



PROMOTING STEWARDSHIP OF WHALES AND THE SALISH SEA ECOSYSTEM THROUGH EDUCATION AND RESEARCH

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June 20, 2007

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

Dear Ms. Darm:

The Whale Museum would like to thank you for the opportunity to provide comments on whether – and, if so, what type of – conservation measures, regulations, and, if necessary, other measures would be appropriate to protect killer whales from the potential threat of disturbance, injury or mortality by vessels and aircraft engaged in whale watching (commercial and recreational).

Please accept the following comments on behalf of The Whale Museum. The museum has principally drawn from the long-term data sets and annual reports characterizing vessel trends with Southern Resident Killer Whales from The Whale Museum's Soundwatch Boater Education Program. Soundwatch has over fourteen years experience with the development and evaluation of the region's best practice guidelines for whale watching, educating recreational and commercial boaters and kayakers on the guidelines, and monitoring vessel activities around the Southern Resident Killer Whales as they move through their Summer Core Area in the Haro Strait region of Washington State and Southern British Columbia, Canada.

#### General Comments regarding the Advanced Notice of Proposed Rule Making Changes:

##### **1-Advisability and need for regulations.**

It is the opinion of The Whale Museum that while conservation education and outreach play a crucial role in marine mammal protection, increased boating pressures and continued noncompliance with the best practice guidelines have prompted the need for developing, implementing and promoting regulations for vessels around orca whales.

##### **2-Geographic Scope of regulations:**

All general regulations (i.e., activities of concern including approach distances, parking in the path etc., see below for details) should be applied to all the areas where Southern Resident Killer Whales have been reported. Broadly, they should apply to the marine waters in the states of Washington, Oregon and California. Specific area restrictions, etc., would only apply in those areas (see below for details).

**3-Management Options:** See below for details.

##### **4-Information regarding potential economic effects of regulating interactions:**

NMFS has used previous Whale Museum reports characterizing the growth of the commercial whale watch industry from the Soundwatch End of Season Reports and special reports specifically on the growth of the Whale Watch Industry from Dr. Richard Osborne for these evaluation purposes. Additionally, reports from the International Fund for Animal Welfare (IFAW) done by Eric Hoyt have also been used to ascertain the economic importance of regional whale watching. Without further specific economic impact studies or a required commercial whale watch passenger

reporting system, reporting actual number of passengers and actual ticket prices, it is difficult to assess the economics of this large and widely dispersed industry.

Comments on NMFS preliminary list of options as posted in the Federal Register:

**1-Codify the current “Be Whale Wise” whale watching guidelines –**

Specifically, The Whale Museum suggests focusing on specific aspects of the current 2006 Be Whale Wise marine wildlife guidelines for implementation as regulation as follows:

**-Reduce vessel speed near whales:** We feel that a specific speed limit of no more than 7 knots within 440 yards equaling  $\frac{1}{4}$  mile from whales would be an appropriate ‘slow, safe speed’ and distance to give vessel operators enough time and distance to see whales, slow down and still be able to make course adjustments to get themselves out of the whales path while operating the vessel in a safe manner.

**-Establish a minimum approach distance:** Given the often unpredictable and dynamic social nature of multiple pods of killer whales and the high likelihood of vessel encounters with whales in the summer months, we suggest that a distance limit be established of 200 yards.

**-Keep clear of the whales’ path:** Evidence presented in recent years has indicated that vessel presence in the whales’ path may elicit behavior changes and/or impede a whale’s or group of whales’ ability to capture and/or share prey. We suggest that vessels should be restricted from approaching (motoring) or positioning (stopping) a vessel (including kayaks or other human powered craft) or otherwise allowing a vessel to become within 400 yards of approaching whales or positioned so that the whales pass closer than 200 yards of the vessel.

**-Restrict approach and departure from whales to approaching from the side, parallel to the direction of the whales travel.** Vessels should not approach or depart from the front or from behind. In essence, treat the area in front of whales and behind the whales as the whales’ path since whales often make abrupt reversals in direction. This would also prohibit crossing the path of the whales within a distance of 400 yards.

**-Restrict vessels from to traveling on the inshore of whales when the whales are traveling within  $\frac{1}{2}$  mile from shore.** The whales often use regular routes near shore for traveling, foraging, resting, and socializing. Restricting vessels from traveling inshore of whales when whales are within  $\frac{1}{2}$  mile (880 yards) from shore would prevent vessels traveling at high speeds, close to whales, which is often seen occurring by private recreational boaters along the whales’ major nearshore travel routes. This would be consistent with vessels traveling slow within  $\frac{1}{4}$  mile of whales and requiring them to move offshore and out and around the whales, would prevent vessels from motoring through groups of whales.

