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December 18, 2019

Mr. Barry A. Thom  
West Coast Regional Administrator  
National Marine Fisheries Services  
National Oceanic and Atmospheric Administration  
U. S. Department of Commerce  
1201 Northeast Lloyd  
Portland, OR 97232

Re: Proposed Revision to the Critical  
Habitat Designation for the Southern  
Resident Killer Whale Distinct Population  
Segment (Docket No. NOAA-NMFS-2014-  
0041)

Dear Administrator Thom:

The American Waterways Operators is the national trade association for the tugboat, towboat, and barge industry. AWO's 300 member companies own and operate barges and towing vessels on the U.S. inland and intracoastal waterways; the Atlantic, Pacific and Gulf coasts; and the Great Lakes. The tugboat, towboat and barge industry provides family-wage jobs and ladders of career opportunity for more than 50,000 Americans, including 38,000 positions as mariners on board our vessels who safely, securely and efficiently move more than 760 million tons of cargo critical to the U.S. economy.

The towing industry in the Western United States provides tangible economic and environmental benefits. From ship docking in some of the country's largest ports to moving commodities by barge in coastwise trade, the West Coast towing industry is a vital piece of America's transportation network. According to a 2017 PWC study, the towing industry sustains over 26,500 jobs in California, Oregon, and Washington and the greater domestic maritime industry generates over \$5 billion in labor income in those states.<sup>1</sup> Marine freight transportation is also the most efficient and environmentally friendly mode of transportation. A single ocean-going deck barge pulled by a twin-engine tugboat can move nearly 600 truckloads of cargo with a nearly tenfold reduction in greenhouse gas emissions. Marine freight transportation makes sense for the economy and the environment and AWO strongly encourages NOAA-NMFS to encourage policies that will foster growth in the maritime sector.

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<sup>1</sup> Economic Information is taken from "Contributions of the Jones Act Shipping Industry to the U.S. Economy," prepared by PricewaterhouseCoopers for Transportation Institute (October 2018)

Thank you for the opportunity to comment on the proposed revisions to the critical habitat designation for the Southern Resident Killer Whale Distinct Population Segment by creating six additional critical habitat areas between the U.S. international border with Canada and Point Sur, California. AWO has a strong history of supporting environmental initiatives that contribute to the protection of endangered species. AWO is also concerned that changes to critical habitat areas could impact safe and efficient coastal navigation that occurs in the proposed areas, posing both environmental and economic risks. Specifically, AWO asks that if the new critical habitat areas overlap with U.S. Coast Guard Traffic Separation Schemes (TSS), the National Oceanic and Atmospheric Administration (NOAA) enter into full consultation and analysis with the U.S. Coast Guard and the marine freight transportation industry to ensure that marine safety is not compromised.

### Towing Industry Record

The towing industry has an active presence in the areas under consideration for critical habitat designation. Although the proposal to expand critical orca habitat on the west coast contains no specific proposed restrictions on coastwise navigation, AWO is concerned that the designation process could lead to potential routing, voyage planning, and navigation restrictions that could impede navigation.

The towing industry also has a strong national record on oil spill prevention and response, and on the U.S. West Coast, there has not been a cargo oil spill resulting from an allision, collision or grounding since 1989. Federal and state rules and regulations around oil spill prevention and response, coupled with improvements in equipment, safety management systems, and oversight from operators has fostered an extraordinarily high-functioning system for preventing spills and responding effectively in the rare instances when they occur. NOAA-NMFS should be mindful of the effectiveness of this system to ensure that critical habitat expansion does not disrupt safety and environmental protection activities that are already in place.

### Existing Mitigation Efforts

Over the past several years, AWO members have made improvements in voyage planning, routing, and environmental safety to mitigate environmental impacts and reduce the risk to the ecosystem. Some of these measures are regulatory but many are voluntary actions taken by the industry, including industry best practices. Taken together, these efforts demonstrate an engaged commitment to reducing ecological harm from interaction between coastwise towing vessels and marine life.

1. The U.S. Coast Guard's recent promulgation of towing vessel inspection regulations under 46 CFR Subchapter M will continue to elevate industry safety by establishing higher standards for towing vessel operation, management, and equipment. By elevating safety standards, this new regulation will significantly reduce the risk of marine casualties and oil spills.
2. All tugboats and barges over 400 GRT are subject to the International Maritime Organization's (IMO) designation of the Olympic Coast National Marine Sanctuary Area To Be Avoided (ATBA). This ATBA established a twenty-five-mile area along Washington's Olympic Coast as a "routing measure comprising an area within defined limits in which either navigation is particularly hazardous or it is exceptionally important

to avoid casualties and which should be avoided by all ships, or certain classes of ships.”

3. AWO members participate in both the Whale Report Alert System utilized by Washington State and the Port of Vancouver, BC’s Enhancing Cetacean Habitat and Observation (ECHO) Program. Although these programs are voluntary, they are nonetheless widely adopted by commercial vessel operators. These programs allow mariners to report real-time sightings of whales to alert other vessel operators of their presence, allowing other vessels to quickly implement avoidance measures.
4. Both the federal government and the IMO have created vessel Traffic Separation Schemes. TSS create shipping lanes for vessels and help to mitigate vessel collisions with whales. Officials from both the Cordell Bank National Marine Sanctuary and Greater Farallones National Marine Sanctuary have worked with the Coast Guard to modify shipping lane approaches to California ports to reduce interactions between ships and whales and report that these mechanisms have been effective.<sup>2</sup>

#### Navigational Concerns of Expanding Critical Habitat Designation

AWO strongly supports measures to improve the marine ecosystem and to protect endangered species such as the Southern Resident Killer Whale. Nonetheless, AWO remains concerned that the expansion of critical habitat designation could lead to the imposition of routing measures and additional regulation that could adversely impact the ecosystem. Changes to existing navigation routes could a) increase cetacean interaction with vessels; b) contribute to an increase in vessel emissions as more fuel may be required to navigate longer distances; c) increase cetacean exposure time to undersea noise; and d) remove vessels from proximity to oil spill or marine safety response resources.

Finally, NMFS has claimed that the agency does not believe adding additional conservation measures for killer whales would have an impact on vessel traffic. However, AWO disagrees with this conclusion and believes full consultation and analysis with the Coast Guard must take place before moving forward. If habitat expansion triggers a revision of any existing coastal TSS, then NMFS should be required to consult with the U.S. Coast Guard.

In studying the potential effects of critical habitat expansion in coastal waters around San Francisco Bay on the TSS, NMFS’s existing Biological Opinion found that if a future habitat expansion were to be considered in this area, then NMFS should re-initiate a full consultation with the Coast Guard.<sup>3</sup> Such a consultation would help to safeguard the interests of commercial shipping and ensure that modifications to existing TSS would not inadvertently elevate risks to shipping or the marine environment.

#### Conclusion

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<sup>2</sup> “Reducing Ship Strike Risk to Whales.” National Marine Sanctuaries, National Oceanic and Atmospheric Administration.

<sup>3</sup> Draft Economic Analysis for Proposed Expanded Critical Habitat for Southern Resident Killer Whales September 2019.

Thank you again for the opportunity to comment on the proposed critical habitat expansion. We would be pleased to answer any questions or provide further information to assist the National Marine Fisheries Service in ongoing Southern Resident Killer Whale conservation efforts.

Sincerely,

A handwritten signature in blue ink, appearing to read "Charles P. Costanzo". The signature is stylized and cursive.

Charles P. Costanzo  
General Counsel & Vice President – Pacific Region