

**Subject:** Comments \_ 4 based on Kenmore Air's Letter[2]  
**From:** Seabreeze Adventures <info@seabreezeadventures.ca>  
**Date:** Tue, 12 Jan 2010 11:12:20 -0800  
**To:** Orca.Plan@noaa.gov

January 10, 2010

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

To Whom It May Concern:

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

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

We fully support regulations that promise to protect these endangered animals and help lead to their recovery. However, we believe that the proposed new restrictions on vessel activity near the San Juan Islands and the 200 yard viewing distance regulation manifestly fail to meet this criterion.

The presumed benefit to the whales from the new vessel regulations is not only unproven by the Scientific evidence but is scarcely even suggested by it. If imposing tighter restrictions on vessels were the last strategy remaining to protect orcas after all else had been done on their behalf, then perhaps taking a chance on the speculative link between such vessel encounters and Southern Resident Killer Whale Recovery might make sense. You have done a fantastic job preparing a Southern Resident Killer Whale Recovery Plan. There are much more promising strategies for helping the Southern Resident Killer Whales listed in NOAA's Recovery Plan such as salmon restoration, tighter restrictions on toxins, and more effective public education.

Regarding the latter — educating the public on threats to orca survival and the impact of human activities (including violation of existing vessel regulations) on the orca — the important and constructive role of the whale-watching industry can scarcely be overstated. Without the personal connection with the Southern Resident Killer Whales that this industry uniquely affords tens of thousands of passengers annually, it is hard to imagine that the Southern Resident Killer Whale Recovery Plan will enjoy the level of public support that will be necessary for it to succeed. Isn't that (Recovery of the Southern Resident Killer Whale Population) the primary goal of this legislation?

We are also not so naïve as not understand that the Recovery of the Southern Resident Killer Whales is just part of a much bigger project. Not only "do we get it", but many of us in the "Whale Watch Industry" have spent the last 20 years of our lives trying to get that message across to the General Public. We have subversively been:

- (1) Filling the heads of unsuspecting passengers with the joy and excitement of seeing Killer Whales in the Wild;
- (2) Creating a passion in them to clean up Puget Sound and the Salish Sea;
- (3) Make positive changes in how they treat the Environment in the communities where they live, so that they will eliminate or greatly reduce the pollutants that they put into the

- Environment; and
- (4) "Accidentally" save our Children and Grandchildren from the injuries, diseases and syndromes that these harmful pollutants cause... All because their grandchildren, children and/or they saw, no, made an experiential connection with Nature by being on a whale watching cruise.

That is why Five Star Whale Watching and the Pacific Whale Watch Association fully support Responsible Marine Mammal Viewing Regulations: What seems to be missed in this discussion is that we as an industry are willing to support Regulations that are stricter than the Guidelines that are now in place: Guidelines, let us remind you, that we created and imposed on our own Pacific Whale Watch Association members over 15 years ago, long before it became fashionable to get on the "controlling vessel interactions" bandwagon.

Excuse us for the frustration, bitterness and anger that come through in that last paragraph. But we have been calling for more enforcement, better patrolling of these waterways for years.

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

There is one problem with NOAA's approach: Extending the Regulated Viewing Distance from 100 yards to 200 yards will do Significant Economic Harm to the Whale Watching Industry, and may or may not provide even a miniscule benefit to the Southern Resident Killer Whales.

Being that NOAA is in the Commerce Department, you will understand that there is a "Multiplier Effect" on the Significant Economic Harm to the Whale Watching Industry: The Negative Economic Impact to the San Juan Islands and surrounding communities will be several times the direct revenue loss to the whale watch industry. Your own Economic Impact Review acknowledges that. But it concludes that the dollar amount doesn't reach the \$100,000,000 threshold that would prevent this change.

Your numbers are probably right: This will likely "only" have a \$60,000,000 to \$80,000,000 Negative Economic Impact on this Region.

But without adding any measurable added protection to the Southern Resident Killer Whales, NOAA also seems willing to cast off the passionate support of up to 200,000 passengers for the next, tougher phases of the Recovery Plan (Our surveys anticipate the extension of the Viewing Distance from 100 yards to 200 yards will result in a 25% to 40% reduction of the 500,000 passengers that have annually come to this Region for Whale Watching).

It is equally hard to imagine that the proposed vessel regulations will do anything but serious damage to the viability of the whale watching industry and the related tourism industry.

Oh, it may well send the message to other businesses and industries that NOAA is very serious (Hell Bent?) to move this forward and that businesses should be prepared to quickly bend to your wishes or face the consequences. We can understand that as a Machiavellian tactic. Kind of like the Public Policy version of "Shock and Awe". We get that.

If that is NOAA's calculation, then so be it. There is nothing we can do against the power that you have available at your command. But we would much rather think that this has been an accidental miscalculation and that we can all... All being the Southern Resident Killer Whales, ENGO's, Scientists, PWWA and affected Communities... move forward to work together to implement your Southern Resident Killer Whale Recovery Plan.

It thus strikes us that counterproductive consequences for the Orca will surely ensue from these proposed vessel regulations, while any benefits are largely speculative. Please appreciate the likely negative impact on Public Support, resulting in a *net negative* effect of these particular proposed regulations on the Orca, without any appreciable immediate or long-term benefit to the Southern Resident Killer Whales.

Five Star Whale Watching and Pacific Whale Watch Association members create a pro-conservation constituency. We would much rather be seen and used as part of the solution.

San Juan County has been at the forefront of Environmental and Ecological Activism for many years. Of all places, this is the last place in the United States that should suffer, needlessly, from well-intentioned but flawed regulations.

Tourism to the San Juan Islands — much of which is driven by a desire to experience the unique marine environment of the Salish Sea — is most definitely vital to all of San Juan County's businesses.

Regulations that have a negative impact on the marine tourism industry — not only whale watching but also kayaking, yachting, fishing and diving — will most definitely have a negative ripple effect on all business in San Juan County. We hate to contemplate such an effect in exchange for no sure benefit, and quite possibly even a negative net outcome, for the Orca.

We do not urge outright rejection of the proposed new vessel restrictions, but offer amendments that place a significantly higher duty and responsibility than currently exists on all vessels, namely:

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

These will require increased enforcement.

Businesses in the Pacific Whale Watch Association will suffer economically: We have always been willing to shoulder more than our share of the load in promoting Environment Reforms, especially if they lead to the Recovery and Conservation of the Southern Resident Killer Whales. But most PWWA may survive the 10% drop in Revenue that we would anticipate from these, our amended regulations: But that would be nothing compared to the devastation that the 25% to 40% reduction in revenue that likely would result from the 200 yard viewing limit in your Proposed Regulations.

We hope that you will consider our alternative amended regulations.

Sincerely,

Richard Omori;

Steveston Seabreeze Adventures

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