

Commercial Whale Watching Briefing and Decision

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Washington Department of Fish and Wildlife

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Washington
Department of
**FISH and
WILDLIFE**

Timeline



4/22 2SSB 5577 passes
 7/28 Bill effective date
 10/9-20 Application period for Advisory Committee members
 11/19 Advisory Committee members selected

April-December 2019

9/15 Adaptive Management recommendations from the Science Panel
 9/23 Draft SEPA EIS published for public comment

September

12/4-5 Fish and Wildlife Commission hearing on proposed rules
 12/11 Final EIS publication
 12/15 Special session
 12/18 Scheduled decision

December

January - August 2020

1/17 – 7/8 Advisory Committee meetings
 4/27 & 5/6- Science Panel stakeholder workshops
 6/8 Science Panel feedback to Advisory Committee
 7/31 Science Panel feedback on two rule packages proposed in the Advisory Committee process

October – November 2020

10/1-8 Early draft rules & public comment
 10/19 Public Meeting
 10/21 CR-102 with draft rules and SBEIS filed
 10/23 SEPA public comment ends

January

Rules go into effect
 Implementation
 E-rules if needed



RCW 77.65.620

“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;

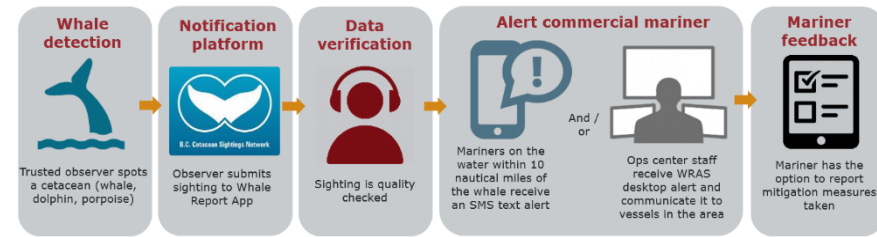
(b) The **number of days and hours** that commercial whale watching operators can operate;

(c) The **duration spent in the vicinity** of southern resident orca whales; and

(d) The **areas** in which commercial whale watching operators may operate.



Optimizing



Whale Report Alert System
B.C. Cetacean Sightings Network

Indirect benefits
to SRKW

Implementable,
enforceable, measurable,
and able to be adaptively
managed

The rules must be
designed [using best
available science] to
reduce the daily and
cumulative impacts on
southern resident orca
whales and **consider**
the economic viability
of license holders.



Conservation need

Prey availability and noise are interrelated: Increasing prey by 15% and decreasing vessel noise by 50% is expected to recover the population more effectively than increasing prey by 30% alone (Lacy et al. 2017). SRKW can handle more disturbance/noise when prey is abundant.

This legislation and rulemaking were specifically designed to address CWW noise and disturbance impacts, which are not negligible:

- Commercial whale watching (CWW) makes up 0.6% of *ambient* noise in the Salish Sea (MacGillivray et al. 2016), but that isn't the same as what's experienced by the whales.
- Noise levels *received by SRKW* are correlated with the **number of vessels within 1000 meters** (Holt et al. 2009). CWW make up **more than half** (56% in 2019) **of boats** in the vicinity of orcas (Soundwatch 2019).
- Tollit et al. (2017) found that CWW are responsible for around **1/3 of SRKW's lost foraging time** each day.
- Studies report behavioral changes within distances *beyond* the current (2019) restrictions, suggesting "**likely impacts to SRKWs even by the regulation-abiding boats.**"
- Studies of orcas and other cetaceans find that the effect of **vessel presence** increases with vessel numbers, particularly for **three or more vessels** (Williams et al 2002, Williams et al 2009, Williams and Ashe 2007). A lower number of vessels would lead to lower levels of disturbance.



Addressing other sources



Shipping

- ECHO (BC) and “Quiet Sound” (proposed, Washington): Commerce, WSF, and PSP are working with the Ports, NOAA, and others through the Washington Maritime Blue alliance. Working groups: vessel operations, incentives, innovations, notification, monitoring, evaluation, and adaptive management.
- ECHO program in Canada has seen greater than 80% compliance with voluntary, seasonal slowdowns and lateral displacements by shipping and towing sectors through SRKW hotspots over past few years, resulting in marked reduction in underwater noise levels
- Canada has started a transboundary discussion of the feasibility of modifying the Traffic Separation Scheme (aka shipping lanes)
- Whale Report Alert System (BC, recently expanded into Washington): facilitated by WSF, PSP, and Commerce. It is now adopted by Puget Sound Pilots, WA State Ferries, fast ferries, and local tug and tow operators and is under consideration by the U.S. Navy.

