchwhales.com>

Date: Tue, 08 Dec 2009 10:40:47 -0800

To: Orca.Plan@noaa.gov

Please reconsider the current proposed orca recovery plan in San Juan Island. The plan, as it is currently written, will not be productive for the endangered species. Please revise the plan to make it a successful and helpful plan for the SRKW. Boats (motor/non-motor) will not be the driving force to break this population. If they are not getting enough food, they will starve. Focus on where they go in the winter time. What they eat when they are not in the San Juans, which is the majority of their life time. Don't make this only about the boats, focus on the real issue at hand. Lack of food. What do they eat the other 8 months out of the year when they are not in our area? Focus on salmon restoration, focus on boater education and pollution in Puget Sound and the local rivers/streams. We can all work together to make this a better environment for the wildlife and ourselves....but we have to work together and be smart about our plans and our actions.

Erin Ancich

Captain Pete Ancich & Erin Ancich

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Friday Harbor, WA 98250

www.watchwhales.com

Subject: Fwd: Recovery plan comment on vessel control

From: Tom Aversa <chartert@rockisland.com>

Date: Mon, 07 Sep 2009 21:27:36 -0700

To: Orca.Plan@noaa.gov

Subject: Recovery plan comment on vessel control

My Name is Tom Aversa. I have owned and operated Deer Harbor Charters, a whale watching business on Orcas Island since 1988. I was the first elected president of the Whale Watch Operators Association NW which is now the Pacific Whale Watch Association. For years there was really no control or enforced guidelines, which made being around the whales a free for all and not a pretty picture. I used to have a megaphone on the boat and would use it when a boat was too close to the whales. It was the only way to keep some boats at bay. Now there are far more guidelines and standards such as the Be Whale Wise Guidelines. This has dramatically changed the impact pleasure and commercial boats have when around the SRKW. I worked with Rich Osborne from the Whale Museum when I was president to create new guidelines which included the current 1/4 mile no boat zone.

Now NOAA is proposing a 1/2 mile no boat zone and a 200 yard viewing distance. I cannot support this proposal for a couple of reasons. One reason is that 1/2 mile off San Juan Island is where most of the tide rips are. When it is a rough day these rips should be avoided by small boats and kayaks as they create steep waves, whirlpools and a collection of flotsam. These tide rips are to be taken very seriously when the weather is foul. I am surprised you have not performed the proper research by taking aerial and/or vessel surveys which would have showed you the danger of these rips.

Another reason is the educational benefit we offer our guests. How else will people from all over the world get to see these whales, learn about them and create a lasting bond with them? Our goal is education. Most people that come on our boats think of the whales as a Free Willy figure or as a Shamu in Sea World. When we explain what these whales are all about, their family structure, their diets their history they are always impressed and want to know more. At 200 yards away the viewing impact is greatly diminished. If there is positive scientific proof (that I have not seen yet) that this increase in viewing distance to 200 yards will benefit the whales I will endorse it. As of today you know and I know there is not one bit of definitive proof that the scientific community can agree upon that vessels create a serious problem for the SRKW. The 1/2 mile no boat zone will create more pressure around a whale or whales that are outside of the 1/2 mile zone. I can tell you after 22 years of being around these whales every day from May through September that I do not believe small boats create a long term problem. Yes, I do think boats can create a short term problem if a boat is trying to disrupt the behavior pattern of the whales they are watching. But to be 100 yards away with my engines off or paralleling at a slower speed than the slowest whale while staying completely out of their path, I feel the whales, while they know we are there, are not concerned and do not go to extra measures to try and avoid us nor do they expend any extra energy to move away.

Why not create more enforcement of the existing guidelines (which I believe are extremely adequate) instead of trying to double the existing guidelines without more enforcement? I have seen that in the past couple of years the enforcement presence has impacted the vessel behavior in a very positive way. More enforcement would help support the current guidelines. Soundwatch's data from this year shows a dramatic decrease in the observed incidents of noncompliance with the current guidelines according to Soundwatch observations by commercial vessels, both American and Canadian.

What about the other areas the SRKW's travel? Will there be no guidelines when they are not on the west side of San Juan Island? Can vessels then approach the shore at a distance less than 1/4 mile of their choosing anywhere else? What about when K or L pod are on the coast traveling to Monterey Bay, Calif.?

