

# Commercial Whale Watching Briefing, Public Hearing

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Washington Department of Fish and Wildlife

December 4, 2020



Washington  
Department of  
**FISH and  
WILDLIFE**

## Updates

- 74 SRKW in the wild (2 calves in September)
- Additional pregnancies
- Orca Recovery Day 10/17/2020

**Governor Jay Inslee** @GovInslee · Oct 17

Orcas are core to Washington state's cultural identity. It's on all of us to protect them.

This [#OrcaRecoveryDay](#), we celebrate the work being done to help them thrive in our state.



**Governor Jay Inslee** ✓  
@GovInslee



Department of Fish and Wildlife



State of Washington

October 16, 2020

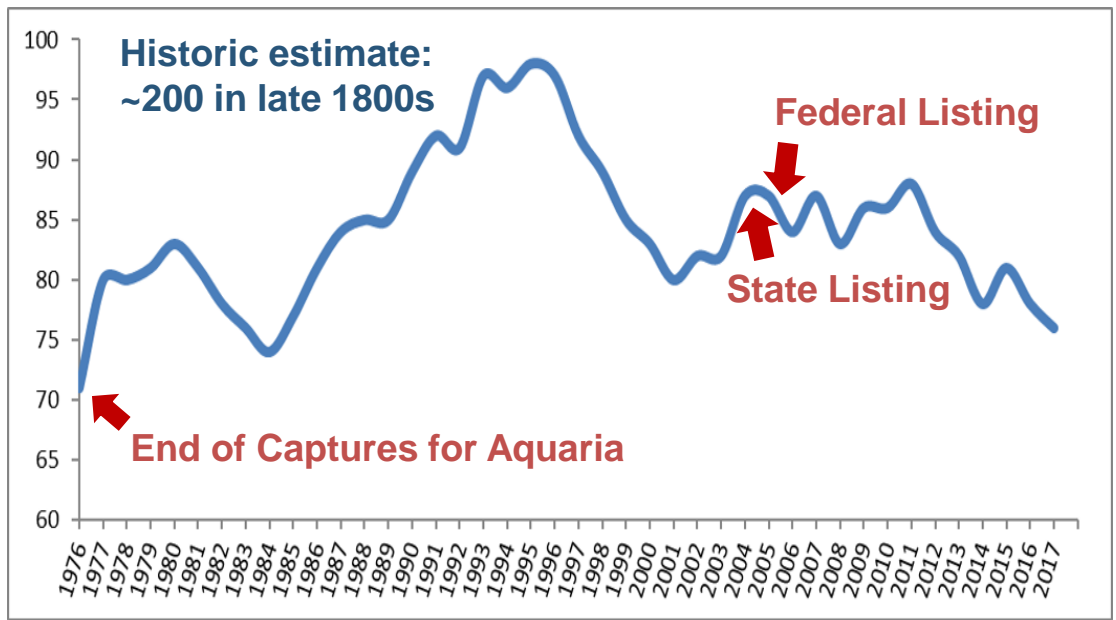
The Honorable Jay Inslee  
Governor  
P.O. Box 40002  
Olympia, WA 98504-0002

**Subject: Status Report on the state's progress to recover Southern Resident Orcas**

Dear Governor Inslee:

In March 2018, you created the Southern Resident Killer Whale Task Force (Task Force) through Executive Order 18-02. The Task Force met for nearly two years and delivered 49 recommended actions. At your direction and with funding from the Legislature, state agencies are implementing of the recommendations. In advance of Orca Recovery Day 2020, which will be celebrated on Oct 17, we are writing to provide you with an update on progress since the final Task Force report was released in November 2019.

Orca recovery is a broad endeavor that includes an extensive network of partners, stakeholders, and tribes. Recognizing that the state is involved in and relies on this extensive network to be successful, this update specifically profiles agency activities and identifies agency progress across the main th

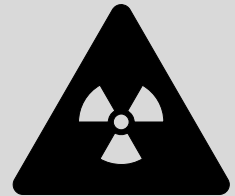
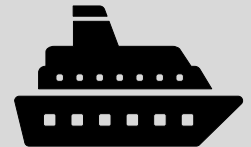
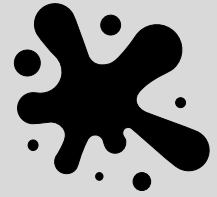


**SRKW recovery**



# Legislation passed in 2019

- ✓ ESHB 1578 - oil transportation safety
- ✓ 2SHB 1579 - increase Chinook salmon and other orca prey abundance
- ✓ 2SSB 5577 - reduce vessel noise and disturbance of orca
- ✓ SSB 5135 - toxic pollution prevention



# Legislation: 2SSB 5577

“A commercial whale watching license is required for commercial whale watching operators.”



- **Defines fees** per operator and per vessel (including kayak operations)



- Requires WDFW to **adopt rules** for license-holders, and specifies minimum considerations for the rulemaking



- Requires WDFW to convene an **independent panel of scientists** to review disturbance and noise impacts on SRKW from small vessels and commercial whale watching



- Requires WDFW to **report on the effectiveness** and recommended changes to the rules November 2022, 2024, and 2026.



"Incidental whale watching" (e.g. fishing charter) operators need licenses, & the SRKW rules apply.

# Definitions from 2SSB 5577

**"Commercial whale watching"** means the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

**"Commercial whale watching operators"** includes commercial vessels and kayak rentals that are engaged in the business of whale watching.

**"Commercial whale watching vessel"** means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

**"Sustainable whale watching"** means an experience that includes whale watching from land or aboard a vessel that reduces the impact on whales, provides a recreational and educational experience, and motivates participants to care about marine mammals, the sea, and marine conservation.



# RCW 77.65.620

“The department *must adopt rules* **for holders of a commercial whale watching license** established in RCW 77.65.615 **for the viewing of southern resident orca whales** for the inland waters of Washington by January 1, 2021...”

The rules must be designed to reduce the daily and cumulative impacts on southern resident orca whales and consider the economic viability of license holders.



The department shall at a minimum consider protections for southern resident orca whales by establishing limitations on:

(a) The **number of commercial whale watching operators** that may view southern resident orca whales at one time;

(b) The **number of days and hours** that commercial whale watching operators can operate;

(c) The **duration spent in the vicinity** of southern resident orca whales; and

(d) The **areas** in which commercial whale watching operators may operate.



Broader vessel regulations for viewing marine mammals

CWW Licensing Program fees and requirements

Rules for license holders' viewing of SRKW

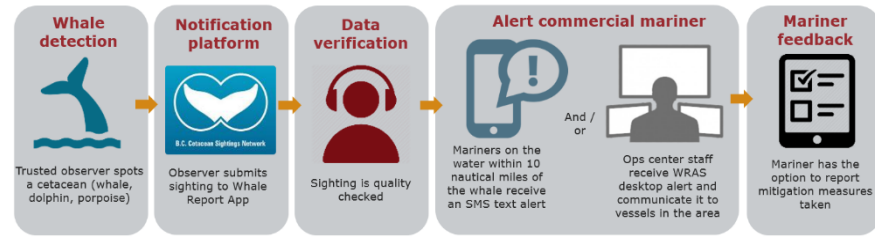
## Context

- **Slow down to 7 knots within ½ nautical mile and stay 300 yards, 400 in the path (front and back) from SRKW (2019)**
- Stay 200 yards from transient killer whales
- Stay 400 meters from all orca in Southern BC coastal waters (Canada).
- Stay 100 yards from other whales
- Stay 50 yards from dolphins, porpoises, seals, and sea lions
- Avoid approaching whales, dolphins, and porpoises when calves are present.





# Optimizing



Whale Report Alert System  
B.C. Cetacean Sightings Network

Indirect benefits  
to SRKW

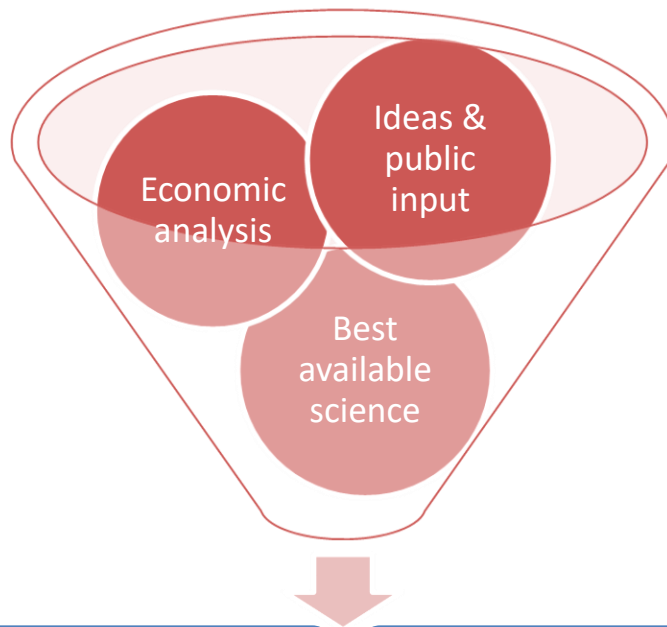
Implementable,  
enforceable, measurable,  
and able to be adaptively  
managed

The rules must be  
designed [using best  
available science] to  
**reduce** the daily and  
cumulative impacts on  
southern resident orca  
whales and consider  
the economic viability  
of license holders.



