

OFFICE OF THE SECRETARY OF STATE

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SECRETARY OF STATE

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AND TRIBAL LIAISON



Attachment 2

ARCHIVES DIVISION
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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 635
DEPARTMENT OF FISH AND WILDLIFE

FILED
12/28/2023 10:53 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Potential to List Southern Resident Orca as Endangered and Adopt Survival Guidelines; Related Definition Amendments

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 02/16/2024 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Salem, OR 97302

Filed By:
Steven Emerson
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 02/16/2024

TIME: 8:00 AM - 5:00 PM

OFFICER: Steven Emerson

HEARING LOCATION

ADDRESS: Hidden Creek Community Center - Kalapuya Hall, 5100 NE Hidden Creek Drive, Hillsboro, OR 97124

SPECIAL INSTRUCTIONS:

This hearing will be conducted as a hybrid meeting, providing an opportunity to give testimony either in person or virtually. Additional information regarding participation will be posted on our website at www.dfw.state.or.us/agency/commission/minutes/. The meeting can be viewed at www.youtube.com/user/IEODFW. Any changes to the meeting format (to virtual only if emergency arises) will be posted to our website as soon as possible.

NEED FOR THE RULE(S)

The Commission commenced a rulemaking process in February 2023 to consider whether SROs should be listed on the State List of Threatened and Endangered Species. After evaluation of the status of SROs and the criteria under the Oregon Endangered Species Act, the Commission may decide to add SROs to that list or may decide that adding SROs to the list is not warranted at present. If the Commission adds SROs to the list, the Commission must then adopt by rule survival guidelines for the species. Survival guidelines apply to actions proposed on State-owned or leased lands, or where the State holds a recorded easement, and may also serve to guide State agencies that have a role to play in the conservation of the species. Amendment to the range of rules where definitions apply may also be made to reflect such changes, if any.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

1. Staff report prepared for the Oregon Fish and Wildlife Commission hearing on 02/16/2024.

A copy of the rules and the other documents relied upon for this rulemaking [the above document(s)] are available from the Oregon Department of Fish and Wildlife, Fish Division, 4034 Fairview Industrial Drive SE, Salem, Oregon 97302-1142. Contact Steve Emerson at 503-947-6233 or Steven.C.Emerson@odfw.oregon.gov to view by appointment between the hours of 8:00 a.m. and 4:00 p.m., on normal working days, Monday through Friday.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department has solicited input from representatives of underrepresented communities likely to be affected on whether the proposed rule will have a fiscal impact on the community, the extent of the fiscal impact, and whether the rules will have significant impact on underrepresented communities. <https://www.dfw.state.or.us/OARs/index.asp>

FISCAL AND ECONOMIC IMPACT:

Fiscal and economic impacts discussed in this document pertain only if SROs are listed as "Endangered" under the Oregon Endangered Species Act. The current federal listing status of the species as "Endangered" already establishes a level of protection. Fiscal and economic impacts may result from implementing the survival guidelines, as well as the endangered species management plans, for affected state agencies.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) a. State agencies likely to be economically affected by any listing of SROs include the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of State Lands (ODSL), the Oregon State Parks Department (OPRD), the Oregon Land Conservation Development Commission (LCDC), the Oregon Department of Environmental Quality (DEQ), the Oregon State Marine Board (OSMB), and the Oregon State Police (OSP). There may also be very small impacts to other state land-owning or managing agencies. While not quantifiable at this time, the following qualitative impacts are projected for each affected agency:

- A. ODFW – Low
- B. ODSL – Low
- C. OPRD – Low
- D. LCDC – Low
- E. DEQ – Low
- F. OSMB – Very low
- G. OSP – Very low

If the Commission adds SROs to the State List of Threatened or Endangered Species then the impacts to the ODFW, ODSL, OPRD, and LCDC are expected to include evaluation of compliance with adopted survival guidelines or the development of new endangered species management plans specific to SROs, or both. This work could possibly be accomplished with existing staff and budgets, though it would require the investment of staff time and would come at a cost to staff members' previous projects and duties.

