



MARINE MAMMAL COMMISSION

4 December 2020

Dr. Julie Watson, Killer Whale Policy Lead
Washington Department of Fish and Wildlife
Natural Resources Building
1111 Washington St. SE
Olympia, WA 98501

Dear Dr. Watson:

On 21 October 2020, the Washington Department of Fish and Wildlife (WDFW) published a notice (WSR 20-21-111) soliciting public comments on a proposed commercial whale-watching licensing program and associated restrictions for the viewing of Southern Resident killer whales (SRKWs). WDFW proposed the licensing program in response to the passage of Washington State Senate Bill 5577, which addresses the protection of Southern Resident killer whales from the disturbance impacts of whale-watching vessels. That bill directs WDFW to administer a licensing program and to develop rules for commercial viewing of SRKWs by 1 January 2021.

Under the proposed program, a license would be required for the operators of both motorized and non-motorized commercial whale-watching vessels, including kayaks and sailboats. Up to three motorized commercial whale-watching vessels would be allowed within one-half nautical mile (in the “vicinity”) of a group of SRKWs, while no restrictions would be placed on the number of non-motorized commercial vessels operating within the vicinity of SRKWs. Licensed vessel operators would be required to complete annual training regarding these regulations and potential impacts of their activities on SRKWs, and to log and report every instance when they entered the vicinity of SRKWs. An automatic identification system (AIS) would be required on every commercial motorized whale-watch vessel. Motorized whale-watch vessels would be prohibited from operating within one-quarter mile from shore from Mitchell Point to Cattle Point and within one-half mile of Lime Kiln State Park, on the west side of San Juan Island, throughout the year. Operators of non-motorized commercial whale watching vessels would be required to stay within one hundred yards of shore within this zone.

Two options are under consideration for seasonal restrictions of the licensing program. Option A would establish a three-month, whale-watching, summer season from July through September and would prohibit motorized commercial whale-watching vessels from approaching within one-half nautical mile of a SRKW at other times of the year. In addition, approaches by those vessels to within one-half nautical mile of an SRKW group would be limited to two, two-hour periods from Friday through Monday. Option B would add shoulder seasons of two months on either side (May through June and October through November) to the main summer season. During the shoulder seasons, approaches within the vicinity of SRKWs would be allowed only on Saturday

and Sunday, with a limit of one motorized, commercial whale-watching vessel operating within the vicinity of a group of SRKWs.

The staff of the Marine Mammal Commission has reviewed the proposed rule and commends WDFW and the State of Washington for its increased efforts to protect SRKWs from disturbance by vessels, but believes that much more needs to be done to reverse the downward population trend and to put the population on a trajectory to full recovery. The Commission staff provides the following comments on the proposed commercial whale-watching program and restrictions for viewing SRKWs and urges WDFW, roughly in order of importance, to:

- strongly consider an option to indefinitely prohibit all commercial SRKW whale-watching at least within the whales' primary/core foraging areas in the Salish Sea, similar to regulation extant in British Columbia, until such time that a sustained increase in the population has been documented, at which time the prohibition could be re-examined¹;
- extend the width of the closure on the west side of San Juan Island to one-half mile between Mitchell and Cattle Points, to provide better protection of foraging SRKWs;
- extend the extent of the closure on the west side of San Juan Island to include important adjacent foraging areas to the North, South and East of the island;
- select Option A, to minimize the exposure of SRKWs to disturbance by whale-watching vessels during a critical foraging period for the population;
- further modify Option A by restricting the number of days open to commercial whale-watching to just two (e.g., Saturday and Sunday) to reduce disturbance to less than 50 percent of each week, and by decreasing the number of vessels allowed at one time in the vicinity of SRKWs to just one vessel;
- require vessels within a specified distance of the animals to turn off depth sounders that could interfere with killer whale communications;
- restrict the number of licensed commercial non-motorized vessels operating within the vicinity of SRKWs, as it does for motorized vessels;
- substantially increase surveillance and enforcement efforts; and
- require licensed commercial operators to display a flag or other signage to allow enforcement officers and other members of the public to distinguish between licensed and non-licensed operators.

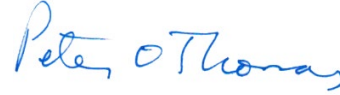
In addition, we urge WDFW, following this process, to consider developing and implementing a permitting program for the viewing of SRKWs by non-commercial vessels.

¹ We note that the legislation does not exclude the possibility of a total prohibition of SRKW whale watching, and in fact implicitly allows for this possibility (RCW 77.6.620(1)).

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Thank you for the opportunity to comment on the proposed commercial, SRKW whale-watching licensing program and associated viewing restrictions. Please contact me if you have any questions about our recommendations or rationale.

Sincerely,

A handwritten signature in blue ink that reads "Peter O. Thomas". The signature is written in a cursive style with a large initial "P" and a distinct "O" for the middle name.

Peter O. Thomas, Ph.D.,
Executive Director