Whale Warning Flag  
San Juan County MRC





# Rulemaking Process



# Parallel Tracks



## Advisory Committee

Context  
Alternatives  
Recommendation



## Intergovernmental Coordination Group

Guidance  
Implementation and enforcement counsel  
Transboundary coordination



## Independent Science Panel

Workshops  
Q&A  
Report  
Review  
Adaptive management



## SEPA & economic analysis

Scoping  
Comment periods  
Public meeting(s)  
Draft & final EIS  
Viability analysis  
Small Business Economic Impact Statement



## WDFW Licensing Infrastructure

System development  
Launch/FAQ

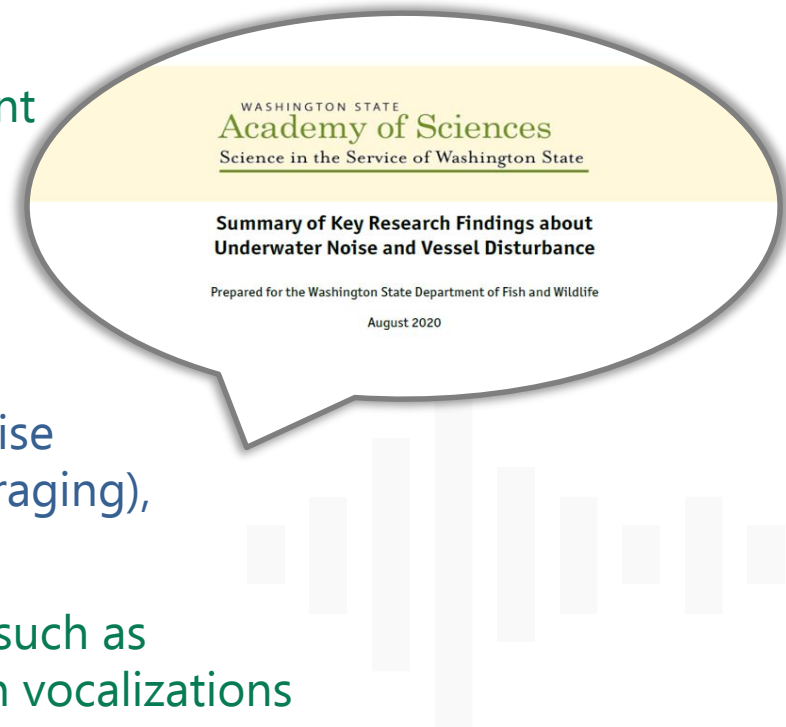


# The best available science

"The department must use the **best available science** in the establishment of the southern resident orca whale watching rules and continue to **adaptively manage the program** using the most current and best available science."

## Summary of the Relevant Scientific Findings:

1. Close approaches by vessels can cause significant direct effects on foraging [Lusseau et al 2009], and vessel presence, not just sound, can cause changes in orca behavior [Williams et al 2010].
2. Close approaches of boats can cause indirect negative effects including masking (elevated noise levels that interfere with communication and foraging), even with slow-moving vessels [Holt et al 2008].
3. Behavioral responses to noise and disturbance, such as increased surface-active behaviors or changes in vocalizations [Holt et al 2008, 2009, Noren et al 2009], can increase energy expenditure [Noren et al 2009, 2012, 2013, Holt et al 2015, Noren et al 2017].



# The best available science

Determining impacts of whale watching vessels is **complicated by the scope and context of many studies to date**, including study age (and hence vessel management regime), sample size, and other limitations, and the confounding effects of an **array of different threats** including limited prey availability, polluted waters, and small population size. As a result, many of the questions surrounding vessel disturbance of SRKW cannot be answered with certainty.

4. Reduced individual foraging success due to vessels may in turn result in reduced survival and fecundity that may result in population-level effects. Lactating females and calves are likely the most susceptible to the consequences of reduced foraging **[SRKW studies ongoing, studied in Sperm Whales by Farmer et al 2018 a, b]** .

5. Chinook prey abundance has a greater effect on SRKW population growth rates than vessel noise and disturbance, according to recent population viability analysis models **[Lacy et al 2017, Murray et al 2019]**. However, SRKW reduce foraging behavior in the presence of vessels regardless of prey availability.



# The best available science

Given the fragile condition of the SRKW population, however, the committee considers the **precautionary approach** to management of known stressors to be justified. **The committee recommends defining every interaction with an SRKW as an opportunity to disturb a whale.**

6. Strike risk is not zero, and the risk of injury and or mortality increases with vessel speed **[Murray et al 2019]**.
7. Data gaps include an understanding of the chronic effects of whale watching activities on SRKW foraging success under current management, and of the extent that reduced foraging success translates into the growth or decline for the SRKW population.



**“Slowing boats and decreasing time around whales, as well as increasing distance from whales, are considered the primary means to reduce noise levels.”**

Setting noise threshold targets is not recommended due to the intrinsically high spatial and temporal variability of natural and anthropogenic underwater noise.

Local “Slow-Go” areas are worth consideration for the west coast of San Juan Island when SRKW are present.

New Canadian management measures are focusing whale watch tours away from targeting SRKW.

**“There is insufficient evidence for a positive ‘sentinel’ effect of commercial whale watching; this topic needs further study.”**

A sentinel effect is defined as the presence of commercial whale watch vessels serving to alert and slow other vessels; a magnet effect is defined as the presence of the whale watch vessels drawing in additional vessels.

A recent analysis of Soundwatch data [Hass 2020] did not support a sentinel effect, due to limitations in data collection and sample size.

No data were available for infraction rates when no commercial whale watch or Soundwatch vessels were present.

WASHINGTON STATE  
**Academy of Sciences**  
Science in the Service of Washington State

**Summary of Key Research Findings about Underwater Noise and Vessel Disturbance**

Prepared for the Washington State Department of Fish and Wildlife

August 2020

**“Use the best available science”**



# “Consider the economic viability”

- Viability = direct compliance and/or reduction in ticket sales/ridership that would result in profitability being reduced to \$0
- Factors that could affect viability
  - Purchase of AIS during COVID downturn
  - Hiring new/additional staff
  - Closures beyond existing no-go zone

## VARIABLE

## BREAK-EVEN ANALYSIS

Weighted Average Adult Ticket Price	\$87
Ridership	145,000
Profits	\$1.7 million - \$3.5 million
Ticket sales equivalent to industry profits	21,000 – 40,000
Percent ridership reduction equivalent to profits	14% - 27%

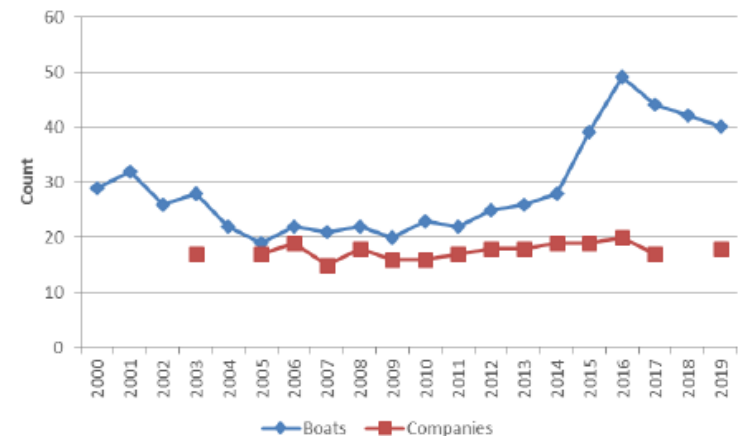


EXHIBIT 6. POTENTIAL FOR REGULATORY IMPACTS BY INDUSTRY SECTOR

INDUSTRY SECTOR	PRIMARY ACTIVITY	IS LICENSING REQUIRED?	DEPENDENCE UPON WHALE WATCHING	POTENTIAL FOR ECONOMIC IMPACTS
Primary Motorized Whale Watch	Motorized or sailing vessel excursions with the express and primary purpose of viewing whales.	Yes.	High. Ability to continue CWW activity critical to business.	High.
Kayak Touring	Human-powered group paddling tours, including day trips and multi-day excursions, for sightseeing, coastal exploration, camping, and wildlife viewing.	Yes. Explicit inclusion of kayaks in RCW 77.65.615.	Low. Whale watching occurs incidental to other primary activities. <sup>1</sup>	Moderate.
Incidental Whale Watch	Motorized or sailing excursions primarily for non-whale viewing purposes including sightseeing, dining cruises, transportation (ferry, water taxi), charter fishing, viewing other wildlife (e.g., birds), etc.	Uncertain. It is not clear whether licensing will be required.	Low. Primary line of business, and driver of customer participation, is not viewing whales.	Low.

Source: Personal communication with Tom Murphy, Outdoor Odysseys Sea Kayaking on June 5, 2020. Interviewee indicated a low dependence on whale watching for his business, and we extrapolate this assumption across all kayak tour businesses.

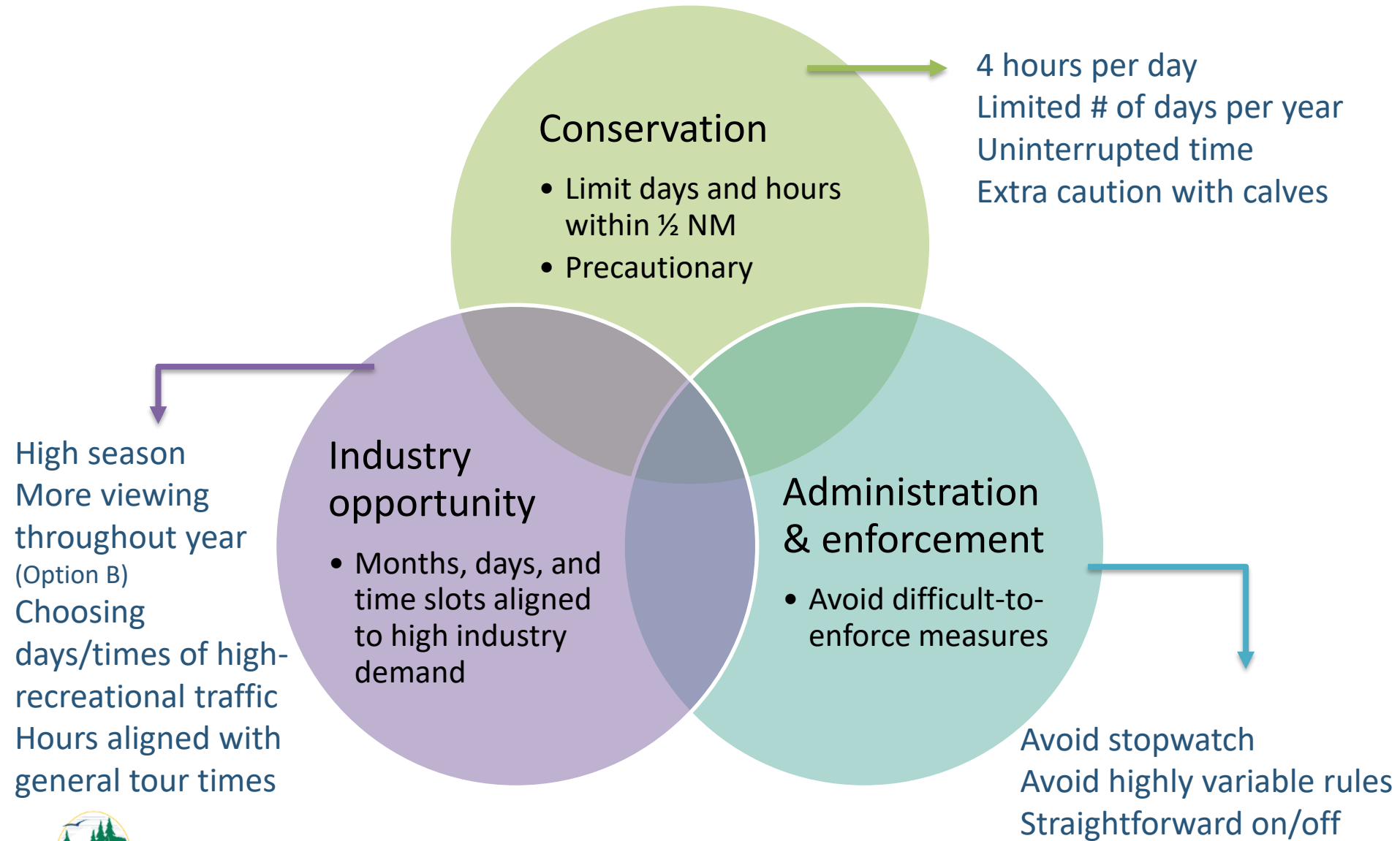
EXHIBIT 7. COUNT OF ACTIVE U.S. WHALE WATCH COMPANIES AND BOATS (2000 - 2019)



