
CWWLP ADVISORY COMMITTEE

Draft Charter and Ground Rules

Group Purpose and Authority

In spring 2019, the Washington State legislature directed the Washington Department of Fish and Wildlife (via [RCW 77.65.620](#)) to develop rules for a new commercial whale watching licensing program enacted via [2SSB 5577: a bill concerning the protection of Southern Resident Orca Whales from vessels](#). The purpose of creating and defining rules for a new licensing program is to enable sustainable whale watching while reducing the impacts of vessel noise and disturbance so whales can effectively forage, rest, and socialize.

The Commercial Whale Watching Licensing Program Advisory Committee will explore alternatives and work towards consensus around a suite of rules for the new licensing program. The group will strive to make consensus recommendations to the Washington Department of Fish and Wildlife (WDFW) Director. WDFW will consider these recommendations for advancement to the Fish and Wildlife Commission (FWC) for rule adoption.

The bulk of committee work will happen across several in-person meetings between January and May 2020. Draft language will be shared and refined over the summer and fall of 2020, with expected adoption of the rules by January 1, 2021.

Two other groups support the work of this Advisory Committee:

- An intergovernmental coordination group comprised of state, tribal, federal, and local governmental representatives: This group will discuss and sideboards and implementability of options explored by the advisory committee and feed that information into the advisory committee process at several touchpoints. This group will have shorter meetings held approximately bi-weekly from December through April and as needed thereafter through the finalization and initial implementation of the rules.
- An independent science panel: This group will review the current body of best available science regarding impacts to SRKW from small vessels and commercial whale watching due to disturbance and noise. Once determined, the best available science will be brought to the advisory committee and used to develop and refine proposed rules.

Language in RCW 77.66.615: Commercial whale watching license— Fees—Definitions.

This section establishes a commercial whale watching licensing program and includes definitions of terms.

(1) A commercial whale watching license is required for commercial whale watching operators. The annual fee is two hundred dollars in addition to the annual application fee of seventy-five dollars.

(2) The annual fees for a commercial whale watching license as described in subsection (1) of this section must include fees for each motorized or sailing vessel or vessels as follows:

- (a) One to twenty-four passengers, three hundred twenty-five dollars;*
- (b) Twenty-five to fifty passengers, five hundred twenty-five dollars;*
- (c) Fifty-one to one hundred passengers, eight hundred twenty-five dollars;*
- (d) One hundred one to one hundred fifty passengers, one thousand eight hundred twenty-five dollars; and*
- (e) One hundred fifty-one passengers or greater, two thousand dollars.*

(3) The annual fees for a commercial whale watching license as described in subsection (1) of this section must include fees for each kayak as follows:

- (a) One to ten kayaks, one hundred twenty-five dollars;*
- (b) Eleven to twenty kayaks, two hundred twenty-five dollars;*
- (c) Twenty-one to thirty kayaks, four hundred twenty-five dollars; and*
- (d) Thirty-one or more kayaks, six hundred twenty-five dollars.*

(4) The holder of a commercial whale watching license for motorized or sailing vessels required under subsection (2) of this section may substitute the vessel designated on the license, or designate a vessel if none has previously been designated, if the license holder:

- (a) Surrenders the previously issued license to the department;*
- (b) Submits to the department an application that identifies the currently designated vessel, the vessel proposed to be designated, and any other information required by the department; and*
- (c) Pays to the department a fee of thirty-five dollars and an application fee of one hundred five dollars.*

(5) Unless the license holder owns all vessels identified on the application described in subsection (4)(b) of this section, the department may not change the vessel designation on the license more than once per calendar year.

(6) A person who is not the license holder may operate a motorized or sailing commercial whale watching vessel designated on the license only if:

- (a) The person holds an alternate operator license issued by the director; and*
- (b) The person is designated as an alternate operator on the underlying commercial whale watching license.*

(7) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial whale watching licenses.

(8) The annual fee for an alternate operator license is two hundred dollars in addition to an annual application fee of seventy-five dollars.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

- (a) "Commercial whale watching" means the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.*
- (b) "Commercial whale watching operators" includes commercial vessels and kayak rentals that are engaged in the business of whale watching.*
- (c) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.*

Language in RCW 77.66.620: Commercial whale watching license— Adoption of rules—Analysis and report to the governor and the legislature—Definitions.

