

DRAFT: Washington Fish and Wildlife Commission Policy Statement on the recovery of Southern Resident Killer Whales and WDFW's commercial whale watching rules

The iconic Southern Resident Killer Whale (SRKW) population holds a deep-seated place in the heart of Washington's culture and ecology, and their extinction would be an unacceptable loss grieved for generations. Yet, the SRKW population has declined to a point where it hovers perilously close to that unconscionable outcome. From its historic population estimated at 200, the three SRKW pods were decimated in the live-capture era of the 1960s, and now hover again near their lowest population levels: Before the birth of two calves in September 2020, the SRKW population had dipped to only 72 individuals.

While the news of SRKW pregnancies and the birth of two calves gives us hope, the situation is still dire. Many calves do not survive to their fifth birthday, and a male-skewed sex ratio means that there are alarmingly few viable breeding females left across the three pods. The population also continues to face an array of threats, from lack of prey availability, to contaminants in their water and food, to vessel noise and disturbance as they try to hunt and communicate using echolocation in the busy soundscape of the Salish Sea. Without drastic action across all of the threats to SRKW recovery, the population is unlikely to survive. The science suggests, for example, that reducing vessel noise and increasing prey availability simultaneously will be more effective than devoting twice the effort to prey availability alone.

The Commission appreciates the Governor's action in March 2018 to create the Southern Resident Killer Whale Task Force, and the work of the Task Force, Governor, and legislature to take action on many of the 49 immediate recommendations to support giving SRKW a chance at recovery. WDFW is responsible for or involved in implementation of approximately two-thirds of those recommendations, spanning actions like significantly increasing hatchery production, managing fisheries to support SRKW prey availability, protecting and restoring salmon habitat, addressing impacts from dams, and enforcing on-the-water regulations to protect SRKW from vessels.

One of many efforts to address vessel noise and disturbance includes reducing impacts from commercial whale watching, and to this end, the Legislature directed WDFW in 2019 to adopt rules for commercial whale watching designed to reduce the daily and cumulative impacts on SRKW and consider the economic viability of license holders. Using best available science, the Fish and Wildlife Commission (hereafter, Commission) took a precautionary approach by defining commercial whale watching vessel presence in the vicinity of SRKW as a potential disturbance, and created rules to significantly reduce the days and hours when motorized commercial whale watching vessels can view SRKW at closer than one-half nautical mile.

The Commission recognizes that there are uncertainties in the science and unknowns about whether commercial whale watching vessels attract boats and/or prevent and deter potential impacts from other boaters. We ask the legislature to fund the Department's 2021-23 operating budget request to conduct monitoring and assessment. We also request that the Department study the potential "Sentinel Role" of the whale watching industry so that we can better assess whether allowing more viewing (and potential viewing-related noise and disturbance) of SRKW is justified or mitigated by this role.

Furthermore, there is much to be learned about the cumulative impacts of many vessel-related efforts—including the new distance and speed restrictions adopted for all boats in 2019, efforts to improve noise impacts from ferries, and work to identify and prevent interactions with large shipping vessels. The

Department has been directed by the legislature to monitor the effectiveness of the commercial whale watching and broader vessel rules and produce a report every two years (November 2022, 2024, and 2026) recommending potential modifications. The Commission is committed to reassessing the rules as the SRKW population changes and/or new information reframes our understanding of the issues.

Watchable wildlife businesses and the access to the outdoors provided by these companies are highly valued by the Commission, as they provide an on-the-water opportunity for people to form lasting memories and emotional connections to the majestic fauna and environs in Washington State. Recognizing that many incidents around SRKWs come from less-informed recreational boaters, we would like to encourage those interested in viewing whales to opt not to view orca from private vessels, and to instead either 1) view from shore at a broad network of locations across the region, or 2) go aboard a professional whale watching vessel that can identify ecotypes and maintain appropriate distances from whales. Although we are adopting restrictions for how frequently SRKW may be viewed by these vessels, there will be year-round tours with ample opportunities to view humpbacks, minke, gray whales, and the transient population of orcas.

In adopting the new WAC Chapter 220-460, the Commission also recognizes that the commercial whale watching industry cares deeply about the wellbeing of SRKW and other marine life, and operators have taken several steps to voluntarily reduce potential impacts from their operations. As such, the Commission did not feel the need presently to incorporate these areas into rules, though we recognize their importance and recommend they continue to be followed as important best practices for the industry:

- Limit time spent in the vicinity of SRKW to 30 minutes, not counting 15 minutes for a slow approach and positioning;
- Use the whale warning flag when in the vicinity of any whale;
- If safe to do so, turn off echosounders/sonar devices when entering the vicinity of whales, following the echosounder standard of care in the Puget Sound Harbor Safety Plan;
- Report all real-time whale sightings- not just SRKW sightings- to the Whale Report Alert System; and
- Communicate with WDFW Enforcement and other relevant authorities to convey concerns about whales, impacts from other boats, and other emerging on-the-water conditions.

Finally, the Commission wishes to emphasize the need for continued momentum on SRKW recovery across the full spectrum of efforts. This effort is a broad endeavor relying on local, state, and federal government entities, and an extensive network of nonprofit and industry partners to be successful. We request an annual progress report from staff on agency progress and the broader SRKW recovery effort.