Any listing is also likely to result in additional public outreach work for ODFW, OPRD, OSMB, and OSP geared towards informing the public of actions that can be taken to help improve the survival of SROs. The OSP, OPRD, and OSMB would be involved in informing boaters on guidelines for how close they may safely approach SROs in the wild. It is projected that this public outreach work could be accomplished with existing staff and budgets, with minimal impacts to

staff time and workloads. ODFW's Information and Education Division (I&E) would also be involved in public outreach activities. It is expected that ODFW I&E staff would need to allocate time towards: creating agency web pages and using social media to provide scientific information on SROs, the threats to their survival, and actions that can be taken to support their conservation; developing brochures and presentations for use in outreach programs regarding SROs; helping to educate boaters on the current Federal vessel buffer guideline off the Oregon Coast; and increasing awareness of SROs connection with other environmental issues in Oregon such as salmon restoration and pollution. This work could be accomplished with existing staff and budgets but would come at a cost of reduced ODFW I&E staff time for existing duties and projects.

It is additionally expected that any listing would result in impacts to ODFW Fish Division staff time. Existing staff time would need to be reallocated towards investigating the potential to enhance hatchery production of salmon (an important food source for SROs), and further staff time would be needed to pursue funding for this enhanced production if said potential is identified. The possible impacts to staff time and workloads resulting from pursuing this funding cannot be quantified at this time, though it is expected that they would be more significant than the workload impacts from the initial investigative work. Fish Division staff time would also need to be allocated towards serving in an SRO Conservation Coordinator role, responsible for facilitating state agency cooperation and coordination of management actions (within and outside of Oregon). This work could potentially be accomplished by existing ODFW staff with existing budgets but would result in opportunity costs as staff priorities would need to be shifted away from existing projects and duties. Any modifications to the proposed survival guidelines that add requirements could add costs and result in additional impacts to ODFW staff time and workloads.

Any listing of SROs may also result in fiscal impacts to Oregon DEQ. The proposed survival guidelines note that state agencies with statutory authority may take actions to protect and improve the marine environment by improving the implementation and enforcement of any National Pollutant Discharge Elimination System (NPDES) permits, as applicable. State agencies with statutory authority for oil spill planning and response shall also commit adequate resources to planning, training, and coordination with other government agencies and industry to effectively respond to oil spills. It is expected that any voluntary changes to the implementation or enforcement of NPDES permits could be undertaken by existing DEQ staff using existing budgets and would result in minor impacts to staff time and workloads. If implemented, these changes may also result in minor compliance costs for any state agencies holding NPDES permits. It is not currently known whether any such voluntary changes will be implemented. As such, exact compliance costs are not quantifiable at this time. DEQ already has oil spill response plans in place, but these may need to be looked at with a focus towards minor revisions specific to protecting SROs. This is expected to result in minimal impacts to DEQ staff time and workloads. It is expected that this work could be undertaken with existing staff and budgets. Any modifications to the proposed survival guidelines that add requirements could add costs and result in additional impacts to DEQ staff time and workloads. Any state agencies with oil spill prevention and emergency response plans in place may also need to evaluate their existing plans for compliance with SRO survival guidelines, making revisions as necessary. It is expected that these revisions may result in minimal impacts to staff time and workloads for impacted agencies.

b. Units of local government may be affected by the rule. The proposed survival guidelines note that state agencies may refine the implementation and enforcement of NPDES permits to improve the marine environment for SROs. If implemented, these refinements may lead to minor compliance costs for municipalities and units of local government holding NPDES permits. Due to the voluntary nature of such state agency actions, it is not known whether any changes will be implemented. As such, exact economic impacts are not quantifiable at this time.

c. The public may be affected by the rule. Industries based in Oregon which are involved in the transport of oil may need to revise their oil spill prevention and response policies to ensure that they are adequate and compliant with SRO survival guidelines. The proposed survival guidelines also note that state agencies may refine non-source point pollution

management plans, or the implementation and enforcement of NPDES permits to improve the marine environment for SROs. If implemented, these refinements may lead to minor compliance costs for impacted Oregon industrial sectors. However, due to the voluntary nature of such state agency actions, it is not known whether any changes will be implemented. As such, exact economic impacts are not quantifiable at this time.

(2)(a) Small businesses offering whale watching and wildlife viewing tours along the Oregon coast may receive some slight long-term indirect benefits from conservation efforts intended to preserve SROs. However, considering the rarity of SRO sightings off the Oregon coast compared to other regions in the Pacific Northwest, and the small number of SROs compared to more commonly sighted species such as resident gray whales; the species is not considered a "primary attraction" for whale watching tourism in Oregon. Overall, implementation of the rule is expected to have minimal effects on small businesses.