This section directs WDFW to establish rules for the licensing program.

(1) The department must adopt rules for holders of a commercial whale watching license established in RCW 77.65.615 for the viewing of southern resident orca whales for the inland waters of Washington by January 1, 2021. 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. The department shall at a minimum consider protections for southern resident orca whales by establishing limitations on:

- (a) The number of commercial whale watching operators that may view southern resident orca whales at one time;*
- (b) The number of days and hours that commercial whale watching operators can operate;*
- (c) The duration spent in the vicinity of southern resident orca whales; and*
- (d) The areas in which commercial whale watching operators may operate.*

(2) The department may phase in requirements, but must adopt rules to implement this section. The department may consider the use of an automatic identification system to enable effective monitoring and compliance.

(3) The department may phase in requirements, but must adopt rules pursuant to chapter 34.05 RCW to implement this section including public, industry, and interested party involvement.

(4) Before January 1, 2021, the department shall convene an independent panel of scientists to review the current body of best available science regarding impacts to southern resident orcas by small vessels and commercial whale watching due to disturbance and noise. The department must use the best available science in the establishment of the southern resident orca whale watching rules and continue to adaptively manage the program using the most current and best available science.

(5) The department shall complete an analysis and report to the governor and the legislature on the effectiveness of and any recommendations for changes to the whale watching rules, license fee structure, and approach distance rules by November 30, 2022, and every two years thereafter until 2026. This report must be in compliance with RCW 43.01.036.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

- (a) "Commercial whale watching" has the same meaning as defined in RCW 77.65.615.*
- (b) "Commercial whale watching operators" has the same meaning as defined in RCW 77.65.615.*
- (c) "Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.*

Advisory Committee Governance

Governance

- **Advisory Group Handbook:** This document applies to all WDFW advisory groups, including the CWWLP Advisory Committee. Members are expected to familiarize themselves with WDFW's Advisory Group Handbook ([available online](#)).
- **Selection:** WDFW solicited CWWLP Advisory Committee applications and selected members to provide a broad and balanced suite of interests and expertise. Committee members were appointed in November 2019 and will serve through December 2020, with the opportunity for an extension during the early phase of implementation of the rules.
- **Withdrawals:** If an appointed member needs to withdraw, they must submit in writing their resignation. WDFW may recruit a replacement member to fill the gap.
- **New recruitments:** WDFW may add to the Advisory Committee membership as needed to enhance the group's representation and effectiveness.
- **Removals:** Members are expected to participate regularly and constructively in accordance with the ground rules and principles in this document. WDFW may dismiss members who fail to do so.
- **Alternates:** The Department values having one core group work together iteratively, and thus, substitutes for members will not be allowed.
- **Travel support:** Members who wish to seek reimbursement for travel/per diem expenses must register as volunteers with WDFW. Contact the project lead for information on the volunteer registration process to receive reimbursement.
- **Meeting times/travel:** WDFW will attempt to schedule meetings to best fit the availability and convenience of Advisory Committee members.

Roles

- Advisory Committee members attend Advisory Group meetings, liaise with relevant caucuses to refine and build support for preferred options, and collaboratively work together to produce recommendations.
 - o Caucuses refer to *ad hoc* interest groups (e.g. the broader whale watch community, environmental NGOs, etc.)
- WDFW and the project lead(s) orchestrate a fair process for the Advisory Committee, including planning meetings, facilitating dialogue, and liaising with the Science Panel and Intergovernmental Coordination Group. Ultimately, WDFW will develop the final proposal to the Fish and Wildlife Commission.
- The Fish and Wildlife Commission (FWC) consider the recommendation from WDFW, listen to public comment, deliberate the rules, and adopt a final rule package.
- Observers from the Intergovernmental Coordination Group are welcome and may be called on for input or guidance on sideboards and implementation needs.
- Subject matter experts may be added to the agenda for particular topics.
- The public and members of the caucus are invited to share their ideas with relevant Advisory Committee members or via opportunities for public participation, including public comment periods.

