

FINAL MEMORANDUM | January 28, 2025

TO Julie Watson, Killer Whale Policy Lead, Washington Department of Fish and Wildlife
FROM Jen Kassakian, Industrial Economics, Inc.
SUBJECT Updated Viability Analysis of the Commercial Whale Watch License Program

In 2019, the Washington State Legislature passed a law requiring the Washington State Department of Fish and Wildlife (WDFW) to adopt regulations for viewing southern resident killer whales (SRKW) in Washington’s inland waters for holders of the commercial whale watch (CWW) license established in RCW 77.65.615. RCW 77.65.620 requires that “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*” (emphasis added). In response to this legal requirement, WDFW contracted with IEc to develop the 2020 memorandum, *Economic Viability of Commercial Whale Watching License Holders* (“viability analysis”). Consistent with this legal requirement, that analysis provided WDFW and the Commercial Whale Watching License Program Advisory Committee (Advisory Committee) with information on the implications of the proposed rule alternatives on the economic viability of the U.S.-based CWW industry, finding that rule elements that would exclusively limit viewing of SRKW may result in some costs, but that the industry would likely be able to adapt to such requirements while remaining economically viable *in an average year*.

Since that time, WDFW has conducted two adaptive management reviews as required by RCW 77.65.620 to consider “the effectiveness of and any recommendations for changes to the whale watching rules, license fee structure, and approach distance rules” As a result of these reviews, both the Legislature and WDFW have taken action to modify the program in ways that were not evaluated in the August 2020 viability analysis. Additionally, the 2020 viability analysis was focused on the costs of the regulations to be implemented by WDFW per RCW 77.65.620, but did not address other program components (e.g., license fees) that were dictated outside of that rulemaking process.¹ The purpose of this memorandum is to provide a more comprehensive assessment of the effect of the Commercial Whale Watch License Program on the viability of the industry. Accordingly, this memorandum considers the potential costs associated with components of the program not addressed in the August 2020 viability analysis, and whether inclusion of those costs may affect the economic viability of the commercial whale watch and marine paddle tour industries.

Defining Economic Viability

As described in the 2020 memorandum, *Economic Viability of Commercial Whale Watching License Holders*, we define “economic viability” as the ability to maintain commercial whale watching as a profitable industry. That is, we consider the industry to cease being economically viable when the annual costs of the rule

¹ The Legislature established fees for Commercial Whale Watch Business licenses in RCW 77.65.615.

(operational costs + reduced revenue) approach expected annual profits. This analysis thus evaluates program costs against the average annual industry profit as a benchmark for economic viability.

August 2020 Viability Analysis

The August 2020 viability analysis found that rule elements under consideration that would exclusively limit viewing specifically of SRKW may result in some costs, but that the industry would likely be able to adapt to such requirements and maintain its operations *in an average year* given the estimated average industry profits of \$1.7 million to \$3.5 million for the motorized whale watch sector and \$320,000 to \$630,000 for the paddle tour sector. It further found that although the industry is not dependent on SRKW viewing in particular, it is reliant on the ability to participate in whale watching more broadly. Thus, the industry would be less able to adapt to restrictions that reduce access to whale watching in general.

Of the specific rule options that were being considered at the time, the analysis found that four options had the potential to threaten economic viability of the industry under certain circumstances:

- Area closures that were not based on the presence of SRKW, depending on size and extent to which the area is used for commercial whale watching;
- Requiring purchase, installation, and use of Automatic Identification Systems (AIS) before the industry had a chance to recover from the economic effects of the COVID-19 pandemic;
- If AIS were required on each individual kayak participating in a given tour; and
- If the required standards of experience or training, educational requirements, and reporting of SRKW presence for the Kayak Tour Sector resulted in a need for businesses to hire additional staff.

