



San Juan County
Marine Resources Committee
915 Spring St – PO Box 729
Friday Harbor, WA 98250



March 27, 2017

San Juan County Council
350 Court Street #1
Friday Harbor, WA 98250

Re: MRC Recommendation on Whale Protection Zone Petition submitted to the National Marine Fisheries Service

Dear San Juan County Council:

This purpose of this letter is to provide the County Council with the MRC's recommendations and concerns regarding the petition submitted to the National Marine Fisheries Service (NMFS) requesting a Whale Protection Zone for San Juan County.

Background/Timeline

- On November 10, 2016, three environmental groups (Orca Relief Citizen's Alliance, Center for Biological Diversity and Project Seawolf) submitted a petition to NMFS proposing the establishment of a WPZ for Southern Resident Killer Whales (SRKW) along the west side of San Juan Island.
- On January 13, 2017, NMFS published a Federal Register notice announcing its receipt of the petition and the opening of a 90-day public comment period to solicit comments on the petitioned action. The public comment period officially closes on April 13, 2017. NMFS subsequently made an informal request that the County Council or MRC convene a public meeting to solicit citizen input on the petition
- On March 1, 2017, the MRC convened a public forum to hear citizen input on the petition.
- On March 6, 2017, the County Council's MRC Liaison formally requested that the MRC provide the Council with a recommendation on the petition.
- On March 15, 2017, the MRC met to discuss the Council's request for a recommendation and passed two motions regarding its recommendation to the Council.

Public Forum

A total of 33 speakers provided comments to the MRC at the March 1, 2017, public forum. We have included a transcript of the comments received and recorded video of the entire proceeding. This public



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forum was limited to the presentation of public comments and an informational presentation by Byron Rot, San Juan County Salmon Recovery Coordinator, that our State Legislators are not hearing from the public on the importance of funding salmon recovery, and that we are in danger of losing both state and federal funding. Subsequent to the public forum and prior to our MRC meeting on March 15, 2017, our members had some internal discussion regarding the various issues and comments that were raised by the public at the forum as well as our own opinions. This discussion resulted in a tabulation and characterization of the comments presented at the public forum which is attached to this letter. The MRC reached the following conclusions after reviewing the public testimony.

- 1) Both supporters and opponents of the WPZ petition recognize and support the need to recover the SRKW population.
- 2) The reduced availability of Chinook salmon is the key threat to recovery of the SRKW population and is one of the reasons the County Lead Entity is actively engaged in Chinook salmon recovery efforts in the San Juan Islands. However, vessel noise and disturbance are also recognized threats to the SRKW population and should be addressed concurrently with ongoing efforts by NMFS and others to recover Chinook and other salmon populations.
- 3) Because the SRKW population faces multiple threats, including those associated with vessel noise and disturbance, most speakers were supportive of any recovery efforts that have been thoroughly and carefully evaluated in terms of their recovery benefits to the SRKW population and the socioeconomic impacts and costs to San Juan County. This petition attempts to address one set of impacts to the SRKW population -- from vessel noise and disturbance -- and that should be the primary consideration in reviewing and commenting on this petition.
- 4) Enforceability (and funding for enforcement) should be a primary concern in evaluating the proposed WPZ in the petition as well as any other alternative protective measures that NMFS may consider. The difficulty of enforcing the proposed WPZ was a key point made by one of the WDFW's primary enforcement officers who provided comments at the forum. None of the other speakers at the forum disagreed with this assessment.
- 5) There was considerable disagreement among researchers (perhaps the most disagreement of any one issue) about the significance of the geographic area delineated by the proposed WPZ to the SRKW population, as well as the expected effectiveness of the WPZ in protecting the population. . On the other hand, many opponents of the petition argued that while the proposed WPZ was relatively insignificant to the SRKW population, its implementation by NMFS would have a very detrimental effect on the quality of the whale watching experience and potentially result in negative economic impacts to our community and the broader whale watch industry. It



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should also be noted that no other specific geographic area was suggested by speakers at the forum that would likely be more effective.

- 6) Most of the opponents of the petition argued that the most viable alternative to the proposed WPZ would be a moving slow go zone around SRKWs because vessel speed and the associated noise frequencies were the most important factors in the observable disturbance of whales. If the petition goes forward, we would assume that continued public input would bring this proposition to the forefront in the consideration of alternatives.
- 7) In regard to items 5 and 6 above, we would point out that the implementation of a moving “slow go zone” instead of the “fixed no go zone” as proposed in the petition would eliminate the opportunity to effectively conduct future observations and scientific research to evaluate the effectiveness of a geographically fixed protection area, which has been a matter of inference and speculation. It is also possible that creating both types of protective measures would provide an opportunity to compare the relative effectiveness of each in protecting SRKWs.

MRC Meeting to discuss a Recommendation to County Council

On March 15, 2017, the MRC met to discuss the petition, the public forum and other issues related to the petition.

