

Commercial Whale Watching Rulemaking & Adaptive Management of Washington State's Vessel Regulations

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Washington
Department of
**FISH &
WILDLIFE**

Presentation Overview

- Background and context on SRKW and vessel noise/disturbance
- SRKW vessel adaptive management process and history
- 2024 SRKW Vessel Adaptive Management Report overview
 - Including: Compliance analysis & Orca Regulations Communications Advisory Group (ORCA Group) process & recommendations
- Report recommendations & next steps
- Commercial Whale Watching (CWW) rulemaking proposal & hearing



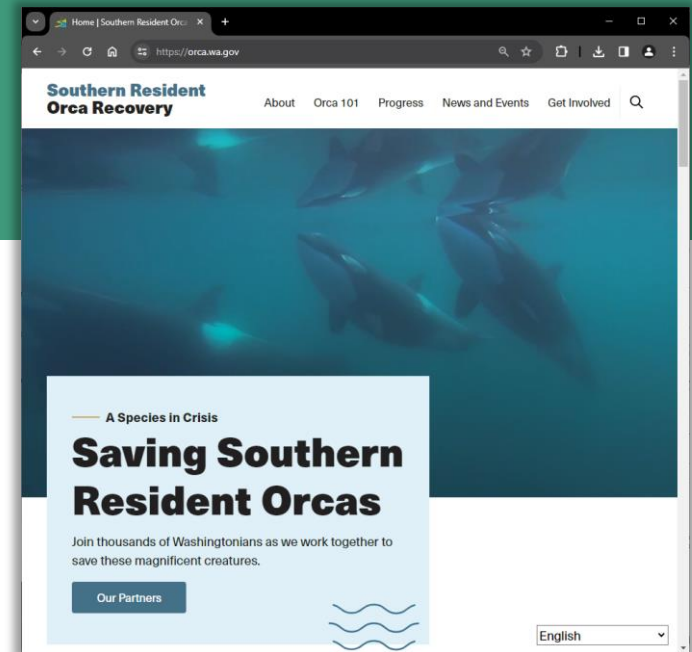
Southern Residents

West coast transients

Offshores

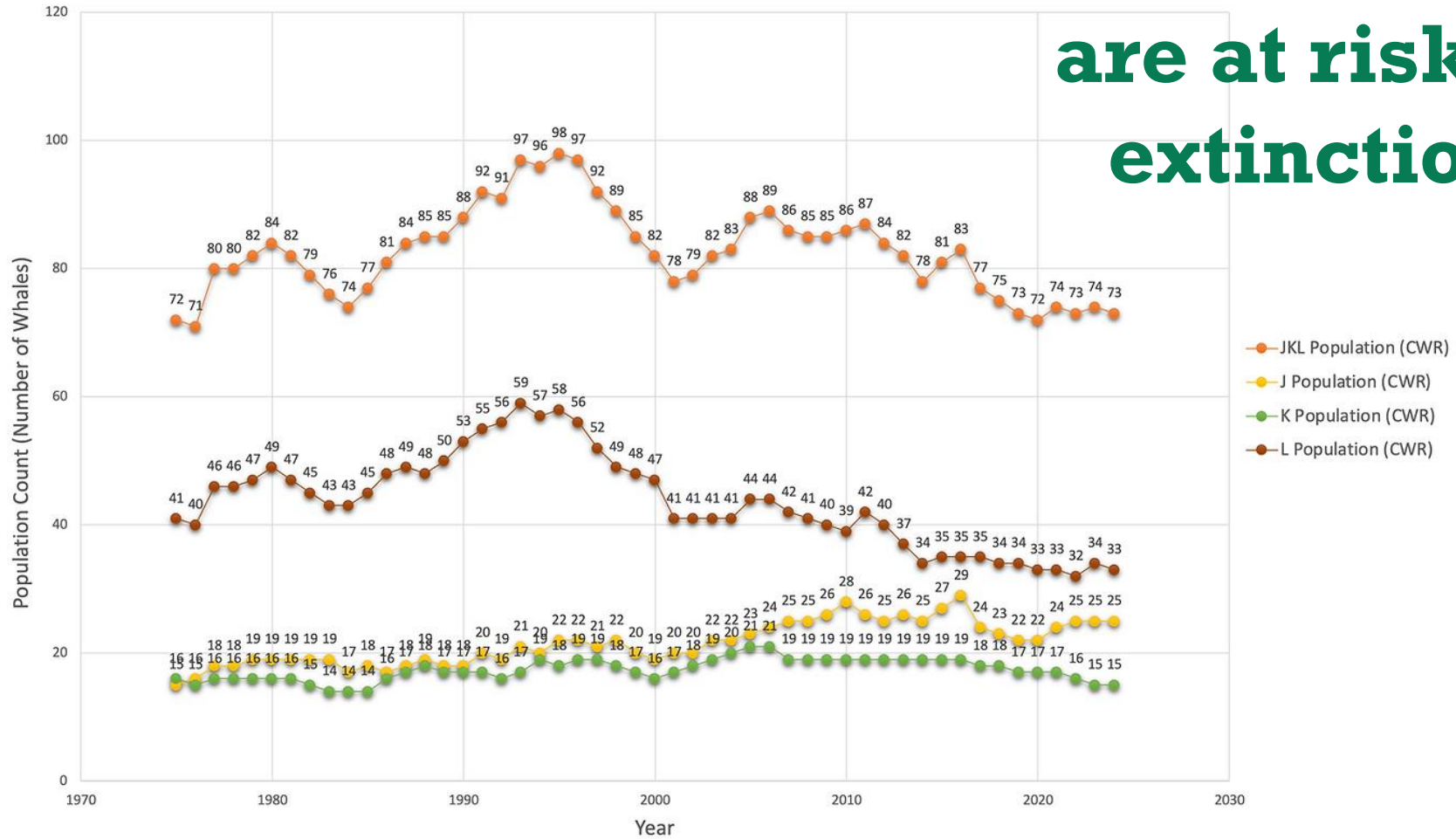


Context



The Southern Resident orcas are at risk of extinction

Southern Resident Orca Population
J, K, and L Pod Census as of July 1, 2024



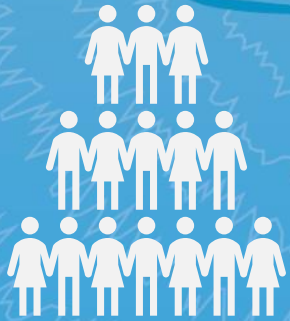
Credit: Center for Whale Research



Threats to Southern Resident orca recovery



Too much noise
& disturbance



Human
population
growth



Too much pollution

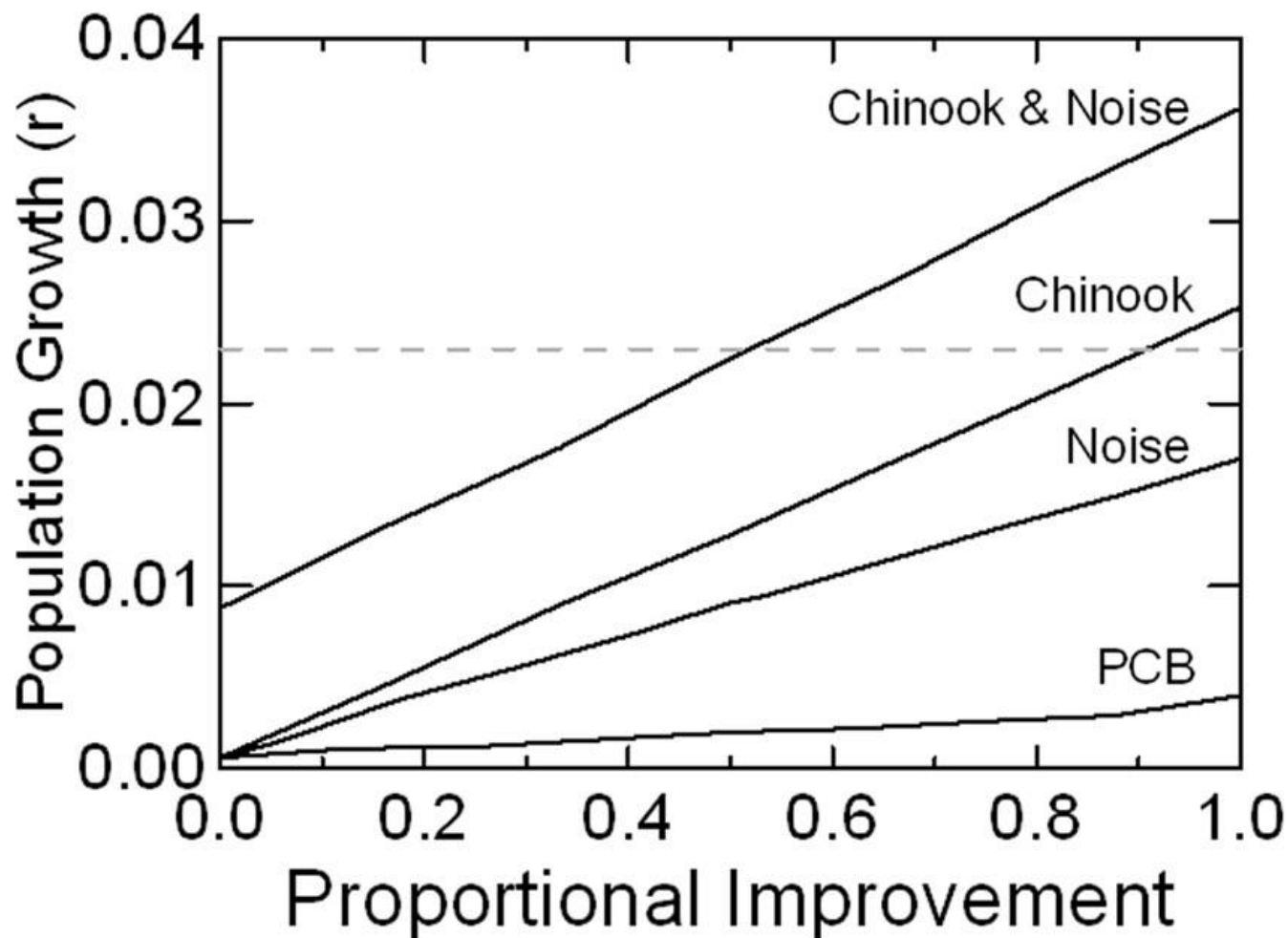


Too few fish



Climate change

Reducing noise by 50% while increasing prey by 15% would make a bigger difference for SRKW recovery than increasing prey alone



Vessel traffic is linked to poor SRKW foraging.

- Foraging success decreases with vessels traveling within 1.5 km (1640 yards), even those operating at just 1-2 knots
- Foraging success further decreases with vessels closer than 400 yards
- Whales dive more steeply
- Whale surface behavior increases



Impacts on female SRKW are especially concerning.

- Females are less likely to pursue prey as noise levels increase
- SRKW less likely to capture prey as noise increases, especially mothers with calves- who more often forage in shallower areas & avoid deep dives
- Population-level implications



Vessel impacts are part of prey availability

- SRKW spend more time searching for food in noisier conditions
- Increased noise may functionally decrease prey density



Tennessen et al. 2024

“We demonstrated that **vessel noise interferes** with **multiple phases of foraging and overall success** in an apex predator that relies on sound to facilitate foraging.

We revealed that vessel noise **reduced searching efficiency** in fish-eating killer whales, potentially causing **females to forgo** foraging while males still pursued but **missed** prey, reducing the overall likelihood of prey capture occurrence across sexes, and specifically increasing the likelihood of **failed attempts.**”





Adaptive Management of Efforts to Reduce Vessel Impacts on SRKW

The Department is required to adaptively manage the CWW license program and rules.

“The Department shall complete an analysis and report...on the effectiveness of and any recommendations for changes to the **whale watching rules**, **license fee structure**, and **approach distance rules** [in 2022, 2024, and 2026].”

RCW 77.65.620 (5)



Who can make changes to the license program and vessel rules?

