

*Science, Service, Stewardship*



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

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**NOAA  
FISHERIES  
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NOAA



## Southern Resident Killer Whales

- J,K,L pods ~85 whales
- Inland waters near San Juan Islands May-Sept
- Winter along coast from CA to BC
- Salmon prey (Chinook)
- Use sound to find food and communicate
- Listed as “endangered” in November 2005

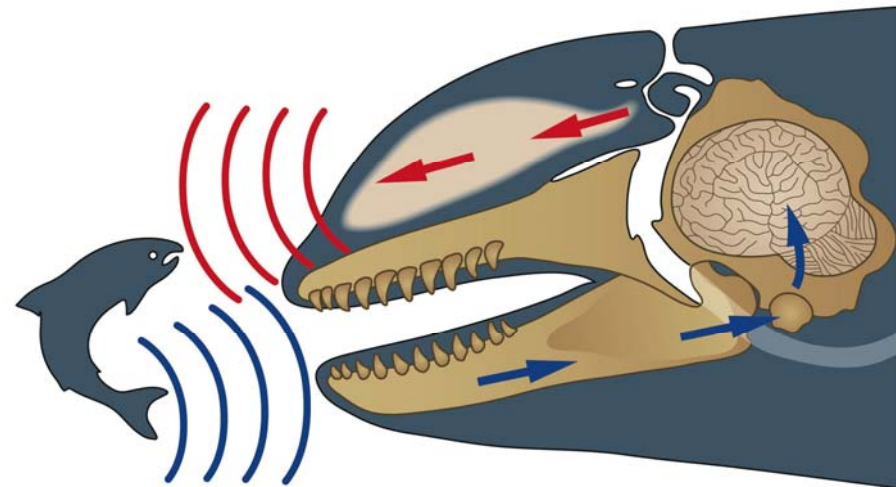


Illustration by Uko Gorter



## Listing Factors

- Prey
- Pollution and contaminants
- Vessels and sound

Also

- Oil spills
- Small population size







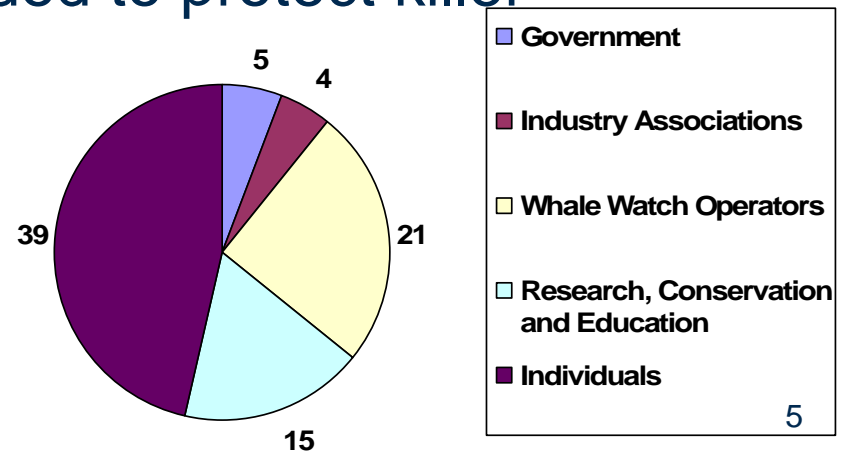
## Advance Notice of Proposed Rulemaking (ANPR)

- March 2007- NOAA Fisheries published ANPR to get input on whether and what type of regulations would be appropriate to reduce vessel impacts.

—Public comment period and public meetings

- We received 84 comments. The majority of comments stated that regulations were needed to protect killer whales from vessel effects.

- All comments received were posted on the NMFS Northwest Regional web page.





## Rationale for Regulations

- Current protections
  - MMPA and ESA prohibit “take”
  - Be Whale Wise guidelines
- Monitoring data
  - Numbers and types of vessels around the whales
  - Numbers of incidents of vessels not following guidelines
- Research results on impacts of vessels
  - Vessel strikes
  - Behavioral disturbance
  - Acoustic masking
- Conclusion: Current protections not sufficient



## Scope of Proposed Regulations

**Geographic Area:** Navigable inland waters of Washington (similar to designated critical habitat).

**All Killer Whales:** Regulations under Endangered Species Act and Marine Mammal Protection Act to protect endangered Southern Residents and all other killer whales. Not feasible for all boaters to distinguish between types of killer whales.