Meeting Discussion

During the MRC’s meeting the primary topics of discussion included: 1) the NMFS and National Environmental Policy Act (NEPA) process that would occur if NMFS decides to move forward with the petition, 2) the importance of local involvement in the NEPA process in that scenario, and 3) the experience of several MRC members with NMFS’s previous attempt to address SRKW protections. There was less discussion of the specific arguments for and against the petition. *There was no generalized consensus among MRC members at the meeting on the expected effectiveness or outcome of the NMFS process, or of the expected effectiveness of the specific measures proposed in the petition. The motions that were made and passed, however, did reflect a broad consensus on the importance of NMFS taking action, the importance of continued local involvement in the process, the critical nature of the time element, and given the above consensus, the importance of evaluating other alternatives to recover SRKW in addition to the specifics of the petition being addressed by NMFS.*

Motions

Following the discussion, the MRC passed two motions:



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- 1) **The MRC recommends to County Council that it recommend that NMFS move forward with the petition.** After a second and discussion of the motion, the motion was passed 9 in favor, 1 opposed and no abstaining.
- 2) **The MRC recommendation to the County Council should include discussion of its concerns with the petition, NMFS review of the petition and any future rulemaking that NMFS may undertake if it accepts the petition.** (as brought forward in MRC deliberations including the Public Forum Comment Tabulation). This motion passed unanimously, 10 in favor and 0 opposed.

Additional MRC Concerns

The MRC has numerous concerns about the WPZ petition, NMFS' review of the petition and any future rulemaking that NMFS may undertake if it decides to accept the petition. The following list represents a series of comments the MRC recommends that County Council consider submitting to NMFS based on our concerns. These comments are organized according to the types of information that NMFS requested in its January 13, 2017, Federal Register notice opening the public comment period.

- 1) **Advisability/need for WP**
 - a. In order to accept the petition, NMFS must clearly demonstrate that its 2011 regulations and all other management measures currently in place aimed at reducing the impacts of noise and vessel traffic on SRKW have not been effective and that existing levels of vessel traffic and noise in the proposed WPZ are having significant adverse impacts on the SRKW population.
 - b. In evaluating the petition, NMFS must consider the feasibility of enforcing (and funding) the proposed WPZ or any future proposed regulations.
- 2) **Geographic scope of proposed WPZ**
 - a. In considering the petition, NMFS must consider the importance of proposed WPZ to the overall habitat of the SRKW and the fact that SRKWs do not utilize this habitat on a full time basis.
- 3) **Alternative management options for regulating vessel interactions with SRKW**
 - a. If NMFS accepts the petition, it should identify and evaluate a full range of management alternatives. These could include a go-slow zone with vessel speed limits, significantly increasing monitoring and enforcement, particularly of recreational vessels, a possible limited entry system to control the number of commercial vessels operating on the west side of San Juan Island, a permitting system, and possible requirement of tracking devices on commercial whale watch vessels so that they can be better monitored.



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- b. In addition, NMFS should evaluate alternatives suggested by the whale watch industry (e.g. a go-slow bubble around SRKWs rather than a geographically fixed WPZ) as well as voluntary alternatives either as stand-alone measures or as part of a phased management alternative that begins with voluntary measures as a first stage and only leads to mandatory regulations if voluntary measures are ineffective.
 - c. The Council should consider indicating that it wants to participate with NMFS in any scoping effort aimed at identifying alternatives to the proposed WPZ in the petition as well as any NEPA analysis that is conducted by NMFS to evaluate the alternatives in support of future rule making.
- 4) Scientific and commercial information relating to effects of vessels/noise on SRKW and their habitat
 - a. NMFS must use the best scientific information available in evaluating the petition or in the development of any future rulemaking including:
 - All new scientific data relating to SRKW usage of the habitat delineated by the proposed SRKW and the behavioral responses of SRKWs to vessel noise including the most recent research conducted by NMFS's Northwest Fisheries Science Center, and
 - A thorough analysis of the effectiveness of all current efforts to protect SRKWs from vessel noise and disturbance including NMFS's 2011 SRKW regulations.
 - b. Prior to making a determination on the petition, NMFS should make the information described in the bullets above available to the public and re-open the public comment period on the petition. This is critical information relating to whether or not the petition should be accepted, as well as whether or not new regulations are needed, and NMFS should not make a determination about the petition until the public has an opportunity to review and comment upon it.
- 5) Information on economic effects on WPZ regulations
 - a. The Council should consider offering to provide whatever existing information it has on the economic importance of the whale watch/wildlife viewing industry to local tourist economy – e.g. # of trips per year, revenue per year to the operators, # of people directly employed, indirect benefits such as restaurants, hotels, etc.
 - b. The Council should consider expressing concern about potential economic impacts to the County's tourism industry as a result of accepting the petition and the possible implementation of WPZ regulations including those proposed in the petition.
 - c. If the petition is accepted, NMFS should conduct a thorough analysis of the economic impacts to the whale watch industry and the county's tourist industry. It must be



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comprehensive and address all possible impacts to the county's economy including impacts to small business entities.

- d. The Council should consider indicating that it wants to work with NMFS in defining the scope of this economic analysis and in gathering data necessary to carry out the analysis.
- 6) Any other relevant information NMFS should consider
 - a. The Council should reference and summarize the County Prosecutor's letter to NOAA that questions the legality of any WPZ. We recommend to the Council that this letter be discussed at the beginning of any comment letter to NMFS.

Thank you for your support in the MRC's hosting of the Public Forum and for the opportunity to provide analysis and input to you on this critically important issue.

Respectfully,

Terry Turner, Chair

San Juan County Marine Resources Committee