



## Fish and Wildlife Commission Presentation Summary Sheet

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**Meeting date:**

2/14/2025

**Agenda item:**

Commercial Whale Watching- Briefing and Decision

**Presenter(s):**

Julie Watson, PhD- Killer Whale Policy Lead

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**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 was to reduce the impacts of vessel noise and disturbance on the whales' ability to forage, rest, and socialize while enabling sustainable whale watching. The Commission adopted rules for commercial viewing of SRKW (WAC Chapter 220-460) in late 2020, and the licensing program and rules have been in effect since early 2021.

In November of 2022, the Department issued the first of three SRKW Vessel Adaptive Management reports required under RCW 77.65.620. In the following 2023 Legislative Session, the Washington Legislature passed Senate Bill 5371, which made changes to the commercial whale watching license fee structure, codified some requirements for commercial whale watching, and instated a 1,000-yard vessel buffer around SRKW which went into effect January 1, 2025. Concurrently with the newly effective statute, the Department proposes to update the commercial whale watching rules in WAC Chapter 220-460.

A summary of the proposed revisions and the rationale behind them is below:

- Removing sections 110 and 120, which define the number of vessels at a time and days and hours when commercial whale watching vessels may approach SRKW closer than one-half nautical mile (1,012.69 yards). With the shift to a uniform 1,000-yard vessel setback from SRKW year-round, these sections are no longer relevant.
- Defining a fee waiver process related to RCW 77.65.615(13) for organizations whose relevant commercial whale watching or marine paddle tour activities are solely for bona fide nonprofit educational purposes.
- Adjusting definitions and reporting requirements to strongly encourage, but not require, logging and reporting SRKW encounters to the Department, and to clarify and add the requirement to report SRKW

encounters to the WhaleReport app for the Whale Report Alert System any time a commercial whale watching operator identifies or comes within 1,000 yards of SRKW.

- Making other minor administrative clarifications and refinements within the WAC Chapter.

The Commission had a January 10 briefing on the development of and reasoning behind the proposed rule changes. The presentation was followed by a formal public hearing, which was part of the public comment process that concluded January 13, 2025. In addition to the briefing and hearing on the proposed rule, the January 10 presentation briefed the Commission on the second SRKW Vessel Adaptive Management Report delivered to the Washington Legislature in November of 2024, including a summary of the work of the Orca Regulations Communications Advisory Group (ORCA Group) that met throughout 2024 and advised the Department on its boater outreach and education efforts regarding the 1,000-yard vessel setback from SRKW.

This agenda item will include a short staff orientation, including a summary of feedback received through the public comment period, followed by time for the Commissioners to deliberate and potentially adopt a final rule. Considering the feedback offered in the public comment period, staff are not proposing additional modifications to WAC Chapter 220-460 beyond those included in the CR-102. WDFW anticipates filing the adopted rule in February 2025.

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**Staff recommendation:**

Staff recommend that the Commission adopt the proposed rules on February 14, 2025, so that the Department can communicate with industry and the public regarding how the changes in RCW 77.15.740 and RCW 77.65.615 comport with WAC Chapter 220-460.

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**Policy issue(s) and expected outcome:**

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

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**Fiscal impacts of agency implementation:**

The rulemaking is not expected to impose new agency costs.

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**Public involvement process used and what you learned:**

This rulemaking is largely aimed at ensuring WAC Chapter 220-460 aligns with the newly effective changes to RCW 77.15.740, and the scope of the proposed rules is effectively confined to that purpose. Industry representatives and intergovernmental partners were engaged as the proposed rules were developed, and the Department worked with Industrial Economics, Inc. (IEc) to prepare an updated industry economic viability analysis for the commercial whale watching licensing program.

Additional public engagement happened via the hearing January 10 and the rulemaking public comment period, which ran from December 4, 2024 to January 13, 2025. Of the 18 comments, 83% directly expressed support for the proposed rule change, and none said they did not support the rule change. Many commenters shared ideas for SRKW recovery beyond the scope of commercial whale watching and advocated for the Department and/or Commission to do more to support orca recovery. These suggestions ranged from offering ideas to support boater compliance or further limit activity around whales to measures aimed at increasing prey for SRKW. A full summary and response to public comments is included in the Commission briefing packet.

More broadly, the 2024 SRKW Vessel Adaptive Management process included a year-long Advisory Group effort, two online public boater workshops, industry interviews, a social marketing analysis, and significant ongoing partner engagement including via the Be Whale Wise transboundary partnership.

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**Action requested and/or proposed next steps:**

Staff will initiate implementation, including communicating with industry about the final rule and updating the annual training for commercial whale watching and paddle tour businesses, operators, and guides. Staff are available to report back to the Commission on request regarding the implementation of these rules and/or the broader SRKW recovery effort.

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**Draft motion language:**

Move to amend WAC Chapter 220-460 as presented by staff in the January 10, 2025 Commission materials.

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**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 whale watching and paddle tour businesses, operators, and guides to let them know about the updated rules. Staff will update the annual training to reflect the revised rules. Finally, in November 2026, the agency will prepare the third and final report to the legislature regarding 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 this report may include additional recommendations for changes to adaptively manage the rules.