I recommend instituting a 100 yard viewing distance for commercial vessels and a 200 yard zone for pleasure craft. I recommend keeping the no boat zone at 1/4 mile. I recommend a permit system and a certification process such as the Dolphin Smart program (<http://sanctuaries.noaa.gov/dolphinSMART/>) for commercial operators to insure we are offering educational tours.

I feel these new proposed rules are not thought out enough, poorly planned and idealistic at best. 1/2 mile off San Juan Island can be a dangerous place for a small boat in rough weather. 200 yards viewing distance will

affect the way commercial boats educate the public and more enforcement will support the existing guidelines.

Tom Avera
Deer Harbor Charters

Subject: Orca recovery comment

From: Tom Aversa <chartert@rockisland.com>

Date: Sun, 10 Jan 2010 11:11:26 -0500

To: Orca.Plan@noaa.gov

My Name is Tom Aversa. I have owned and operated Deer Harbor Charters, a whale watching business on Orcas Island since 1988. I was the first elected president of the Whale Watch Operators Association NW which is now the Pacific Whale Watch Association. For years there was really no control or enforced guidelines, which made being around the whales a free for all and not a pretty picture. Now there are far more guidelines and standards such as the Be Whale Wise Guidelines. This has dramatically changed the impact pleasure and commercial boats have when around the SRKW. I worked with Rich Osborne from the Whale Museum when I was president to create new guidelines which included the current 1/4 mile no boat zone.

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Another reason is the educational benefit we offer our guests. How else will people from all over the world get to see these whales, learn about them and create a lasting bond with them? Our goal is education. Most people that come on our boats think of the whales as a Free Willy figure or as a Shamu in Sea World. When we explain what these whales are all about, their family structure, their diets their history they are always impressed and want to know more. At 200 yards away the viewing impact is greatly diminished. If there is positive scientific proof (that I have not seen yet) that this increase in viewing distance to 200 yards will benefit the whales I will endorse it. As of today you know and I know there is not one bit of definitive proof that the scientific community can agree upon that vessels create a serious problem for the SRKW. The 1/2 mile no boat zone will create more pressure around a whale or whales that are outside of the 1/2 mile zone. I can tell you after 22 years of being around these whales every day from May through September that I do not believe small boats create a long term problem. Yes, I do think boats can create a short term problem if a boat is trying to disrupt the behavior pattern of the whales they are watching. But to be 100 yards away with my engines off or paralleling at a slower speed than the slowest whale while staying completely out of their path, I feel the whales, while they know we are there, are not concerned and do not go to extra measures to try and avoid us nor do they expend any extra energy to move away.

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What about the other areas the SRKW's travel? Will there be no guidelines when they are not on the west side of San Juan Island? Can vessels then approach the shore at a distance less than 1/4 mile of their choosing anywhere else? What about when K or L pod are on the coast traveling to Monterey Bay, Calif.?

I recommend instituting a 100 yard viewing distance for commercial vessels and a 200 yard zone for pleasure craft. I recommend keeping the no boat zone at 1/4 mile. I also suggest a go slow zone of 7 knots when within 400 yards of whales.

I highly recommend a permit system and a certification process such as the Florida Keys Dolphin Smart program (<http://sanctuaries.noaa.gov/dolphinSMART/>) for commercial operators to insure we are offering educational tours.

I feel these new proposed rules are not thought out, poorly planned and idealistic at best. 1/2 mile off San Juan Island can be a dangerous place for a small boat in rough weather. 200 yards viewing distance will affect the way commercial boats educate the public and more enforcement will support the existing guidelines.

Tom Avena
Deer Harbor Charters

Subject: comments on NOAA Fisheries' proposed Orca/Vessel Regulations

From: Casey Brant <lithiumocean@gmail.com>

Date: Fri, 15 Jan 2010 23:11:26 -0800

To: Orca.Plan@noaa.gov

Comments - Same are also sent as an attachment.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 070821475-81493-01]

RIN 0648-AV15

Comments on Proposed “Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act”

I have worked as a captain and naturalist in the Victoria whale watching industry for 8 years, and I am writing in opposition to the proposed regulations. Like many of my colleagues, I care passionately about the welfare of the Southern Resident Killer Whales (SRKWs), and like my colleagues, I see little good coming from the proposed regulations.