Commercial Whale Watching Licensing Program

RCW 77.65.615/620; RCW 77.15.815

- Who makes the changes? Legislature via legislation

Commercial Whale Watching Rules

WAC 220-460

- Who makes the changes? WDFW via rulemaking process

Rules to protect SRKW from vessel impacts

RCW 77.15.740

- Who makes the changes? Legislature via legislation



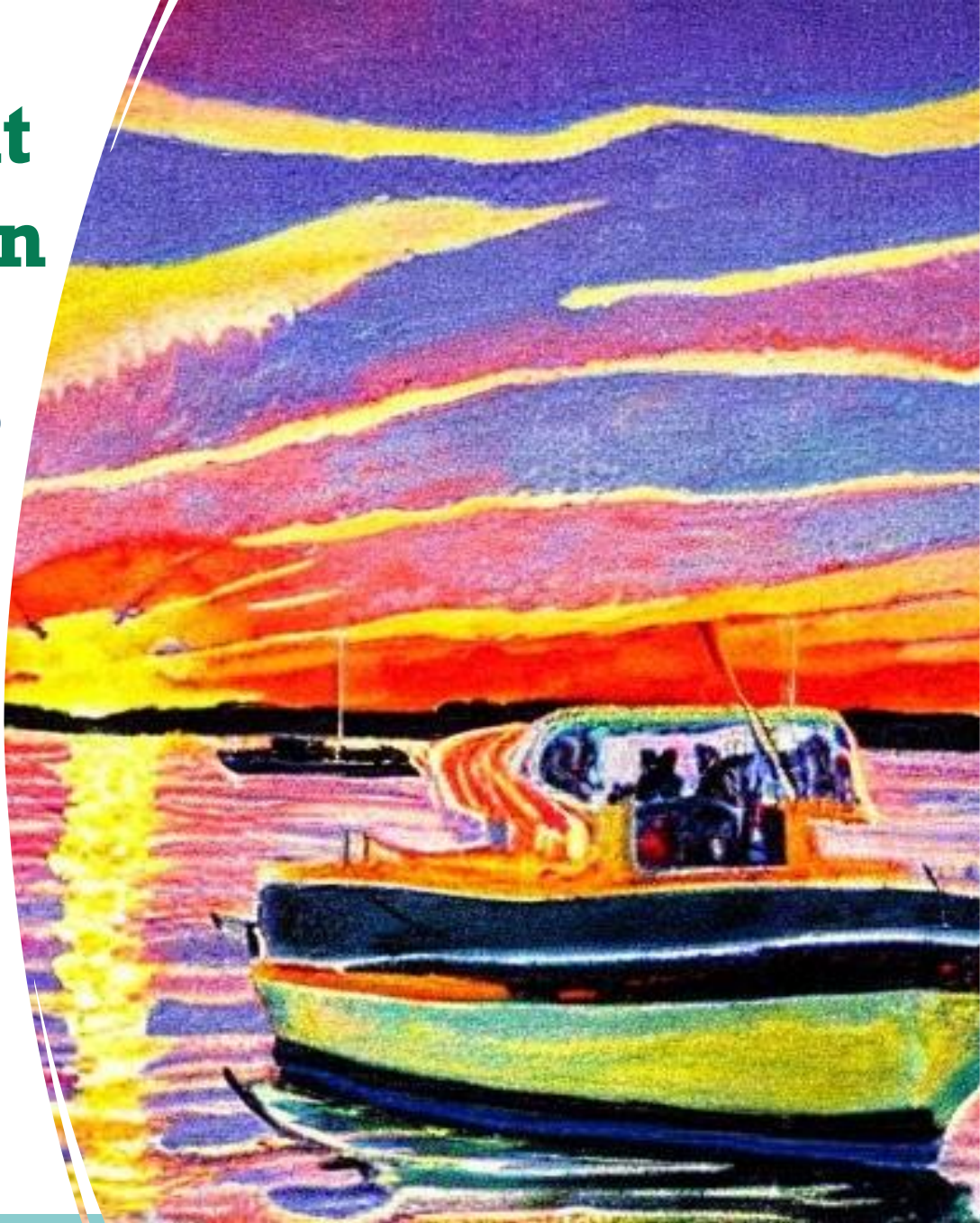


2022 SRKW Vessel Adaptive Management Legislative Report



2022 Department Recommendation

- Increase the vessel buffer around SRKW to 1,000 yards (approximately one-half nm) for all vessels, including CWW vessels
- Make complementary changes to the commercial whale watching licensing program





Outcomes



The Legislature adopted a 1,000-yard vessel setback from SRKW starting in 2025!

- SB 5371 also increased the Department's education/outreach mandate and updated the CWWL fees and requirements
- Orca Regulations Communications Advisory Group (ORCA Group) & boater workshops



What Now?

- 2024 SRKW Vessel Adaptive Management Legislative Report
- January 1, 2025 start date of 1,000-yard vessel setback from SRKW
- Outreach, education, & enforcement aligned with ORCA Group Recommendations
- **Update the Commercial Whale Watching rules**
- Coordinate with NOAA and Canada on regulations aimed at protecting SRKW from vessel impacts





2024 SRKW Vessel Adaptive Management Legislative Report



Compliance and Effectiveness Analysis Key Findings

- The number of businesses licensed each year has been relatively stable since program inception
- Stability of industry profile suggests program has not affected the viability of the industry
- Based on encounter reports made to WDFW, mandatory reporting to WRAS is not comprehensive
- There has been an overall reduction in the number of vessels within one-half nm of SRKW during on-water vessel counts, on a “per vessel count” basis
- Speeding and approach incidents have decreased and continue to be predominantly associated with private recreational vessels



Current Profile of the Licensed Commercial Whale Watching and Marine Paddle Tour Industry