Source: Shedd et al. (2019). Soundwatch Program Annual Contract Report. The Whale Museum, Friday Harbor, Washington.



# How did we land on the draft rules?



# Timeline



4/22 2SSB 5577 passes  
7/28 Bill effective date  
10/9-20 Application period for Advisory Committee members  
11/19 Advisory Committee members selected

**April-December 2019**

9/15 Adaptive Management recommendations from the Science Panel  
9/23 Draft SEPA EIS published for public comment

**September**

**12/4-5 Fish and Wildlife Commission hearing on proposed rules**  
**12/11 Final EIS publication**  
**12/18 Scheduled decision**

**December**

**January - August 2020**

1/17 – 7/8 Advisory Committee meetings  
4/27 & 5/6- Science Panel stakeholder workshops  
6/8 Science Panel feedback to Advisory Committee  
7/31 Science Panel feedback on two rule packages proposed in the Advisory Committee process

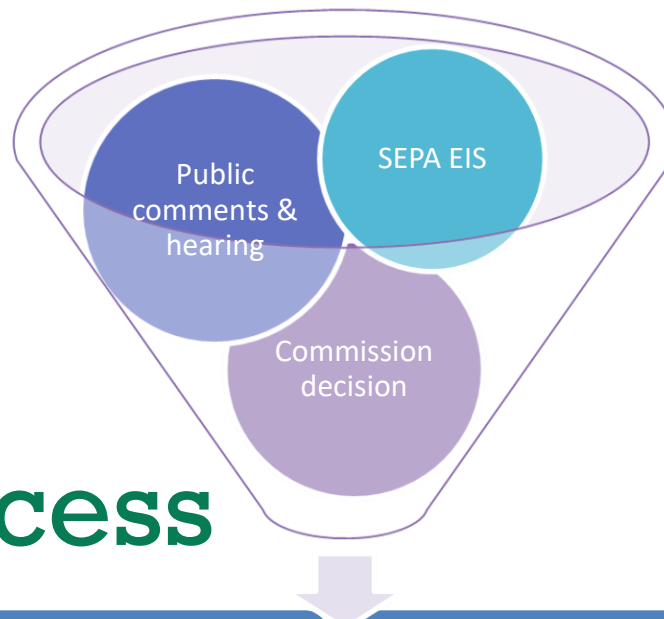
**October – November 2020**

10/1-8 Early draft rules & public comment  
10/19 Public Meeting  
10/21 CR-102 with draft rules and SBEIS filed  
10/23 SEPA public comment ends

**January**

Implementation  
E-rules if needed





# Rulemaking Process





# **Proposed rules for commercial viewing of SRKW**

# What are we proposing?



Number of vessels in the vicinity



Duration in the vicinity



SRKW viewing hours, days, seasons



Geographic restrictions

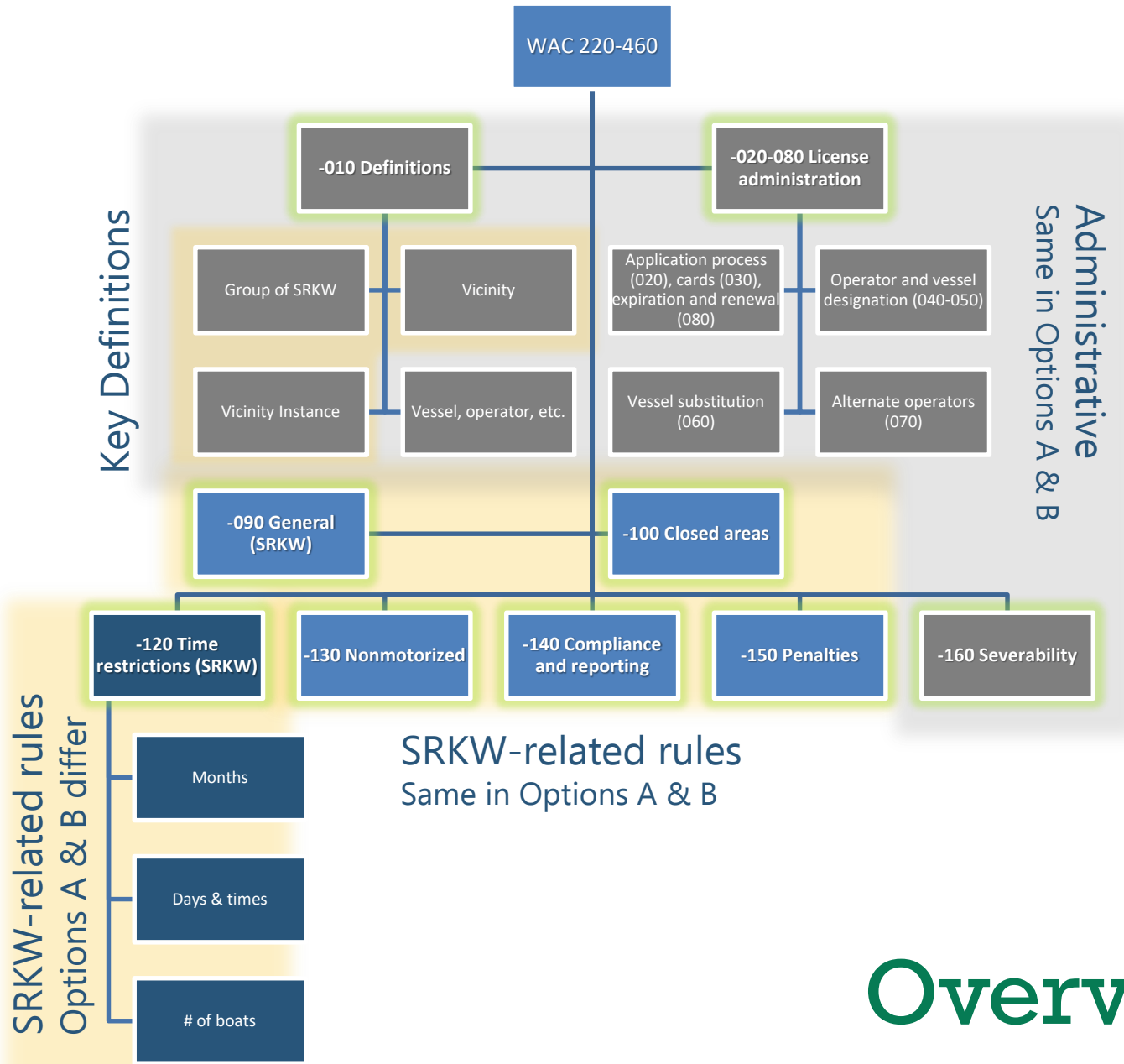


Kayak-specific requirements



Other (reporting, AIS, training requirements, penalties, etc.)