Implementation of the regulations ultimately promulgated for Commercial Whale Watch License holders in December 2020 did not include any of these elements identified as having the potential to threaten the viability of the industry. Specifically:

- The area closure included in the promulgated regulations is relatively small and was already observed by the commercial whale watch industry under pre-existing best practice guidelines (WAC 220-460-100);
- WDFW initially deferred implementation of the AIS requirement, allowing time for industry recovery from the COVID 19 pandemic, and ultimately offered up to \$1,000 per unit in reimbursement for system costs (100 percent of year one costs);^{2,3}
- WDFW did not require AIS units on kayaks (WAC 220-460-140); and
- The regulations do not include experience, education, or reporting requirements that would have necessitated hiring of additional staff. The regulations did not outline experience or education requirements, and the required training was made available at no cost to license holders. Businesses described during interviews that license holder reporting requirements are not onerous and do not constitute a meaningful additional cost to businesses.⁴

² WDFW. 2024. 2024 Southern Resident Killer Whale Vessel Adaptive Management Legislative Report. Olympia WA. Downloaded from <https://wdfw.wa.gov/publications/02549>, December 9, 2024.

³ In total, WDFW provided license holders with \$16,266.54 in grants to cover AIS costs (email communication from WDFW staff to IEC on January 22, 2025).

⁴ Interviews with Commercial Whale Watch Business License holders held in September 2024.

Given the foregoing regulatory information, and the continued operation of the commercial whale watch industry in the years following license program implementation, the program was not found to affect the economic viability of the industry.

Effect of Additional Program Components on the Viability of the Industry

As described previously, certain program elements were not considered in the 2020 viability analysis. This is due either to the program element having been established outside of the rulemaking process that was the focus of the August 2020 viability analysis, or because the program component was implemented more recently through the adaptive management process. In this section, we consider whether the program components not considered in the 2020 viability analysis may affect the conclusion that the License Program and associated regulations is unlikely to threaten the economic viability of the industry.

License Fees

As required by RCW 77.65.620, WDFW's August 2020 viability analysis considered the effect of the regulations it was directed to promulgate for license holders on the viability of the industry. While this assessment thus considered the costs associated with those regulations proposed by WDFW consistent with RCW 77.65.620, it did not incorporate elements of the program established through other processes, including the license program fees established by the Washington State Legislature under RCW 77.65.615. This section considers the effect of those license fees on the economic viability of the industry.

RCW 77.65.615 identifies a license fee schedule applicable to holders of commercial whale watch business, operator, and paddle guide licenses. Although the schedule identifies annual fees of \$200 for businesses (plus a \$70 application fee) and \$25 for each operator and/or paddle guide, WDFW's deferral of fees and reimbursement of past licensing costs have significantly reduced the out-of-pocket costs to industry. Table 1 summarizes the history of documented licensing fees for one example motorized business and one example paddle tour business, and whether those fees were paid, waived, or if paid fees were reimbursed.⁵ These data indicate that businesses did not pay licensing fees in 2021 or 2022, and that fees in 2023 and 2024 were substantially reduced from originally identified levels, and were minimal relative to expected industry profits. During interviews conducted in September 2024, industry representatives identified that WDFW deferrals of fees and reimbursement of past licensing costs substantially reduced these costs to the industry. As a result, when licensing fees are considered collectively with other identified program costs, the Commercial Whale Watch License Program and associated regulations do not threaten the economic viability of the industry.

⁵ WDFW. 2024. 2024 Southern Resident Killer Whale Vessel Adaptive Management Legislative Report. Olympia WA. Downloaded from <https://wdfw.wa.gov/publications/02549>, December 9, 2024.