Table 3. Commercial Whale Watching Business License by Year

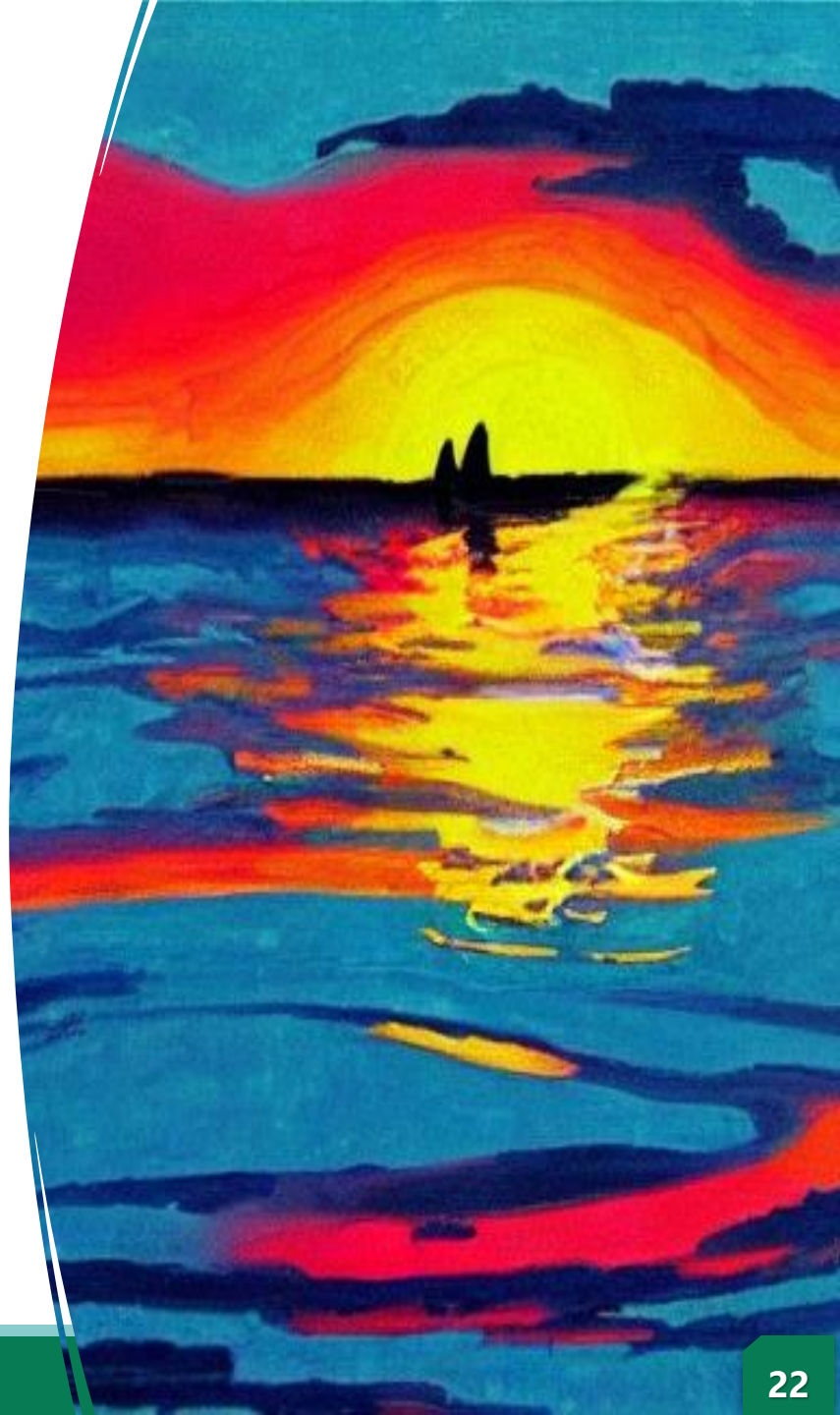
Year	Unique Kayak Business Licenses	Unique Motorized Business Licenses	Unique Motorized and Kayak Business License	Unique Sailing Licenses	Total Number of Business Licenses (WDFW License Data)	Unique Businesses Engaged in Commercial Whale Watching (Soundwatch)
2021	6	27	1	0	34	29
2022	4	31	2	0	37	39
2023	3	30	1	1	35	44
2024	3	32	1	3	39	Not available

Source: WDFW License and Training Data; The Whale Museum (2019, 2020, 2021, 2022, 2023, 2024a)



Industry costs as a result of the program:

- Stability of industry profile suggests program has not affected the viability of the industry.
- WDFW deferrals of fees and reimbursement of past licensing costs have substantially reduced these costs to the industry.
- The costs associated with Operator and Paddle Guide licensing and training differ across businesses, driven primarily by staff licensing requirements.