(2)(b) No significant changes in these costs are expected for the small businesses subject to the rule.

(2)(c) No significant changes in these costs are expected for the small businesses subject to the rule.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

We do not believe that a less intrusive or less costly alternative adaptation to only small businesses is consistent with the proposed rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Department staff provided consultation letters to affected state and federal agencies, affected cities and counties, affected federally recognized Indian tribes, other states having a common interest in the species, and interested persons who have asked to be consulted and whose names are included on the Commission's mailing list for such purposes. Correspondence from and testimony by interested persons is accepted into record and is part of the rulemaking process. The Department pursued these alternative means of public outreach and obtaining public input regarding the proposed rules.

RULES PROPOSED:

635-100-0100, 635-100-0125, 635-100-0138

AMEND: 635-100-0100

RULE SUMMARY: After evaluating the status of Southern Resident Orcas (SROs) and the criteria under the Oregon Endangered Species Act, the Oregon Fish and Wildlife Commission (Commission) may decide to add SROs to the State List of Threatened and Endangered Species and, depending upon the Commission's determination, adopt survival guidelines the Commission considers necessary to ensure the survival of individual members of the species. The Commission may decide not to add SROs to the State List of Threatened and Endangered Species, and may or may not amend one or more of the rules proposed, or may amend the survival guidelines in one or more respects. The proposed amendment to OAR 635-100-0100 (Definitions) includes potential modification of the range of rules where such listed definitions apply.

CHANGES TO RULE:

635-100-0100

Threatened and Endangered Species Definition of Terms ¶

As used in ~~OAR 635-100-0100 to 635-100-0130~~ Division 100 rules:¶

(1) "Commission" means the State Fish and Wildlife Commission.¶

(2) "Conservation means the use of methods and procedures necessary to bring a species to the point at which the measures provided under ORS 496.171 to 496.182 are no longer necessary. Such methods and procedures include, but are not limited to, activities associated with scientific resource management such as research, census taking, law enforcement, habitat acquisition and maintenance, habitat protection and restoration, propagation and transplantation.¶

(3) "Department" means the Oregon Department of Fish and Wildlife.¶

(4) "Director" means the Director of the Oregon Department of Fish and Wildlife.¶

(5) "Endangered Species" means:¶

(a) Any native wildlife species determined by the commission to be in danger of extinction throughout any significant portion of its range within the state; or¶

(b) Any native wildlife species listed as an endangered species pursuant to the federal ESA.¶

(6) "Federal ESA" means the federal Endangered Species Act of 1973 (Public Law 93-205, 16 USC § 1531), as amended.¶

(7) "Federal list" means the list of native wildlife species that have been designated as endangered or threatened under the federal ESA.¶

(8) "Native" means a species indigenous to Oregon, not introduced. Indigenous species include species that occur naturally or were extirpated from the state.¶

(9) "Person" means natural person, individual, corporation, company, society, association, firm, partnership, cooperative, governmental or political subdivision or agency thereof.¶

(10) "Species" means any group or population of wildlife that interbreeds and is substantially reproductively isolated.¶

(11) "State List" means the official state list of wildlife species that have been designated as endangered or threatened under the procedures set forth in ORS 496.172 to 496.192 and OAR 635, division 100.¶

(12) "Substantial scientific evidence" means that quantum of the best available documented information or evidence that a reasonable person would accept as adequate to support a conclusion. This includes information or evidence that may not have been reviewed by a scientific review panel, but that the department considers scientifically reliable.¶

(13) "Survival guidelines" means the quantifiable and measurable guidelines that the commission considers necessary to ensure the survival of individual members of the species.¶

(14) "Take" means to kill or obtain possession or control of any species on the state list.¶

(15) "Threatened species" means:¶

(a) Any native wildlife species the commission determines is likely to become an endangered species within the foreseeable future throughout any significant portion of its range within this state; or¶

(b) Any native wildlife species listed as a threatened species pursuant to the federal ESA.¶

(16) "Verifiable" means scientific information reviewed by a scientific peer review panel of outside experts who do not otherwise have a vested interest in the process. For purposes of this definition, "vested interest in the process" means that the person reviewing the scientific information does not have a personal economic interest in the commission's decision to list a species. Information that would be considered "verifiable" includes, but is not limited to:¶

