

## Proposal D

June 15

*Note: We put this document together quickly for the Advisory Committee, but it is just a narrative summary of our survey responses (we put together our proposal using the survey format). We will provide more information on our reasoning if this is being shared with the WSAS science panel or others for their review or consideration.*

This proposal is based on the precautionary principle and a precautionary management approach, as recommended by the WSAS science panel and summarized in the third paragraph of the Q&A that they prepared for this committee:

“Many of the questions posed by the Advisory Committee cannot be answered with certainty with current evidence. However, given the inherent uncertainties in knowledge due to research gaps, and the dire condition of the Southern Resident Killer Whale (SRKW) population, the committee recommends defining every interaction as an opportunity to disturb a whale and taking a precautionary management approach. According to the precautionary principle, when an activity threatens harm then measures should be taken—even if certain cause-and-effect relationships are not fully established scientifically.”

### **Initial rules**

Given the critical status of the SRKW population, we propose that 0 motorized commercial whale-watching (CWW) boats be allowed to view SRKW at this time (within 0.5 nm). Motorized CWW vessels encountering SRKWs while in transit may view the SRKW while continuing to transit.

The proposal for no motorized CWW viewing of SRKW would be temporary until certain indicators of improvements in SRKW conservation status are documented by DFW.

The best available science is definitive that vessel acoustics and presence adversely impact SRKW socializing and foraging effectiveness, and that small vessels at 300/400 meters and beyond can adversely affect foraging behavior in resident orcas. As the WSAS science panel noted, fewer vessels around whales is better for the whales, there currently is little published empirical evidence of a sentinel effect of CWW vessels, and alleviating impacts on foraging behavior is important in order to maximize the foraging opportunities that these whales have. Todd Hass’s analysis indicated that the potential protective role of 3-4 CWW boats was the same as the protective role of Soundwatch in the absence of CWW boats (but the 3-4 CWW boats would come with additional noise and disturbance).

The dire condition of the population requires the elimination of vessel disturbance to the greatest possible extent until its status improves.

Additional proposed requirements:

- All motorized CWW boats have AIS in use at all times.
- Compliance with the Puget Sound Harbor Safety Committee's [Echosounder Standard of Care](#).
- Standards of experience or training (e.g., demonstrated ability to distinguish ecotypes).
- No marketing or stipulations around marketing of SRKW viewing (e.g., not using photos showing CWW in proximity of SRKW).
- Require reporting of SRKW presence and location to WDFW and SoundWatch. This can be set up in a way that will not deluge WDFW with duplicative reports.

We propose codifying the current voluntary year-round no-go zone on the west side of San Juan Island, extending 1/4 mile offshore from Mitchell Point to Cattle Point, with a 1/2 mile buffer around Lime Kiln Point State Park. We have submitted a request to the USCG to confirm that this would not push boats into the commercial vessel traffic separation lanes. We request that the WAS science panel confirm whether or not the ¼ mile is adequate, and whether there might be any unintended consequences that warrant a modification of that distance at this time. Through adaptive management, in future years WDFW should also look at whether to modify that closed area or consider other area closures (e.g., identified foraging habitat), consistent with the science panel's note about how exclusions can be implemented adaptively and reviewed periodically.

Under this proposal, kayak operators would be treated differently, given the lesser mobility of kayak operators and the opportunistic nature of their whale-watching. For kayak operators we propose codifying the Kayak Education Leadership Program (KELP), including:

- Refrain from launching until SRKW have passed and/or kayakers can maintain 300 yards (400 front and back) from SRKW when SRKW are in the vicinity of the intended route.
- As soon as SRKW are identified, avoid the path of SRKW, raft-up as close to shore as possible and/or in kelp beds, and position guides as the closest kayak to the SRKW.

### **Future rules, applied once adaptive management triggers are reached**

Under the precautionary management approach, we propose that WDFW ratchet up allowable motorized CWW vessel numbers slowly and incrementally from zero as adaptive management triggers are reached, accompanied by monitoring to understand the impacts of more motorized CWW boats in the vicinity of SRKWs.

As the science panel noted, “Adaptive management plans can stipulate changes in the plan based on changes in population status over time.” We suggest using indicators like the growth rate standard in the NMFS Recovery Plan (2.3% per year for 28 years) and the initial abundance target (84 orcas) established by the Governor’s Orca Task Force. While we can’t make a direct cause-and-effect link between these regulations and population growth, a downward trend in population status or failure to recover is an indication that we need to implement all possible protections.

The following proposed rules would apply once adaptive management triggers are reached, thereby allowing >0 CWW boats in the vicinity (i.e., 0.5 nm) of SRKW:

- No CWW viewing of SRKW outside 9am-5pm.<sup>1</sup>
- No CWW viewing of SRKW in low visibility conditions.
- No CWW viewing of SRKW during specified annual window(s) to be determined based on lack of prey abundance (e.g., April-June).
- Motorized CWW operators are required stay downwind from SRKW to reduce vessel exhaust (per a suggestion from the science panel).
- Parade route formation is prohibited.
- Additional required protections for specific demographic groups that are most likely to be negatively affected by disturbance (e.g., pods with a nursing mother, or pods with a member with peanut head) (per suggestion from the science panel).

We are not currently proposing a limit on duration or number of visits per boat per day once adaptive management triggers are reached and there can be motorized CWW boats in the vicinity of SRKW. We would like more input from the science panel about any additional benefits to the SRKWs from issuing rules on visit duration or number of visits per boat per day, on top of limits on vessel numbers. Shorter visits could mean more boats coming and going more frequently, which could mean more noise affecting the whales.

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<sup>1</sup> Note: We considered requiring no CWW outside 9am-5pm (another option in the survey) because of less availability of enforcement vessels and greater difficulty in distinguishing between killer whale ecotypes, but we declined to select that option out of concern for the economic viability of license holders and their need to be able to view non-SR killer whales.

**Additional proposals outside the core scope of the rulemaking**

- WDFW should have the authority to issue emergency rules in response to acute events (e.g. peanut head, an injury, etc.)
- WDFW should develop civil enforcement options.
- Waive license fees for the first 2 years due to the economic impacts of COVID-19.
- As best practices and control technologies are identified for the quieting of underwater noise from small vessels, require and incentivize (via discounted license fees) transitions to quieter vessel designs and commercial-off-the-shelf technology (e.g., echosounders, propulsion systems) to reduce underwater noise.
- Provide promotional materials that highlight all the wildlife and whales (other than SRKW) that can be seen from CWW vessels.
- Provide promotional materials about the value of viewing other species of marine mammals for education and conservation benefit.
- Provide collaborative publicity about the CWW operators supporting SRKW recovery by championing meaningful new protections and committing to not viewing SRKW in the near term.
  - We understand the need for proactive, positive communications and the education of whale-watching passengers and the public about the reasons for not seeking out SRKWs in order to avoid any negative reactions or publicity. Together, we can change public perception and help the CWW industry thrive while focusing on other species.