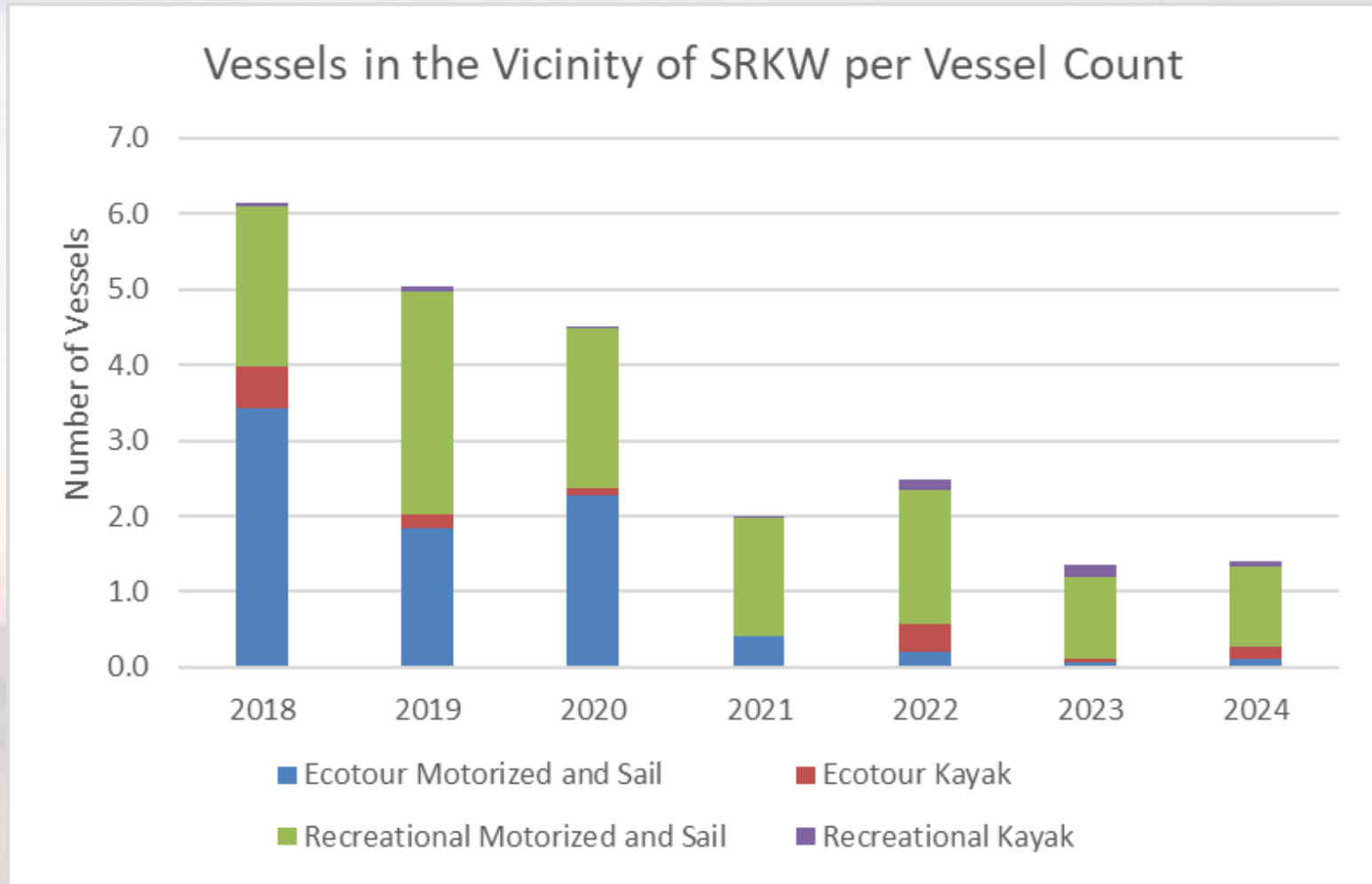


SRKW disturbance from vessel traffic has shifted over the years since the Orca Task Force.

- Overall reduction in the number of vessels within one-half nm of SRKW during on-water vessel counts, on a “per vessel count” basis.
- Speeding and approach incidents have decreased and continue to be predominantly associated with private recreational vessels

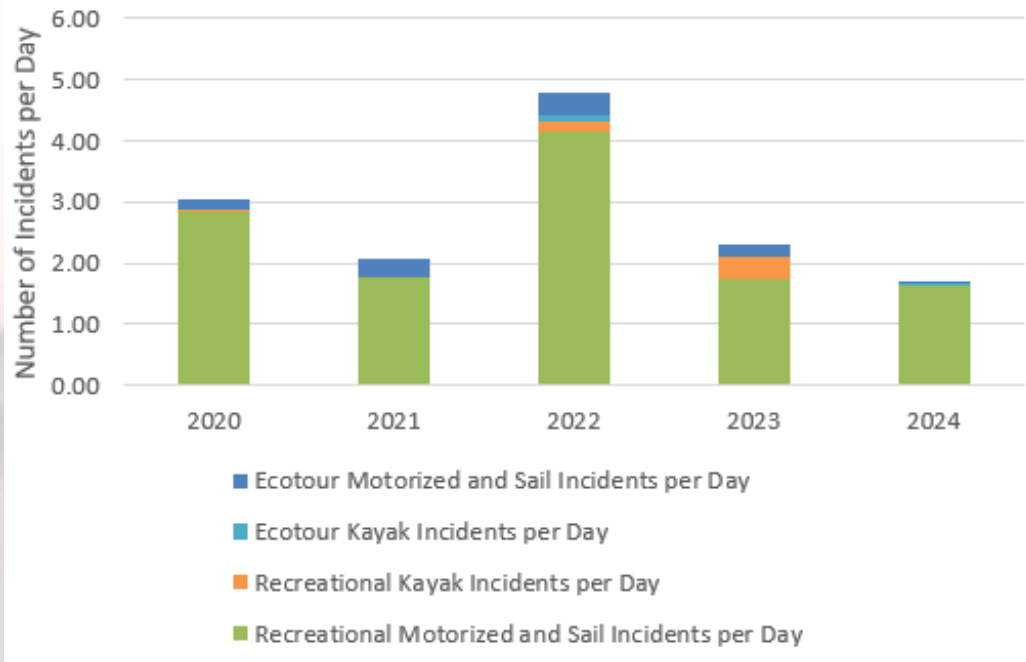
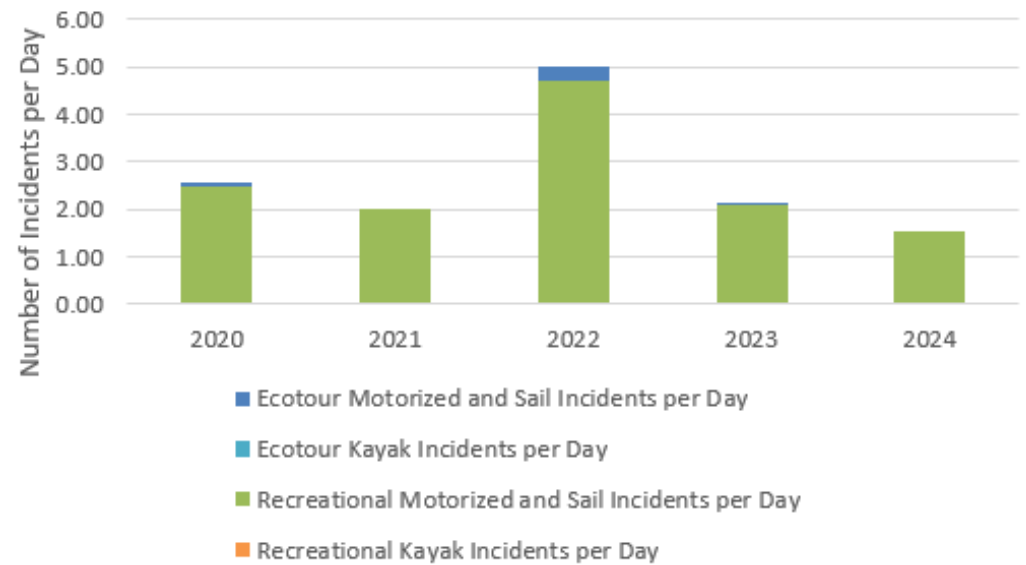