**2. Establishing a minimum approach distance:** - Above recommendations cover this.

**3. Prohibit vessel activities of concern:** In addition to the above we suggest that additional special restrictions apply for kayakers and human powered craft. Regulations that apply to kayakers should require them to remain at or within 200 yards of shore to prevent them from moving off shore to paddle in the whales’ path and into the area of high vessel traffic. Specific kayaker regulations could also require rafting up and not paddling when whales are within 200 yards, waiting on shore as whales pass and/or going next to the shore as whales pass, etc.

**4. Establish time and/or area restrictions in certain locations –** The Whale Museum suggests a two-tiered approach to area restrictions.

**First would be to declare the entire Summer Core Area as a ‘Whale Water Watch-Out’ Area.**

This cautionary area would serve as notice to boaters of high likelihood of encountering whales during the summer months (roughly April–October) and would serve as notice that should boaters

encounter whales in this area they are responsible for knowing the laws and guidelines that apply. These areas could be widely published, including making special delineated 'Cautionary' or 'Precautionary' Areas on NOAA Navigation Charts, as Notices to Mariners and in the WDFW Sportfishing Rules Booklet. These areas would be applicable to a permitting system for commercial whale watch operations (see below).

**Secondarily, special areas within the Whale Waters should be off limits to motor boats when the whales are present.** The established Voluntary No-Go Zones of ¼ mile from Mitchell Pt. south to Eagle Pt. and ½ mile around Lime Kiln need to be expanded and made regulatory to include more of the whales established core routes and areas known to have high vessel densities. The core routes of the whales tend to run roughly north and south along the west side shorelines of Lopez, San Juan, Henry and Stuart Islands. The highest densities of vessel traffic tends to be from Cattle Pass at the south end of San Juan Island to Turn Point on Stuart Island, with the highest overlapping densities of vessels and whales occurring along the west side of San Juan Island from Cattle Pass to Kellett Bluff on Henry Island. (See attached Soundwatch Vessel Density/Whale Area Use Maps for detail). We suggest exploring Vessel Restriction Zones in this core area. Some alternatives might include one or more of the following:

- A Motor Vessel Restriction Zone when whales are present of ½ mile offshore (from point to point, not from furthest shoreline) running From the Turn Point Light House on Stuart Island to Eagle Pt. on San Juan Island.
- A Motor Vessel Restriction Zone when whales are present of 1/4 mile offshore (from point to point, not from furthest shoreline) along any shoreline in the Summer Core 'Whale Waters' Area.

These types of restricted areas would likely need to include some vessel exemptions. We suggest that additional special restrictions apply for kayakers and human powered craft. Regulations that apply to kayakers should require them to remain at or within 200 yards of shore when in these same areas to prevent them from moving off shore to paddle in the whales' path and into the area of high vessel traffic. Specific kayaker regulations could also require rafting up and not paddling when whales are within 200 yards, waiting on shore as whales pass and/or going next to the shore as whales pass, etc.

- Consider a Permanent ALL MOTOR VESSEL RESTRICTION ZONE from shore to ½ mile off shore running south from Small Pox Bay (San Juan County Park) to Edwards Pt. on the Westside of San Juan Island. This area could be a kayak only zone. No exemptions for any type of fishing or boating. Boaters wanting to use the county park boat ramp could still use the ramp, but would be required to exit the park to the north and go out and around this zone. Several other county and state conservation and recreation opportunities already exist in this key area. It is an area that has a Voluntary Bottomfish Recovery Zone under the San Juan County Marine Stewardship Area, has been part of the established Voluntary No Motor Boat Zone when whales are present since 1996 and has The Whale Museum's Whale Research Lab and SeaSound Hydrophone acoustic station present. It is adjacent to Lime Kiln Whale Watch State Park and two of the San Juan County Land Bank Preserve Areas- all areas of prime shore based whale viewing areas and areas where the whales are most often right off the shoreline. This is the main area targeted by the commercial and private kayakers engaged in whale watching and is adjacent to the only San Juan Island west side put-in and public beaches for take-out along the west side of San Juan Island. All other kayaker regulations would apply.
- Explore the idea of 'Feeding Hot Spot' areas where whales are known to be spread out and foraging. Considerable evidence shows that the whales do not always travel in strait line groups along shorelines. It is more difficult to maneuver your vessel according to the current guidelines and the suggested regulations when whales are not traveling in predictable patterns. In areas known to be regular foraging areas for the whales such as

the Salmon Bank Triangle (Offshore SE from Eagle Pt. to the Salmon Bank Marker and E to Iceberg Pt on Lopez Island- this includes the Cattle Pass area) we suggest having additional 'Cautionary Whale Hot Spot Areas' highlighted on the NOAA Navigation Charts, as Notices to Mariners and in the WDFW Sportfishing Rules Booklet within the Summer Core Whale Waters. In these areas vessels would be required to follow all of the other regulations, but could also be required to not use the parallel viewing technique, but rather move only to keep out of the whales path.

