

# Commercial Whale Watching Rulemaking - Decision

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Killer Whale Policy Lead  
Washington Department of Fish and Wildlife

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Washington  
Department of  
**FISH &  
WILDLIFE**

# January 10, 2025

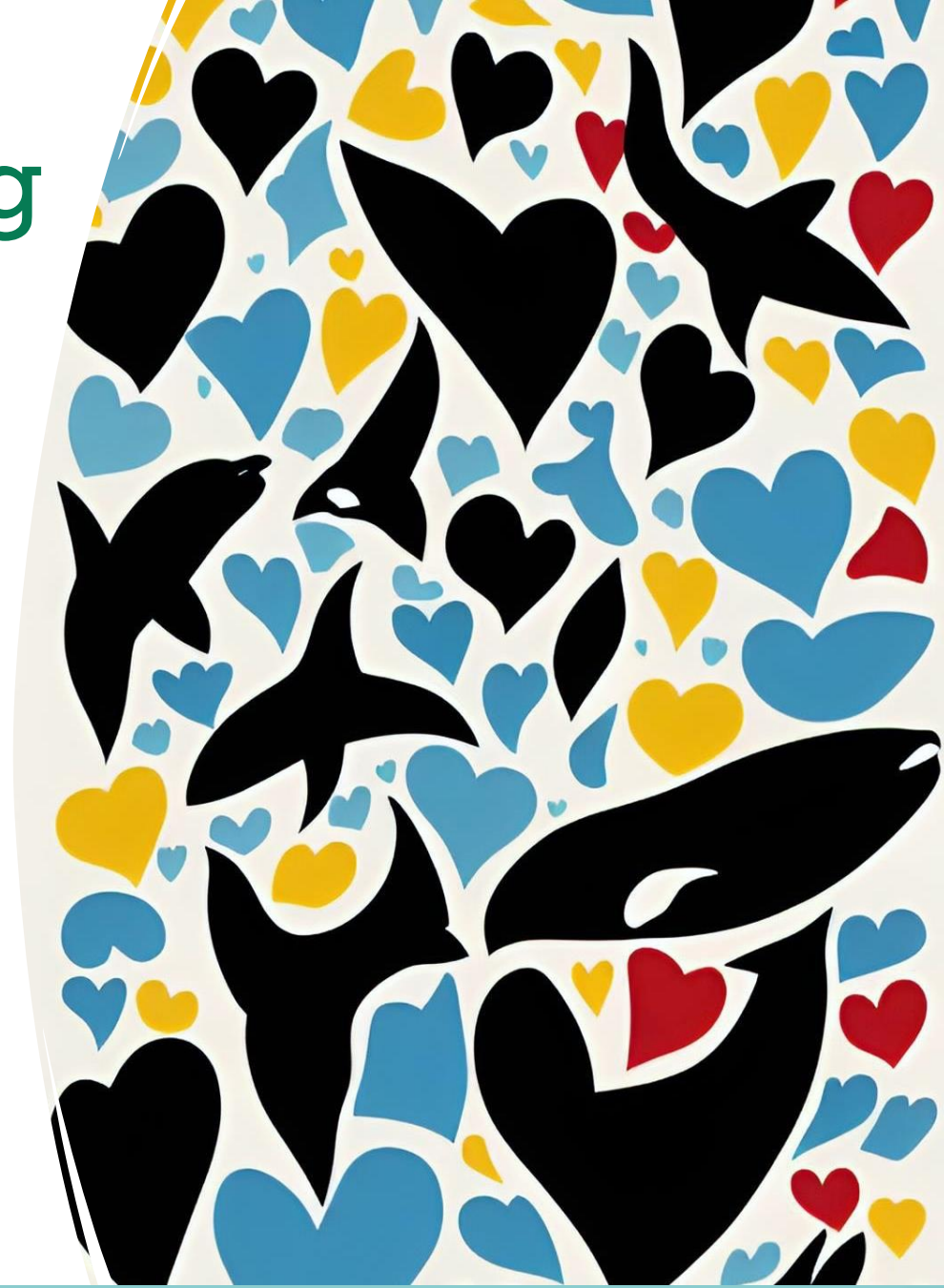
## Briefing Synopsis

- 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



# Today's Briefing

- Overview
- Refresher on proposed rule change
- Industry impact
- Public input
- Looking ahead



# 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



# Rulemaking Timeline

CR-101: Sept. 30, 2024

CR-102: Dec. 4, 2024

- Public Comment Period: Dec. 4, 2024 to 5pm Jan. 13, 2025
- Public Hearing: Jan. 10, 2025