My reasoning is as follows:

1) To anybody who has spent time on the water with these animals, they know that they will do what they please. At the very least, it certainly doesn't matter to them if an approaching vessel is a tour boat, a fishing boat, or an enforcement boat. If it were clear that vessel traffic had a negative impact on the well being of the whales, then the regulations should apply to all vessels operating under normal conditions, not whatever special interest group speaks the loudest.

2) Evidence that vessel traffic negatively affects the whales is non-existent. I make this statement as a scientist. I am a PhD candidate studying marine geology at the University of Victoria. I admit that cetaceans are not my field of study, but as a working naturalist, and one familiar with critical scientific review, I have perused the relevant literature. Frankly I find it insulting that research is cited as “evidence” for the negative impact of vessels.

I cite as an example Williams et al. 2009 who, using advanced statistical analysis determine that whales exhibit more surface active behaviors (SABs) in the presence of boats. There is no evidence that an increase in SABs constitute having a negative effect on the whales. The speculation that it uses valuable energy is a reasonable assumption, but it remains speculation. It is not noted in the study that vessels will concentrate their effort around animals who are exhibiting SABs. It is then unclear if the whales are more active because there are boats around, or are there boats around because the whales are active? In contrast to this tenuous conclusions reached in this study, there is one overwhelming and obvious correlations with regard to whales and vessel traffic... the population of the SRKW's has increased alongside the increase in boat traffic to the region.

3) The reality is that we don't know what impact vessel traffic has on the whales, and it will be a long time before we understand. It has been argued that since we don't know, we should take a more conservative approach, such as the proposed guidelines. It's an admirable, if idealistic position. But

as with most things in life, the costs must be weighed. Personally I don't care about the economic losses that will no doubt follow implementation of the regulations. I drive a boat because I love it, not because it feeds my family. But I do care about losing the opportunity to educate, inspire and share our part of the world with countless visitors. Viewing from 200m will not be the same experience, and that will be a loss. In this time, more than any other we need people to connect with the environment, and to care for it. Preventing people from experiencing whales in the wild will be too little to late... what the whales need is salmon, and clean water. What they need is for people to care.

4) And critically, as has oft been pointed out – the regulations don't mean anything without enforcement. At present the only user group adhering to the existing regulations is the whale watching fleet. If the regulations change then the fleet will view whales from 200 m, while watching visiting pleasure boats drive right over top of the whales, ignorant of the existing regulations and with no consequences. If anything it will encourage viewing from pleasure boats rather than will a competent tour operator. Looking at any Soundwatch report will reveal that the vast majority of infractions are by non-commercial operators.

It just makes no sense to impose restrictive guidelines which will have a negative impact on the whale watching industry, when there is no reason to believe that any changes in vessel behavior, particularly “perceived infractions” (as defined by soundwatch) will result.

5) What it will look like on the water: First, the half-mile no-go zone just makes no sense. As anyone who has spent anytime with these animals on the west side of San Juan Island will know, often the majority of a pod will travel close to shore, and boats set up to view the whales at quarter mile leave a wide corridor between the whales and the boats, though the viewing is not particularly good. Setting up a half mile will make it near impossible to see whales traveling close to the shore. But what also happens is that a handful of whales, often the males, will travel a quarter mile to a half mile offshore. With the new regulations the inshore whales will be near invisible and the entire whale watching fleet will end up focusing on the few offshore animals, instead of spreading ourselves out amongst the entire pod as we are wont to do.

As for the 200m viewing distance. What happens now is that the current guidelines are based on the general idea that the whales are traveling close together and going in a straight line. This is often not the case. Nevertheless, we do the best we can. Typically boats will set up in line with each other with the general aim of having whales pass 100 to 150 m in front of them. As the whales make course changes the boats adjust their positions and frequently communicate with each other so we can keep track and view respectfully adhering to the guidelines. At 200 m it will be harder to track the “line” the whales are traveling along, especially from the waterline height of a small vessel. It will lead to more maneuvering in the presence of the whales

I am in complete support of the alternatives put forth by the PWWA:

