



## AGENDA ITEM SUMMARY

Oregon Listing Determination for Southern Resident Orcas  
February 16, 2024

### BACKGROUND

Southern Resident orcas (*Orcinus orca*) are a distinct population of orcas (killer whales), native to the eastern North Pacific Ocean, with a range that extends from southeastern Alaska to central California. Due to low population numbers and a declining trend, the National Marine Fisheries Service (NMFS) listed Southern Resident orcas (SROs) as endangered under the federal Endangered Species Act (ESA) in 2005. The federal listing prohibits the “take” of SROs with take defined under the ESA as “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.” This prohibition applies to any person subject to the jurisdiction of the U.S. Government. In addition to the take prohibition, Section 7 of the ESA requires federal agencies to consult with NMFS to ensure that actions they authorize, fund, or carry out do not jeopardize the existence of SROs or adversely modify their critical habitat.

As required for a federally listed species, NMFS designated critical habitat for SROs in 2006 (revised in 2021) and produced a recovery plan in 2008. The federal recovery plan provides guidance on actions that can be taken to recover the SRO population and will guide NMFS in its Section 7 consultations, but it does not require any agencies, organizations, or individuals to carry out the recommended actions. In its latest five-year status review in 2021, NMFS concluded that the population should remain listed as endangered. SROs are also featured in NMFS’s “Species in the Spotlight” program, intended to focus attention and resources on the species most at risk of extinction. In Washington State, SROs, along with other orcas in the state’s waters, have been listed as endangered since 2004. The Washington Department of Fish and Wildlife (WDFW) recommended in its 2023 status review that orcas continue to be state-listed as endangered. SROs have been listed as endangered in Canada since 2001.

On February 16, 2023, the Oregon Fish and Wildlife Commission (Commission) was petitioned by the Center for Biological Diversity, Defenders of Wildlife, and Whale and Dolphin Conservation to list SROs as endangered under the Oregon Endangered Species Act (OESA). At its April 21, 2023 meeting, the Commission found that the petition presented “substantial scientific information” to begin a rulemaking process leading to a listing determination.

To list a species as state-threatened or endangered, the Commission must base its decision on documented and verifiable scientific information about the species’ biological status and find that the reproductive potential of the species is in danger of failure due to limited population numbers, disease, predation, or other actions affecting its continued existence. Other listing criteria in OAR 635-100-0105 include requirements for the species to be native to Oregon and in danger of extinction throughout any significant portion of its range within the state.

With respect to the species' range within Oregon, the Commission must consider the total geographic area in the state used by the species, the nature of the habitat (e.g., any distinctive characteristics of the habitat used for breeding, resting, or foraging), and the extent to which the species habitually uses the geographic area within the state.

To be listed, the Commission must also find that one or more of the following factors exists:

- Most populations of the species are undergoing imminent or active deterioration of their range or primary habitat,
- Overutilization of the species or its habitat for commercial, recreational, scientific or educational purposes is occurring or is likely to occur, or
- Existing state or federal programs are found to be inadequate to protect the species and its habitat (ORS 496.176; OAR 635-100-0105).

## **PUBLIC INVOLVEMENT**

### **Consultation with Required Entities, Persons, and Organizations**

ODFW drafted a Biological Assessment of SROs and a set of Survival Guidelines which would be implemented if SROs are listed under the OESA. Both drafts were sent to affected state and federal agencies, Oregon's federally recognized Tribes, city and county governments on the Oregon Coast, non-profit groups, Oregon whale-watching charters and guides, and the academic community in the fall of 2023 for their review and comment. ODFW considered the reviewers' comments and suggestions during development of the final Biological Assessment and Survival Guidelines. ODFW also corresponded with parties regarding questions and concerns related to the potential listing of SROs in Oregon and met with the Tribes interested in consultation on the issue.

### **General Public Involvement**

All materials for the Commission's review, including the Biological Assessment, Survival Guidelines, and this Agenda Item Summary, were posted to the ODFW website to provide the public with the opportunity to review the materials and provide comments to the Commission.

## **ISSUE**

Determine whether SROs should be listed as endangered under the OESA based on documented and verifiable scientific information related to the species' biological status and evaluation of other criteria outlined in Oregon statutes and rules.

