

June 10, 2020

Dear Advisory Committee Members,

I am writing this candid letter to you today in the hope that it will spark discussion, while I recognize the difficulties surrounding these discussions, I hope that they will lead to the success of this Committee. Like all of you, I had high hopes for us all to work together and come up with a solution that would benefit the Southern Resident Killer Whales (SRKW's). As well, like most of you we have been in this position before; the Governor's Task Force, Vessel Working Group, Transport Canada Working Groups, etc. It seems we have found ourselves in a similar position, a stalemate.

I have been working with many of the members of this Committee individually over the past week and I am worried that we may conclude our next meeting without agreement. If this happens, Washington Department of Fish & Wildlife will take over the process and put forth its own recommendations. This would be a failure of the Committee. None of us would be happy with that outcome.

Therefore, I have decided to write this letter to openly collect my thoughts on everything we have heard, and put forth a proposal that I hope we can begin discussing even before our next meeting. First, I would like to say it has been an honor serving on this Committee with all of you. You are all experts in your field or industry and I am humbled to be seated at the same table as you. I'd also like to say that none of what I say is targeted or directed at one individual or group. My goal has always been to provide benefits to the SRKW's whether through education, research, these meetings etc. For that to happen, some tough conversations need to be had that may not align with your personal views. For that, I am sorry.

There are a few things to get out of the way. I do not think we, as a Committee, should continue to discuss and take time on proposing a moratorium on commercial whale watching. If this is your view, you have been heard and duly noted. At this time, there is not enough scientific evidence to support a moratorium and the economic impact to these (mostly) small businesses and the region as a whole could be vast. Also, we will not accept doing nothing. We are here to recommend additional regulations to the commercial whale watch industry to protect a critically endangered species. We would all like to move on and focus our efforts on recreational boaters, salmon, pollution, etc. but to do that we need to establish something concrete for commercial whale watching. I believe a successful program could greatly benefit the commercial whale watching industry. Giving up just a little and accepting these rules would greatly improve the image and public view of commercial whale watching and the industry as a whole. Take this opportunity to say we all worked together and came to these outcomes that we gladly accept to conserve and protect the SRKW's. Hopefully, the media and public can move on too and focus on other threats facing the SRKW's. Since the beginning our goal has been to create a license program that allows for changes as needed within an adaptive management framework. Let's put something in place now so that it can be monitored and assessed for effectiveness, enforced, and adapted as necessary. We can then move forward and put our efforts and resources into other threats impacting the SRKW's.

## **Round 2 Straw Proposal**

### ***Maximum Number of Vessels Around Southern Resident Killer Whales***

First, “around SRKWs” should be defined as a half mile. This has been a standard data collection measure for SRKWs. Therefore, within a half mile of SRKWs **the maximum number of commercial whale watch license holder vessels shall be limited to 3**. Commercial kayak license holders of multiple kayaks should be considered as 1 vessel, instead of the total number of kayaks in the groups. If there are 2 groups of kayaks present within a half mile, then they will each count as 1 vessel for a total of 2 vessels. Be aware that multiple groups of SRKWs can be greater than a half mile apart, so there could be cases (west side of San Juan) where it would appear there are more than 3 commercial whale watch vessels around SRKWs, but as long as those groups are greater than a half mile apart this would be satisfactory under the CWWLP.

Both Soundwatch and PWWA 2019 data showed that the average number of commercial whale watch vessels around SRKWs was around 3 (Soundwatch = 2.55), so this would have little economic and operational impact to the commercial whale watch industry while still affording the potential benefits of the “sentinel role” of the commercial whale watch fleet (under scientific review and can be adapted). The number of 3 commercial whale watch vessels ways also highlighted as a critical number by Rob Williams and referenced by the Science Panel. We have heard from the industry leaders on this Committee that the industry as a whole tends to focus their whale watching efforts on alternative species and only watch SRKWs when necessary. This will continue to provide the educational and economic benefits of commercial whale watching to the SRKWs.

### ***Time Viewing SRKWs***

There are two parts to timing, the length of which a single whale watch vessel can view SRKW and the time of day watching of the SRKW can occur. First, I propose that 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. Additional kayak groups would be exempt from this rule due to the nature of human powered craft and behavior of the SRKW. For example, on the west side of San Juan Island, where a majority of kayak companies operate their tours, the SRKWs can flip direction 180 degrees multiple times within a short distance and/or over a long period of time. This could lead to the situation in which a kayak group is within a half mile of SRKWs for greater than 45 minutes. However, it is strongly encouraged that kayak companies limit their viewing time to 45 minutes when possible.

