

## Round 2 Straw Proposal

The following proposal is being submitted as suggested rules under the Washington state commercial whale watching licensing program. The suggestions below apply to viewing SRKWs only, as specifically outlined in the related legislation.

The rules for viewing SRKWs below, combined with existing federal and state regulations, and professional whale watching guidelines represent a dramatic shift in viewing SRKWs when compared to the time period before the first federal regulations were implemented in 2011. The combination of these proposed licensing rules around viewing SRKWs, existing regulations and guidelines should allow us to move on from the issue of potential impacts of whale watching vessels and focus on other areas for SRKW recovery.

### 1. Adaptive Management Strategy

It is widely agreed upon that the primary threat to SRKWs is the lack of prey abundance, specifically the collapse of Chinook salmon. Historically, the driver for SRKW presence in the inland waters of Washington state and British Columbia between April – August was Fraser River Chinook.

During the late summer, fall, and early winter months, SRKW presence in the inland waters is driven by Coho, Chum and winter Chinook, which are now more abundant than the spring and early summer Fraser River Chinook runs. As a result, with more abundant and diverse food, SRKW presence is now higher in the fall and early winter than spring and summer.

It is also agreed upon by many scientists that potential vessel impacts are primarily concerning during times of increased food scarcity (Ayres et al. 2012) and that when food is available potential vessel impacts are negligible when mitigation efforts are used, primarily vessel speed and distance. This is clearly evidenced by the populations of Pacific Northwest Bigg's killer whales who have an abundant food supply, year-over-year increased presence around professional whale watching, and a population of roughly 400 individuals, increasing at over 4% per year. With approximately 100 calves born since 2012 and over 90% surviving, they are a thriving and frequently watched population.

We propose the appropriate adaptive management strategy for professional whale watching around SRKWs focus on prey availability.

The Albion Test Fishery (Fraser River) has operated consistently since 1981. It operates daily and fishes two sets to coincide with the daily high tide and publishes its catch each day. Using data from the Albion Test Fishery would allow us to see, in almost real-time, periods of time of increased and decreased food scarcity. It would also allow us to see long-term trends for various months. It makes sense that this metric provides us both short-term and long-term guidance on vessel management as it relates to salmon abundance, and the desperate need for Fraser Chinook restoration.

This metric allows for a reliable and trusted data source during the most concerning months, April – August, when the Fraser River Chinook is the primary food source for SRKWs when they are present in the inland waters. Examples of how this metric can be used are outlined below in section 2.

**2. Maximum Number of Licensed Vessels around SRKWs**

We propose setting a maximum number of licensed vessels “viewing SRKWs,” defined as the established standard of within a half mile of SRKWs. Commercial kayak license holders with multiple kayaks should be considered as 1 licensed vessel, unless they are being approached by SRKW in a manner that would preclude the kayak operators from limiting the number of kayak groups in an area. SRKWs can often be spread into multiple groups well over a half mile apart. As long as the groups are greater than a half mile apart, this would satisfy the maximum vessel requirements. Professional whale watching vessels throughout the region are in constant communications throughout each day through several communications networks. These communications will enable the professional whale watching community to self-enforce the number of licensed vessels viewing SRKWs. This will greatly reduce the enforcement burden on WDFW and the communications protocols already established by professional whale watchers will enhance the role of WDFW on the water.

The number of permitted licensed vessels should be variable based on several factors, outlined below.

Sentinel Role

This number of licensed vessels viewing SRKWs must consider the impact of the sentinel role of professional whale watch vessels. Although this role is just beginning to be shown through data collection, the sentinel effect is very real and very frequent. It has been shown that by alerting recreational boaters, ferries, commercial shipping and military of the presence of SRKWs it enables them to slow down, reduce underwater sound, and alter course. The impact of this is an extremely important reduction of potential vessel impacts. It is also important to note that Soundwatch and DFW cannot be everywhere at once. With the spread of different groups of SRKWs, licensed professional whale watch vessels enhance the presence of enforcement and monitoring vessels. Operating at approach distances of 300 yards and slow speeds allow these vessels to mitigate their own potential impacts while also serving to mitigate the greater potential impacts of unaware vessels.

To help support the sentinel role, communications from the licensing process, WDFW and other entities can help educate other boaters that when they see professional whale watching vessels they should reduce their speed, assess their route of transit, and hail one of the whale watching vessels on VHF if they need assistance to determine the best route to transit around the area.