Private Boater Education & Enforcement

- Legislature adopted “Go-Slow” bubble for all boats and increased distance regulations around SRKW
- Be Whale Wise- signs on docks, pamphlets, boat show booths, Shell gas station ads, etc.
- Soundwatch (WA) and Straitwatch (BC) on-water education and monitoring
- Protection of SRKW included in State Parks’ mandatory boater education curriculum
- Canada is investing \$415k over 3 years into education and awareness
- Safe, voluntary standards for boaters’ use of depth finders to reduce interference with SKRW echolocation

Private Boater Education & Enforcement (continued)

- PSP and DOL distributed messaging on rules to all licensed boaters in Washington, and the 2019 orca laws for boats are featured at top of DOL boating registration webpage
- WDFW Enforcement has increased patrols in order to educate boaters and enforce the new rules.
- Voluntary no-go zone (WA) and interim sanctuary zones (BC)
- Whale Warning Flag program (BC and WA)

Ferries

- WSF completed a fleet-wide noise study to establish noise ‘footprints’ for each vessel
- A noise mitigation plan that identifies operational methods to quiet vessels
- WSF Electrification Plan, incentivized vessel construction contracts to reduce engine noise
- Ecology partnering to retrofit one of WSF’s Jumbo Mark II ships with a hybrid propulsion system

Navy

- Northwest Testing and Training protocols include new restrictions on Navy’s use of sonar based on State feedback regarding measures to protect SRKW

Oil Spills

- Legislature passed a bill in 2019 to require tug escorts
- Interagency coordination on plans for spill response and deterrence of SRKW from affected areas

QUIET SOUND



How did we land on the draft rules?

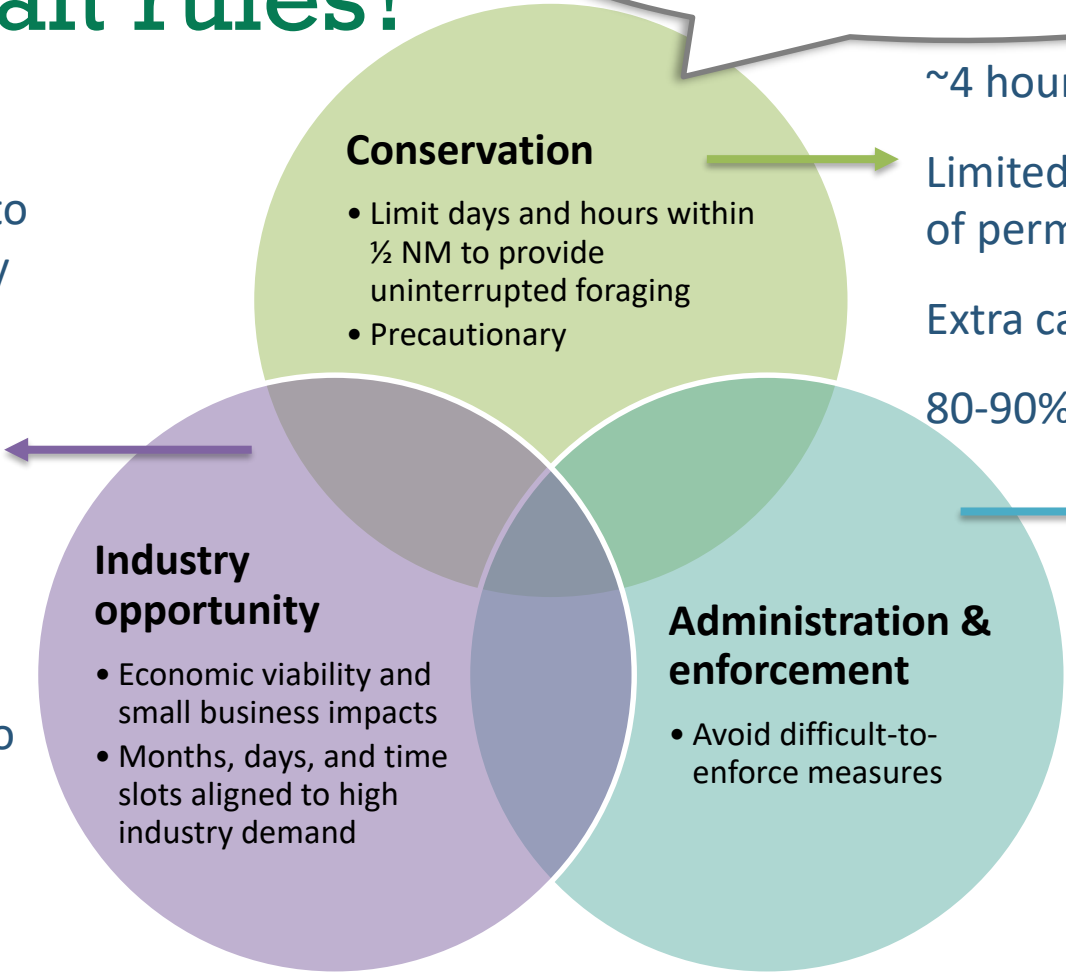
The committee recommends defining every interaction with an SRKW as an opportunity to disturb a whale. -WSAS