- 1 • "Vessels may not negligently be within 100 meters of Southern Resident Killer Whales in Washington, Oregon, and California, except under special permit issued by NOAA."
- 2 • "Vessels must avoid the established path of Southern Resident Killer Whales."
- 3 • "Vessels must obey a 1/2 mile go-slow zone (7 knots) from Eagle Point to Mitchell Point, along San Juan Island"

Thank you for this opportunity to comment.
Sincerely

Casey Brant
Skipper & naturalist, Prince of Whales
Victoria BC

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Casey Brant

School of Earth and Ocean Science
University of Victoria

Brant comments on Vessel Regulations.doc	Content-Type: application/msword Content-Encoding: base64
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Subject: Proposed SRKW regs.
From: james maya <captjim@interisland.net>
Date: Fri, 15 Jan 2010 11:24:05 -0800
To: Orca.Plan@noaa.gov

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

To Whom It May Concern:

Having been a whale watch captain and boater on the waters of Haro Strait and the Salish Sea since 1988, I have the following opinions.

I am opposed to three of the proposed restrictions; the 200 yard approach restriction, the 1/2 mile no-go zone, and the prohibition against parking in the whales' path. I believe the basis for these proposed rules has not been supported by good, peer reviewed science and is simply a reactionary response to a perceived threat and hysteria created by well funded groups like Orca Relief, who use unsupported, cherry-picked, unscientific evidence to support their arguments. Legitimate researchers only speculate as to the possible effects of vessel contact on the SRKW population. How many dollars have been spent looking for the smoking gun?

If we want to help the SRKW population we should expand present regulations to include Oregon and California with Washington. I would contend that factors outside the great Puget sound area are a key factor in the declining population. How is J Pod doing? Nuf said.

We should replace the proposed 1/2 mile no-go zone with a go-slow zone. The proposed "no-go" zone is impossible to enforce and includes kayaks. Kayaks? Please get serious.

We need more federal enforcement dollars. Any proposed new laws the Federal Government must have a plan and funding in place for enforcement. The whales would be better served by funded enforcement of the laws currently in place.

What will happen again is that some poor schlep will be busted by authorities to show the public that the authorities are on the job. It will be a publicity stunt for the press, but will do no good other than make people feel warm and fuzzy, like, something is being done. By replacing the 1/2 mile no-go zone with a "7-knot speed limit" you would have an enforceable rule that would add to the protection of the whales while maintaining the rights of passage, shipping, fishing, kayaking and general recreation.

NOAA needs also to fund more public education.

Additional education for the public of threats and potential threats to these whales would do more for them than the addition of these proposed rules. Funding for education should be an essential part of this protection plan. Why do we never mention the declining herring populations, especially the Cherry Point run, over near the oil refineries. Let's educate the public to the true threats. There must be increased education of private boaters to mitigate their impacts but there also needs to be educational opportunities for all of the public to mitigate their effects.

Also, if the proposed new laws are put into affect, there will be negative economic effects on kayak, whale watching, lodging, and other tourist companies and local communities.

And of course, we need for more salmon enhancement. And have we considered banning commercial salmon?

Sincerely,

Capt. Jim Maya

Proposed SRKW regs.

210 Madrona Dr.
Friday Harbor, WA 98250
360-378-7996

Subject: Fwd: Rules and Regs for Whale Watching P.N.W.
From: Denise Wilk <eclipse@orcasonline.com>
Date: Tue, 29 Sep 2009 12:31:50 -0700
To: Orca.Plan@noaa.gov

Thank you for your concern about our issues. .
We hope you will join us in the future.
Sincerely; Denise and Captain Daniel Wilk

Orcas Island Eclipse Charters
www.orcasislandwhales.com

From: Denise Wilk <eclipse@orcasonline.com>
To: orca.plan@noaa.gov
Subject: Rules and Regs for Whale Watching P.N.W.

Dear NOAA and Powers that be,

We are wildlife tour operators on Orcas Island. We have moved from fishing careers, to wildlife viewing and whale watching in the early 90's. Understanding that the Salmon were in danger of being over fished, we sold our fish permits and let go of fishing all together in 1994. We commercial fished for 15 years prior to that time. A lifestyle we changed due to necessity.

As small operators we banded together with other small operators, & started the Whale Watch Operators association with five other companies in the San Juans Islands and a couple others from across the boarder.