# Overview



# Definitions

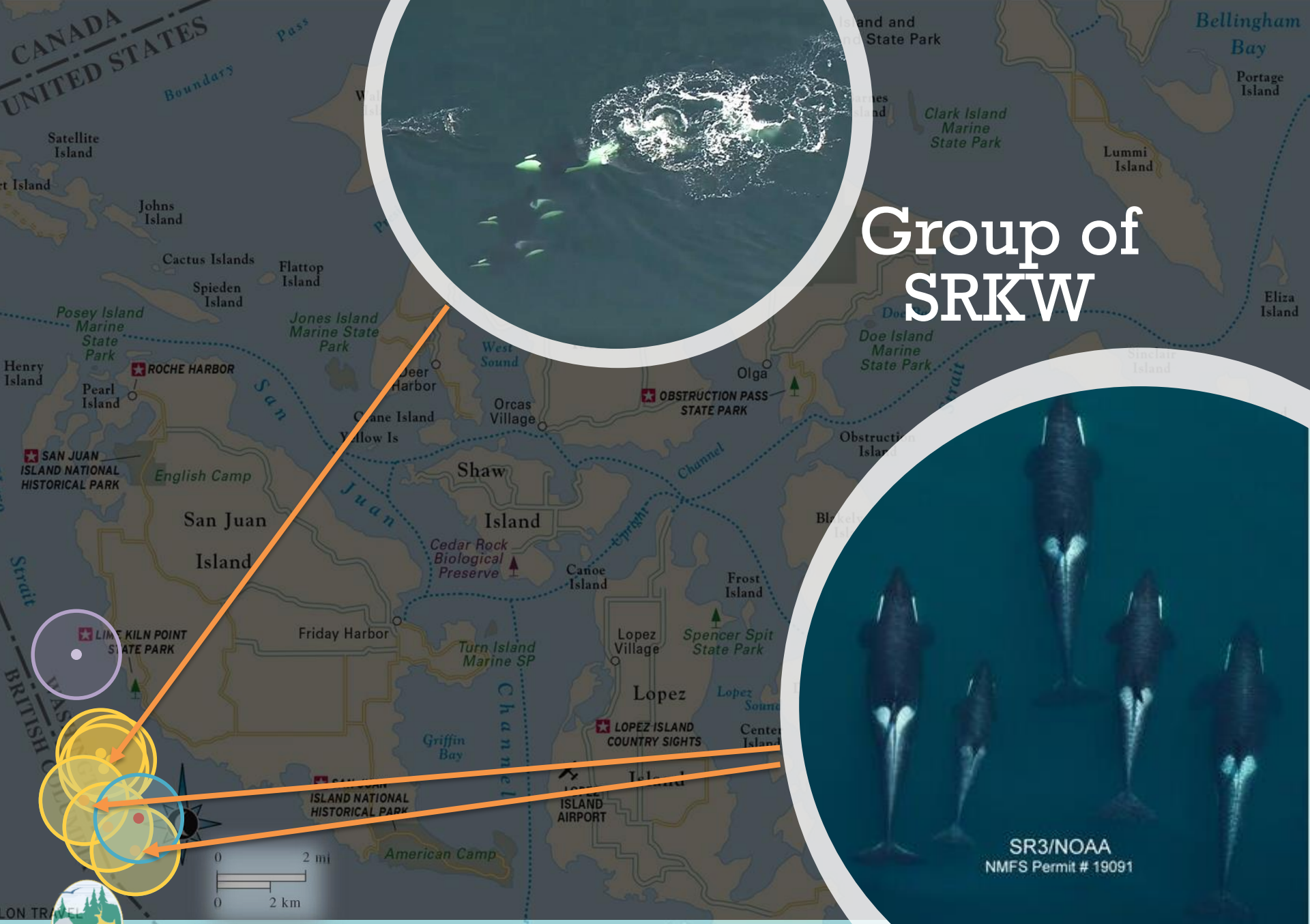
"Group of southern resident killer whales" is defined as a single southern resident killer whale or an assemblage of southern resident killer whales wherein each member is within one nautical mile of at least one other southern resident killer whale. Any individual(s) farther than one nautical mile constitutes a separate group.

"Vicinity" is defined as one-half nautical mile from all southern resident killer whales in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident killer whale closer than the statutorily defined distances in RCW 77.15.740.

Vicinity instance. Each time any commercial whale watching vessel operating under a license enters within one-half nautical mile of a southern resident killer whale will count as one vicinity instance associated with that license.

Automatic identification system (AIS). AIS refers to a maritime navigation safety communications system... that: (a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft; (b) Receives automatically such information... and (c) Exchanges data with shore-based facilities.



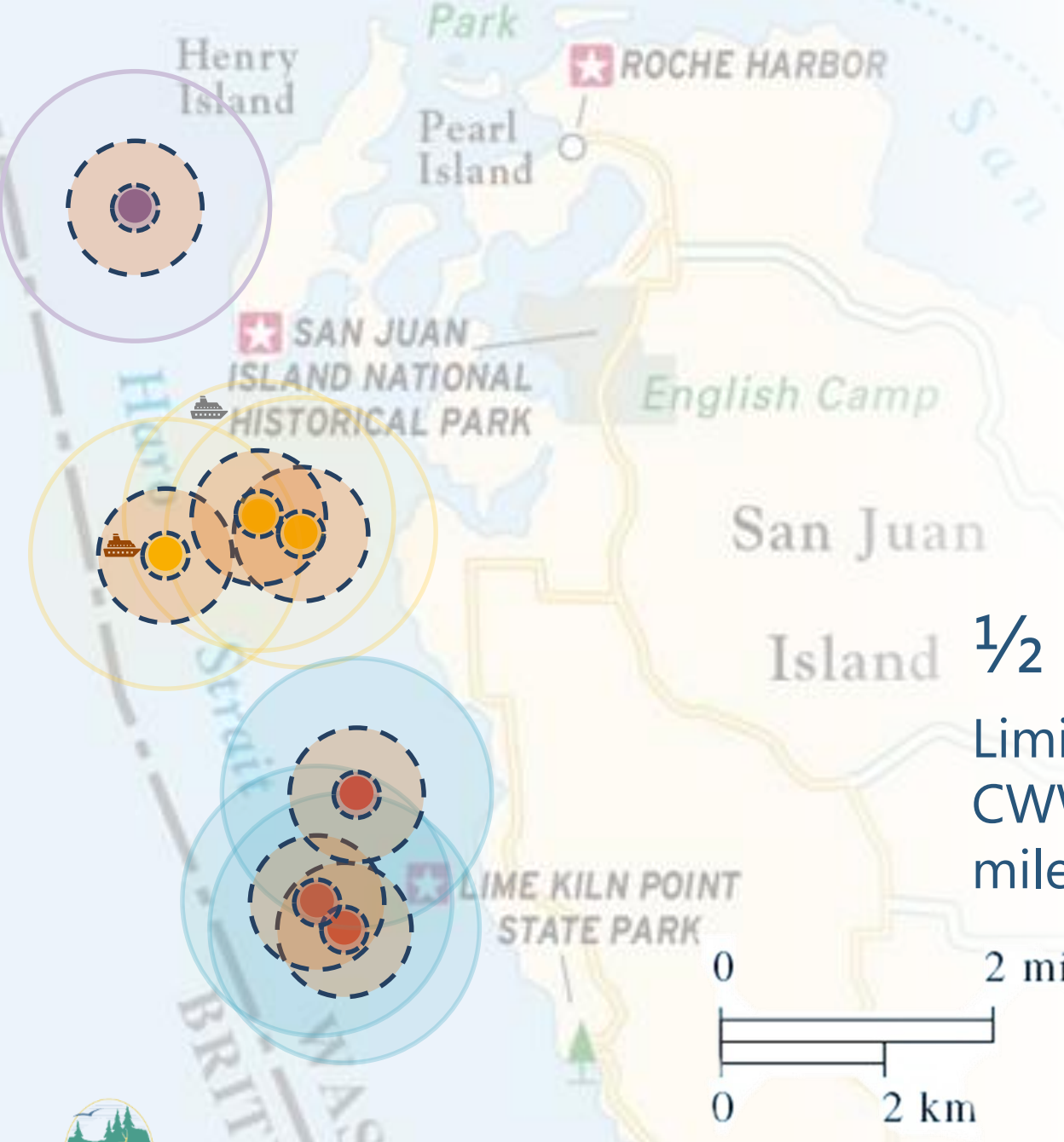


# Group of SRKW

SR3/NOAA  
NMFS Permit # 19091







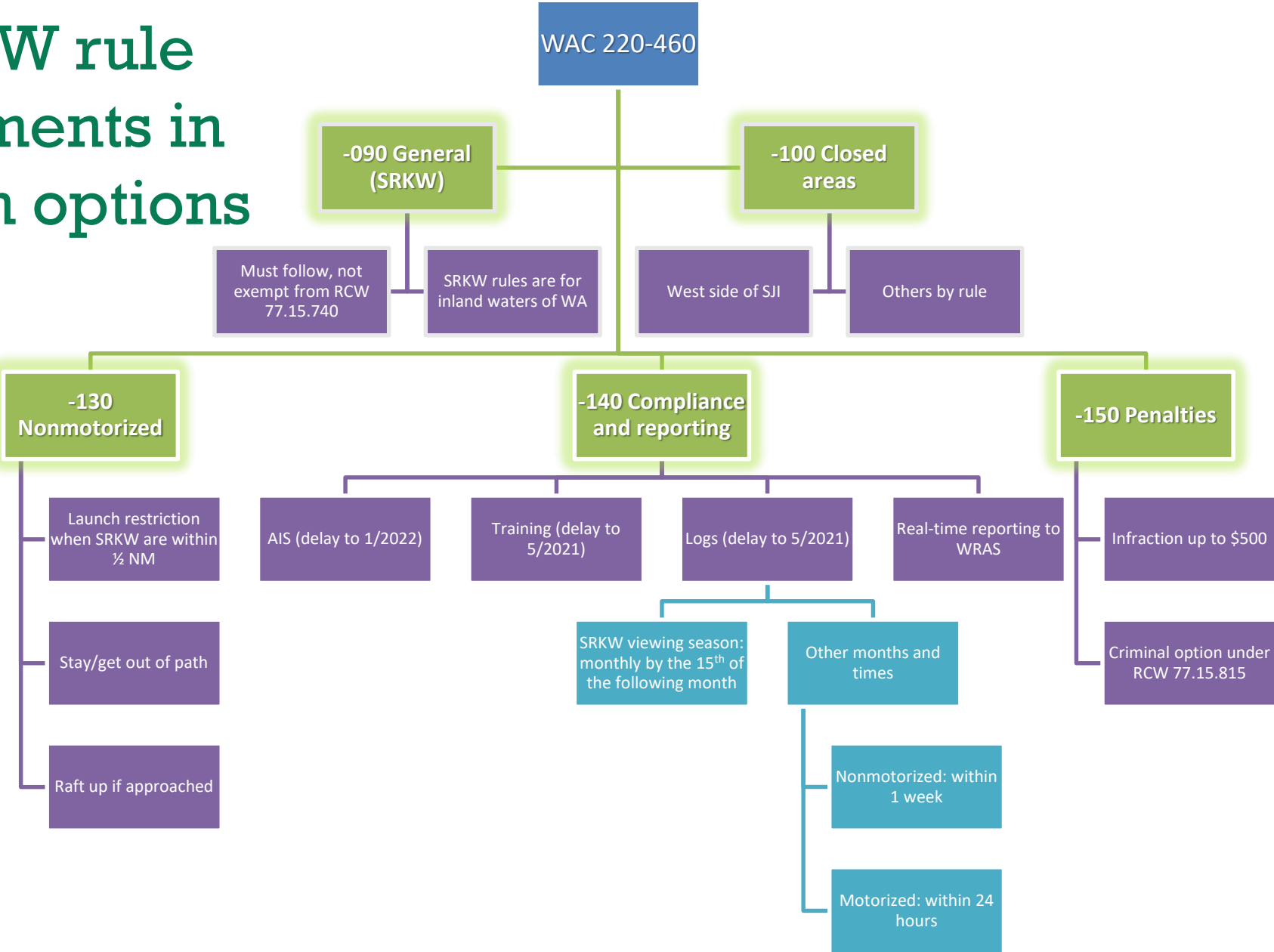
# Vicinity

1/2 nautical mile

Limits on # of motorized CWW within 1/2 nautical mile of *the group* of SRKW



# SRKW rule elements in both options



# Rules for license holders to reduce daily and cumulative impacts on SRKW

Variable	Status quo	Proposed rules
<b>General</b>	Speed and distance rules in place (2019)	Speed and distance rules must be followed; SRKW rules apply in the inland waters of WA
<b>Geographic restrictions</b>	Unrestricted, but voluntary no-go zone on the west side of San Juan Island	Close the west side of San Juan Island to CWW vessels, allowing a 100-yard corridor for human-powered vessels.
<b>Human-powered vessels</b>	Distance rules in place (2019)	No launching within ½ nautical mile of SRKW; raft-up requirement if SRKW are encountered; no positioning or paddling in the path of SRKW.
<b>Compliance and reporting</b>	No requirements	AIS requirement (2022); log and report each instance in the vicinity of SRKW; real-time reporting to Whale Report Alert System; WDFW training required.
<b>Penalties</b>	Criminal citations of RCW 77.15.740 and RCW 77.15.815	Criminal (under RCW 77.15.740 or RCW 77.15.815) or civil citations (with fines of up to \$500).