Limiting # of boats, days, hours allowed with SRKW unlikely to affect viability- many other species with unrestricted viewing

Industry wanted more viewing throughout year

Days/times of high-recreational traffic to study sentinel role

Hours aligned with high demand and general tour times



~4 hours per day of CWW

Limited # of days per year of permitted viewing

Extra caution with calves

80-90% reduction

Avoid stopwatch, complex tracking and counting

Avoid highly variable rules

Straightforward



SBEIS

- **Existing best practices:** no-go zone, kayak positioning and raft-up
- **Unlikely to affect:** number of boats, days and hours with allowed SRKW viewing closer than ½ NM
- **May result in impacts:** kayak ½ mile launch restriction

If the proposed rule directly limits the level of activity in the industry (i.e., the number of tickets that can be sold), this may result in revenue impacts that should be considered in the context of this SBEIS. As described above, **rule elements that limit viewing of Southern Residents only, or that limit the geographic area where CWW activity may occur, will not limit overall CWW activity because substitute viewing opportunities (both geographic and species-based) are available.**

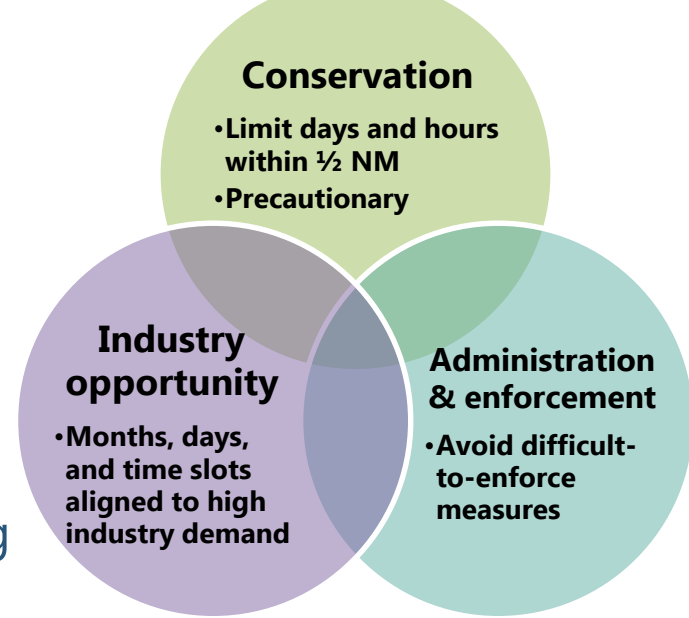
If launches must be delayed and relocation to an alternate launch location is not logistically possible, there is the potential that trips could be cancelled, resulting in decreased activity and reduced revenues for these businesses. However, **given the relatively infrequent presence of Southern Residents in Washington's inland waters generally, tour launch delays are unlikely to occur frequently.**





Public comment themes (10/21-12/5)

- A partial draft was presented 12/4
- The full report includes all comments received during the comment period and at the hearing



Sentiment	Number of comments
Support for the rules	4,086 (315 individual comments +1,489 WEC letters, +1,586 petition signatories, +691 CBD letters, +5 form letters representing repeated comments)
Support Option B	14
Support Option A (or "Option A as filed")	2,417 (191 individual comments +1,489 WEC letters, +691 CBD letters, +5 form letters)
Promoting Option A with additional restrictions	1,583 (94 individual comments +1,489 WEC letters)
Promoting a suspension of SRKW viewing	2,382 (105 individual comments +1,586 petition signatories, +691 CBD letters)

Sentiment	Number of comments
Opposition to both Options A and B	213 (144 individual comments +69 naturalist letter signatories)
Positive value of commercial whale watching	146 (77 individual comments +69 naturalist letter signatories)
Promoting a counter-proposal to Options A and B	29
Redirecting focus to other issues such as prey availability	38