**Tentative Adoption/Decision:  
Feb. 14, 2025**



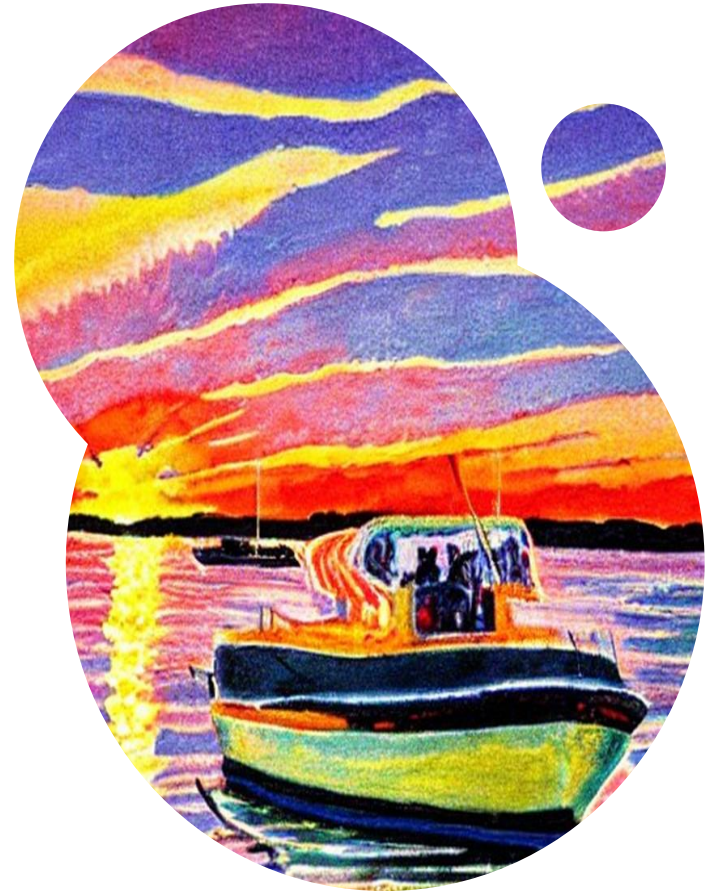


# Recommended changes to WAC Chapter 220-460



# Summary of proposed changes

- 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 WhaleReport 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

~~((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.~~

~~(e) 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.







# Industry impact & economic viability

# 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.



# Economic Viability Analysis Findings

Jen Kassakian & Maura Flight, IEc

- The [proposed rule changes] are not expected to result in additional costs to the industry, and in fact may in certain instances result in cost savings.
- The Commercial Whale Watch License Program and associated regulations...have not affected and are not expected to affect the viability of the commercial whale watch and paddle tour industries in Puget Sound.





# Public Comments

# Public Comment Summary:

- No commenters opposed the WAC 220-460 rule changes.
- 83% (15/18) of comments explicitly stated support for the rule changes.
- Many comments encouraged the Department and/or the Fish and Wildlife Commission to do more to protect orcas and offered several suggestions for the Department to consider.





# Comment Suggestions:

## **Commercial whale watching-related**

- Further regulate commercial whale watching and paddle tours
- Increase role of commercial whale watching companies in promoting orca-positive behaviors and policies

## **For further reducing vessel impacts on SRKW**

- Consider regulating air-based whale watching activities
- Increase WDFW Enforcement presence on the water and/or assign Orca pod-specific enforcement vessels
- Establish vessel-free “Orca Survival Zones” in the Salish Sea
- Establish dynamic “hot zones” around orca pods that could be tracked with a phone application
- Encourage boaters to use the WhaleAlert phone application
- Further regulate on-the-water activities including fishing

## **Encouraging more efforts around prey availability for SRKW**

- Support removal of the Lower Snake River Dams
- Consider fishery and hatchery changes to support SRKW





# Looking Ahead

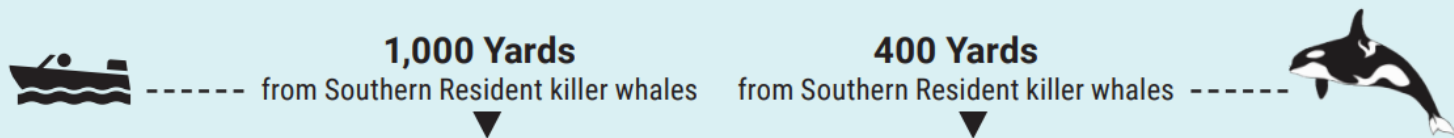


# Boater education and outreach is a high priority in 2025

Boater resources & FAQ:  
[wdfw.wa.gov/orca](http://wdfw.wa.gov/orca)

Know the laws to protect

## Southern Resident killer whales



**STAY AWAY**  
 >1,000 yards  
 from whale(s)

**SLOW**  
 Move away obeying  
 7-knot speed limit

**STOP**  
 Disengage transmission,  
 cease paddling, luff sails

1/2 nautical mile = roughly 1,000 yards



# Early 2025 to-dos

- Implementing ORCA Group recommendations
- Industry outreach + post-rulemaking updates to the CWW training and webpage
- Migrating the CWW business licenses, operator licenses, paddle tour business licenses, and paddle guide licenses to a new licensing platform







*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>



# **2024 SRKW Vessel Adaptive Management Legislative Report**