Decision-making

- The Advisory Committee will operate on a gradient of agreement, consensus decision-making process with the objective of making a consensus recommendation to WDFW regarding proposed rules.
- Consensus means general accord of collective opinion; it does not require a unanimous opinion.
- In the event that a consensus cannot be achieved, WDFW shall attempt in good faith to resolve the matter.
- WDFW will work in good faith to carry forward the recommendation of the Advisory Committee, but the Director will retain final decision-making authority and responsibility for the recommendation passed on to the FWC for rule adoption.

Membership & Contact Information

Advisory Committee Members

Name	Affiliation	Location	Email Address	Phone Number
Shane Aggergaard	Island Adventures	Anacortes	whales@islandadventurecruises.com	360-293-2428
Rein Attemann	Washington Environmental Council	Seattle	rein@wecprotects.org	206-631-2625
Jeff Friedman	Pacific Whale Watch Association	Friday Harbor	jeff.friedman@gmail.com	360-317-5397
Cindy Hansen	Orca Network	Friday Harbor	cindy@orcانetwork.org	360-223-5666
Michael Jasny	NRDC	Vancouver	mjasny@nrdc.org	310-560-5536
Tom Murphy	Outdoor Odysseys	Friday Harbor	tom@outdoorodysseys.com	360-378-3533
Nora Nickum	Seattle Aquarium	Seattle	n.nickum@seattleaquarium.org	206-693-6290
Lovel Pratt	Friends of the San Juans	Friday Harbor	lovel@sanjuans.org	360-378-2319
Ivan Reiff	Western Prince Cruises Inc.	Friday Harbor	ivanreiff@gmail.com	360-378-8113
Joe Scordino	None	Edmonds	joe.scordino@yahoo.com	425-319-8386
Taylor Shedd	The Whale Museum	Friday Harbor	taylor@whalemuseum.org	812-447-2999

WDFW Project Lead

Julie Watson (360-790-4528; julie.watson@dfw.wa.gov)

Other Contacts

Jessica Stocking (360-902-2591; jessica.stocking@dfw.wa.gov)

Todd Hass (360-280-1588; todd.hass@psp.wa.gov)

Communication

The Advisory Committee recognizes the importance of communication for the purposes of increasing public understanding and awareness, soliciting input and fresh ideas from others, enhancing the understanding of considerations for the deliberations, operating transparently, generating buy-in, and collectively understanding and owning the story of the Advisory Committee's process and recommendations.

Core elements of how the Advisory Committee agrees to manage communications include:

- Brief meeting summaries will be produced following each meeting, and the Advisory Committee will discuss as needed and endorse the summary.
- The Advisory Committee agrees that any individual member's communication with constituencies and stakeholders outside of the process should not conflict with the content of the meeting summaries.
- Members of the Advisory Committee will not speak on behalf of the Advisory Committee or rulemaking process and will not inform or participate in media/social media regarding the CWWLP rules/process unless there is consensus and/or a Committee-generated press release effort.
- Members will proactively engage with their constituencies (per the roles listed in this charter) in a manner that aligns with the communication values and purposes described in this section.
- Members will respectfully hold one another accountable to these rules, and any member found to be disregarding these rules or communicating in poor faith may be dismissed from the Committee.
- The Advisory Committee and Project Lead(s) will coordinate to develop and promote several purposeful public engagement options as the most effective opportunities for public engagement.

Guiding Rules and Principles

Statements of Principle:

