

January 14, 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:

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

We are lucky that here in the Pacific Northwest there is great consensus that tough decisions need to be made and sacrifices must 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 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.

Ocean Ecoventures Whale Watching has been operating sightseeing tours and whale watching/wildlife cruises in the Salish Sea, often to and near the San Juan Islands, since 2003. We employ approximately 6 people annually and consider ourselves an important piece of the economic development equation in our region. Tourism, one of the cleanest and greenest industries in this province, needs to be fostered and developed. This proposed rule will do the opposite.

I, personally, have been working as a Marine Naturalist and operating vessels in and around the San Juan Islands and interacting with our Southern Resident Killer Whales since 2003.

We, as a company, and I, personally, support the idea of greater restrictions and stronger enforcement of both Guidelines and New Regulations. But I would like to express my opposition to the Proposed Regulations in the way that they are now written.

Why? Because from the many Scientific papers that I have read, from my on-the-water experience with these animals, and from the responses that we have received from passengers I fear that these Proposed Regulations will not substantially help in the Recovery of the Southern Resident Killers Whales, and will in all likelihood devastate the Regional Tourism Industry and, as a result, the Regional Economy.

The 200 yard approach restriction adds little to help the Southern Resident Killer Whales, but dramatically reduces the emotional connection with Nature that passengers seek: And 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 Southern Resident Killer Whale Recovery Plan that require Salmon Habitat Restoration, Pollution Clean-up and Pollution Prevention.

We know that the Southern Resident Killer Whale Recovery Plan is only very partially about Southern Resident Killer Whales. It is really about long-overdue Environmental Education and Clean-up. That is what I have spent the last 40 years trying to promote, the last 25 years within the Whale Watching Industry, using Responsible Wildlife Viewing as a hook to change passenger perceptions and invigorate their will to Reduce, Re-Use and Recycle.

The ½ mile no-go zone, and the prohibition against parking in the whales’ path don’t really affect Ocean Ecoventures Whale Watching or me directly: We already operate in a way that we don’t ever intend to breach either of these. But the problem is that the whales don’t always operate that way.

Here’s the problem: We can fully support “No Parking in the Path of the Whales” as a guideline because as a guideline it is recognized that Killer Whales often do not travel in a predictable direction, especially if there is a lot of Salmon around. Do “yes” we do everything humanly possible to stay out of their Path, but there are times when whales will unexpectedly deviate from that somewhat Predictable Path, and because their unexpected change of direction has occurred underwater, we don’t know that they have changed direction until they surface to breathe.

So doing everything absolutely perfectly from a vessel operation point of view may still result in 2% to 3% (2 or 3 out of every 100 trips) where we might be considered in violation of a guideline. And remember that NOAA’s own science suggests that even if we violated that guideline 100% of the time, there may well be no negative impact on the Southern Resident Killer Whales.

Making that “Guideline” into a “Regulation” means our vessels could well be ticketed 2% to 3% of our trips even if we do everything right. Does that make any sense?

I believe these proposed rules divert attention from the true issues facing Southern Resident Killer Whales (SRKW) by reacting to the optical threat of Whale Watching. If these Regulations are a reactionary response to a perceived threat, then let’s remove the perception of the threat without destroying the 99% of the times when Whale Watching Vessels, far from being a perceived threat, are powerful advocates for Environmental Change:

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

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

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

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

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

(3) 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) Do more research to determine how best to increase Killer Whale foraging in this Region.

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

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

(6) Move On from the Issue of Avoidance. (Whales don't appear to avoid vessels)

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

“The potential impacts of whale watching on killer whales remain controversial and

inadequately understood. Although numerous short-term behavioral responses to whalewatching vessels have been documented, no studies have yet demonstrated a long-term adverse effect from whale watching on the health of any killer whale population in the northeastern Pacific.”

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

(7) Provide NOAA with more federal enforcement dollars.

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

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

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

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

This proposed rule does not realistically reflect the potentially adverse economic effect that these rule changes will have on this commercial industry and through the Multiplier Effect, drastic negative impact on the Region. Just as Economics are playing a role in the decisions on Salmon Enhancement and Environmental Contamination so should they on commercial whale watching.

(10) Refocus on more salmon enhancement.

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

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

- ***"Vessels may not negligently be within 100 meters of Southern Resident Killer Whales."***

- ***"Vessels must avoid the established path of Southern Resident Killer Whales."***
- ***"Vessels must obey a 7 knot speed restriction year round from Eagle Point to Mitchell Point, along San Juan Island, out 1/2 mile."***

Realizing that this is a politically charged issue I can only urge you to take a step back from this path and amend the Proposed Regulations to these as listed above. This will give the opportunity to enhance the health and protection of the SRKW population while continuing to learn from and about these intelligent and incredible creatures.

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

Sincerely,

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