## ANALYSIS

The following is a condensed summary of information on SROs to help determine whether the population should be listed as endangered in Oregon. More detailed evaluation of the documented and verifiable scientific and other information can be found in Attachment 4: Biological Assessment of Southern Resident Orcas in Oregon.

### Biology

Globally, there are an estimated 50,000 orcas spread throughout the world's oceans. The roughly 2,500 orcas that inhabit the eastern North Pacific Ocean are comprised of three ecotypes: resident, transient, and offshore. Differences in traits between the ecotypes, such as genetic makeup, body size and pigmentation, dorsal fin shape, vocalization pattern, social structure, and diet are maintained through a lack of interbreeding among ecotypes even when their distributions overlap. Resident orcas live in larger, more stable groups and rely almost entirely on fish for their diet, particularly Pacific salmon (*Oncorhynchus* spp.). Transient and offshore orcas live in smaller, more fluid groups and primarily feed on marine mammals and sharks, respectively.

SROs are one of four resident orca populations (Southern, Northern, Southern Alaska, Western Alaska) and are the least numerous. Like other orcas, SROs are highly social animals with a well-developed social structure consisting of several female-led matrilineal pods, designated J, K, and L. The orcas have dorsal fin and saddle patch characteristics that are individually unique, allowing the entire population to be counted during annual censuses. The most recent population size for SROs (as of July 1, 2023, Center for Whale Research) is 75 orcas (25 in J pod, 16 in K pod, and 34 in L pod), an increase from the 2022 census when the population numbered 73 individuals. Two new calves (one female and one male) were born into L pod in the first half of 2023, and no mortalities occurred over the past year. Another male calf was born into J pod in late December 2023 but is presumed dead.

Orca vocalizations are critical for communication between individuals, maintaining social bonds, navigation, and foraging. Each orca pod has a unique vocal dialect, which can be used to identify pods acoustically. Orcas are polygamous and males usually mate with females outside of their own pods, which helps to reduce the risk of inbreeding. Female orcas typically produce their first calf between 12 and 17 years of age and can be reproductively active for 20 to 24 years before entering a post-reproductive phase. Male orcas reach sexual maturity at 11 to 15 years of age and remain reproductively active throughout their lives. The average life expectancy of SROs is 29 years for females and 17 years for males with maximum life spans of 80 to 90 years and 60 to 70 years, respectively. Orcas have no natural predators, so the primary sources of natural mortality are thought to be malnutrition and disease. In the past, human-related mortality or loss included Indigenous and commercial harvest, collections for marine parks, and predator control efforts. Currently, most human-related mortality is incidental and usually involves vessel strikes or fishing gear entanglement, but human activities that negatively impact SROs' prey, water quality, and ambient noise levels can have long-term effects which result in mortality.

About 96% of the SROs' diet during the summer consists of adult salmonids. Chinook salmon, which are an important part of the diet year-round, account for approximately 65 to 70% of consumed prey. Coho and Chum salmon are also consumed during the late summer and fall, respectively. Chinook salmon appear to be selected over other salmon species and may be preferred by SROs due to their relatively large size and high fat content, resulting in a greater energy return per unit of foraging effort. Genetic analyses of prey samples indicate that SROs consume Chinook salmon from a wide variety of stocks from many river systems ranging from northern British Columbia to central California. Having access to a diverse mix of Chinook stocks throughout the year may provide SROs with greater resiliency in their diet, especially as Chinook stock abundances fluctuate. During the winter, the SROs' diet appears to be broader, including more steelhead and non-salmonids, presumably because of the low abundance of their preferred prey, Chinook salmon, at that time of year. In the outer coastal waters of Washington, Oregon, and California, Columbia River Chinook salmon comprised nearly 54% of the prey samples collected during the winter and spring. Lower river spring and fall Chinook, the Columbia Chinook salmon stocks most likely to originate from Oregon tributaries and hatchery salmon release areas, accounted for 27% of the samples. Chinook salmon from Oregon Coast rivers have not been collected in prey samples from coastal waters, but their small population sizes may make them less likely to be sampled.