We met with the Whale Museum , top researchers Ken and Kelly Balcolm and others. We all agreed to take the naturalist training program the Whale Museum offered to help standardize, how we approached our unique business's.

As years past many other companies started up and as we met each year, we had to communicate and agree to make stronger guidelines to follow. We were all clear on our mission to set a president for others to follow. Pleasure boats often do not know how to approach and view wildlife.. The Whale Watch operators have been proactive in enforcement issues.

We employ 7 people from the islands and feel like the limits being proposed will hurt the Whale watching industry. We all depend on our jobs as well and all the lodges where we put heads in beds due to our industry. Restaurants, stores, super markets, all services depend on Tourism. Much of the tourism comes to the islands to see the Orca. We are educators and help people understand the urgency to care for our waters and the wildlife that habitats them. We give much attention to the decimation of educational materials and do work with a study for the past 13 years from Lime Kiln Light whale watch park. Interns comes aboard our vessel and do survey work for a whale watching perception study done by Dr. Bob Otis Ripon University Lime Kiln Park in the summer and aboard our vessel "Orcas Express".

We all see the explosion of all kinds of boats on the water. It was even more concentrated when commercial fishing was open season as well as Native fisheries. We wish for enforcement of our PRESENT guide lines. Our guidelines are good ones, well thought out and implemented by most operators. Distance feeding corridors for the Orca that seem far enough, if they were enforced.

The Whale Museums Sound Watch needs funding and a county Sheriff, Fish and Game or NOAA enforcement boat need to be funded and on scene to enforce the current existing guidelines with 1/4 mile shore side distance on the West Side

of San Juan island and 1/2 mile around Lime Kiln, Whale watch park . When people are reregistering their boats next year they could be issues guide lines and a sticker that says "I am aware of "Be Whale Wise" Guidelines". All fuel docks, boat launches, marine supplies stores in the Puget Sound Corridor, & San Juan Islands need to have whale " Be Whale Wise" guide lines posted. That is something that need funding.

Working together can really make a difference. Enforcement vessel coming together, communicating with the operators out on the water to help the plan work.

We feel if the current guidelines could be respected and enforced it would be a huge step in the right direction. We just do not see why our current guidelines which are stricter that the Federal Governments, could not be left in place and with enforcement, it would be a nicer experience out on the water.

We are approaching our 20th season in the tour business.
Thank you for your consideration over our concerns.

Sincerely:
Denise and Captain Daniel Wilk
Owner Operators
Orcas Island Eclipse Charters

cc: PRD



STEVESTON SEABREEZE ADVENTURES

12511 No. 1 Road, Bldg 43.
Richmond, B.C. V7E 1T7 Canada
Phone: 604-272-7200
www.seabreezeadventures.ca
e-mail: info@seabreezeadventures.ca

To whom it may concern:

I am writing in regards to proposed regulation changes and the potential effect on the commercial whale watching industry in British Columbia, Canada.

My name is Rick Thompson and I operate a whale watching business out of Steveston, BC- a small fishing village in the south west corner of Vancouver. Steveston was once a thriving fishing community supporting several thousand commercial fishing vessels. I myself fished commercially for over 35 years and operated an aluminum boat building and fabricating business that employed 15 people. Due to regulatory change and depletion of the salmon stocks, Steveston now has a few remaining fishing vessels that were allowed to fish one day only in 2009.

Due to the changes in fishing regulations imposed by Department of Fisheries and Oceans (DFO), I was forced to close the doors to my business after 20 years, and sell off my commercial fishing license. The economic impact was devastating. Today we struggle to keep one marine fueling station operating. A large volume of the fuel sales are being consumed by commercial whale watching boats.

We have had to unwillingly adapt to the changes. Whale watching has provided us an alternative opportunity to make a decent living. Together with our neighbouring whale watching company, we bring in thousands of tourists, who in turn generate a great deal of revenue for the local merchants. Without the whale watching proponent of the tourism income, our local economy would be facing another devastating blow.

This summer, I conducted a survey on what the impact of doubling the present viewing distance from 100 yards to 200 yards would have on our guests. I was shocked to find that

over 50% of the guests surveyed stated that they would NOT go whale watching if the viewing distance doubled. Our business would be forced to shut down.