The limit of 45 minutes was based on recommendations that I have heard from other members on this Committee and personal experience on the water. **The true nature of this regulation is to limit parallel viewing of SRKWs within 300-500 yards to 30 minutes**. 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 could include talking with other commercial whale watch operators over the VHF 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 why I believe 45 minutes is an appropriate time to arrive “on scene” correctly, educate passengers, and gain an experience with the SRKWs.

### *Time of Day*

License holders shall be **limited to viewing SRKWs from 9:00 am to 5:00 pm Pacific Standard Time of the same day year-round**. This measure would reduce the daily impact from vessels on the SRKWs. These times were decided upon from the operations of the commercial whale watch fleet, the operation time of WDFW Enforcement, and cover the height of recreational boating hours. We in the Committee have heard from the PWWA that most companies offer tours between the hours of 9:00 am and 5:00 pm historically, so this would not have a significant impact on their operations. Additionally, these times are when WDFW Enforcement, Soundwatch and other monitoring and research operations take place. Therefore, the SRKWs could be monitored by experts outside of the license program and help enforce and educate the recreational vessels potentially drawn to the presence of the SRKWs. As noted by Soundwatch, recreational vessel presence around whales tends to drop off past 5:00 pm PST reducing the risk of impacts from these vessels.

If license holders **unknowingly encounter SRKWs outside of 9:00 am – 5:00 pm, or a different group of SRKWs is encountered after 45 minutes on the same tour, the vessel is permitted a maximum of 15 minutes viewing time** to make positive identification, data collection, and location sharing. License holders are encouraged to continue on their way after making positive identification of SRKWs and not view an extra 15 minutes of viewing time on a different group of SRKWs as a loophole.

The monitoring of maximum number of vessels and time limits shall be the responsibility of the license holders themselves and the industry as a whole. This is a practice that is already engrained in the PWWA and achieved through communications, respect for other operators, and respect for the whales. WDFW Enforcement will enforce these measures, but not act as a “referee” or “gate keeper” allowing vessels to approach and advising them to leave. WDFW Enforcement will monitor the scene as they typically do and communicate with license holders when they feel it is necessary through appropriate means. They will also issue Warnings under the license program if these limits are not kept (described below).

### *San Juan Island West Side 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 best applicable** on the west side of the island in Haro Strait year-round. The No-Go-Zone extends from Mitchell Point to Cattle Point a quarter mile offshore and a half mile from the Lime Kiln Lighthouse. 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.

The PWWA has an established guideline to remain outside of the No-Go-Zone since the late 1990's, but including this limit within the license program would officially codify this as a rule. Seeing as the industry already adheres to this guideline the impacts to their business should be minimal. This regulation would also act as a further example to recreational vessels to remain outside of the No-Go-Zone. Other protected areas, or foraging hotspots, could continue to be identified and be included in the license program as necessary when identified by peer reviewed science or managers.

### *Limited Visibility*

**License holders shall not view SRKWs in reduced visibility** below a half mile due to fog, smoke, rain, dawn, dusk, night etc. The industry has shared with this Committee that these conditions are rare, so the impact to their operations is minimal while the benefits to the SRKWs could be great.

### *Data Sharing*

**All license holders are required to record all encounters with SRKWs:** time, location, number of commercial license holder vessels present, and other pertinent data. These data must be shared with WDFW for distribution to other researchers or managers by the end of the calendar year. **If a license holder encounters SRKWs and WDFW Enforcement is not on scene the license holder must notify WDFW Enforcement of SRKW presence immediately.** To avoid unnecessary calls to law enforcement officials, a clear system of communication should be established between license holders and WDFW, such as providing WDFW access to the PWWA Sightings App. This data sharing will increase monitoring of the license program, increase enforcement presence and strengthen collaboration between the industry, WDFW and partners, which will only serve to benefit the SRKWs.

### *Allotted Warnings*

**License holders shall be granted 3 Warnings for violating any of the other regulations within the license program, and those already codified by law, in a calendar year.** If a license holder exceeds this number their license to view marine mammals commercially is void for the rest of the calendar year and reapplication is required for the following year. If a license holder exceeds the annual allotment greater than 3 times then their subsequent permit allotment shall be limited to 1 Warning. If there is continued violations of this rule or the others outlined in the program by a license holder WDFW Enforcement has the right and responsibility 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 (Coast Guard, San Juan County Sheriff, NOAA Office of Law Enforcement, Department of Fisheries & Oceans Canada, etc.) 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, and maintained by WDFW Enforcement and WDFW license program managers.

This rule gives enforcement structure to the license program and allows for consequences to be passed down to those who violate the license program. All regulations put forward in this proposal have minimal impact on the industry and follow guidelines in which the industry already follows. Therefore, this enforcement regulation should not be a further burden on the industry. This regulation will also increase compliance among license holders, which in turn will set a further example for recreational vessel to operate under these best practices.

