

**Note: This is the Jan. 8, 2021 draft version that incorporates edits in track-changes received by F&W Commissioners through Jan. 22.**

**DRAFT: Washington Fish and Wildlife Commission Policy Position Statement on the adoption of commercial whale watching rules to protect Southern Resident killer whales**

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 hugely tragic loss grieved for generations. Yet, the SRKW population has declined to a point where it hovers perilously close to that unconscionable-unfortunate 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 alarmingly few viable breeding females are 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 Salish Sea soundscape. Without drastic action across all of the threats to SRKW recovery, this 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 food for SRKW, protecting and restoring salmon habitat, addressing impacts from dams, and enforcing on-the-water regulations to encourage responsible boating and further protect SRKW.

One of many efforts to address vessel noise and disturbance includes reducing impacts from commercial whale watching of SRKW. To this end, the Legislature directed WDFW in 2019 to adopt rules for commercial viewing of SRKW 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 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 new chapter of the Washington Administrative Code (WAC) containing these rules is located [here](#).

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 measures into rules, though it recognizes their importance and recommend commercial operators continue to follow these 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.

~~In addition to adopting rules to reduce immediate-vicinity noise impacts on SRKW from commercial whale watching vessels, the Commission considered how reducing noise from private vessels engaged in whale watching might be accomplished. The Commission ~~also~~ recognizes that watchable wildlife businesses provide an on-the-water opportunity for people to form lasting memories and emotional connections to the majestic fauna and environs in Washington State and support access to the outdoors for Washingtonians and out of state visitors alike. Recognizing that ~~many incidents a significant amount of noise pressure~~ around SRKWs can come from recreational boaters, we encourage those interested in viewing SRKWs ~~from private vessels to voluntarily comply with noise reduction regulations applicable to commercial whale watching vessels as to days and times open. For example, there will now be a nine-month closure to SRKW watching activity by commercial whale watching vessels—the Commission intent is to seek that private vessels also observe this closure, albeit voluntarily. to opt not to view SRKW 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. While these rules restrict commercial viewing of SRKW, operators will have tours year round with~~ Another example may be when there are more than three vessels within a half nautical mile of SRKW, increasing noise and disturbance impacts, recreational boaters should voluntarily consider the number of other boats present before deciding to view SRKW consistent with the ‘Be Whale Wise’ guidelines. ~~As is the case with commercial whale watching vessels, recreational boaters~~ have ample opportunities to view humpbacks, minke, gray whales, and the transient population of orcas.~~

~~For members of the public who do opt to get out on the water in a private vessel, the Commission similarly acknowledges the importance of recreating responsibly. The Commission asks the Department to continue its partnership with the recreational boating community and~~

~~ports to promote 'Be Whale Wise' whale viewing guidelines. Further, the Department should work with those partners to determine the best way to promote voluntary measures for the recreational boating community that align with the commercial whale watching restrictions for viewing SRKW. For example, there will now be a nine-month closure to SRKW watching activity by commercial whale watching vessels, and the Commission encourages recreational vessels to also observe this closure, albeit voluntarily. Another example may be when there are more than three vessels within a half nautical mile of SRKW, increasing noise and disturbance impacts, recreational boaters should voluntarily consider the number of other boats present before deciding to view SRKW consistent with the 'Be Whale Wise' guidelines.~~

Going forward, the Commission supports the Department's 2021-23 operating budget request to conduct monitoring and assessment and to seek funding to bridge the uncertainties in the science about whether commercial whale watching vessels attract boats and/or prevent and deter potential impacts from other boaters. The Commission also requests that the Department study the whale watching industry's potential "sentinel role" to better assess whether allowing more or less viewing (and potential viewing-related noise and disturbance) of SRKW is justified or mitigated by this role.

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 Legislature directed the Department 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. An aspect the Commission asks the Department to evaluate is whether limiting entry for commercial whale watching licenses would further aid in reducing vessel disturbance while also maintaining economic viability of the whale watching industry.

The Commission is committed to reassessing the rules as the SRKW population changes and/or new information reframes our understanding of the issues. The Commission has tasked the Department to provide an annual progress report from staff evaluating the intended progress on Commission decisions in regard to these rules and on the broader SRKW recovery effort in general.

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, tribal, and federal government entities, and an extensive network of nonprofit and industry partners to be successful.