(a) Articles and information published in peer-reviewed scientific journals, such as the Journal of Wildlife Management and Transactions of the American Fisheries Society;¶

(b) Information developed by the department, which has been peer reviewed by outside experts (e.g., agency management plans, Nongame Wildlife Program Technical Reports);¶

(c) Information developed by federal agencies, which has been peer reviewed (e.g., peer-reviewed agency management plans, final environmental impact statements, adopted recovery plans, interagency technical reports);¶

(d) Peer-reviewed data gathered by the department or others using standard methodologies or protocols.¶

(e) Information developed by the Pacific Northwest Electric Power and Conservation Planning Council or other organizations, which has been peer reviewed.¶

(17) "Wildlife" means fish, wild birds, amphibians, reptiles and wild mammals.¶

[Publications: Publications referenced are available from the agency.]

Statutory/Other Authority: ~~ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026~~496.172, 496.182

Statutes/Other Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

AMEND: 635-100-0125

RULE SUMMARY: After evaluating the status of Southern Resident Orcas (SROs) and the criteria under the Oregon Endangered Species Act, the Oregon Fish and Wildlife Commission (Commission) may decide to add SROs to the State List of Threatened and Endangered Species and, depending upon the Commission's determination, adopt survival guidelines the Commission considers necessary to ensure the survival of individual members of the species. The Commission may decide not to add SROs to the State List of Threatened and Endangered Species, and may or may not amend one or more of the rules proposed, or may amend the survival guidelines in one or more respects. The proposed amendment to OAR 635-100-0100 (Definitions) includes potential modification of the range of rules where such listed definitions apply.

CHANGES TO RULE:

635-100-0125

State List of Threatened and Endangered Species ¶

The state list of threatened and endangered species is as follows:

Statutory/Other Authority: ~~ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026~~496.172, 496.182

Statutes/Other Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192, 498.026

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

**DIVISION 100
WILDLIFE MANAGEMENT PLANS: WILDLIFE DIVERSITY PLAN**

635-100-0125

State List of Threatened and Endangered Species

The state list of threatened and endangered species is as follows:

COMMON NAME	SCIENTIFIC NAME	Endangered (E)	Threatened (T)
Fish			
Hutton Spring Tui Chub	<i>Siphateles bicolor</i> ssp		X
Warner Sucker	<i>Catostomus warnerensis</i>		X
Lahontan Cutthroat Trout	<i>Oncorhynchus clarkii henshawi</i>		X
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>		X
Snake River Fall Chinook Salmon	<i>Oncorhynchus tshawytscha</i>		X
Lower Columbia River Coho Salmon	<i>Oncorhynchus kisutch</i>	X	
Lost River Sucker	<i>Deltistes luxatus</i>	X	
Shortnose Sucker	<i>Chasmistes brevirostris</i>	X	
Amphibians and Reptiles			
Green Sea Turtle	<i>Chelonia mydas</i>	X	
Leatherback Sea Turtle	<i>Dermochelys coriacea</i>	X	
Loggerhead Sea Turtle	<i>Caretta caretta</i>		X
Olive Ridley Sea Turtle	<i>Lepidochelys olivacea</i>		X
Birds			
Short-tailed Albatross	<i>Phoebastria albatrus</i>	X	
California Brown Pelican	<i>Pelecanus occidentalis californicus</i>	X	
Western Snowy Plover	<i>Charadrius nivosus nivosus</i>		X
California Least Tern	<i>Sternula antillarum browni</i>	X	
Marbled Murrelet	<i>Brachyramphus marmoratus</i>	X	
Northern Spotted Owl	<i>Strix occidentalis caurina</i>		X

COMMON NAME	SCIENTIFIC NAME	Endangered (E)	Threatened (T)
Mammals			
Gray Whale	<i>Eschrichtius robustus</i>	X	
Sei Whale	<i>Balaenoptera borealis</i>	X	
<u>Southern Resident Orca</u>	<u>Orcinus orca</u>	<u>X</u>	
Sperm Whale	<i>Physeter macrocephalus</i>	X	
Blue Whale	<i>Balaenoptera musculus</i>	X	
Humpback Whale	<i>Megaptera novaeangliae</i>	X	
North Pacific Right Whale	<i>Eubalaena japonica</i>	X	
Fin Whale	<i>Balaenoptera physalus</i>	X	
Kit Fox	<i>Vulpes macrotis</i>		X
Wolverine	<i>Gulo gulo</i>		X
Sea Otter	<i>Enhydra lutris</i>		X
Washington Ground Squirrel	<i>Uroditellus washingtoni</i>	X	