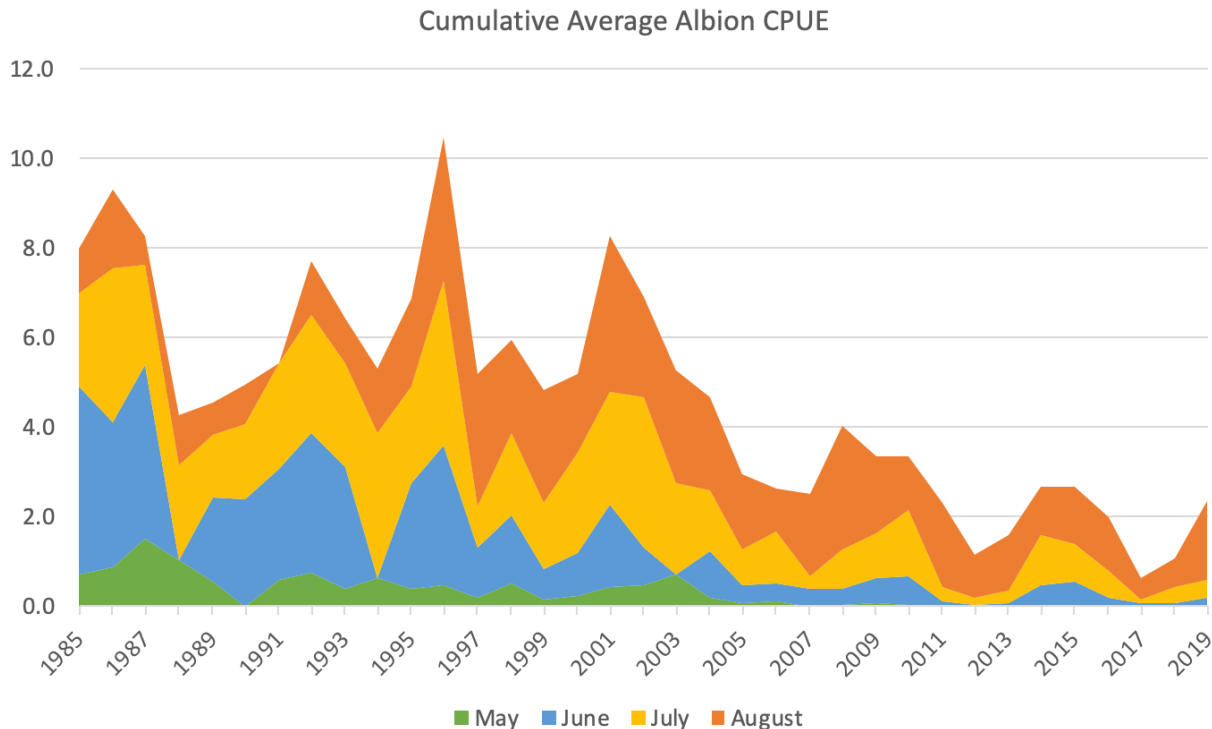
Prey Abundance

In months of known acute food scarcity license holders viewing SRKWs shall be limited to a lower number than in months of more abundant prey. In recent years, based on data from the

Albion Test Fishery, we know that the months of April – June, have been record low years for Chinook returns to the Fraser. We also know that July and August have shown more consistent and higher returns than April – June (see graph below). And we know that by late August – December SRKWs are feeding on more abundant food sources other than Fraser Chinook, such as Coho, Chum and Puget Sound winter Chinook. The maximum number of licensed vessels viewing SRKWs must take these factors into account, and should be flexible to allow for change as food availability changes.

At the beginning of the licensing program in 2021, we propose licensed vessels be limited to:

- April – June: Maximum of 3 licensed vessels
- July – October: Maximum of 5 licensed vessels
- November – March: Maximum of 3 licensed vessels



We also recommend, as mentioned above, that prey abundance be the primary adaptive management tool to adjust the number of licensed vessels. For example, if salmon recovery efforts lead to more abundant food sources in April – June, the number of vessels may increase. Similarly, if Fraser River Chinook crash in July, the number of vessels may be reduced. We recommend that we create a mechanism to be able to adjust the maximum licensed vessel limit between 3-5 using both short-term and long-term trends. For example, if lower limits are set during months known to have lower fish numbers, but in some years experience higher numbers, there should be flexibility to make adjustments. This is also true for months with known higher abundance. If data shows lower numbers in particular years, the program should allow for adjusting to a lower number of licensed vessels.

**3. Time Limits of Viewing SRKWs**

We propose viewing of SRKW by a single license holder vessel be limited to 45 minutes around (half mile) SRKWs per whale watching tour. This would limit the total time a commercial whale watch vessel could spend around SRKWs at one time. If the company offers multiple trips a day or operates multiple vessels each is granted 45 minutes per tour. Kayak groups would be exempt from this rule due to the nature of human powered craft and behavior of the SRKW.