Decrease in Vessels in the Vicinity of SRKW:



Decrease in vessels speeding in the vicinity of SRKW:

Decrease in vessels involved in approach incidents around SRKW:



Potential Compliance Challenges With the 1,000-yard Approach Distance Regulation:

- Noticing and identifying orca ecotypes at distance
- Passages or channels under 1,000 yards ("pinch points")
- Nature of whale behavior and movement
- Travel requirements
- Mobility limitations
- Weather and currents

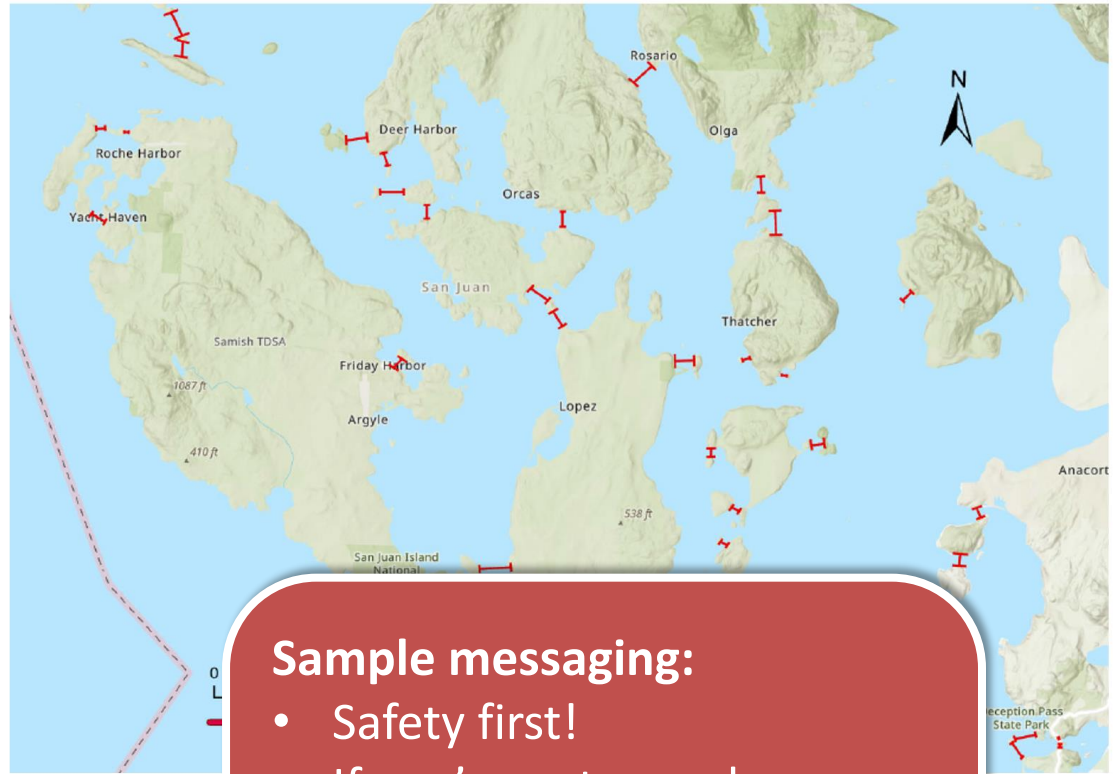


Figure 19. Example of 1,000-yard approach distance regulations around the San Juan Islands

Sample messaging:

- Safety first!
- If you're not sure, be precautionary.
- Enforcement wants to help, and they use discretion re: when to issue a ticket.



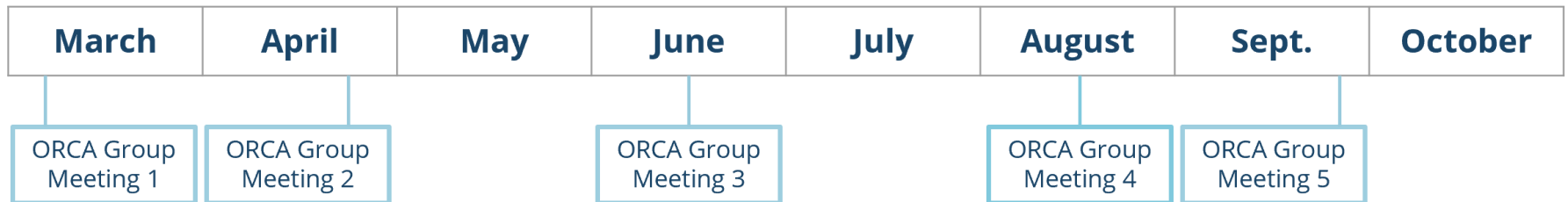


Orca Regulations Communications Advisory Group (ORCA Group)

The ORCA Group

Members represented multiple stakeholder groups, including recreational boaters, commercial whale watchers, the SRKW sighting community, Tribes, local governments, marine mammal scientists, and citizens.

ORCA Group 2024 Timeline



The ORCA Group developed recommendations for boater outreach and education.

- Investment allocations in FY24 and FY25 for communications and outreach
- Components of a communications strategy for FY25 and beyond

The ORCA Group received input and feedback from:

- A recreational boater subgroup of ORCA Group members
- Social marketing research
- Online Public Boater Workshops (June and September 2024)



ORCA Group Findings

- The recommended actions will not be effective in isolation—partnerships will be essential
- Enforcement cannot be over-emphasized: All members believe Enforcement presence is the best way to protect SRKW
- Many recommendations are packages with individual components that differ in importance to ORCA Group members
- The final SRKW communication and outreach strategy will be informed by stakeholder input and social marketing research



ORCA Group FY25 Communications Recommendations

1. Build **partnerships** to streamline the region's vessel regulation and SRKW communication landscape
2. Develop a living SRKW communications and implementation **plan** to guide Department efforts
3. Immediately develop material(s) to augment current communication methods
4. Employ a **range of communication methods** to reach as many recreational boaters as possible
5. Coordinate with state and federal partners to **leverage existing systems** for SRKW communication purposes
6. Develop a robust vessel regulations and SRKW-related communications **toolkit**
7. Increase awareness of new regulations and enthusiasm for SRKW recovery through an **Ambassador Program**



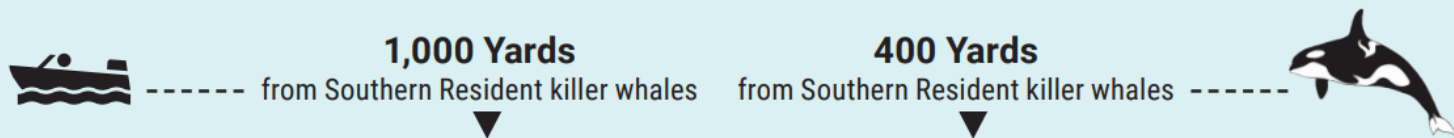


Many of these ideas are in the works!