Statutory/Other Authority: [ORS 496.004, 496.171,]496.172, 496.182[, 496.192 & 498.026]
Statutes/Other Implemented: ORS 496.004, 496.171, 496.172, 496.182, 496.192 & 498.026

RULE SUMMARY: After evaluating the status of Southern Resident Orcas (SROs) and the criteria under the Oregon Endangered Species Act, the Oregon Fish and Wildlife Commission (Commission) may decide to add SROs to the State List of Threatened and Endangered Species and, depending upon the Commission's determination, adopt survival guidelines the Commission considers necessary to ensure the survival of individual members of the species. The Commission may decide not to add SROs to the State List of Threatened and Endangered Species, and may or may not amend one or more of the rules proposed, or may amend the survival guidelines in one or more respects. The proposed amendment to OAR 635-100-0100 (Definitions) includes potential modification of the range of rules where such listed definitions apply.

CHANGES TO RULE:

635-100-0138

Survival Guidelines for Southern Resident Orcas

(1) ORS 496.182 (Protection and conservation programs) subsection (2) 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 and may also serve to guide State agencies that have a role to play in the conservation of the species. For endangered species, survival guidelines will apply until a State land-owning or managing agency's endangered species management plan is approved by the Commission.¶

(2) The Southern Resident Orca Distinct Population Segment (DPS) was listed as endangered under the Federal Endangered Species Act (ESA) in 2005. The National Marine Fisheries Service (NMFS) has identified three main threats to the survival of this DPS, including: 1) scarcity of prey, 2) high levels of contaminants from pollution, and 3) disturbance from vessels and sound. The population is also at high risk from oil spills. The threats likely interact to produce additive or synergistic effects.¶

(3) These survival guidelines focus on measures to protect, and where feasible enhance, the critical habitat of Southern Resident orcas and are preempted by any more protective measures required by the Federal ESA. "Critical habitat" refers to the specific areas within the geographical area occupied by the Southern Resident orcas in which are found physical or biological features essential to the conservation of the species and which may require special management considerations or protection (86 FR 41668). In Oregon, critical habitat designated by NMFS includes marine waters between the 20-ft depth contour and the Oregon state waters boundary (3 miles from the coastline) and extends from the Washington state line at the Columbia River mouth to the California state line.¶

(4) Southern Resident orcas require prey of sufficient quantity and quality for survival and successful reproduction. This population primarily consumes adult salmonids, especially Chinook salmon. Salmon populations have declined significantly from historical abundance because of habitat degradation, including construction of the federal Columbia river hydrosystem; overharvest; impacts from hatchery fish and non-native species; and barriers to fish passage. To aid the recovery of these populations, State and Federal agencies, Tribes, Non-governmental organizations, and members of the public have implemented a multitude of regulatory and voluntary actions. Many large-scale actions such as the Oregon Plan for Salmon and Watersheds (1997), the Pacific Coastal Salmon Recovery Fund (2000), the Federal Columbia River Power System Biological Opinion (2008), Amendment 21 of the Pacific Coast Salmon Fishery Management Plan (2021), and the 2023 Presidential Memorandum have been implemented to restore the health of watersheds critical to the recovery of wild salmonids. Billions of dollars have been invested in the recovery of anadromous salmonids native to the Pacific Northwest, and fisheries and hatcheries are managed to avoid impacting recovery of ESA-listed species and to prevent the decline of unlisted stocks. Progress has been made in improving freshwater and estuarine habitat, hydropower system fish passage, and hatchery practices. These actions are ongoing but can take several years to accrue benefits to the salmon populations. Near term increases in the Southern Resident orcas' prey base can be achieved through enhanced hatchery production. To that end, the Oregon Department of Fish and Wildlife (ODFW) will investigate the potential to enhance hatchery production of salmon, preferably Columbia River Chinook stocks important to Southern Resident orcas. If additional production potential exists, ODFW will pursue funding to increase hatchery production. Increased releases of hatchery salmon should be undertaken in a manner that minimizes adverse impacts on wild salmon.¶