### **Critical Habitat**

In 2006, NMFS designated critical habitat for SROs in the inland marine waters of Washington State. In 2021, based on more recent research, NMFS expanded the SROs' critical habitat to include the outer coastal waters of Washington, Oregon, and California between Cape Flattery, Washington and Point Sur, California (Figure 1). The K and L pods spend considerable time in the outer coastal waters during the winter and spring, especially along the southern Washington coast and near the mouth of the Columbia River. This area has been identified as a foraging hotspot and the SROs' presence coincides with the return timing of spring Chinook salmon to the Columbia. Satellite tagging data indicate that Oregon coastal waters between Cape Meares and the California border serve as an important travel corridor for SROs as they move between foraging areas to the north and south. SROs traveling along the Oregon Coast during winter and early spring stay within a relatively narrow corridor ranging from 1.2 to 7.5 miles from shore, with an average distance from shore of 3.7 miles. The median depth traveled by SROs is 187 feet. Recent observations suggest that SROs may be spending less time in their core habitat area in the Salish Sea and more time in outer coastal waters, possibly due to a lower abundance of salmon in the inland marine waters during the late spring and early summer.



Figure 1. Map showing new area added to SRO critical habitat in 2021 (Oceana).

### Population Status and Trends

The SRO population was significantly reduced by the removal of individual animals for the aquaria trade in the late 1960s and early 1970s and has since experienced periods of growth and decline (Figure 2). Since peaking at 98 individuals in 1995, the SRO population has exhibited an overall declining trend. Although this population decline initially corresponded with lower Chinook salmon abundance in the late 1990s, the association between Chinook salmon abundance and SRO population status has weakened in recent years as the population continues to decrease even during periods of improved Chinook salmon numbers. Therefore, other factors such as contaminant exposure and noise/vessel disturbance are likely contributing to the

population’s long-term decline. While the birth of the new calves and slight improvement in population size in 2023 is encouraging, the current SRO population size (75) remains below what it was when the population was federally listed in 2005 (88). Small population size makes the community vulnerable to inbreeding and catastrophic events and means that its age and sex compositions are heavily influenced by the births and deaths of individual animals.