# Inland Waters of WA



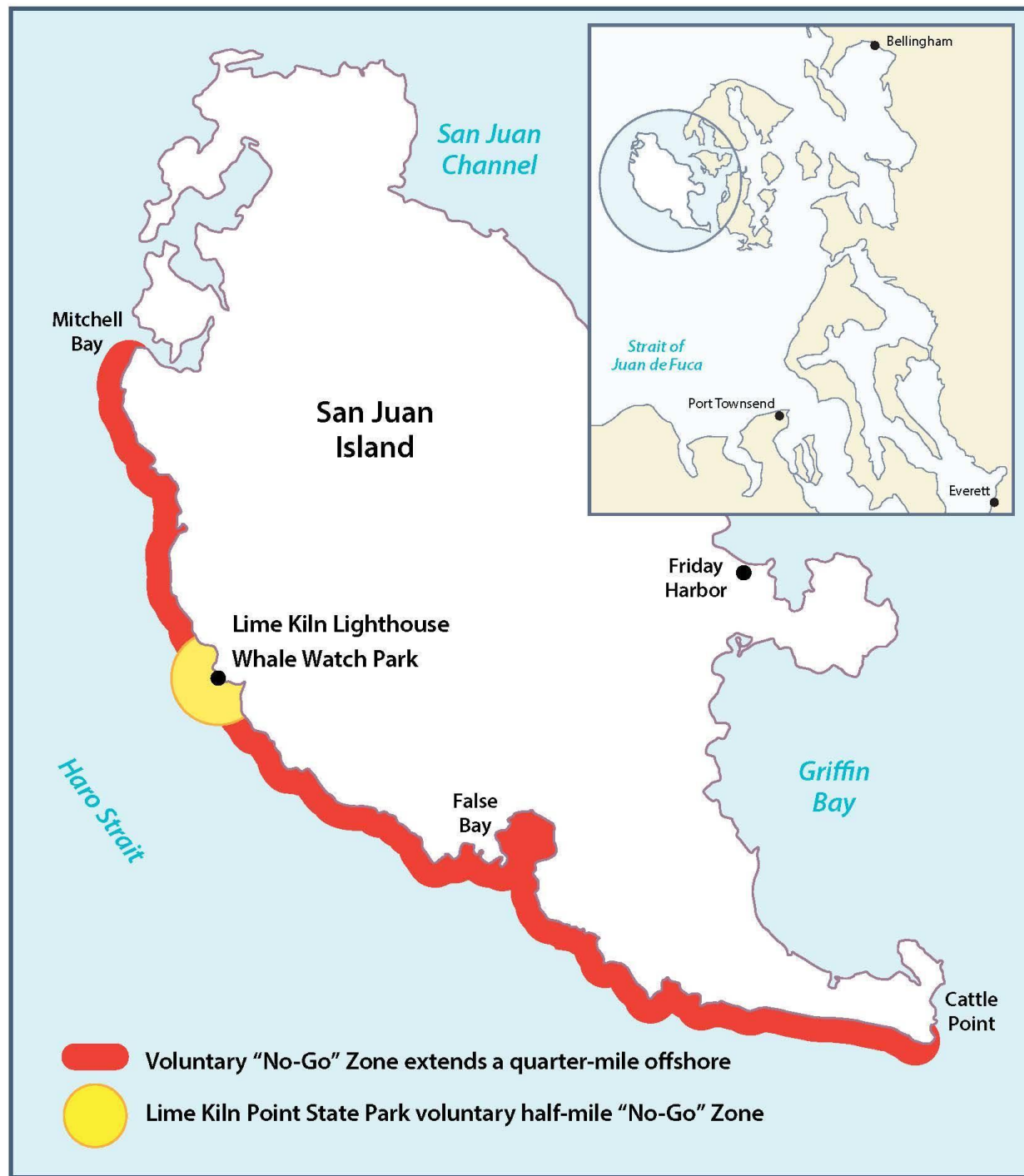


# Geographic restrictions

*"The **areas** in which commercial whale watching operators may operate."*

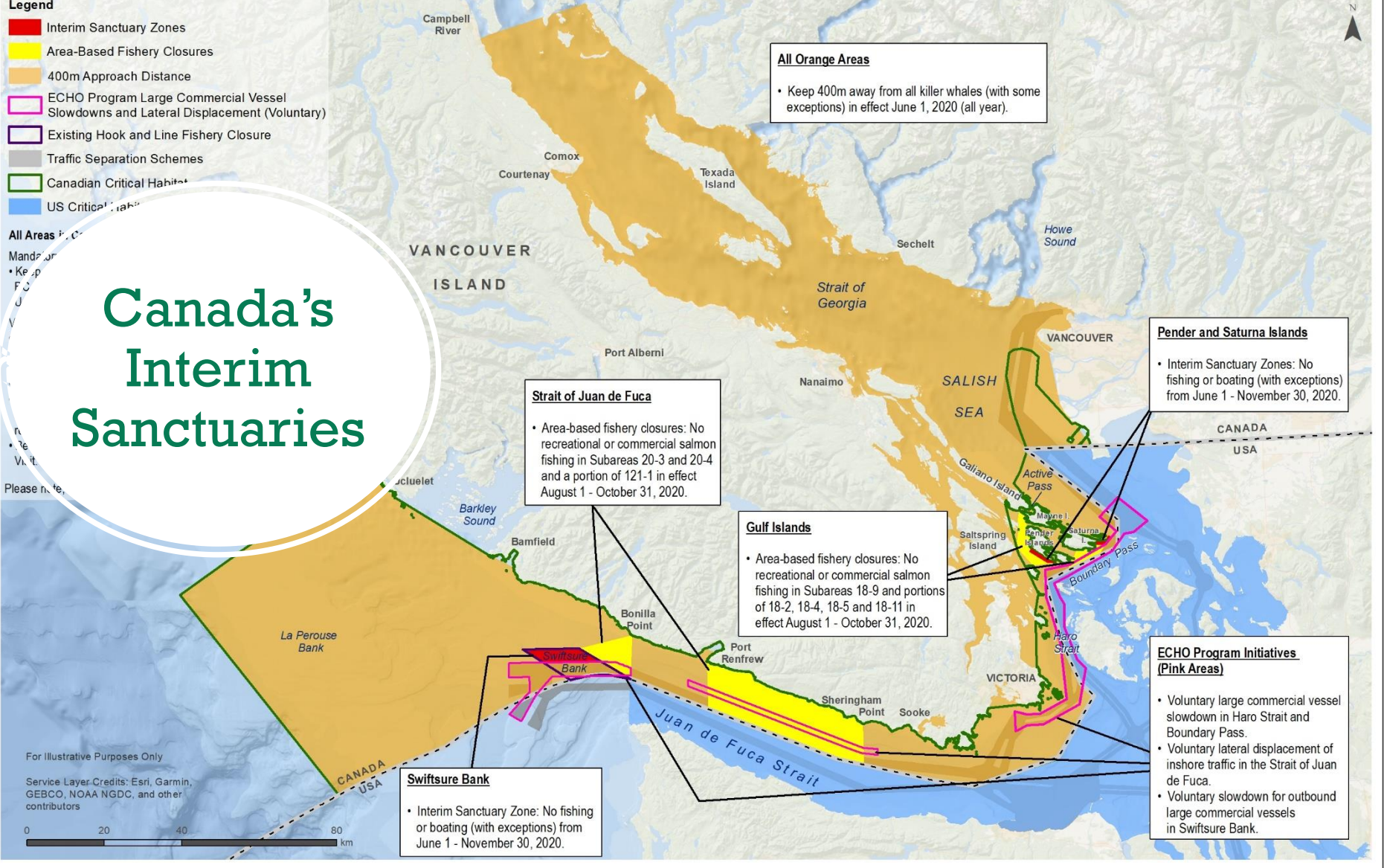
The zone extends 1/4 mile offshore from Mitchel Point to Cattle Point, with a 1/2 mile buffer around Lime Kiln Point State Park.

