Comments of the

World Shipping Council

Submitted to the

National Oceanographic and Atmospheric Administration

In the matter of

Endangered and Threatened Species; Petition for Rulemaking to Establish a Whale Protection Zone for Southern Resident Killer Whales

Docket Number: NOAA-NMFS-2016-0152

April 13, 2017
The World Shipping Council (WSC) is a non-profit trade association that represents twenty-two liner shipping companies that carry over 90% of U.S. international containerized trade. WSC's member companies operate more than 5,000 ocean-going liner vessels -- mostly containerships -- of which approximately 1,500 vessels make more than 27,000 calls at ports in the United States each year.

The WSC files these comments with the National Oceanographic and Atmospheric Administration (NOAA) in response to the Notice published on January 13, 2017 (82 Fed. Reg. 4276), which invites public comment on a petition ("the petition") proposing the establishment of a whale protection zone in the San Juan Islands, Washington.

The WSC and its member companies support appropriate and effective measures to reduce the risk of vessel interactions with whales. The petition, however, proposes a whale protection zone that overlaps with a maritime traffic separation scheme and precautionary area that was established long ago to reduce the risk of collisions between vessels operating in the confined waterways of the Haro Strait. Adopting the proposed whale protection zone would risk the safe navigation of oceangoing commercial vessels carrying America's waterborne commerce, would increase the navigational safety risks for all vessels operating in the area, and would increase the risk of vessel collisions, allisions and groundings in the area – accidents that could cause substantial environmental and economic harm to the region.

We explain further below.

1. The Petition’s Proposed Whale Protection Zone Conflicts with Essential Maritime Traffic Safety Routing Measures

The petition proposes establishment of a Southern Resident Killer Whale protection zone that, including the ¼ mile protection buffer, would extend one mile offshore of San Juan Island from Mitchell Point (to the north) to Cattle Pass (to the south). This proposed protection zone overlaps with the Haro Strait traffic separation scheme and precautionary area, which lies less than one mile from the western shore of San Juan Island.

On the below image of the nautical chart of Haro Strait, the proposed whale protection zone is indicated with a red line. The areas shaded in yellow indicate where the proposed zone overlaps with the Haro Strait traffic separation scheme and precautionary area. In the lower right portion of the chart, the proposed zone would overlap more than half the width of the northwest bound lane of the traffic separation scheme.

The chart also indicates that a shoal called "Kelp Reefs" is located just to the west of the traffic separation scheme precautionary area (approximately one inch to the left of the “SAN JUAN ISLAND” label on the chart). The proposed protection zone would force vessels to divert to the west, but the presence of the Kelp Reefs would limit vessels’ ability to do so, further

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1 Liner vessels operate on fixed schedules among pre-determined ports. WSC’s member lines operate containerships, roll-on/roll-off, and car carrier vessels. A list of the Council’s members may be found at [www.worldshipping.org](http://www.worldshipping.org).
constricting an already narrow waterway. And since no vessels would be authorized to transit through the whale protection zone, all vessel traffic that operates in this area – deep-draft oceangoing cargo vessels, tug and barge units, passenger vessels, and recreational vessels – would be forced to pass through this constricted waterway. This would create a highly unsafe situation.

The development of maritime traffic safety routing measures in the Strait of Juan de Fuca and its approaches (including Haro Strait) dates back to 1982, when the International
Maritime Organization (IMO), the United Nations body that regulates international shipping and maritime safety, adopted traffic separation schemes in the area.

In 1999, the U.S. Coast Guard (USCG), in partnership with other U.S. agencies and Canadian authorities, initiated a Port Access Route Study (PARS) to evaluate the need for modifications to the existing vessel routing and traffic management measures in place in the Strait of Juan de Fuca and its approaches, including Haro Strait. The USCG developed the PARS using vessel traffic studies, waterways analyses and usage reports, and extensive consultation with potentially affected stakeholders, including the general public, mariners, environmental groups, port and shipping industry representatives, and state, local and tribal authorities.

The PARS findings and recommended modifications to the existing vessel routing and traffic management measures were published in 2001 (66 Fed. Reg. 6514). With respect to the Haro Strait, the PARS noted that, “In recent years, the level of recreational boating has significantly increased. Also, there has been explosive growth in the number of small commercial vessels providing whale-watching tours off the western shore of San Juan Island. This growth in the number of whale-watching tours has resulted in an increased number of conflicts with deep-draft vessels.”

The PARS also recommended establishment of a two-way route in Haro Strait to “increase order and predictability for vessel traffic in these waters” and to “reduce dangerous interactions between the deep-draft vessels following the TSS and smaller vessels that choose not to follow the TSS [emphasis added].” The PARS’ recommendations were codified in a USCG Interim Rule that became effective in January 2011.

The whale protection zone the petitioners propose would directly conflict with measures that have been implemented in the Haro Strait over the past 35 years to reduce the risk of vessel-related accidents in this confined, high-traffic waterway. The navigation safety and traffic management measures in place today were developed by the USCG, which is responsible under the Ports and Waterways Safety Act (33 U.S.C. 1221-1232) to provide safe access routes for vessels, based on detailed analyses of the types and volumes of vessel traffic in the Haro Strait and after extensive public consultations with potentially affected groups, including environmental groups.