**Authority:** Rulemaking authority under Marine Mammal Protection Act section 112(a) and Endangered Species Act section 11(f).

**Vessels:** All motorized, non-motorized, and self-propelled vessels, regardless of size. Regulations would apply to all types of vessels that spend time in close proximity to whales.



## Proposed Regulations

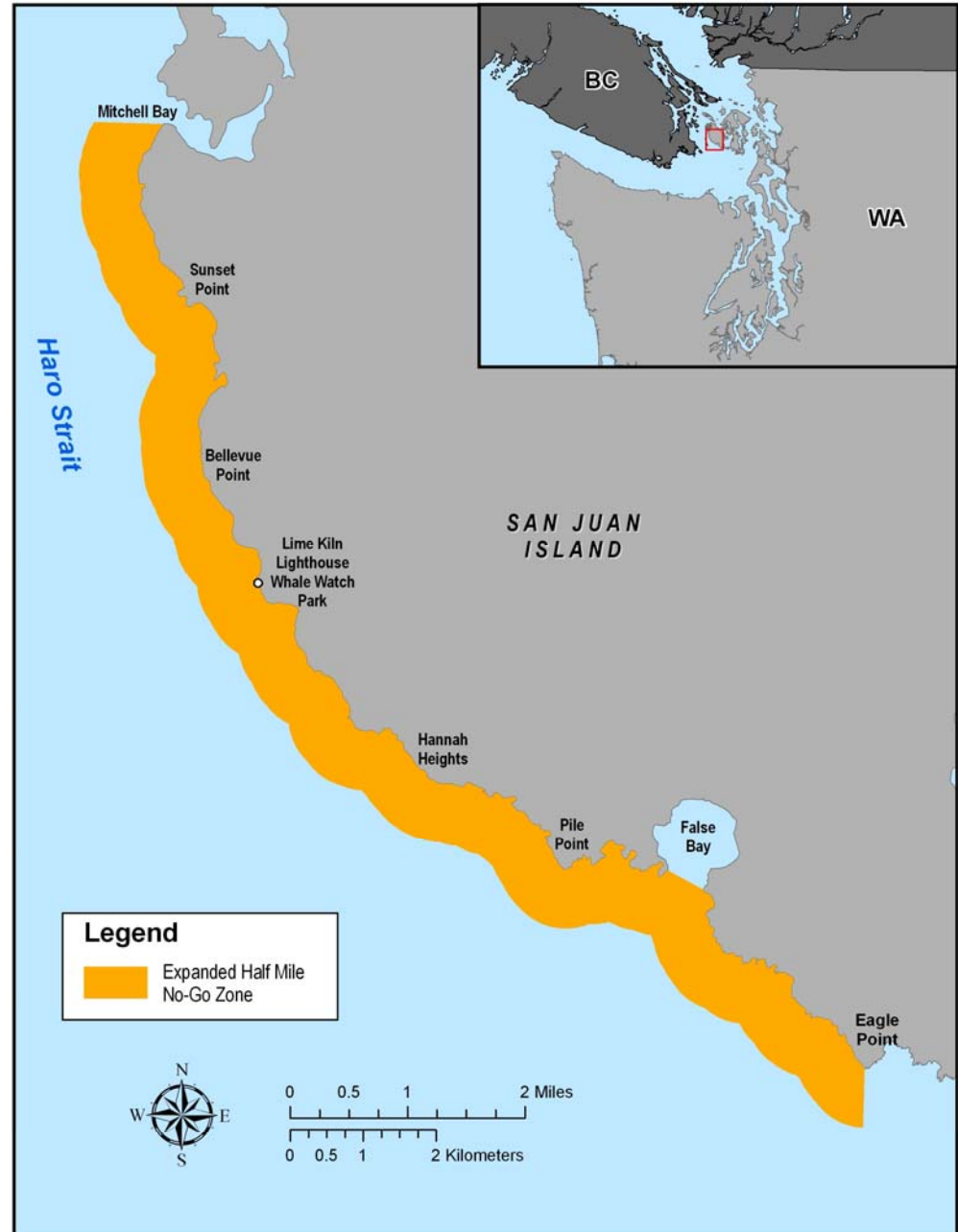
The proposed regulations would make it unlawful for vessel operators to:

1. Cause a vessel to approach within 200 yards (182.2m) of any killer whale;
2. Enter the no-go zone located along the west side of San Juan Island from May 1-September 30; or
3. Position a vessel in the path of any killer whale at any point located within 400 yards of the whale.