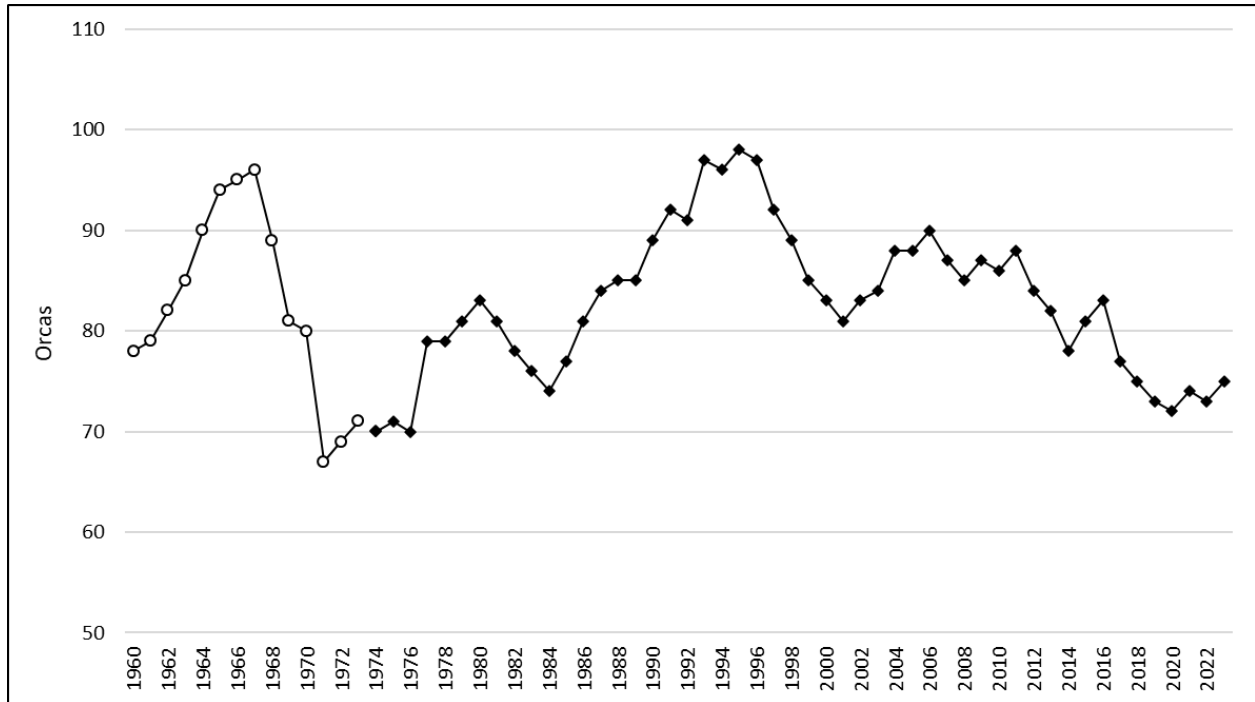


Figure 2. SRO population size and trend, 1960–2023 (data from NMFS and Center for Whale Research). Data points for 1960–1973 from modeling estimates; data for 1974–2023 represent census counts.

There are also signs of reproductive issues within the SRO population. Researchers found that 52% of the calves born between 1990 and 2015 were sired by only two males and there were four highly inbred offspring in the population. Also, unlike most orca populations, mating within pods appeared to be more common for SROs. The average calving interval of 6.1 years for SRO females is longer than for Northern Resident females, resulting in a lower fecundity rate (births per year) for the SRO population. The sex ratio of the SRO population was recently estimated to be 55% male and 45% female, placing the population at a reproductive disadvantage due to the lower proportion of females. Also, the proportion of reproductive-age females that have not given birth to a calf is relatively high. Recent studies indicate that several SRO females have had late-term miscarriages and calves have died within a short time of birth. Inbreeding depression, along with other reproductive issues, make the recovery of the SRO population more difficult.

Population viability modeling by NMFS indicates that the SRO population size is projected to decrease over the next 25 years (Figure 3). By 2045, the population may number between 39 and 64 individuals, depending on the modeled survival and fecundity rates. Even though survival

rates for the SRO population have been slowly increasing since the 1990s, the downward projections largely reflect the population’s relatively low fecundity rates and recent shifts in the age and sex compositions of the population.