Furthermore, the measures in place today have been codified not only in U.S and Canadian regulations, but in IMO International Regulations for Avoiding Collisions at Sea (COLREGS), which are legally applicable to vessels operating in the traffic separation schemes. Changing the existing traffic management and safety measures, even if it were justified, would require the involvement of the USCG, the Canadian government and the IMO.

The potential navigation safety problems that would result from the proposed protection zone are not discussed in the petition. They are, however, directly relevant to the action proposed. The petition itself states that, “the ongoing threat of an oil spill (along with the increasing effects of climate change) may increase the risk of extinction of the SRKW DPS (Southern Resident Killer Whale Distinct Population Segment).” One of the very possible outcomes of the creation of a whale protection zone that would further compress maritime
traffic in the already confined and dangerous Haro Strait is that the risk of vessel collisions, allisions, and groundings would increase, thus increasing the risk of a fuel or cargo oil spill that could be very damaging to the Southern Resident killer whale population. In other words, there is a high likelihood that the action requested by the petition would be self-defeating.

The existing traffic safety routing measures in Haro Strait were developed carefully based on expert analyses and consultations with affected parties. Any possible changes to the existing safety measures must be evaluated with the same level of care so that unintended consequences, such as increased risk of maritime accidents, can be prevented.

The WSC recommends that NOAA take no further action to consider the proposed whale protection zone. Instead, WSC recommends that NOAA consult with the USCG regarding the possible navigational safety and environmental consequences of the proposed action.

2. **Existing Vessel Traffic in the Haro Strait is Significant Making Further Narrowing of the Waterway Dangerous**

There is significant commercial vessel activity in the Haro Strait, including deep-draft oceangoing cargo vessels (e.g. container ships, tankers and bulk freighters), passenger ships, coastal tug and barge units, fishing vessels, and commercial tour boats. In addition, large numbers of recreational boats operate in the area.

The vessel-track “heat maps” on the following page were generated using NOAA’s Marine Cadastre National Viewer showing vessel AIS (Automated Information System) data for 2013. These maps show the location and density of vessel traffic by vessel type.

The image below depicts cargo vessels operating in the Haro Strait. The track nearest to San Juan Island is comprised of northbound vessels following the designated traffic safety route, which comes close to San Juan Island because the water there is sufficiently deep for large vessels and because this lane provides adequate separation from the southbound commercial traffic operating to the west. If the proposed whale protection zone was adopted, cargo vessels operating in the northbound traffic safety route would be diverted to the west, bringing them closer to the southbound vessels and increasing the risk of collisions between north and south bound vessels.
For comparison, the below image depicts all vessels (fitted with AIS systems) operating in the Haro Strait in 2013. This image indicates the presence of yellow vessel tracks between San Juan Island and the red tracks generated by the cargo vessels operating in the designated traffic safety routes. These yellow tracks were generated by the thousands of other vessel types – tug and barge units, fishing vessels, commercial tour vessels, and recreational vessels -- that operate outside of the designated traffic safety routes to avoid interacting with the larger deep-draft oceangoing commercial ships.
If the proposed whale protection zone were adopted, vessel operation shoreward of the designated traffic safety routes would not be authorized, forcing smaller vessels to move into the designated traffic routes where they would create navigational safety conflicts with larger, less maneuverable, oceangoing commercial vessels. Given the narrowness of this waterway, there is simply nowhere else for the smaller vessels to operate if the area closest to San Juan Island is turned into a restricted zone.

Existing vessel operations in the Haro Strait make it clear that further restricting this already confined waterway would force vessels of all types, sizes and speeds to interact and such interactions would undoubtedly increase the risk of a navigation-related accidents in the area. For example, a large northbound vessel seeking to avoid a collision with a smaller vessel operating inside the traffic route could be forced to the west where it could collide with another large southbound vessel.

The normal wind, weather and currents in the Haro Strait also increase the risk of collisions for vessels operating in the area. Limited visibility conditions such as fog and rain are common in the Haro Strait. These conditions require the use of radar for safe navigation and collision avoidance. Small vessels that today operate outside the traffic safety routes, are often not equipped with radar and/or produce a limited radar signature, making it difficult for large ships to detect and avoid them. Further complicating navigation in the Haro Strait are the frequently changing winds and currents. Environmental factors, such as wind, weather, and currents, were considered when the USCG developed the existing vessel safety routing measures for the Haro Strait, which were designed “to reduce dangerous interactions between the deep-draft vessels following the TSS and smaller vessels that choose not to follow the TSS.”

The large volume of vessel activity and the challenging environmental conditions in the Haro Strait demonstrate that the proposed whale protection zone would pose serious risks to the safe navigation of vessels operating in the area.

The WSC recommends that NOAA take no further action to develop the proposed protection zone and instead seek consultation with the USCG regarding the possible navigational safety and environmental consequences of the proposed action.

3. Conclusion

The WSC appreciates the opportunity to provide comments to NOAA on the petition to establish a whale protection zone off of San Juan Island in the Haro Strait. While we support appropriate measures to protect whale populations, the proposed whale protection zone would significantly increase the risk of preventable maritime accidents in the Haro Strait – accidents that could cause substantial environmental and economic harm to the region.

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