SR3/NOAA
NMFS Permt # 19091

Northwest Indian Fisheries Commission: Focused on the no-go zone, compliance monitoring, and enforcement

Puget Sound Partnership: Supported a modified Option B

San Juan County: Supported Option B and focused on compliance monitoring

The Port of Friday Harbor: Supported limits, no-go when SRKW are present, incentivizing quieter vessels

The Samish Indian Nation and Will Hall, Mayor of Shoreline: Modified Option A

Intergovernmental comments



Recommended adjustments



Section	Original	Recommended adjustment
WAC 220-460-010	--	Added definition for “Inland waters of Washington”
WAC 220-460-090	--	Added section to define geographic scope of SRKW viewing rules
WAC 220-460-120(2) Option A	Limited viewing in July-September to Friday-Monday	Removed “on Fridays, Saturdays, Sundays, and Mondays”
WAC 220-460-140(3)(b)(iv)	Detailed reporting requirements for vicinity instances outside permitted days/times	Split into section for motorized vessels (iv) and nonmotorized vessels (v) to improve clarity in requirements

The full list of recommended adjustments is available in the 12/4 Commission briefing packets.



Rules for license holders to reduce daily and cumulative impacts on SRKW

Variable	Status quo	Proposed rules
General	Speed and distance rules in place (2019)	Speed and distance rules must be followed; SRKW rules apply in the inland waters of WA
Geographic restrictions	Unrestricted, but voluntary no-go zone on the west side of San Juan Island	Close the west side of San Juan Island to CWW vessels, allowing a 100-yard corridor for human-powered vessels.
Human-powered vessels	Distance rules in place (2019)	No launching within ½ nautical mile of SRKW; raft-up requirement if SRKW are encountered; no positioning or paddling in the path of SRKW.
Compliance and reporting	No requirements	AIS requirement (2022); log and report each instance in the vicinity of SRKW; real-time reporting to Whale Report Alert System; WDFW training required.
Penalties	Civil infraction (RCW 77.15.740) and criminal charges (77.15.815)	Civil infractions with fines of up to \$500 for violations of both statutes, criminal charges remain an option



Options A and B

Variable	Option A: July-September (3 months)	Option B: May-November (7 months)
SRKW viewing hours by motorized CWW at closer than ½ nautical mile allowed only during these months, days, and times	July-September: 10 a.m.-12 p.m. and 3-5 p.m. Friday-Monday (as filed, but recommended adjustment to <i>daily viewing</i> July-September)	July-September: 10 a.m.-12 p.m. and 3-5p.m. Friday-Monday
	N/A	May-June: 10 a.m.-12 p.m. and 3-5p.m. Saturday-Sunday Oct.-November: 10 a.m.-12 p.m. and 2-4 p.m. Saturday-Sunday
	Each company can view in one of these two periods in a day.	Each company can view in one of these two periods in a day.
Number of motorized CWW vessels that can be within ½ nautical mile of a group of SRKW at once	July-September: Three	July-September: Three
	N/A	October-November and May-June: One
	Zero if calf of less than 1 year (and/or with vulnerable whales, by emergency rule)	Zero if calf of less than 1 year (and/or with vulnerable whales, by emergency rule)



April

Mo	Tu	We	Th	Fr	Sa	Su
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

May

Mo	Tu	We	Th	Fr	Sa	Su
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31						

June

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April

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May

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June

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July

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August

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September

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26	27	28	29	30	31	

July

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27	28	29	30	31		

August

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September

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12	13	14	15	16	17	18
19	20	21	22	23	24	25
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**Recommended adjustment:
daily viewing July-September**

October

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
3	4	5	6	7	8	9
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17	18	19	20	21	22	23
24	25	26	27	28	29	30
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November

Mo	Tu	We	Th	Fr	Sa	Su
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December

Mo	Tu	We	Th	Fr	Sa	Su
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October

Mo	Tu	We	Th	Fr	Sa	Su
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10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
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November