When a vessel arrives “on scene” there is typically a period in which the operator assesses the scene and determines the best placement of the vessel for prevailing conditions and behavior of whales. This includes talking with other professional whale watch operators to determine the best entry and placement of that vessel. With caution and professionalism, this could take up to 15 minutes depending on the behavior of the whales. This is one of the reasons that 45 minutes is an appropriate viewing time to correctly educate passengers, and gain an experience with SRKWs.

As mentioned above, the communications protocols established by professional whale watching vessels will allow for self-enforcement of time limits, which will reduce the burden on WDFW.

**4. Data Sharing & Reporting**

License holders will be required to notify WDFW of the presence of SRKWs when they are identified in Washington waters. To reduce potential of burden on WDFW from multiple reports, license holders will establish a protocol so that one contact will notify WDFW.

Additionally, PWWA and WDFW can enter into an agreement for data sharing from the PWWA sightings app. This agreement will allow WDFW to have real-time sightings information on SRKWs, and can also provide reporting to WDFW on time, location, number of licensed vessels present and other data. This agreement will be established separate from the licensing rules and will be renewed annually.

**5. West Side San Juan Island No-Go-Zone**

The PWWA has an established voluntary no-go zone on the west side of San Juan Island. The No-Go-Zone extends from Mitchell Point to Cattle Point, one quarter mile offshore and a half mile from the Lime Kiln Lighthouse. Including this limit within the license program would officially codify this as a rule. This regulation would also act as a further example to recreational vessels to remain outside of the No-Go-Zone.

All non-human powered license holders must remain outside of the San Juan Island no-go-zone and all commercial kayak license holders must remain within 100 yards of shore when possible on the west side of the island in Haro Strait year-round. Kayaks and other non-human powered license holders are exempt from remaining outside the no-go-zone rule but must maintain best practices including the Whale Warning Flag, KELP Guidelines, and other regulations outlined within the license program.

**6. Other Considerations:**

#### Time of Day and Days of the Week

These could potentially be useful at some date in the future when SRKWs return to presence patterns similar to 2005 and earlier, when there was predictability and consistency in their presence and movements.

However, because their presence patterns have increasingly changed, there is no predictability or consistency that warrants these restrictions. Setting time of day and day of week restrictions for SRKWs who are not present in any consistency does not help us achieve our goals of limiting potential impact and it does risk putting unnecessary negative consequences on professional, licensed whale watchers.

#### Education

License holders should be encouraged to provide education on SRKWs on every tour when appropriate. It shall be up to each license holder as to the content and delivery of educating the passengers. There should also be flexibility for instances of unrelated tours, such as charters for bird tours, humpback specific tours, etc.

#### Allotted Warnings

License holders shall be allotted 3 warnings for intentionally violating rules established by the licensing program for viewing SRKWs and regulations already codified by law for viewing SRKWs, in a calendar year. Consistent with the legislation, this allotment applies specifically for viewing SRKWs. If a license holder exceeds this number, their license is void for the rest of the calendar year and reapplication is required for the following year. If a license holder exceeds their annual allotment more than 3 calendar years, then their subsequent permit allotment shall be reduced to 1 warning for a determined number of years until going back to 3 warnings.

If there are continued violations of these rules outlined in the program or other regulations by a license holder, WDFW Enforcement has the right to void any license they deem necessary to protect marine wildlife. Allotted warnings for a license holder are limited to that license holder and all vessels which they operate. Individual vessels or captains are not allotted their own number for warnings. For example, if a license holder operates 3 vessels, the entire company still only is allotted 3 Warning, not 9 (3 per vessel).

WDFW Enforcement and its other law enforcement partners (US Coast Guard, San Juan County Sheriff, NOAA Office of Law Enforcement,) are the only entities with the authority to cite license holders with a warning for violating regulations of the license program. These violations must be submitted, investigated with due process where the license holder is granted an opportunity to be heard, and maintained by WDFW Enforcement and WDFW license program managers.

### **7. Economic Viability**

The Washington state commercial whale watching licensing program is required to consider the economic viability of license holders. We are offering several suggestions that would assist with the economic viability of sustainable whale watching in Washington state. *[One idea is included in this*

*abbreviated proposal.*] We are hoping the licensing panel will provide a supporting recommendation for the following:

Communications

Communications from WDFW, other agencies and NGOs regarding the licensing program should include information that positions professional whale watching in the state as one of the most responsible whale watching communities in the world. By participating in the regulatory process as an engaged partner, consistently leading through science-based guidelines, serving as sentinels in our shared waterways, and participating in research, education, and conservation, Washington state should take great pride in its professional whale watching community. It is not like this in many places around the world. Additionally, communications should promote accurate education about SRKWs, as well as information about thriving populations of whales in the region, including Bigg's killer whales, Humpbacks, and Minke. This position should be promoted in press releases about the new rules and at public meetings to help educate the public.