I sincerely hope that you will consider the economic impact that regulation changes could have on my business, and the community in which I live. I believe that we need to adhere to the regulations that are in place, and to educate the public as to what the regulations are. As for a “no go” zone, this could put some vessels in a dangerous position under certain weather conditions. “Go slow” and use common sense seems to be more reasonable. Viewing the whales at 200 yards does not promote the educational benefit that viewing from 100 yards provides.

After spending almost 45 years of my life on the water, as a commercial fisherman, charter fishing operator, and now a whale watching captain, viewing these same whales on a regular basis, I have not noticed any behavioural change except for an increase in mating activity over the last two years. This is reinforced by the number of new calves born in the past year, particularly in J-pod. These whales are extremely intelligent mammals and I don't believe that we are giving them the respect that they deserve. Harassment is totally unacceptable, but being present and viewing them in a responsible manner, from my observations, does not disturb them at all.

I truly hope that my children and grandchildren will have the privilege of viewing these magnificent animals in their natural habitat. I believe that the only way this will be possible is to deal with the issues that are the basis of the problem.

- 1) Pollution, toxic waste
- 2) Food supply – increase the amount of salmon to the spawning grounds.
- 3) Start using the money being wasted on rhetoric and regulation change to address the real problems #1 and #2.

These whales have been in contact with vessels for hundreds of years now. It is a part of their natural environment. I would argue that there is a lower degree of direct vessel contact now than there was 40-50 years ago. With several thousand commercial vessels on the water five to six days per week, the number of direct contacts is astounding compared to the number of whale watching vessels now operating and viewing the whales from a minimum of 100 yards. No one in the whale watching industry wants to see any harm come to these animals. On the contrary, the educational value that we are able to pass on to people from all over the world as to the challenges that these animals face, only strengthens public awareness to their plight and eventually to cleaning up our waters and their environment. Our eco-tours provide an opportunity for marine biologists, wildlife photographers, and educational groups to view these incredible animals in the wild.

Your attention to these considerations would be greatly appreciated.

We are "NOT" the problem. We are part of the "SOLUTION".

Respectfully yours,

J.E. (Rick) Thompson, Steveston Seabreeze Adventures

A handwritten signature in black ink, appearing to read "J.E. Thompson", with a long horizontal flourish extending to the right.

PUBLIC SUBMISSION

As of: February 01, 2010
Received: January 15, 2010
Status: Pending_Post
Tracking No. 80a7e74f
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-0048

Comment from James Dale

Submitter Information

Name: James Harold Dale

Address:

P.O. Box 2404

Friday Harbor, WA, 98250

Email: execdir@pacificwhalewatch.org

Phone: (250) 883-8021

Fax: (250) 388-5474

Organization: Pacific Whale Watch Association

General Comment

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

Re: Comments on NOAA's Proposed Protective Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act

Please find attached Comments that we submit concerning your Proposed Regulations for Killer Whales in the Northwest Region Under the Endangered Species Act and Marine Mammal Protection Act.

Members of the Pacific Whale Watch Association have had the privilege of educating and entertaining passengers since 1992. Our commitment to Education, Research and Responsible Wildlife Viewing has not wavered. We have and continue to work closely with NOAA/NMFS, WDFW, San Juan County and many Environmental Non-Governmental Organizations. Together we are already doing an excellent job on Public Education and “Precautionary Measures”.

The time is now to get on with the really difficult work of Salmon Habitat Restoration, Pollution Control and Clean-up. Many of the strongest supporters of these programs are now having their livelihoods and recreational activities put at risk by this proposal of regulations that accidentally damage the Regional Economy. We all want to provide additional protection to the Southern Resident Killer Whales from the possible effects of vessel interactions. We humbly suggest that our options can add more protection than those proposed by NOAA

The Pacific Whale Watch Association has offered some suggestion for modifications to NOAA’s Proposed Protective Regulations for Killer Whales in the Northwest Region. We are confident that if our suggested modifications are reflected in the Final Regulations that they can provide strong protection for the Southern Resident Killer Whales without further damaging the economy or the enjoyment of this fabulous marine environment by responsible recreational and commercial boaters.

Thank you for providing us this opportunity to make these comments

Attachments

NOAA-NMFS-2008-0327-DRAFT-0048.1: Comment from James Dale