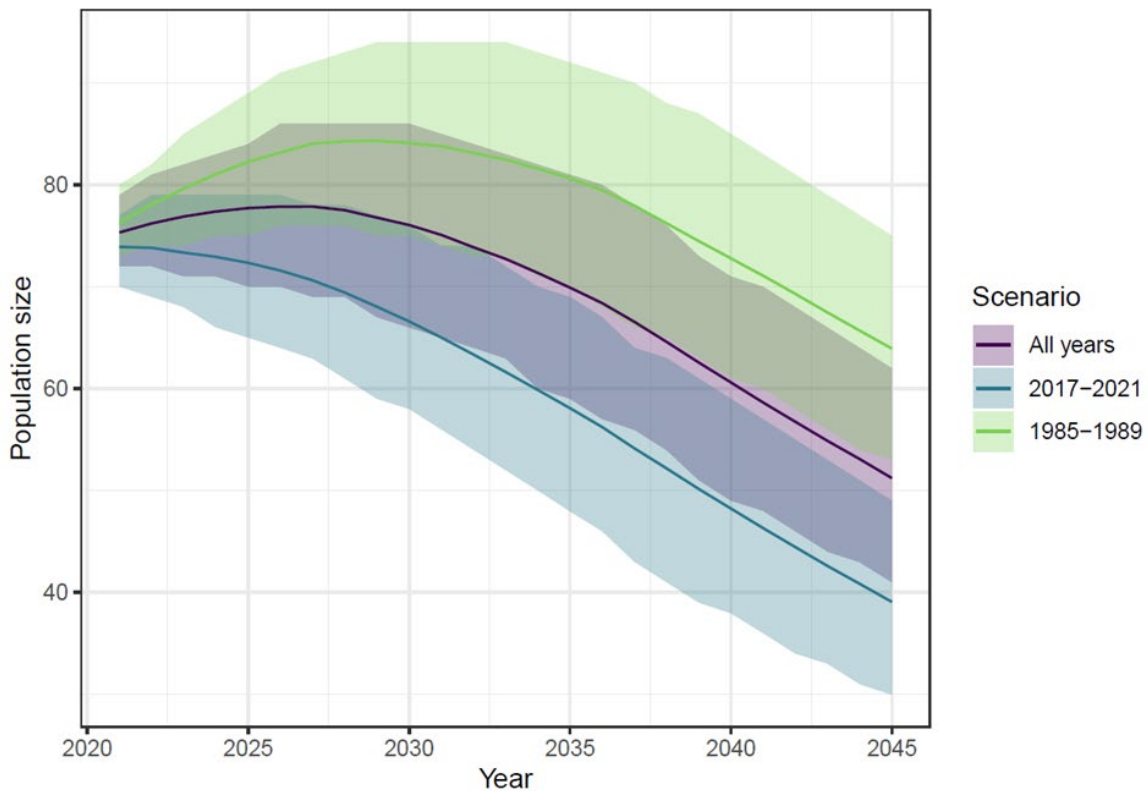


Figure 3. SRO population size projections from 2020 to 2045 under three scenarios: (1) use of fecundity and survival rates estimated over the entire time series (1985–2021, purple), (2) use of rates estimated over the last five years (2017–2021, blue), and (3) use of the highest estimated survival and fecundity rates (1985–1989, green) (NMFS 2021 5-Year Status Review).

### Threats

NMFS identified the following factors as key threats to the survival and recovery of SROs: 1) prey availability, 2) sound and vessel disturbance, and 3) environmental contaminants. These threats form the basis of the ESA recovery plan for SROs and help guide recovery efforts. Other major threats to the population include oil spills and biological factors such as small population size, inbreeding depression, and poor body condition.

**Prey availability**—The abundance of Chinook salmon, the SROs’ principal prey, has been greatly reduced over the last 150 years due to habitat loss and degradation, overfishing, and hydropower operations on the Columbia River and other rivers. Nine Chinook stocks are listed as threatened or endangered under the ESA and three Chinook populations in British Columbia are eligible for listing as endangered. The effects of climate change are expected to place additional stresses on these populations. In addition to reductions in the quantity of prey,

decreased quality of prey is apparent. Pacific salmon, including Chinook, have decreased in physical size over the past several decades. Smaller prey may result in fewer calories being consumed per unit of foraging effort for orcas. Nutritional stress can lead to increased mortality and poor reproductive success.

***Sound and vessel disturbance***— Noise and disturbance from vessel traffic, dredging/drilling, seismic testing, construction, and ocean energy development can potentially interfere with the SROs’ ability to communicate with each other and forage efficiently. Noises may mask or prevent the perception of vocalizations and interfere with echolocation, reducing the range at which SROs can detect salmon. Orcas also change their behavior in the presence of vessels, spending more time traveling and less time foraging. Behavioral changes can occur at varying distances from vessels, ranging from 100 meters (109 yards) to 400 meters (437 yards) or greater. Whale watching is an important industry in several coastal communities, boosting the local economy and increasing the public’s appreciation for marine mammals. However, whale-watching vessels can negatively affect orcas if approached too closely. In Washington and British Columbia, orcas are the primary species of interest for the whale-watching industry due to their historically reliable presence in the Salish Sea. Whale watching off the Oregon Coast focuses on gray whales (*Eschrichtius robustus*) because of their spring and fall migrations, and a subset of gray whales that feed off the Oregon Coast during the summer. Orcas are seldom observed in Oregon with sightings typically occurring during April to June, and the orcas are usually the transient ecotype. The development of marine renewable energy projects off the Oregon Coast is currently being investigated with plans to test wave energy devices at a site near Newport, Oregon, and possible commercial development of offshore wind facilities located more than 18 miles off the southern Oregon coast. Installation and operation of ocean energy infrastructure may produce sound at levels exceeding ambient conditions that could have a range of effects on marine mammals.

