From: Chris Letterman
To: City Clerk; Alexandra Pierce; Borough Assembly; Alexandra Pierce
Subject: VITF Public Comments re: VITF Recommendations to CBJ Assembly
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Dear Members of the Visitor Industry Task Force and the Assembly,

I'm writing about the proposals before the task force to establish a whale-watching permit system, limited entry, or fleet reduction plan. Several operators have already raised serious concerns about fairness, process, and the scientific basis for these measures, and I share many of them. I also want to add a concern the taskforce has so far deferred to "the Assembly to figure out later": whether CBJ can lawfully carry out such recommendations at all. To be clear, the frustration residents feel at Statter Harbor and on the water is real, and I'm not asking the task force to do nothing. I'm asking it to pick tools that will work and will hold up.

I spent years inside State of Alaska government, twice as the State's Chief Information Security Officer. I've watched plenty of policy be built, and I know what a defensible process looks like. You define the problem. You bring in the people affected. You let evidence lead. You check your legal authority before you write the rule, not after. My concern is that this process has done these things in reverse order.

1. The limited-entry concept under consideration treats one group differently from others doing the same activity. Whale watching from Statter Harbor would be capped. Whale watching from private docks, lodges, fishing charters, and water taxis would not. Article VIII, Section 17 of the Alaska Constitution requires that laws governing the use of natural resources "apply equally to all persons similarly situated." Alaska's equal protection standard is also stricter than the federal one, and it requires a fair and substantial relationship between a classification and its purpose. If the purpose is protecting whales or reducing traffic on the water, it's hard to explain why the same boat doing the same thing is regulated from one dock and exempt from another. The only line this proposal draws is which dock you leave from. That line has no relationship to whales.

2. CBJ's clear authority stops at its own docks. The city can manage its harbor: moorage, loading zones, and passenger-for-hire floats. The water past the harbor is state water, and the Alaska State Constitution guarantees free access to navigable

waters unless *the legislature* restricts it by general law (Art. VIII, §14). It's worth remembering that the State itself had to amend the Constitution in 1972 before it could create limited entry for commercial fisheries. A municipal limited-entry program for an activity conducted on state waters would be on weaker footing than that.

These first two points are really one problem. The only lever CBJ clearly holds is its harbor. A harbor-based cap therefore can't regulate the industry. It can only regulate the operators who use public facilities, which is exactly the "winners and losers" outcome the industry has been working to avoid.

3. Protecting whales is a federal responsibility. Humpback whales are protected under the Marine Mammal Protection Act, and NOAA already enforces approach rules for humpbacks in Alaska. The MMPA generally bars state and local governments from regulating the "taking" of marine mammals, and as I read it, that includes harassment. When NOAA and university researchers studied Juneau's humpbacks during the 2020 season, with almost no whale-watch traffic, they attributed the increase in calves more to ocean conditions than to the absence of boats, and cautioned it was too early to draw conclusions about vessel impacts. NOAA's own Whale SENSE coordinator has described Juneau's fleet as largely made up of considerate, responsible operators. That is not the record of an industry that needs to be capped to protect whales. If CBJ justifies limited entry as protecting whales, it is moving into a field Congress reserved for federal agencies. If it justifies the program as managing congestion, **then the right tools are congestion tools**, not a cap on the number of operators or a weak "rented" seasonal permit. A rented permit fails on every count that matters. It counts operators, not boats on the water at 10 a.m. in July, so it does nothing about congestion. No one can finance or insure a vessel against a permit they may not hold next season, so it punishes the small, local operators the city says it wants to protect and favors whoever has the deepest pockets to outlast everyone else. It still exempts private docks. And charging rent for access to state waters CBJ doesn't control raises the same authority problems in points 1 and 2. It hasn't been tested against a single operating season.

4. CBJ's legal position appears to have changed. About 15 months ago, CBJ staff told operators that this kind of control wasn't being considered *because it was illegal*. If that view has changed, the Assembly and the public deserve to know why, in writing, before any recommendation advances.

The Task Force's own October 15 materials list the number of active whale watch vessels as data CBJ still needs to obtain from NOAA, estimate up to $150,000 just to design a limited-entry program, and identify a formal operating agreement with

SEAWWA as a high priority. CBJ should finish the cooperative option it already has before spending six figures to cap a fleet it hasn't counted.

My requests of CBJ Assmbly before ruling on VITF Recommendations:

1. Before advancing any limited-entry or permit-cap recommendation, get a written opinion from the City Attorney on CBJ's authority and on equal-application and preemption issues.

2. Demand marine tour operators have a real seat in any further VITF or Assembly work on this subject, not simply offer participation on a one-time panel.

3. Let the industry's 2027 operational commitments (loading-zone limits, cross-loading, an extended no-wake boundary, and treating Coghlan Cut as a no-wake zone) run for a full season, and formalize them in the SEAWWA operating agreement the Task Force has already rated to be a high priority. Set measurable benchmarks such as loading-zone dwell time, fuel dock access, and wake complaints, and judge the results before adding restrictions. For context, the TBMP hotline logged 33 whale-watching complaints in 2026, up one from 2025. From 2019 through 2025, whale watching never ranked above third among complaint categories, behind buses and flightseeing. That gives us a measurable baseline to judge future seasons against.

4. Defer any limited-entry or fleet-cap decision until the Marine Passenger Fee–funded Juneau Whale HEALTH research (UAS/UAF; $160K in FY25, with $210K requested for FY26) is published and independently peer reviewed, with the goal of revisiting the question before the 2028 season. NOAA Fisheries has determined that the Hawaii population, which makes up most of Juneau's humpbacks, has recovered and was delisted in 2016, and federal approach regulations are in place and enforced. Before CBJ layers local restrictions on top of that federal framework, the research being commissioned and paid for by MPFs should show a specific, documented need, and the City should confirm with NOAA that any proposed measure is consistent with federal law.

Everyone at this table wants to ensure the best outcomes for the whales and the harbor. Let's get there with something that will survive its first court challenge.

Sincerely
Chris E. Letterman
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(Written in support of Harv and Marvs Outback Alaska, Alaska Galore Tours, and

Juneau Lighthouse Tours)