- **Cautionary Exit Corridors Adjacent to Whale Routes:** Adjacent to the whales' core routes are several heavily used traffic areas that exit out into whale routes. In addition to the alternate vessel restriction areas and special 'Whale Waters Watch-Out' Caution Areas, these exit corridors need to be marked on the same NOAA navigational charts, Notice to Mariners, etc. Notices of these Cautionary exit areas could be posted on existing or intentionally placed navigational buoys or markers at the exit areas cautioning boaters as to the 'Whale Crossing Area Ahead'. In these areas boaters should be advised to approach slowly, ascertain whales presence, proceed cautiously and/or wait for the whales to pass. Vessels should not exit the pass until whales are at least 400 yards beyond the exit area and vessels should go out at least 400 meters at maximum of 7 knots before going out and around whales to leave the area or before engaging in whale watching. The exit areas of concern are Cattle Pass, San Juan County Park (Small Pox Bay), Mosquito Pass/Open Bay, Roche Harbor/Spieden and New Channels to North Haro Strait and the Turn Point Boundary Pass Area.

**Overall Area Time Restrictions** on whale watching would certainly decrease the hours in the day that whales had boats accompanying them. Time restrictions would be hard to enforce broadly, but could be generally advised and/or limited to the commercial whale watching industry, thereby reducing significantly both the number of vessels with whales during those restricted times as well as the obvious draw the commercial whale watch industry creates by alerting private boaters as to the whales' location by presence and VHF radio chatter. Time restrictions would also allow for research activities especially behavior research requiring situations with low or no boat presence. The Whale Museum recommends a time restriction limiting commercial whale watching (including kayak and aircraft used for viewing) to the hours between 10 am and 8 pm. Certainly vessels could be on the water earlier or later, observing other marine wildlife, but could not engage in killer whale specific viewing activities.

#### **5. Operator permit or certification program –**

The Whale Museum is in favor of exploring permitting options and suggests a phased permitting system that could evolve over time as current levels of whale watching efforts are evaluated and better understood. To start off, immediately we recommend a permit be required for all commercial company vessels engaged in whale watching activities, including kayaks, charters, aircraft and specific whale watching vessels operating in the 'Summer Core Whale Waters'. This would include both Canadian companies and US who would be operating in this specific area. Initially this could be an annual permit given out to all operators for a fee that could be established as a flat rate or an assessment based on use and/or passenger capacity. In the first years, it could be a requirement just to have obtained and display the vessel permit, reporting on vessel statistics (make, model, engine type, passenger capacity, total annual passengers etc.) and require operators to log and report contact time with southern resident killer whales, or all killer whales and/or all other whales.

In order for a permit to be obtained by a company, all company vessel operators (guides for kayakers) must also be required to obtain an annual certification as to knowledge of whale behaviors and proper procedures for operating vessels around whales as well as current regulations. This could be done through annual operator certification training courses. In addition, naturalists/guides working for these companies would also need to hold a certificate of training on killer whale biology, conservation, guidelines and regulations. This could be accomplished through a certification naturalists' course with a requirement for an annual "continuing education" course Fees should be charged for certifications that cover the costs of the courses and materials. If

companies do not meet these requirements, they would not be given their permit to whale watch in the Whale Waters Area.

In the future, permits may give a company more access to certain areas, viewing times, approach distance, etc. Permits may also become limited as to numbers given out, limited by company, and/or vessel operator record of incidents, regulation violations, areas, etc. Permits may also be used to limit the number of vessels allowed to operate or to operate in certain areas.

All Permit fees should go directly to supporting not only the permitting infrastructure but also enforcement and monitoring efforts. Fines from regulation violations should go back into the enforcement of regulations. Additional one dollar per passenger stewardship fees should be required of each whale watch passenger onboard permitted vessels and these fees should go into killer whale conservation, education, stranding networks and monitoring activities.

### **Other Management Considerations/Notes:**

#### **Foreign Vessels:**

It is important that the regulations apply to all commercial and recreational vessels, including vessels originating from Canada, as we know that many of the private recreational boaters and commercial operators engaging in whale watching are from Canada.