***Environmental contaminants***— Chemicals known as persistent organic pollutants (POPs) are one of the greatest contaminant risks to SROs because they are slow to degrade in the environment and bioaccumulate in top marine predators through consumption of contaminated prey. High levels of POPs have been detected in Chinook salmon from Puget Sound and the lower Columbia River. High POP concentrations in marine mammals have been linked to endocrine, metabolic, and immune system disruption, cancer, decreased reproduction, and increased calf mortality. Female orcas transfer much of their contaminant burden to their offspring in utero and during nursing. Orca calves are especially vulnerable to the effects of contaminants because of exposure during an important time in their growth and development. The health impacts of contaminants on SROs can be influenced by other stressors such as a lack of prey. A shortage of food causes an orca’s body to draw on its fat reserves, mobilizing toxins into the circulatory system where they can have harmful effects. Attention is also focused on “contaminants of emerging concern” (CECs). CECs are found in common household products like pharmaceuticals and personal care products but are also produced in industrial processes. CECs are difficult to treat in wastewater and are deposited in waterbodies through effluent from treatment plants. CECs have been found in SROs, but little is known about the effects of these



chemicals on marine mammals. Recently, 6PPD-quinone, a transformed product of the widely-used tire preservative, 6PPD, has received a lot of attention due to its toxic effects on adult Coho salmon in the Pacific Northwest. Because Coho salmon are part of the SROs' diet, this compound has the potential to impact the SRO population.

**Oil spills**— While the likelihood of a major oil spill in the northeastern Pacific region is low, if one were to occur, the impacts could be severe to orcas and other coastal organisms. The *Exxon Valdez* oil spill in Prince William Sound, Alaska in 1989 resulted in unprecedented mortalities for resident and transient orca pods in southern Alaska. Oil spills can also affect prey populations that SROs rely on, reducing the amount of food available to them.

**Biological factors**— Some biological factors associated with the SRO population can also pose a threat to their survival and chances for recovery. The small SRO population size makes the community vulnerable to catastrophic events like oil spills or disease outbreaks and can exacerbate the effects of acute and chronic stressors. Serious reproductive issues within the SRO population suggest that inbreeding depression is likely a factor that is inhibiting the population's recovery. Poor body condition has been documented in a significant proportion of SROs and animals in poor condition are much more likely to die than those in a more robust condition.

### **Management Actions**

Prey availability has been identified as the most important factor affecting SROs, followed by sound and vessel disturbance and contaminants. However, cumulative effects, which include interactions between the three primary threats, determine overall population growth. Therefore, management actions need to address multiple threats since no single threat can be sufficiently mitigated to achieve recovery objectives for SROs.

Salmon recovery efforts in the Pacific Northwest have been ongoing for decades with tens of millions of dollars in state and federal funds invested annually in freshwater and estuarine habitat restoration actions through programs like the Oregon Plan for Salmon and Watersheds and Washington Governor's Salmon Strategy. In addition, Oregon's recently established Private Forest Accord Mitigation Fund will provide nearly \$20+ million per year in grants for stream habitat restoration projects on private forest lands.

The Southern Resident Killer Whale Task Force (Task Force), established by Washington's governor in 2018, developed 16 recommendations to address prey availability for SROs through habitat restoration, improved fish passage, enhanced hatchery salmon production, and fishery and predator management measures. Implementation is underway on almost all the recommendations. Hatchery funding from the 2019–2028 Pacific Salmon Treaty (PST) Agreement and the Washington legislature seeks to increase the amount of Chinook salmon available to SROs by 4–5%, which roughly corresponds to an additional 20 million hatchery

smolts released annually. Funding recipients include state, federal, and tribal hatcheries in Washington and Oregon. While enhanced hatchery Chinook production to increase the amount of prey available to SROs is supported by NMFS, it needs to be done in a manner that avoids adverse impacts on wild salmon. Fishery management actions that address the prey needs of SROs include harvest reductions in the 2019–2028 PST Agreement and management measures in Amendment 21 of the Pacific Fishery Management Council’s Pacific Coast Salmon Fishery Management Plan that are to be implemented if Chinook salmon abundance in the North of Falcon ocean area is below a threshold level. All the actions currently taken to increase salmon abundance and prey availability are consistent with the federal recovery plan for SROs.