### ***Automatic Identification System (AIS)***

Due to current enforcement limitations, staffing needs, budget concerns, and other factors I do not propose any requirements for license holders to install and utilize Automated Identification System (AIS) other than those vessels are already required to have by other laws.

However, should additional recourses become available or the conditions change to allow monitoring and/or incorporation of navigation technology, AIS should be considered for license holders. When speaking with Navionics at the Seattle Boat Show they can set up their navigation software so that when AIS enabled vessels enter a no-go area the system can alert the captain but also alert whoever else has been set up to receive that alert. For no-go areas AIS would seem a good option to incorporate in the future.

### ***Adaptive Management***

This license program shall be continually monitored, managed and updated as necessary by WDFW and its partners. Changes to the population dynamics and behavior of the SRKW shall be considered when making updates to the program. Number of individuals within the SRKW population is not sufficient in itself to be a governing factor of “success” or “recovery” of the entire population. Other threats and risks to the SRKW population shall be taken into account when making updates to the program. Enforcement needs, limitations, resources and practicality shall be considered when making updates to the program. Violations and incidents recorded by WDFW Enforcement and its partners shall be taken into consideration when making updates to the program. Data collected by license holders shall be considered when making changes to the program. Peer-reviewed research, experts, and partners (NOAA, DFO, Soundwatch, Cascadia, etc.) shall be utilized when making updates to the program.

### ***Marketing and Advertising***

**I do not believe WDFW has the resources or need to manage and enforce any limit or regulation of marketing and advertising by license holders.** I believe this responsibility falls solely on the individual license holders, the PWWA and the industry as a whole. All Committee members understand the influence of news, social media, and public perception and we as a Committee shall do our best to manage our own external communications, but as for businesses a majority of the responsibility falls on the business.

For example, this video posted by a potential license holder on social media shows 3 clips of what seems to be a commercial whale watching vessel within 100 – 200 yards of killer whales, including SRKWs, throughout the video. <https://www.facebook.com/watch/?v=2693252567577875> This is a link to a Facebook Page so I hope it works for all of you. Clip 1 SRKW (0:00 – 0:07),

Clip 2 Transient KW (0:08 – 0:28), Clip 3 SRKW (0:29 – 0:50). We do not know when these videos were taken, we do not know where exactly they were taking, and we do not know that these Clips were taken in violation of any regulations. Maybe the whales approached the vessels, maybe the engines were shutdown, etc. However, this is a prime example of what some people see as an issue with commercial whale watching. Again, this is an example and I do not mean to highlight any individual or company, or suggest that they were intentionally in violation of regulations

### *Summary*

- Maximum 3 commercial whale watch vessels within a half mile of whales.
- Commercial whale watch vessels limited to 45 minutes of viewing time within a half mile of SRKWs.
- Viewing limited to 9:00 am – 5:00 pm May 1 – September 30.
- Non-human powered license holders must remain outside of the San Juan Island No-Go-Zone.
- No viewing of SRKW in limited visibility.
- Data sharing efforts.
- 3 annual allotted warnings per license holder.
- No current requirements for AIS

### *Additional Regulations Open for Discussion*

- **Additional Restrictions on certain days of the week.** For example, no commercial whale watching on SRKWs Monday – Thursday of each week. This would require additional monitoring and enforcement, possibly requiring AIS.
- **Marine Area Closures.** Examples: Marine Area 6 closed to commercial whale watching when SRKWs are present within the Marine Area. No commercial whale watching of SRKWs in Marine Areas 5, 6, and 7 (San Juan Islands) May 1 – September 30. Marine Area 10 (Puget Sound / Seattle) closed to commercial whale watching from October 1 – April 30. This would require additional monitoring and enforcement, possibly requiring AIS.
- **Marine Observers.** Establish an observer program structured around fisheries observers to randomly monitor license holder practices. Observers could be randomly placed on license holder vessels to monitor for compliance with all regulations. This could be an avenue to understanding self-regulation of the industry verses increased WDFW Enforcement responsibilities, referred to as “big brother-ish” in the Committee.
- **Education Guidelines.** License holders must educate guests on SRKW population, threats, recovery, etc. no matter what species are being viewed. Additionally, license holders could communicate to guests why vessel regulations and the license program is in place.
- **Speed Regulations.** License holders are required to maintain under 7 knots when within a half mile of all killer whale eco-types.

Proposal B- Taylor

I hope this proposal makes sense to everyone and starts the discussion we all desperately need. I apologize for not going through the “proper” channels to submit this proposal to you all, but I figured this was the most efficient way for us all to work together, discuss options, get my entire thoughts and reasoning across and make this Committee a success. After all, each and every one of us is here to provide benefit to the critically endangered Southern Resident Killer Whales that are so unique and special to our little region of the world. Thank you.

Sincerely,

Taylor Shedd, MAS

The Whale Museum