Currently a voluntary best practice



- Legend**
- Interim Sanctuary Zones
  - Area-Based Fishery Closures
  - 400m Approach Distance
  - ECHO Program Large Commercial Vessel Slowdowns and Lateral Displacement (Voluntary)
  - Existing Hook and Line Fishery Closure
  - Traffic Separation Schemes
  - Canadian Critical Habitat
  - US Critical Habitat

# Canada's Interim Sanctuaries



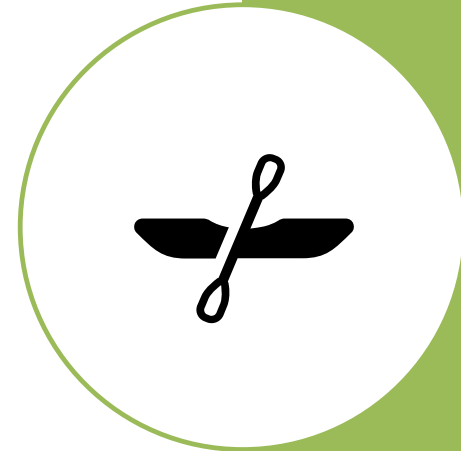
## Overview of 2020 management measures to protect Southern Resident Killer Whales



# Human-powered vessels



- Guide is responsible for all vessels in the tour
- Launch restriction when SRKW are within  $\frac{1}{2}$  nautical mile
- No paddling or positioning in the path of a SRKW
- If approached by a SRKW, move out of path, move as close to shore as possible, raft up





# Compliance and reporting

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## Logs of all SRKW “vicinity instances”

- Includes details such as time spent in the vicinity and interactions with other boaters
- Reporting for the month due the 15<sup>th</sup> of the following month during the SRKW-viewing season
- Motorized vessel vicinity instances outside the allowed viewing days and hours must be reported within 24 hours
- Nonmotorized vessel vicinity instances outside the SRKW-viewing season are due within 1 week





# Compliance and reporting

## AIS vessel tracking (delay to 1/2022)

- ~\$1,000 but could be difficult during COVID economic downturn
- Half the fleet already has AIS per Coast Guard requirement

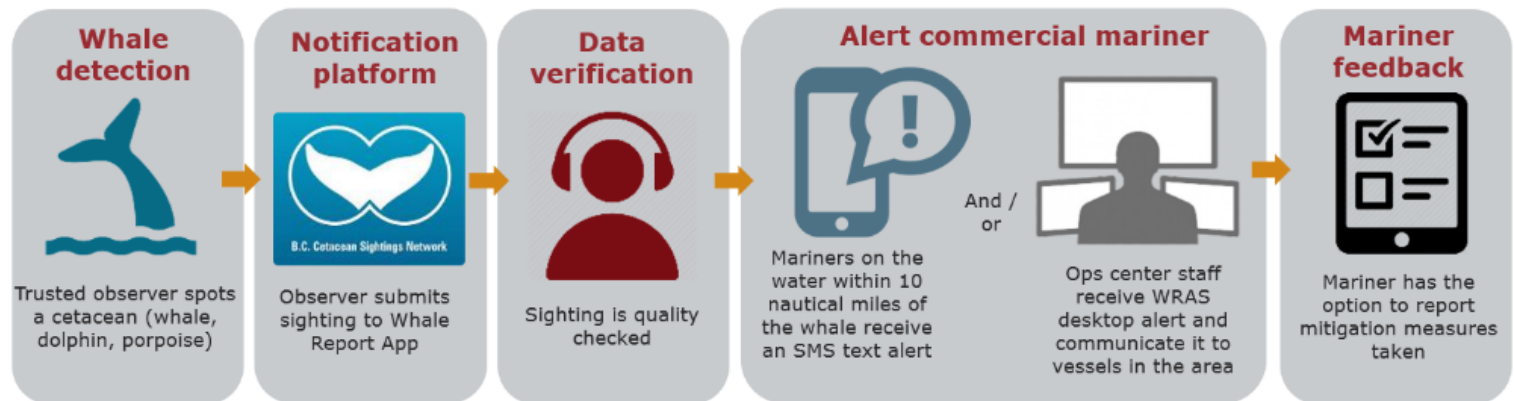
## WDFW training (delay to 5/2021)

## SRKW sightings sent real-time to the Whale Report Alert System



Automatic Identification System  
Class B

Whale Report Alert System  
B.C. Cetacean Sightings Network



- Criminal citations under 77.15.815 or 77.15.740
- Up to \$500 penalties for infractions

Washington Department of Fish and Wildlife

Home / News / Give pregnant killer whales space to forage, agencies and partners request

## Give pregnant killer whales space to forage, agencies and partners request

**Date**  
Aug 10, 2020

**Contact**  
Eryn Couch, WDFW, 360-890-6604

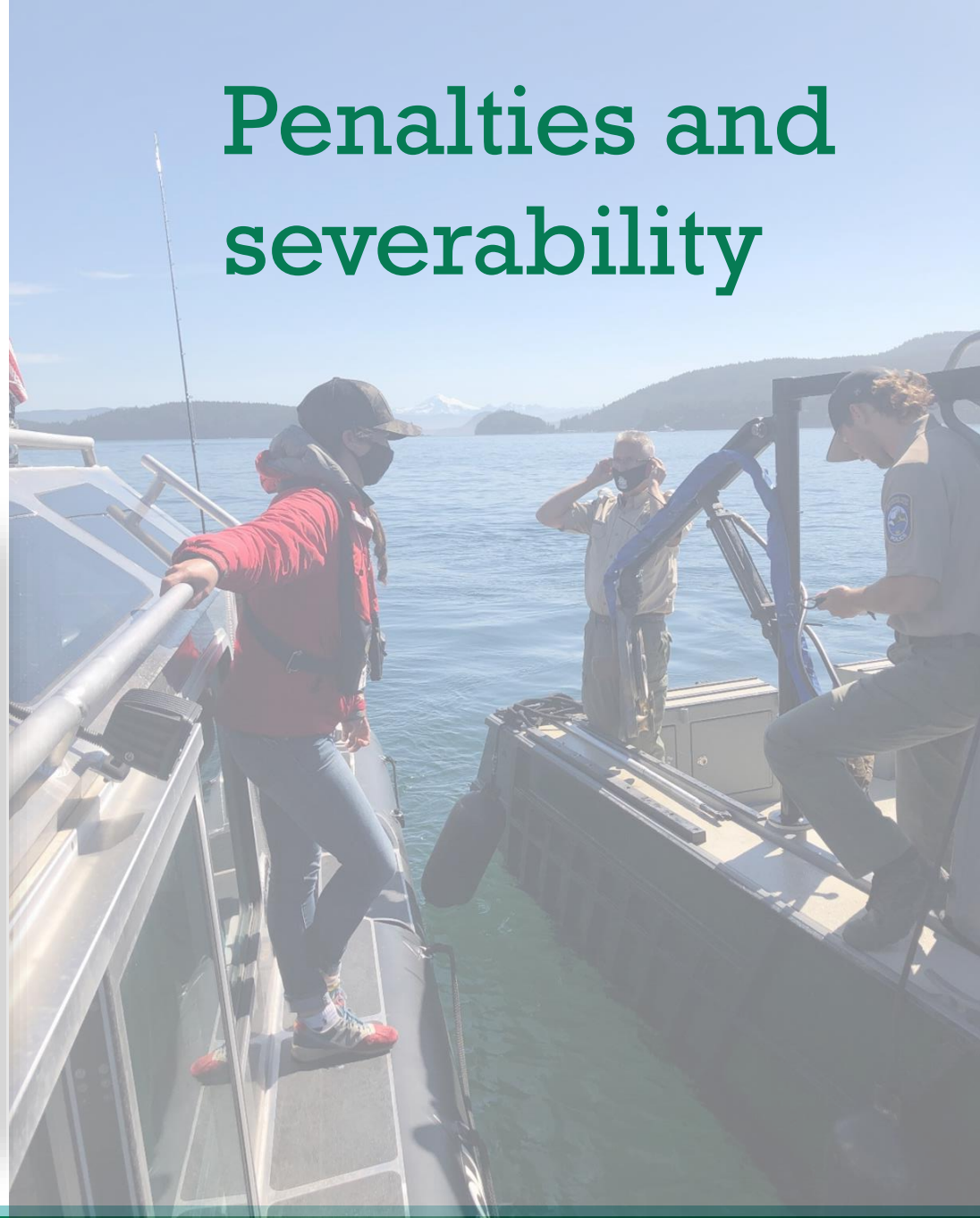
Washington regulations require boaters stay 300 yards and behind.

With news of multiple pregnancies among the endangered Southern Resident killer whales, the Washington Department of Fish and Wildlife, NOAA Fisheries, whale watch organizations, and other agencies are asking boaters to steer clear of the whales and give them extra space on the water at this time.

"The whales, for the first time in a couple years, are very present, unfortunately having a lot of people get too close to orcas within these regulated boundaries," said Washington Department of Fish and Wildlife Police Captain Alan Myers said. "That bubble of protection is extremely important in order to keep boaters either intentionally or unintentionally from interfering with these animals while they feed, forage, and transit Washington's waters."

A photogrammetry team from SR3 and Southall Environmental Associates last month [documented pregnancies](#) in all three Southern Resident pods. While this is promising news, research has shown that many Southern Resident pregnancies fail or the calves do not survive beyond their first year.

While the lack of sufficient Chinook salmon prey is a threat to the whale population, vessel traffic can interrupt echolocation clicks the whales use to track and capture fish. In the presence of vessel traffic, the whales have been