#### **Restrictions Applied to All Killer Whale Types:**

The Whale Museum supports that the restrictions should apply to all killer whale types occurring in the 'Whale Water' and broader geographic range as it is hard to ascertain killer whale types by the average boater.

**Special Restrictions for Special Whale Activities:** Special considerations should apply to resting whales, mother-calf pairs and transient whales. Whether these should be regulations or additional guidelines should be explored.

#### **Restrictions Apply to all Fishermen en route to fishing spots.**

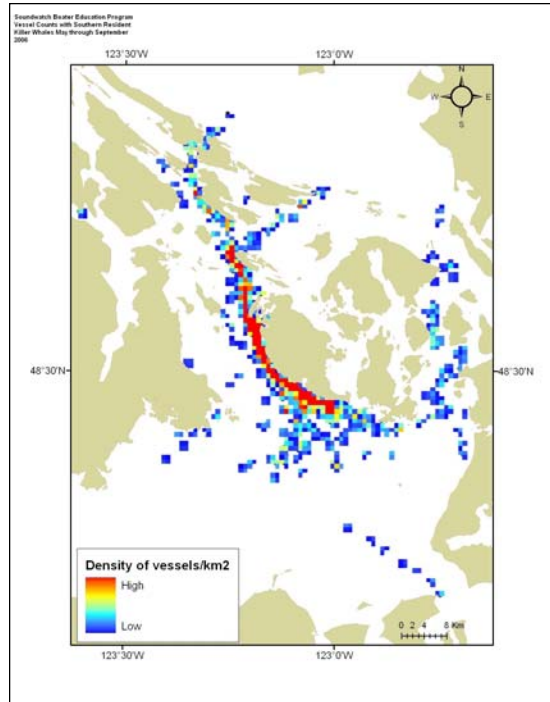
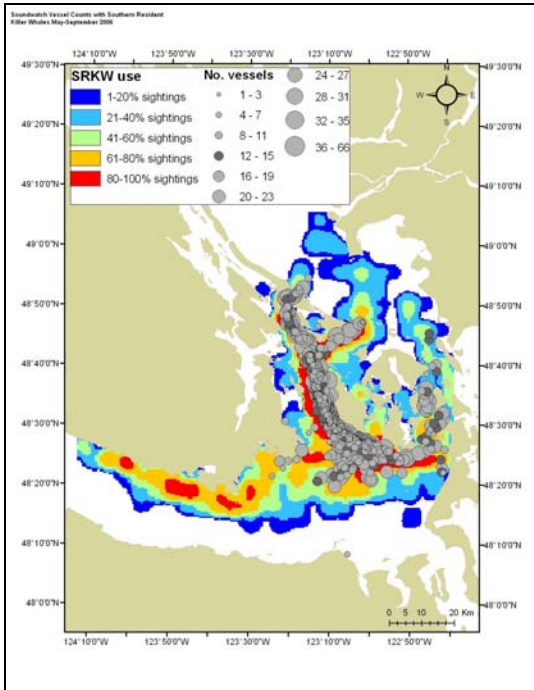
While exceptions may be warranted with actually engaged in fishing, while en route, all restrictions should apply equally.

**Use of Special Shoreline Symbols to Remind Boaters of Area Restrictions when Whales are Present:** Much like the fishing regulations are displayed in Canadian waters, large yield symbols outlined in a certain color could be placed along the shoreline in the restriction and exit areas. The symbols and their locations could be published on the NOAA navigational charts, Notice to Mariners and Sportsfishing rules booklets.

**Utilize the State Vessel Licensing System:** At time of vessel registration, handout or mail whale-watch regulations and guidelines including brochures and stickers for placement in vessel. Signature on vessel registration would signal notice of regulations and guidelines and would serve as public notice. Use the State's current Carbon Monoxide Program as model.

**Create a 'Whale Waters Watch Out' VHF Radio Channel/or Notice System:** Utilize the NOAA Weather and/or emergency notification channel and Notice to Mariners updates to provide notices of whale regulations and restrictions especially on busy holiday or special whale situation days. Use a regular frequency for vessels on-scene to communicate about proper placement. Note: Not a channel for vessels to call into to find out where whales area.

## 2006 Soundwatch Vessel Density/Whale Area Use Maps



We appreciate the opportunity to comment on behalf of The Whale Museum. We are pleased to be working together to help recover the Southern Resident Killer Whales and their important habitats.

Sincerely,

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Director, The Whale Museum

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