



Fish and Wildlife Commission Presentation Summary Sheet

Meeting date:

12/15/2020

Agenda item:

Commercial Whale Watching- Briefing and Decision

Presenter(s):

Julie Watson, PhD- Killer Whale Policy Lead

Background summary:

In spring 2019, the Washington Legislature passed Senate Bill 5577: *a bill concerning the protection of Southern Resident Orca Whales from vessels*, which developed a license for commercial whale watching and directed the Washington Department of Fish and Wildlife (WDFW) to administer the licensing program and develop rules for commercial viewing of Southern Resident Killer Whales (SRKW). (See RCW 77.65.615 and RCW 77.65.620)

The purpose of creating rules for commercial whale watching of SRKW is to reduce the impacts of vessel noise and disturbance on the whales' ability to forage, rest, and socialize while enabling sustainable whale watching. Draft rule language was developed in a year-long process and was shared for public comment (October 21-December 5) and consideration by the Fish and Wildlife Commission (December 4, 15, and 18). There are two options put forward by staff:

- Option A includes a three-month July-September season for motorized commercial whale watching of SRKW with two, two-hour periods per day where viewing SRKW is allowed at closer than one-half nautical mile (limit of 3 motorized commercial whale watching vessels per group of SRKW). In the final stages of drafting the proposed rule, text that would limit viewing to Friday-Monday was inadvertently included in Option A. Both daily viewing and four day per week viewing are included as possible motions for the Commission to consider.
- Option B adds a shoulder season of two months on either side (May/June and October/November) of the main season. The shoulder season is Saturday-Sunday viewing only (limit of 1 motorized commercial whale watching vessel per group of SRKW) and the main summer season viewing (July-September) is Friday-Monday (limit of 3 motorized commercial whale watching vessels per group of SRKW). For days that allow viewing of SRKW, there are two, two-hour periods.
- Note: The seasons described in Options A and B only apply to the viewing of SRKW by motorized commercial whale watching vessels and do not restrict the viewing of other whales or marine mammals.
- Both options propose formalizing the 'no-go' zone on the west side of San Juan Island (currently voluntary) for motorized commercial whale watching vessels (100-yard corridor along the shore for kayaks). The no-go zone is included in both alternatives. It would apply year-round regardless of SRKW presence.

- License application processes, no viewing of groups of SRKW with a calf of under 1 year of age, reporting and training requirements including real-time reporting to the Whale Report Alert System, kayak-focused measures, and AIS requirements are present in both options.

The Commission had a December 4 briefing on the development of and reasoning supporting the two proposed rule options, and then held a December 15 special meeting for Commission discussion that included consideration of public comments received during the public comment period (October 21 – December 5, 2020) and during the December 4 hearing. This briefing also followed the publication of the final SEPA Environmental Impact Statement (EIS) on December 11, 2020. At the special session, Commissioners also discussed an interest in a more conservative version of Option A. Staff have include a motion that would modify Option A to Friday-Monday viewing and a limit of one vessel per group of SRKW.

This agenda item will include a short staff orientation followed by time for the Commissioners to deliberate and adopt a final suite of rules. WDFW anticipates filing the final rules by January 2021.

Finally, at the December 15 special meeting, Commissioners expressed an interest in adopting a policy statement about the recovery of SRKWs and the commercial whale watching rule package. A draft statement has been prepared for Commission consideration at the meeting.

Staff recommendation:

Staff recommend Commission adoption of rules per one of the draft motions below on December 18, 2020 so that the Department can meet the mandate in RCW 77.65.620 to adopt rules by January 1, 2021.

Policy issue(s) and expected outcome:

This is a Commission discussion and expected decision to adopt commercial whale watching rules.

Fiscal impacts of agency implementation:

The 2021-23 agency budget request includes funds for monitoring and adaptive management of the rules once adopted.

Public involvement process used and what you learned:

This process has benefited from significant public engagement via the SEPA scoping and draft Environmental Impact Statement public comment processes, science and stakeholder workshops hosted by the Washington State Academy of Sciences, and public comment at advisory committee meetings. Additional public engagement happened via the December 4 Commission hearing and the rulemaking public comment period, which ended December 5. A full summary and response to public comments is included in the Commission briefing packet.

Action requested and/or proposed next steps:

Staff will initiate implementation, refine a monitoring and adaptive management plan, and report back to the Commission as requested on implementation status of these rules and the broader SRKW-recovery effort.

Draft motion language:

Alternative motions for adopting WAC:

- **Option B** with staff's recommended adjustments:
 - I move to adopt WAC chapter 220-460 that is included in **Option B** with all proposed adjustments presented by staff in the Dec. 4 commission materials.
- If a commissioner wants to move to adopt **Option A** with 3 motorized commercially whale watch vessels allowed **daily** during July through September.
 - I move to adopt WAC chapter 220-460 that is included in Option A with all proposed adjustments presented by staff in commission materials for the Dec. 4 meeting.
- If a commissioner wants to move to adopt **Option A** with 3 motorized commercially whale watch vessels allowed from **Friday through Monday** during July through September:
 - I move to adopt WAC chapter 220-460 that is included in Option A with adjustments proposed by staff to sections, except for the proposed adjustment to WAC 220-460-120(2), so that the text "on Fridays, Saturdays, Sundays, and Mondays" will not be removed.
- If a commissioner wants to move to adopt **Option A** with only **1 motorized commercial whale watch vessel** allowed from **Friday through Monday** during July through September:
 - I move to adopt WAC chapter 220-460 that is included in Option A with adjustments proposed by staff to sections, except for the proposed adjustment to WAC 220-460-120(2), so that the text "on Fridays, Saturdays, Sundays, and Mondays" will not be removed.
 - And I further move to amend the Option A language in WAC 220-460-110(1) to change the language from: "It is unlawful for more than three motorized commercial whale watching vessels at a time to be within the vicinity of any group of southern resident killer whales."; To "It is unlawful for more than one motorized commercial whale watching vessel at a time to be within the vicinity of any group of southern resident killer whales."

A second, separate motion regarding the policy statement is:

- I move to approve the Washington Fish and Wildlife Commission Policy Statement "Washington Fish and Wildlife Commission Policy Statement on the recovery of Southern Resident Killer Whales and WDFW's commercial whale watching rules" as presented by staff.

Post decision communications plan:

The Commercial Whale Watching Licensing Program webpage will be updated, a press release will be issued, and the Department will reach out to known watch watching companies and ocean fishing charters to let them know of new commercial whale watching rules. Emergency rules will be issued to cover any gaps between adoption and the effective date(s) of the rules, and work will continue into the spring to develop and roll out the training for operators, which will feature an introduction to the new rules. The agency will prepare reports to the legislature in November 2022, 2024, and 2026 about the effectiveness of the licensing program and commercial whale watching rules as well as the broader vessel speed and distance regulations to protect SRKW, and these reports may include recommendations for changes to adaptively manage the rules.

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