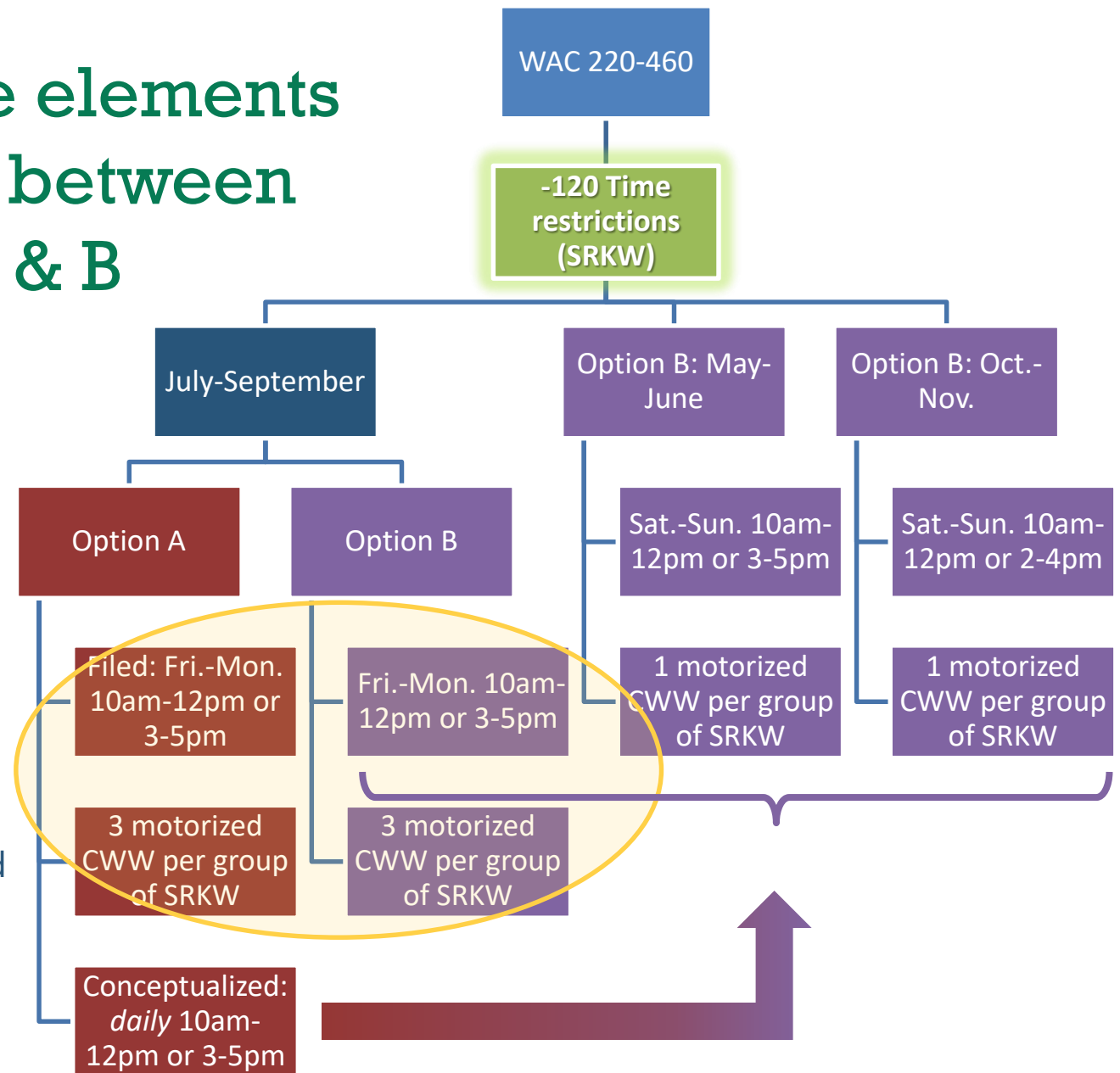
# Penalties and severability



# SRKW rule elements that differ between Options A & B

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.

Option B was developed in response to feedback received during the comment period on **pre-filed draft rules**.



# Options A and B

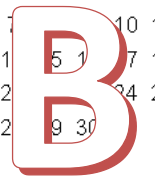
Variable	Option A: July-September (3 months)	Option B: May-November (7 months)
<b>SRKW viewing hours</b> by motorized CWW at closer than ½ nautical mile allowed only during these months, days, and times	July-September: 10 a.m.-12 p.m. and 3-5 p.m. <b>Friday-Monday</b> (as filed, but recommended adjustment to <i>daily viewing</i> July-September)	July-September: 10 a.m.-12 p.m. and 3-5p.m. <b>Friday-Monday</b>
	N/A	<b>May-June:</b> 10 a.m.-12 p.m. and 3-5p.m. <b>Saturday-Sunday</b> <b>Oct.-November:</b> 10 a.m.-12 p.m. and 2-4 p.m. <b>Saturday-Sunday</b>
	Each company can view in one of these two periods in a day.	Each company can view in one of these two periods in a day.
<b>Number of motorized CWW vessels</b> that can be within ½ nautical mile of a group of SRKW at once	July-September: Three	July-September: Three
	N/A	<b>October-November and May-June: One</b>
	Zero if calf of less than 1 year (and/or with vulnerable whales, by emergency rule)	Zero if calf of less than 1 year (and/or with vulnerable whales, by emergency rule)



April							May							June							
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	
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5	6	7	8	9	10	11	3	4	5	6	7	8	9	7	8	9	10	11	12	13	
12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20	
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27	
26	27						24	25	26	27	28	29	30	28	29	30					
							31														



April							May							June								
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su		
			1	2	3	4							1	2			1	2	3	4	5	6
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12	13	14	15	16	17	18	10	11	12	13	14	15	16	14	15	16	17	18	19	20		
19	20	21	22	23	24	25	17	18	19	20	21	22	23	21	22	23	24	25	26	27		
26	27	28	29	30	31		24	25	26	27	28	29	30	28	29	30						
							31															



July							August							September						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
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12	13	14	15	16	17	18	9	10	11	12	13	14	15	13	14	15	16	17	18	19
19	20	21	22	23	24	25	16	17	18	19	20	21	22	20	21	22	23	24	25	26
26	27	28	29	30	31		23	24	25	26	27	28	29	27	28	29	30			
							30	31												

**Recommended adjustment:  
daily viewing July-September**

July							August							September						
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su
		1	2	3	4								1			1	2	3	4	5
5	6	7	8	9	10	11	2	3	4	5	6	7	8	6	7	8	9	10	11	12
12	13	14	15	16	17	18	9	10	11	12	13	14	15	13	14	15	16	17	18	19
19	20	21	22	23	24	25	16	17	18	19	20	21	22	20	21	22	23	24	25	26
26	27	28	29	30	31		23	24	25	26	27	28	29	27	28	29	30			
							30	31												

October							November							December														
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su								
				1	2	3							1	2	3	4	5							1	2	3	4	5
4	5	6	7	8	9	10	8	9	10	11	12	13	14	6	7	8	9	10	11	12	6	7	8	9	10	11	12	
11	12	13	14	15	16	17	15	16	17	18	19	20	21	13	14	15	16	17	18	19	13	14	15	16	17	18	19	
18	19	20	21	22	23	24	22	23	24	25	26	27	28	20	21	22	23	24	25	26	20	21	22	23	24	25	26	
25	26	27	28	29	30	31	29	30						27	28	29	30	31			27	28	29	30	31			

October							November							December															
Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su	Mo	Tu	We	Th	Fr	Sa	Su									
					1	2	3							1	2	3	4	5							1	2	3	4	5
4	5	6	7	8	9	10	8	9	10	11	12	13	14	6	7	8	9	10	11	12	6	7	8	9	10	11	12		
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18	19	20	21	22	23	24	22	23	24	25	26	27	28	20	21	22	23	24	25	26	20	21	22	23	24	25	26		
25	26	27	28	29	30	31	29	30						27	28	29	30	31			27	28	29	30	31				

# Options A & B

SRKW viewing by motorized CWW at closer than 1/2 NM

Two, two-hour viewing periods per highlighted day

Limits on # of motorized CWW per group of SRKW:

**yellow=3**  
**blue=1**



In WA waters,  
Canadian operators  
need licenses & the  
SRKW rules apply.

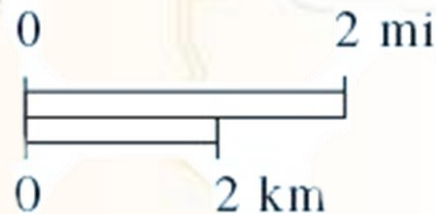
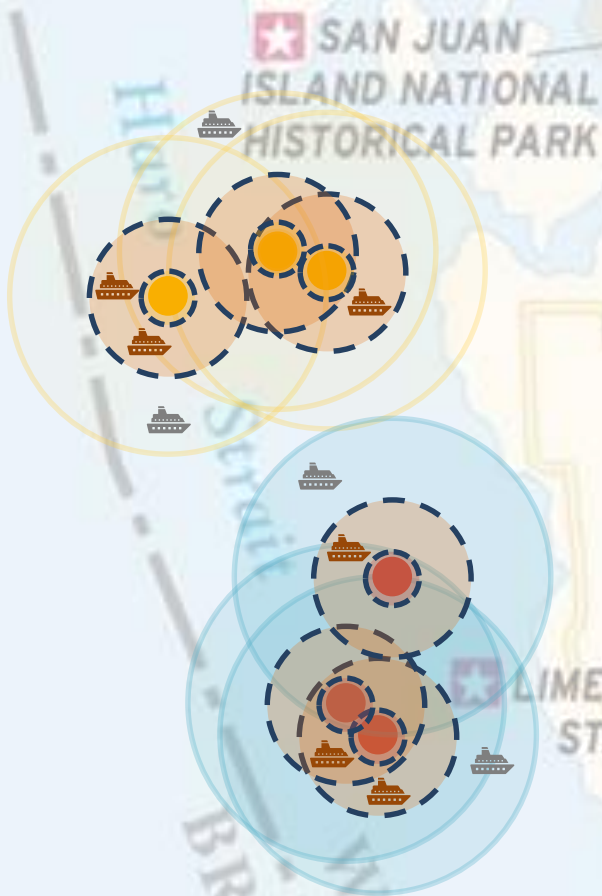
# Limits on # of vessels in the vicinity of SRKW

July-September (both options):

**3 motorized commercial whale watching  
vessels *per group* of SRKW.**

Option B (May-June, Oct.-Nov.):

**1 motorized commercial whale watching  
vessel *per group* of SRKW.**







# **Analysis and feedback on the proposed rules for commercial viewing of SRKW**



# Small Business Economic Impact Statement (SBEIS)



ANALYSIS OF THE **COST OF COMPLIANCE** FOR BUSINESSES, INCLUDING COSTS OF EQUIPMENT, SUPPLIES, LABOR, PROFESSIONAL SERVICES AND INCREASED ADMINISTRATIVE COSTS



CONSIDERATION OF **WHETHER COMPLIANCE WITH THE PROPOSED RULE WILL CAUSE BUSINESSES TO LOSE SALES OR REVENUE**



DESCRIPTION OF **HOW THE AGENCY WILL INVOLVE SMALL BUSINESS** IN THE DEVELOPMENT OF THE PROPOSED RULE



LIST OF **INDUSTRIES REQUIRED TO COMPLY** WITH THE PROPOSED RULE



ESTIMATE OF THE **NUMBER OF JOBS THAT WILL BE CREATED OR LOST** AS THE RESULT OF COMPLIANCE WITH THE PROPOSED RULE



DESCRIPTION OF **THE STEPS TAKEN TO REDUCE OR MITIGATE COSTS** FOR SMALL BUSINESSES OR AN EXPLANATION WHY THE AGENCY CAN'T REDUCE COSTS





# Small Business Economic Impact Statement (SBEIS)

In complying with the **Regulatory Fairness Act's** requirements when proposing a new rule, a state agency must determine whether the proposed rule would impose more than "minor" costs.