Table 1. Cumulative History of Commercial Whale Watch Program License Fees

<i>Source:</i>	Original fees per 2019 SB 5577	Fees per 2021 SB 5330		Fees per 2023 SB 5371	Total Paid by Business (2021-2024)
	<i>Year(s):</i>	2021	2021 & 2022	2023	2023 & 2024 (and ongoing) Fees collected
<i>Status:</i>	Not collected	Fees waived during COVID-19 pandemic per SB 5330	Fees refunded to SB 5371 updated fee levels ^a		
Sample CWW operation					
Business	\$200 + \$75 app. fee	\$0	\$200 + \$75 app. fee	\$200 + \$70 app. fee	\$540
Vessel 1: 125 passengers	\$1,825	\$0	\$1,825	\$0	\$0
Vessel 2: 30 passengers	\$525		\$525	\$0	\$0
Vessel 3: 12 passengers	\$325	\$0	\$325	\$0	\$0
Operator 1	included in business license	\$0	\$100 + \$75 app. fee	\$25 app. fee	\$50
Operator 2	\$200 + \$75 app. fee	\$0	\$100 + \$75 app. fee	\$25 app. fee	\$50
Operator 3	\$200 + \$75 app. fee	\$0	\$100 + \$75 app. fee	\$25 app. fee	\$50
Total	\$3,500	\$0	\$3,475	\$345	
Actual Payment (Net)	\$0	\$0	\$345	\$345	\$690
Sample paddle tour operation					
Business	\$200 + \$75 app. fee	\$0	\$200 + \$75 app. fee	\$200 + \$70 app. fee	\$540
30 kayaks	\$425	\$0	\$0	\$0	\$0
Guide 1	included in business license	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 2	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 3	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 4	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 5	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 6	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 7	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Guide 8	\$200 + \$75 app. fee	\$0	\$25 + \$25 app. fee	\$25 app. fee	\$50
Total	\$2,350	\$0	\$675	\$470	
Actual Payment (Net)	\$0	\$0	\$470	\$470	\$940
Source: Washington Department of Fish and Wildlife. 2024. 2024 Southern Resident Killer Whale Vessel Adaptive Management Legislative Report. Olympia, WA.					
Note:					
a. WDFW issued reimbursements totaling \$59,400 for 175 licenses (email communication from WDFW staff to Senator Liz Lovelett on July 6, 2023).					

Proposed Regulatory Updates

On December 4, 2024, WDFW filed a CR 102 proposing several modifications to the Commercial Whale Watch License Program regulations codified in WAC 220-460. As described below, the proposed regulatory updates are not expected to result in additional costs to the industry, and in fact may result in cost savings. As a result, the regulatory changes do not affect the conclusion that the Commercial Whale Watch License Program is unlikely to affect the viability of the industry.

The proposed rule modifies the existing regulations to ensure consistency between the commercial whale watch license holder regulations set forth in the WAC and corresponding components of the RCW. The proposed rule recalibrates the definition of “vicinity” and other distance-related requirements to be relative to 1,000 yards, compared to the existing requirements that are based on a one-half nautical mile distance (1,012 yards). These changes are being proposed for consistency with RCW 77.15.740, and there is not generally a perceptible difference between these distances in the whale watching experience. Consequently, this change does not generate costs. The proposed rule also removes the approach and proximity limitations placed on license holders because they are superseded by the statutory requirements in RCW 77.15.740, which beginning in January 2025 will require all vessels to maintain a minimum distance of 1,000 yards from Southern resident orcas at all times. Removal of the approach and proximity limitations will allow license holders to approach Southern resident orcas within 1,000 yards (i.e., 12 yards closer than what is allowed in the existing rule). Importantly, the forthcoming requirement that all vessels maintain a distance from Southern resident orcas of at least 1,000 yards was implemented through legislative action as part of the general vessel traffic guidelines and is therefore not a change in requirements resulting from the proposed rule or the Commercial Whale Watch License Program.

Other proposed changes are designed to provide greater clarity for requirements already included in the regulations, and to make administrative changes to the Commercial Whale Watch License Program. Changes designed to clarify existing requirements do not generate costs. Similarly, the administrative changes that waive license fees for educational non-profit organizations and makes reporting to WDFW of encounters with Southern resident orcas optional do not generate costs, and in fact may reduce administrative burden and associated costs.

Conclusion

The economic viability of the commercial whale watch industry would be considered threatened if the direct operational costs and/or reductions in revenues resulting from implementation of the Commercial Whale Watch License Program exceed the industry’s annual profits. The August 2020 viability analysis found that the program as implemented would not threaten the viability of the industry. The additional program costs of licensing were not previously considered in the viability analysis. However, WDFW waivers and reimbursements of licensing fees have substantially reduced the costs accrued to the industry. Changes proposed in the forthcoming rulemaking are not expected to result in additional costs to the industry, and in fact may in certain instances result in cost savings. Altogether, we find that the Commercial Whale Watch License Program and associated regulations subject to this analysis have not affected and are not expected to affect the viability of the commercial whale watch and paddle tour industries in Puget Sound.