Boater resources & FAQ: wdfw.wa.gov/orca

Know the laws to protect

Southern Resident killer whales



<p>STAY AWAY</p> <p>>1,000 yards from whale(s)</p>	<p>SLOW</p> <p>Move away obeying 7-knot speed limit</p>	<p>STOP</p> <p>Disengage transmission, cease paddling, luff sails</p>
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1/2 nautical mile = roughly 1,000 yards



ORCA Group Long-term Recommendations

- A. Secure ongoing funding to sustain and refine communications efforts beyond FY2025.
- B. Sustain strategic partnerships to develop and implement coordinated SRKW education and outreach and provide guidance and resources to partners.
- C. Increase WDFW Enforcement marine patrols during daylight hours when SRKW are in the Salish Sea (including fall and winter months in Central and South Puget Sound). ***Regulations that aren't enforced lose their effectiveness.***



Department Recommendation to the WA State Legislature:

- Fund WDFW's 2025-27 Enforcement decision package, which will increase Enforcement's reach and resources across the state, broadly increasing capacity to protect habitat and wildlife including SRKW.

This request includes funding for a vessel for use in patrols that will increase on-water Enforcement presence, which is a major deterrent of vessel regulation violations. Funding this request would increase Enforcement's education and outreach capacity both on and off-water.



Looking ahead to 2026 Adaptive Management

- Ability to implement the ORCA Group recommendations and WDFW's enhanced portfolio of boater outreach and education efforts will be based on funding/capacity.
- **RCW 77.15.740 (4)(d):** Anticipated to pose enforcement challenges
- **RCW 77.15.740(8):** Anticipated to reduce the Department's ability to analyze and report on the effectiveness of regulations related to CWW in the 2026 report
- **RCW 77.15.740(2)(c):** WDFW defers to NMFS and does not separately permit approaching SRKW for research/spill response.



Early 2025 to-dos

- Outreach, education, signage at marinas & boat launches
- Suite of updates to the CWW rules in WAC Chapter 220-460
- Migrating the CWW business licenses, operator licenses, paddle tour business licenses, and paddle guide licenses to a new licensing platform





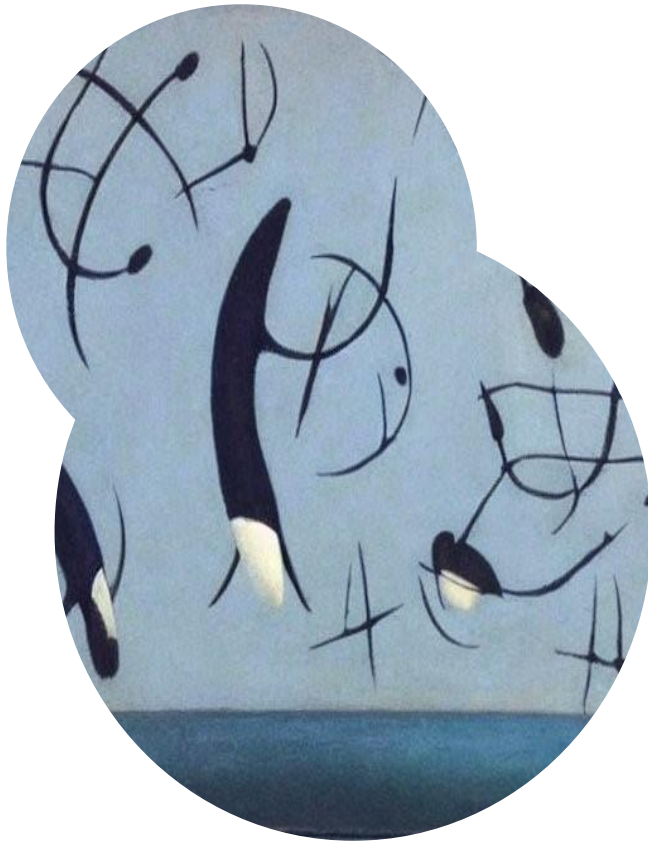
Recommended changes to WAC Chapter 220-460

Highlights

- Removing WAC 220-460-110 and 120
- Adding fee waiver process
- Adjusting reporting requirements
- Refining language (e.g., 1/2 NM -> 1,000 yds)



Simplifying the rules for CWW



- *Why?* SB 5371 requires a year-round 1,000 yard setback from SRKW, including for CWW and paddle tour vessels.
- *Proposal:*
 - Repeal 220-460-110 Limits on # of CWW vessels (includes vulnerable whales language)
 - Repeal 220-460-120 Time limitations (months and hours)



Adding fee waiver process

- *Why?* SB 5371 created a fee waiver.
- RCW 77.65.615 (13): “The license and application fees in this section may be waived for organizations whose relevant commercial whale watching or marine paddle tour activities are **solely for bona fide nonprofit educational purposes.**”
- *Proposal:* New section defining administrative requirements for organizations seeking a fee waiver.



Adding fee waiver process

NEW SECTION

WAC 220-460-025 Fee waiver for nonprofit educational whale watching and paddle tours. (1) In order to qualify for a fee waiver, an organization's relevant commercial whale watching or marine paddle tour activities must be solely for bona fide nonprofit educational purposes.

(2) In order to receive a fee waiver, the organization must submit documentation to the department:

(a) Demonstrating the organization's nonprofit status; and

(b) Explaining the relevant whale watching or paddle tour activities and the educational purpose of the activities.