WDFW contracted with economic firm IEC to do the economic viability analysis and SBEIS.



## DESCRIPTION OF AFFECTED INDUSTRY

TYPE OF BUSINESS	# OF AFFECTED BUSINESSES <sup>1</sup>	ESTIMATED EMPLOYMENT <sup>2</sup>	PERCENT OF BUSINESSES DEFINED AS SMALL <sup>3</sup>	AVERAGE ANNUAL REVENUES PER BUSINESS <sup>4,5</sup>	MINOR COST THRESHOLD <sup>6</sup>
Primary Motorized Whale Watch <sup>7</sup>	21	160	100 percent	\$1.1 million	\$3,300
Kayak Touring	12	60	100 percent	\$235,110	\$700
Incidental Whale Watch	7	35	100 percent	\$113,680	\$340



# SBEIS

- **Existing best practices:** no-go zone, kayak positioning and raft-up
- **Unlikely to effect:** number of boats, days and hours with allowed SRKW viewing closer than ½ NM
- **May result in impacts:** kayak ½ mile launch restriction

If the proposed rule directly limits the level of activity in the industry (i.e., the number of tickets that can be sold), this may result in revenue impacts that should be considered in the context of this SBEIS. As described above, **rule elements that limit viewing of Southern Residents only, or that limit the geographic area where CWW activity may occur, will not limit overall CWW activity because substitute viewing opportunities (both geographic and species-based) are available.**

If launches must be delayed and relocation to an alternate launch location is not logistically possible, there is the potential that trips could be cancelled, resulting in decreased activity and reduced revenues for these businesses. However, **given the relatively infrequent presence of Southern Residents in Washington's inland waters generally, tour launch delays are unlikely to occur frequently.**



Rule element	Cost description	Estimated cost
<b>AIS</b> ( <i>only element that results in more than minor cost, for smaller primary CWW</i> )	Initial unit cost; installation; annual maintenance; user training	Primary & Incidental: Unit cost (2020\$) approx. \$750 for Class B. Installation = \$225/unit for Class B; Training = \$110/user; Annual O&M = \$250 annually/device. Costs only incurred by businesses that do not currently use AIS.
Training	Staff time and travel expenses associated with viewing and refreshing training	Primary & Kayak: <i>De minimis</i> additional cost.
Logs	Staff time associated with documentation and info transfer to WDFW	Primary: <i>De minimis</i> - most info is already collected, and little effort to transfer data Incidental & Kayak: <i>De minimis</i>
Real-time reporting	Time associated with collating and communicating information to WRAS	Primary: <i>De minimis</i> effort beyond current practices Incidental: <i>De minimis</i> time commitment

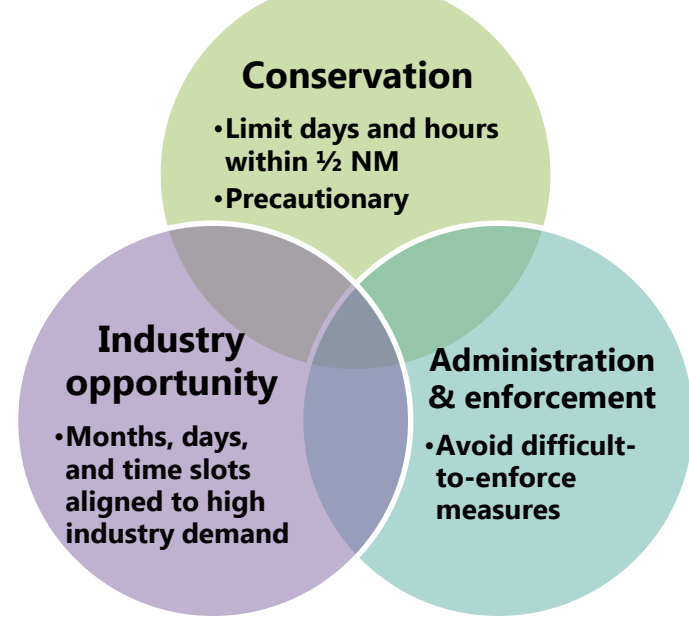
# Small Business Economic Impact Statement (SBEIS)





# Initial public comment themes (10/21-11/28)

- Full summary in the meeting packet.
- The analysis will be updated once the comment period closes on December 5.



Sentiment	Number of comments
Support for the rules	<b>3,582</b> (252 individual comments +1,485 WEC letters, +1,586 petition signatories, +254 CBD letters, +5 form letters)
Support Option B	<b>10</b>
Support Option A (or "Option A as filed")	<b>1,934</b> (190 individual comments +1,485 WEC letters, +254 CBD letters, +5 form letters)
Promoting Option A with additional restrictions	<b>1,567</b> (82 individual comments +1,485 WEC letters)
Promoting a suspension of SRKW viewing	<b>1,920</b> (80 individual comments +1,586 petition signatories, +254 CBD letters)

Sentiment	Number of comments
Opposition to both Options A and B	<b>201</b> (132 individual comments +69 naturalist letter signatories)
Positive value of commercial whale watching	<b>140</b> (71 individual comments +69 naturalist letter signatories)
Promoting a counter-proposal to Options A and B	<b>28</b>
Redirecting focus to other issues such as prey availability	<b>34</b>



Variable	Suspended	Advisory Committee Proposal L	Multiple public comments	Option A: July-September	Option B: May-November	Advisory Committee Proposal J	Multiple public comments	Status Quo
Months	0	12	3	3	7	12	12	Unlimited
Days per week	0	7	4	4 (or 7 - staff recommended change)	4 July-Sept. 2 May-June and Oct.-Nov.	7	7	Unlimited
Hours per day	0	10am- 1 hour before sunset	4	4	4	Unlimited, 45 minutes in vicinity at a time	Unlimited, 45 minutes in vicinity at a time	Unlimited, voluntary 45 minutes in vicinity
Number of boats	0	1, if WDFW nor Soundwatch are present	1	3	3 July-Sept. 1 May-June and Oct.-Nov.	3	5	Unlimited, voluntary reduction to average of ~5
Number of boats (special)	0	0 in low visibility	0 w/ calf, pregnant and vuln. whales, 0 in low visibility	0 w/ calf 0 with vuln. whales, by emergency rule	0 w/ calf 0 with vuln. whales, by emergency rule	N/A	N/A	Unlimited
Geographic	All areas	West side of SJI	West side of SJI	West side of SJI	West side of SJI	West side of SJI	West side of SJI when SRKW are present	West side of SJI voluntary
Compliance	N/A	AIS, WRAS, WDFW, whale flag	AIS, WRAS, WDFW	AIS, WRAS	AIS, WRAS	WDFW	WDFW, whale flag	Voluntary

# Putting the proposal in context





SR3/NOAA  
NMFS Permt # 19091

**Northwest Indian Fisheries Commission:**

Focused on the no-go zone, compliance monitoring, and enforcement

**Puget Sound**

**Partnership:** Supported a modified Option B

**San Juan County:**

Supported Option B and focused on compliance monitoring

# Intergovernmental comments





# Recommended adjustments



Section	Original	Recommended adjustment
WAC 220-460-010	--	Added definition for “Inland waters of Washington”
WAC 220-460-090	--	Added section to define geographic scope of SRKW viewing rules
WAC 220-460-120(2) Option A	Limited viewing in July-September to Friday-Monday	Removed “on Fridays, Saturdays, Sundays, and Mondays”
WAC 220-460-140(3)(b)(iv)	Detailed reporting requirements for vicinity instances outside permitted days/times	Split into section for motorized vessels (iv) and nonmotorized vessels (v) to improve clarity in requirements

The full list of recommended adjustments is available in the Commission briefing packets.



# Timeline



4/22 2SSB 5577 passes  
7/28 Bill effective date  
10/9-20 Application period for Advisory Committee members  
11/19 Advisory Committee members selected

**April-December 2019**

9/15 Adaptive Management recommendations from the Science Panel  
9/23 Draft SEPA EIS published for public comment

**September**

**12/4-5 Fish and Wildlife Commission hearing on proposed rules**  
**12/11 Final EIS publication**  
**12/18 Scheduled decision**

**December**

**January - August 2020**

1/17 – 7/8 Advisory Committee meetings  
4/27 & 5/6- Science Panel stakeholder workshops  
6/8 Science Panel feedback to Advisory Committee  
7/31 Science Panel feedback on two rule packages proposed in the Advisory Committee process

**October – November 2020**

10/1-8 Early draft rules & public comment  
10/19 Public Meeting  
10/21 CR-102 with draft rules and SBEIS filed  
10/23 SEPA public comment ends

**January**

Rules go into effect  
Implementation  
E-rules if needed





# Broad Analysis of Options

## SEPA Environmental Impact Statement (EIS)

- **Final EIS expected 12/11/2020**
- The EIS contains analysis of the full spectrum of options and alternatives WDFW was asked to consider in the legislation.
- The final EIS will include an analysis and response to public comments on the draft EIS.





*Staff Acknowledgement:* Nate Pamplin, Tom McBride, Nelson Falkenburg, Chalee Batungbacal (Director's Office), Hannah Anderson and Jessica Stocking (Wildlife Diversity), Amy Dona (AGO), Kristin Nielsen, Cheri Rakevich, Peter Vernie, Ben Power, and formerly Michele Culver (TFM), Lisa Wood (SEPA), Captain Myers, Captain Anderson, Sergeant Kimball, and formerly Russ Mullins (Enforcement), and several others who have been tracking this process and offering support as needed, including Dir. Susewind, Deputy Dir. Windrope, R6 Dir. Larry Phillips, and R4 Dir. Brendan Brokes

*Partner Acknowledgement:* Advisory Committee members, tribes and intergovernmental partners, many other organizations and members of the public who have weighed in to advise the process over the last year

# Questions?

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Washington  
Department of  
**FISH and  
WILDLIFE**