## Proposed No-go Zone

- Extends ½ mile from shore from Mitchell Bay to Eagle Point (6.2 square miles)
- Effective May 1 - September 30





## Exceptions to All Regulations

1. Federal, state, or local government vessels operating in the course of official duty;
2. Vessels participating in the U.S. and Canadian Coast Guard Cooperative Vessel Traffic Service and constrained to the Traffic Separation Scheme shipping lanes;
3. Vessels engaged in an activity, such as scientific research, authorized through a permit;
4. Vessels lawfully engaged in treaty Indian fishing that are actively setting, retrieving or closely tending fishing gear; and
5. Vessel operation necessary to avoid imminent and serious threat to a person.



## Additional Exceptions

- 200 yard approach and keep clear of path regulations
  - Non-treaty commercial fishing vessels lawfully engaged in setting, retrieving or closely tending fishing gear would be exempt.
- No-go Zone
  - Privately owned vessel transiting through the no-go zone for the sole purpose of gaining access to privately owned shoreline property located immediately adjacent to the no-go zone would be exempt.



# Environmental Assessment

- Analysis of alternatives, including no action
- Provides scientific information regarding vessel impacts and data on economic impacts for each alternative
- Seeking public comment

## DRAFT ENVIRONMENTAL ASSESSMENT

### New Regulations to Protect Killer Whales from Vessel Effects in Inland Waters of Washington



National Marine Fisheries Service  
Northwest Region



January 2009



## Vessel Impacts

- Behavioral disturbance documented from vessels at 100 yards and within 200-400 yards
  - Changes to swimming patterns - speed, direction changes, respirations
  - Increase in surface active behaviors
  - Decrease in time spent foraging
- Acoustic masking
  - 88-100% estimated reduction in detection range from moving vessel at 100 yards, 38-90% reduction from vessel 200-400 yards
  - Increase in duration and amplitude of communication calls
- Vessel strikes
  - Rare, but injuries and mortalities serious in small population



## Benefits to Whales- Increased Fitness

- 200 yard approach restriction
  - Reduced behavioral and masking impacts from vessels at 100 yards
  - Reduced risk of vessel strike
- No-go zone
  - Reduced impacts to behavior from vessels in zone
  - Reduced acoustic masking (more efficient echolocation) in important feeding area
- Keep clear of the whales' path
  - Reduced risk of vessel strike (risk of strike from vessels in whales' path)
  - Reduced impacts from vessels within 400 yards (reduced energy expenditure, more foraging opportunities)
  - Reduced acoustic masking from vessels within 400 yards (masking impact greatest from vessels in path of whales)



# Costs of Proposed Regulations

## Costs to boaters

- Increased viewing distance for whale watching (greater than current 100 yard guideline)
- Displacement from boat launch
  - Free to public
  - Near high whale use area for commercial whale watching
- Slight course changes to avoid whales or no-go zone
- Relocate to alternate fishing areas outside no-go zone



## Weighing Benefits and Costs of Proposed Regulations

- Combination of 200 yard, no-go zone, and keep clear of path:
  - Provides greatest benefits to whales
  - Trade-off for economic and recreation costs is increased chance of recovery for whales
  - Maintains opportunities for whale watching
  - Supports long-term sustainability of whale watching
  - Creates tools for enforcement
- Proposed regulations maximize net benefits



## Next Steps

### Public meetings

September 24<sup>th</sup>, Pier One Main Warehouse, Anacortes, WA

September 30<sup>th</sup>, Seattle Aquarium, Seattle, WA

October 5<sup>th</sup>, Grange Hall, Friday Harbor, WA

Public comment period closes October 27, 2009 (extended to January 15, 2010)

E-mail: [orca.plan@noaa.gov](mailto:orca.plan@noaa.gov)

Federal Rulemaking Portal: [www.regulations.gov](http://www.regulations.gov)

Mail: Assistant Regional Administrator

Protected Resources Division

Northwest Regional Office, National Marine Fisheries Service

7600 Sand Point Way, NE

Seattle, WA 98115

### Final regulations

- Review all comments and new information
- Implementation plan to identify actions and resources needed for outreach and education, enforcement, coordination with Canada