(3) Each year after the initial application, when applying for an annual commercial whale watching and/or paddle tour business license, the organization must:

(a) Affirm that all relevant activities are for nonprofit educational purposes; and

(b) Ensure that all documentation remains up-to-date, and submit revised documentation if needed.

(4) Individuals that solely operate on behalf of an organization that qualifies for a fee waiver are eligible for a fee waiver for their operator or paddle guide license.

(a) Operator or paddle guide licenses issued under a nonprofit educational fee waiver may not be used by the individual to conduct for-profit activities. The license will be limited to nonprofit educational activities.

(b) In order to engage in for-profit whale watching or paddle tour activities, any operator or paddle guide operating under a license obtained by fee waiver must forfeit their license and apply and pay the relevant fees for a new operator or paddle guide license.

(5) In order to obtain a fee waiver for an operator or paddle guide license, the applicant must:

(a) Be designated as an operator or paddle guide on the qualifying organization's business license; and

(b) Not be designated as an operator or paddle guide for any for-profit commercial whale watching or paddle tour business.

(6) The applicant must indicate at the time of their application that they intend to apply for a fee waiver.

(7) Fee waivers may be issued in the form of reimbursements.

(8) Organizations and individuals who conduct commercial whale watching or paddle tour activities solely for nonprofit educational purposes are required to follow all laws and rules that apply to for-profit commercial whale watching and paddle tour licensees, including the requirements outlined in this chapter.



Adjusting reporting requirements

- *Why?* The 2022 report recommended refinements, and SB 5371 codified some changes to requirements.
 - RCW 77.15.740 (8): “The operator of a motorized commercial whale watching vessel **may voluntarily log** the incident, including measures taken to determine whether the whales were southern resident orcas, and submit the log to the department within 24 hours of the incident.”
- *Proposal:* Make submitting logs to WDFW encouraged but voluntary. Require reporting to WRAS for “encounters” and not solely when a CWW enters within 1000 yards of SRKW.

(12) ~~((Vicinity instance))~~ Encounter. Each time any commercial whale watching vessel or nonmotorized vessel operating under a license identifies and/or enters within ((one-half nautical mile)) 1,000 yards of a southern resident ~~((killer whale))~~ orca will count as one ~~((vicinity instance))~~ encounter associated with that license.



Adjusting reporting requirements

(10) **Group of southern resident (~~killer whales~~) orcas.**

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

(11) **Vicinity.**

"Vicinity" is defined as (~~one-half nautical mile~~) 1,000 yards from all southern resident (~~killer whales~~) orcas in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident (~~killer whale~~) orca closer than the statutorily defined distances in RCW 77.15.740.

(12) **(~~Vicinity instance~~) Encounter.** Each time any commercial whale watching vessel or nonmotorized vessel operating under a license identifies and/or enters within (~~one-half nautical mile~~) 1,000 yards of a southern resident (~~killer whale~~) orca will count as one (~~vicinity instance~~) encounter associated with that license.



Adjusting reporting requirements

~~((c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to participate in the annual training.))~~

(3) All commercial whale watching and paddle tour license holders ~~((shall))~~ are strongly encouraged to maintain accurate logs on each instance a vessel operating under a license ~~((enters within one-half nautical mile vicinity of))~~ encounters southern resident ~~((killer whales))~~ orcas and submit copies of the logs to the department within 24 hours of the encounter.

(4) Content of southern resident orca encounter logs:

(a) Logs ~~((must))~~ should, at minimum, include the business ~~((license holder))~~ name; vessel operator or paddle guide name; ~~((other staff names and roles;))~~ vessel name; ~~((port(s) of departure; departure time(s); return time(s); number of passengers;))~~ the location(s) ~~((Lat/Long))~~ of southern resident ~~((killer whales))~~ orcas encountered; ~~((time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within 400 yards of southern resident killer whales))~~ and the time and duration of the encounter.

(b) If applicable, license holders are encouraged to log details regarding encounters within 1,000 yards of southern resident orcas, including time and duration within 1,000 yards vicinity of southern resident orcas; time and duration within 400 yards of southern resident orcas; and measures taken to determine whether the whales were southern resident orcas.

(c) License holders are also encouraged to log qualitative details of southern resident ((killer whale)) orca encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

~~((b) Information from the logs shall be submitted to the department on the following schedule:~~

~~((i) All vicinity instances in July must be reported by August 15th.~~



Adjusting reporting requirements

~~(ii) All vicinity instances in August must be reported by September 15th.~~

~~(iii) All vicinity instances in September must be reported by October 15th.~~

~~(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within 24 hours.~~

~~(v) Paddle guides must report vicinity instances that happen October through June within one week.~~

~~(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.~~

~~(d) Logs must be provided for inspection on request of department law enforcement.~~

~~(4))~~ (5) All motorized commercial whale watching license holders must ~~((log))~~ report accurate, complete sighting information to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea, immediately upon ~~((entering within one-half nautical mile of a southern resident killer whale))~~ encountering a southern resident orca.



Other refinements

- Changing ½ NM to 1,000 yards throughout
- Changing from “killer whale” to “orca” throughout (to match SB 5371)
- Procedure for paddle tour incidental encounters with SRKW

(c) If (~~(a vessel or)~~) vessels inadvertently encounter a southern resident (~~(killer whale)~~) orca, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all (~~(killer whales)~~) orcas have moved to at least 400 yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping. Once any orcas are moving away from the vessel(s) and are at least 400 yards away, all paddlers must either remain rafted/secured until the whales are at least 1,000 yards away or must paddle in the opposite direction of travel from the orcas until all vessels are 1,000 yards away from the orcas.



Timeline & Next Steps

CR-101: Sept. 30, 2024

CR-102: Dec. 4, 2024

Public Comment Period: Dec. 4, 2024 to 5pm Jan. 13, 2025

- **Public Hearing: Today!
Jan. 10, 2025**

Tentative Adoption/Decision:
Feb. 14, 2025





Thanks to our contractors & staff who supported the 2024 SRKW Vessel Adaptive Management process. Thanks also to the ORCA Group and boaters who informed the Department's outreach strategy!



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Questions?

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<https://wdfw.wa.gov/orca>