- 1) Whale watching
 - a) The legislation and this process support whale watching that is sustainable for the ecosystem and species being viewed. "Sustainable whale watching" means an experience that includes whale watching from land or aboard a vessel that reduces the impact on whales, provides a recreational and educational experience, and motivates participants to care about marine mammals, the sea, and marine conservation.
 - b) The Advisory Committee acknowledges that ethical, ecologically sustainable ecotourism (including commercial whale watching) is an industry aligned with the State's conservation values.
 - c) Sound and disturbance from vessels, and therefore commercial whale watching, have impacts on SRKW.
 - d) The intent of RCW 77.65.620 is to aid in the long-term sustainability and recovery of SRKW by reducing the daily and cumulative impacts of commercial whale watching on SRKW.
- 2) One of several influences on SRKW
 - a) The Advisory Committee recognizes that several other factors beyond commercial whale watching influence the health of the SRKW population, hence the Governor's SRKW Task Force's focus on prey availability and contaminants as well as disturbance and noise. The Advisory Committee also recognizes that there are interactions between these variables and between sub-components of each variable.
 - b) Within the topic of vessel disturbance and noise, commercial whale watching vessels represent only a portion of vessel traffic (alongside ferries, recreational boaters, navy vessels, and large commercial shipping vessels).
 - c) Though it is one of many influences, the Washington State Legislature has mandated licenses for commercial whale watching and directed WDFW to create rules for the program.
 - d) Though it is one piece of a broader puzzle, the Advisory Committee is tasked at minimum with leveraging this CWWLP to reduce daily and cumulative impacts on SRKW.
- 3) Rules
 - a) The Advisory Committee will recommend rules that are implementable, enforceable, and manageable for license holders and WDFW (the administrative body).
 - b) The Advisory Committee will recommend rules that are related to the sustainability of the population of SRKW and associated with measurable effectiveness metrics so that they may be evaluated and adaptively managed.
 - c) 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.
- 4) Science
 - a) While citizen science, reports, and personal observations are valuable and may be brought into discussion, the findings of the Washington State Academy of Sciences panel will serve as the definitive "Best Available Science" for this Advisory Committee's work.
 - b) When there is insufficient science on SRKW, scientific best practices (e.g. using studies focused on similar species) will be used to interpolate impacts to SRKW.
 - c) While it is reasonable to note areas of uncertainty or conflict in the literature, we will favor the consensus of the literature and Academy panel over niche/conflicting studies or interpretations.
 - d) The Advisory Committee recognizes the need to take action based on the best available science even if there is uncertainty and adaptively manage the rules as new science becomes available.

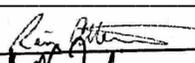
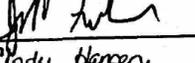
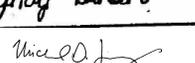
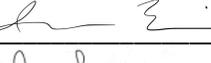
Ground Rules for Conduct:

- Members will be active participants in meetings, which includes:
 - o Showing up on time, rested, and prepared
 - o Keeping electronics and other multitasking confined to breaks
 - o Abstaining from side conversations and commentary
 - o Expressing views and concerns honestly, openly, and in a timely manner rather than withholding, withdrawing, or venting concerns via other channels
 - o Participating in facilitated activities in good faith that they are intended to bring out the best group outcomes
 - o Sharing collective responsibility for the success of each meeting and the process as a whole
 - o Respectfully holding one another accountable to these ground rules
- Members will lean into respectful debates that deepen understanding, which includes:
 - o Listening with curiosity and an open mind
 - o Assuming positive intent and speaking with positive intent
 - o Making your values and interests clear, including explaining your reasoning and intent
 - o Not using personal attacks, passive aggression, extreme/all-or-nothing language, insults, or ultimatums
 - o Abstaining from “whataboutisms”- attempts to direct the conversation towards something other than what is being discussed
 - o Sharing supporting evidence and specific examples for views expressed and offering up data to support claims when requested
 - o Striving for consensus by offering up pathways for agreement
- Members will conduct themselves in and outside of the meetings in a way that supports building consensus within the process, including:
 - o Engaging in respectful discourse in alignment with these ground rules outside of meetings
 - o Not recording meetings/conversations, or using ideas offered or statements made in the meeting against one another outside of the meetings
 - o Operating in good faith
 - o Engaging with partners/caucuses outside of the process to bring them along and make sure their interests and concerns are accounted for in the process

Members who are unwilling or unable to adhere to the group’s ground rules may be asked to leave a meeting or be formally dismissed from the Advisory Committee.

Signatures

By signing this charter you agree to abide by the rules, principles, and Advisory Committee governance established herein for the duration of your appointment.

Shane Aggergaard <u></u> Rein Attemann <u></u> Jeff Friedman <u></u> Cindy Hansen <u></u> Michael Jasny <u></u> Tom Murphy <u></u>	Nora Nickum <u></u> Lovel Pratt <u></u> Ivan Reiff <u></u> Joe Scordino <u></u> Taylor Shedd <u></u>
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