



Nov. 12, 2020

Washington Department of Fish and Wildlife (WDFW)  
Attn: Mr. Kelly Susewind, Director; Ms. Lisa Wood, SEPA/NEPA Coordinator, WDFW Habitat Program  
Natural Resources Building  
1111 Washington St. SE  
Olympia, WA 98501

***Sent Via Electronic Mail and Online Comments, and Regular Mail***

***RE: Comments on Draft Rule-Making Concerning Commercial Whale-Watching Restrictions***

Dear Director Susewind and Ms. Wood:

We are writing on behalf of the Recreational Boating Association of Washington (RBAW) and the Northwest Marine Trade Association (NMTA), organizations with a collective 137 years of experience representing the interest of recreational boaters and the businesses that serve them.

This letter provides you with our shared comments on the Draft Rule-Making on Commercial Whale Watching. While we recognize these rules pertain to commercial whale-watching entities and not to recreational boaters, we have concerns with the rules and their effect on three fronts:

- 1) The rules attempt to use the Washington Administrative Codes (WACs) to go above and beyond well-thought-out and carefully negotiated aspects of **Second Substitute Senate Bill 5577 (2SSB 5577)** enacted by the 2019 Legislature and signed into law by Governor Inslee.
- 2) The rules do not properly take into account the important role that whale-watching vessels play out on the water, often referred to as “the sentinel role.”
- 3) The rules do not attempt to integrate any of the good-faith proposals offered to WDFW by the whale-watching sector.

Following are our brief comments on each of these three (3) items noted above:

- 1) **Going above and beyond key aspects of 2SSB 5577 that were carefully negotiated and agreed to by a broad-based group of stakeholders, administration officials, and lawmakers:** We have

significant concerns with the changes to the “no-go zone” that would be incorporated into this rule-making vis-à-vis what was agreed to and negotiated into **2SSB 5577**. In that legislation, the Governor’s Office, leaders of the Southern Resident Killer Whale Task Force (“Orca Task Force”), stakeholders, and legislators crafted a bill that established new and more expansive distance requirements, go-slow zones, and provisions that made the west side of San Juan Island a no-go zone when SRKWs are present. All these provisions involved good-faith offers by the recreational boating and commercial whale-watching sectors to place new limits upon their operators as a way to enhance safety, reduce noise, and create a better habitat and birthing environment for the orcas. The WDFW rule-making, however, goes beyond **2SSB 5577** by making the no-go zone permanent and enforcing it whether or not orcas are present. We see nothing in **2SSB 5577** that called for or authorized such a change. We fully understand that these rules would currently apply just to commercial whale-watching operators, but we have a concern with the precedent that would be set here.

- 2) **The rules do not take into account the “sentinel role” played by whale-watching vessels:** With the caveat that the questions and science on this matter are not fully settled, there is a significant body of research and commentary to bolster the point that commercial whale-watching vessels play an important role in alerting other boats to the presence of whales and to controlling the behavior of and the number of boaters in such situations. This “sentinel role” has been noted by Soundwatch whale observers, by WDFW enforcement officers, and by Pacific Whale Watching Association (PWWA) operators who have acted to quantify these incidents. In light of this information and research, we urge WDFW to proceed with extreme caution before issuing any licenses that sharply limit the number of months in which whale-watching vessels operate.
  
- 3) **Good-faith proposals by the PWWA and whale-watching sector:** It is our understanding that in the discussions leading up to the draft rule-making, the PWWA proposed a number of restrictions and accountability measures, including limiting the number of vessels at a 300-yard distance to five (5); a time limit (45 minutes); flag-flying and reporting requirements; and a closure of the west side of San Juan Island when orcas are present. It is our hope that WDFW, in finalizing the rule-making required under **2SSB 5577**, will look at ways to integrate some of these steps offered by an industry sector demonstrating a willingness to regulate itself in the name of Orca safety and preserving and growing the population counts of Orcas.

We thank you in advance for considering our comments on the draft rule-making, and stand ready to answer any questions you may have.

Sincerely,



Bob Wise  
RBAW President



George Harris, NMTA President/CEO