A variety of actions have been taken to reduce sound and vessel disturbance of SROs. In 2011, NMFS implemented regulations for the inland waters of Washington State that prohibit vessels from approaching within 200 yards of orcas, and from parking in the path of orcas within 400 yards. NMFS recently completed a public scoping process to examine the need for updating the regulations and is working with the State of Washington and the Province of British Columbia on potential alignment of regulations. Current Washington State regulations, which apply to SROs within the state’s inland waters, require vessels to stay 300 yards from the orcas on either side and 400 yards in front of or behind the orcas. Additional guidelines suggest that boat speed should be <7 knots within ½ mile of SROs and vessel operators are advised to disengage their engines if orcas appear within 300 yards. In 2025, a new Washington law for the state’s inland waters will expand the vessel buffer on all sides of an SRO to 1,000 yards and require that vessel operators maintain a speed of <7 knots within 1,000 yards and disengage the engine within 400 yards. Federal regulations apply to orcas in Washington’s inland waters that are not SROs (e.g., Bigg’s transients). There is an extensive outreach program in place to educate boaters on these vessel regulations. Canadian regulations require buffers between vessels and orcas that range from 200 meters (219 yards) to 400 meters (437 yards), depending on the location. In the outer coastal waters off Washington, Oregon, and California, current federal viewing guidelines suggest that vessels stay at least 100 yards from “whales,” including orcas.

The U.S. and Canada recently implemented voluntary slow-down trials in the Salish Sea to address noise generated by large cargo ships. The trials were successful at reducing ambient noise in the frequency range used by SROs. Programs and procedures are also in place to minimize or eliminate potential negative effects from in-water activities such as dredging, drilling, and construction. The U.S. Army Corps of Engineers issues project permits and NMFS consults on the permits and helps applicants to incorporate conservation measures into their plans. Planning and development of renewable energy projects in Oregon marine waters are guided by the Oregon Territorial Sea Plan. ODFW provides input on the potential effects of projects on marine wildlife through its participation in the Joint Agency Review Team.

Several federal, state, and local regulations, agencies, and programs address environmental contaminants. At the federal level, these include the Clean Water Act and the Environmental Protection Agency (EPA), which implements pollution control programs, sets wastewater standards, and enforces water quality regulations. The National Pollutant Discharge Elimination System, administered by state agencies, has been responsible for significant improvements in water quality. In 2007, Washington State established the Puget Sound Partnership, a new agency

to oversee the restoration of Puget Sound’s environmental health. Additionally, the Washington Department of Ecology has already implemented several Task Force recommendations related to contaminants. In Oregon, the Department of Environmental Quality (DEQ) is the state agency responsible for protecting and improving the state’s water quality for multiple uses, including aquatic habitat for fish and wildlife. It develops and implements water quality standards and clean water plans, regulates sewage treatment systems and industrial dischargers, and evaluates water quality.

Oil spill prevention and response in the northeastern Pacific region is addressed through the International Maritime Organization, the U.S. Oil Pollution Act, the Canada Shipping Act, and the Northwest Area Committee. In 2001, the U.S. Coast Guard (USCG), EPA, U.S. Fish and Wildlife Service and NMFS entered into an agreement to ensure inter-agency cooperation and facilitate compliance with ESA protections for listed species and critical habitat, without compromising the response to an oil spill. An orca-specific oil spill response plan is also part of the Northwest Area Contingency Plan. In Oregon, USCG and DEQ have primary responsibility for preventing, planning for, and responding to spills of oil and other hazardous materials. These agencies have contingency plans in place and conduct regular response training; actions that are consistent with the federal recovery plan and Oregon’s proposed survival guidelines.

### **Evaluation of OESA Listing Criteria**

Based on the documented and verifiable scientific information summarized in this Agenda Item Summary and detailed in the Attachment 4: Biological Assessment of Southern Resident Orcas in Oregon, SROs meet the criteria in Oregon statutes and rules for listing of the population as endangered under the OESA. SROs are in danger of extinction due to low population numbers and a declining trend which is projected to continue in the future. Additionally, the reproductive potential of SROs is in danger of failure due to small population size, inbreeding depression, and other reproductive issues. The key factors contributing to these problems—decreased quantity and quality of prey, sound and vessel disturbance, and exposure to high levels of contaminants—have reduced the quality of SRO habitat and are significant threats to the population’s continued existence. SROs are native to Oregon and two of the population’s three pods spend time during the winter and early spring foraging in and traveling through waters off the Oregon Coast, including Oregon’s territorial sea (0–3 miles offshore).