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

December

Mo	Tu	We	Th	Fr	Sa	Su
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

Options A & B

SRKW viewing by motorized CWW at closer than 1/2 NM

Two, two-hour viewing periods per highlighted day

Limits on # of motorized CWW per group of SRKW:

yellow=3
blue=1



Variable	Suspend	Advisory Committee Proposal L	Multiple public comments	Option A: July-September	Option B: May-November	Advisory Committee Proposal J	Multiple public comments	Status Quo
Months	0	12	3	3	7	12	12	Unlimited
Days per week	0	7	4	4 (or 7 - staff recommended change)	4 July-Sept. 2 May-June and Oct.-Nov.	7	7	Unlimited
Hours per day	0	10am- 1 hour before sunset	4	4	4	Unlimited, 45 minutes in vicinity at a time	Unlimited, 45 minutes in vicinity at a time	Unlimited, voluntary 45 minutes in vicinity
Number of boats	0	1, if WDFW and Soundwatch are not present	1	3	3 July-Sept. 1 May-June and Oct.-Nov.	3	5	Unlimited, voluntary reduction to average of ~5
Number of boats (special)	0	0 in low visibility	0 w/ calf, pregnant and vuln. whales, 0 in low visibility	0 w/ calf 0 with vuln. whales, by emergency rule	0 w/ calf 0 with vuln. whales, by emergency rule	N/A	N/A	Unlimited
Geographic	All areas	West side of SJI	West side of SJI	West side of SJI	West side of SJI	West side of SJI	West side of SJI when SRKW are present	West side of SJI voluntary
Compliance	N/A	AIS, WRAS, WDFW, whale flag	AIS, WRAS, WDFW	AIS, WRAS	AIS, WRAS	WDFW	WDFW, whale flag	Voluntary

Putting the proposal in context



Effective dates for WAC 220-460

File on 12/23/2020

Effective on 1/23/2021

- Definitions (010)
- License administration (020-080)
- SRKW rules (090-130)
- Penalties (150)
- Severability (160)
- E-rule to cover 1/1-1/23
- E-rule to delay 020(1) requirement to have a license in order to operate until 3/1

Effective on 5/1/2021

- Compliance and reporting (140)
- E-rule to delay 140(1) AIS requirement to 1/2022



Alternative Motion Language

Option B with staff's recommended adjustments:

- I move to adopt WAC chapter 220-460 that is included in **Option B** with all proposed adjustments presented by staff in the Dec. 4 commission materials.

If a commissioner wants to move to adopt **Option A** with 3 motorized commercially whale watch vessels allowed **daily** during July through September.

- I move to adopt WAC chapter 220-460 that is included in Option A with all proposed adjustments presented by staff in commission materials for the Dec. 4 meeting.

If a commissioner wants to move to adopt **Option A** with 3 motorized commercially whale watch vessels allowed from **Friday through Monday** during July through September:

- I move to adopt WAC chapter 220-460 that is included in Option A with adjustments proposed by staff to sections, except for the proposed adjustment to WAC 220-460-120(2), so that the text "on Fridays, Saturdays, Sundays, and Mondays" will not be removed.

If a commissioner wants to move to adopt **Option A** with only **1 motorized commercial whale watch vessel** allowed from **Friday through Monday** during July through September:

- I move to adopt WAC chapter 220-460 that is included in Option A with adjustments proposed by staff to sections, except for the proposed adjustment to WAC 220-460-120(2), so that the text "on Fridays, Saturdays, Sundays, and Mondays" will not be removed.
- And I further move to amend the Option A language in WAC 220-460-110(1) to change the language from: "It is unlawful for more than three motorized commercial whale watching vessels at a time to be within the vicinity of any group of southern resident killer whales."; To "It is unlawful for more than one motorized commercial whale watching vessel at a time to be within the vicinity of any group of southern resident killer whales."

A second, separate motion regarding the policy statement is:

I move to approve the Washington Fish and Wildlife Commission Policy Statement "Washington Fish and Wildlife Commission Policy Statement on the recovery of Southern Resident Killer Whales and WDFW's commercial whale watching rules" as presented by staff.





Staff Acknowledgement: Nate Pamplin, Tom McBride, Nelson Falkenburg, Chalee Batungbacal (Director's Office), Hannah Anderson and Jessica Stocking (Wildlife Diversity), Amy Dona (AGO), Kristin Nielsen, Cheri Rakevich, Peter Vernie, Ben Power, and formerly Michele Culver (TFM), Lisa Wood (SEPA), Captain Myers, Captain Anderson, Sergeant Kimball, and Sergeant Russ Mullins (Enforcement), and several others who have been tracking this process and offering support as needed, including Dir. Susewind, Deputy Dir. Windrope, R6 Dir. Larry Phillips, and R4 Dir. Brendan Brokes

Partner Acknowledgement: Advisory Committee members, tribes and intergovernmental partners, many other organizations and members of the public who have weighed in to advise the process over the last year

Next steps?

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Washington Department of **FISH and WILDLIFE**