### **Potential Impact of OESA Listing**

**Benefits**—The listing of SROs as endangered in Oregon would require the Commission to identify state agencies that can serve a role in the conservation of the population. These agencies would then need to carry out actions that support their conservation role, consistent with an Endangered Species Management Plan (ESMP) (for land-owning or managing agencies) or survival guidelines (for non-land-owning or managing agencies) approved by the Commission.

Public outreach and education efforts stemming from an Oregon listing of SROs could benefit the population by raising awareness of SROs and the threats they face, and inspiring Oregonians to support conservation and recovery actions.

**Costs**—State listing of SROs would require ODFW to develop an ESMP and advise other state agencies on their ESMPs and proposed conservation actions. ODFW would also need to coordinate state actions and implement a public outreach program to support SRO conservation and recovery. ODFW has applied for a federal grant to fund this potential work, but without the grant, the agency would have difficulty carrying out all the tasks without impacting other conservation priorities. Other state agencies that are identified by the Commission as serving a role in SRO conservation would also need to obtain additional funding for SRO-related actions or shift personnel and resources from other projects and programs.

Enhancing hatchery salmon production in Oregon to increase the prey base for SROs is an action that the State can potentially take to support the population’s conservation and recovery. However, this would require sufficient rearing capacity, authorization from NMFS due to concerns with straying of hatchery fish, and additional hatchery funding. It is highly uncertain whether these requirements can be met.

**Survival Guidelines**—If the Commission decides to list SROs as endangered under the OESA, ORS 496.182 subsection (2)(a) states that the Commission shall, at the time a species is added to the list of threatened or endangered species, adopt by rule guidelines that the Commission considers necessary to ensure the survival of individual members of the species. Survival guidelines apply to actions proposed on state lands (or waters) and may also serve to guide state agencies that have a role to play in the conservation of the species. Draft survival guidelines for SROs are provided for the Commission’s consideration in Attachment 3.

### **Non-listing Option**

The Commission may decide not to list a species that otherwise qualifies for listing in any one of the following circumstances:

- (a) The future of the species is secure outside of Oregon;
- (b) The wildlife species is not of cultural, scientific or commercial significance to the people of Oregon;
- (c) The species has been listed as threatened or endangered pursuant to the federal ESA;
- (d) The species is a candidate species under the federal ESA;
- (e) The species has been petitioned for listing under the federal ESA;
- (f) The responsible federal agency has determined that the species does not warrant listing as a threatened or endangered species under the federal ESA; or
- (g) The species is currently on the Department’s sensitive species list. (OAR 635-100-0105(7)).

SROs are listed under the federal ESA (ORS 496.176 subsection (6)(a); OAR 635-100-0105 subsection (7)(c)). If the Commission determines that the federal listing adequately protects SROs in Oregon, it can decide not to list the population under the OESA (OAR 635-100-0105(8)).

## OPTIONS

1. List SROs as endangered under the OESA and adopt survival guidelines for the species as proposed by staff.
2. List SROs as endangered under the OESA and adopt survival guidelines for the species as modified by the Commission.
3. Not list SROs under the OESA.

## STAFF RECOMMENDATION

1. Based on the current and projected status of SROs and analysis of the state listing criteria, staff recommends listing SROs as endangered under the OESA and adopting survival guidelines for the species as proposed in Attachment 3. However, OESA listing likely will not contribute significantly to SRO recovery. This is because several proposed actions overlap with actions already being taken to comply with existing federal and state laws, and because SROs are absent from Oregon waters for the majority of the year. In addition, there is no funding currently available to implement management actions associated with the SRO survival guidelines. Therefore, implementation of the survival guidelines will require state agencies to seek and obtain additional funding or shift personnel and resources from existing priorities.

## DRAFT MOTION

I move to list Southern Resident orcas as endangered under the Oregon Endangered Species Act and adopt survival guidelines for the species as proposed by staff in Attachment 3.

**Effective Date:** *Upon Filing*