(5) Environmental contaminants such as persistent organic pollutants (POPs) bioaccumulate in Southern Resident orcas when contaminated prey is consumed, and the toxicants are subsequently stored in the orcas' blubber. Toxic effects from contaminants can lead to reduced immune system function and reproductive success in Southern Resident orcas. To the extent taking such actions are consistent with the statutory authority of the relevant State

agency, State agencies can protect and improve the marine environment for Southern Resident orcas by taking the following actions to play a role in the conservation of the species:¶

(a) Improve the effectiveness, implementation, and enforcement of any National Pollutant Discharge Elimination System permits, as applicable, particularly for pollutants posing the highest risk for Southern Resident orcas and their prey; and¶

(b) Refine nonpoint source pollution management plans and monitoring activities to address threats to Southern Resident orcas and their prey.¶

(6) Large oil spills are a serious threat to Southern Resident orcas, especially when the orcas are concentrated in foraging areas such as the mouth of the Columbia River. State land-owning or managing agencies and agencies with statutory authority for oil spill planning and response shall address the threat of oil spills by taking the following actions when actions are proposed on State lands (in the absence of an approved endangered species management plan, if applicable) where the threatened or endangered species or its habitat is present:¶

(a) Implement strategies that emphasize the prevention of oil spills and spills of other hazardous materials; and¶

(b) Commit adequate resources to planning, training, and coordination with other government agencies and industry to effectively respond to oil spills.¶

(7) Vocalizations by Southern Resident orcas are critical for communication between individuals, navigation, and foraging. Disturbance and noise from vessels and activities such as dredging, seismic testing, and construction can interfere with the Southern Resident orcas' ability to communicate and forage efficiently. State agencies shall reduce vessel and noise disturbance of Southern Resident orcas by taking the following actions when actions are proposed on State lands (in the absence of an approved endangered species management plan, if applicable) where the threatened or endangered species or its habitat is present:¶

(a) Educate boaters on the current Federal vessel buffer guideline off the Oregon Coast; and¶

(b) Ensure that the Joint Agency Review Team assesses the potential effects on Southern Resident orca communication, navigation, and foraging, consistent with the Oregon Territorial Sea Plan, when planning projects in Southern Resident orca critical habitat off the Oregon Coast.¶

(8) Public outreach and education are important in raising awareness of the presence of Southern Resident orcas in Oregon waters and the issues confronting them. This can inspire Oregonians to support conservation efforts for Southern Resident orcas. To the extent taking such actions are consistent with the statutory authority of the relevant State agency, State agencies shall help educate and inform the public by taking the following actions when actions are proposed on State lands (in the absence of an approved endangered species management plan, if applicable):¶

(a) Create State agency web pages and use social media to provide scientific information on Southern Resident orcas, the threats to their survival, and actions that can be taken to support their conservation;¶

(b) Develop brochures and presentations for use in outreach programs regarding Southern Resident orcas at whale watching venues on the Oregon Coast; and¶

(c) Increase awareness of Southern Resident orcas' connection with other environmental issues in Oregon such as salmon restoration and pollution by partnering with existing programs designed to educate, inform, and engage the public on these issues.¶

(9) It is important that management actions taken by State agencies to support the conservation of Southern Resident orcas are carried out in a coordinated manner to maximize their impact and avoid duplication of effort. ODFW can achieve this objective by pursuing funding to help implement the Oregon Southern Resident Orca Conservation Initiative, which consists of the collective actions taken by State agencies in Oregon to support Southern Resident orca conservation. A key part of the Initiative is a working group comprised of representatives from State agencies that have a role to play in Southern Resident orca conservation. Regular meetings of the working group help facilitate State agency cooperation and coordination of management actions. Also, periodic meetings will be conducted with interested parties to share information on Southern Resident orcas.¶

(10) For the purposes of implementing these survival guidelines, the following definitions apply:¶

(a) "State lands" means lands, including waters over such lands, owned or leased by a State agency, or on lands for which the State agency holds a recorded easement.¶

(b) "Oregon Plan for Salmon and Watersheds" refers to a plan established by the Oregon Legislature in 1997 to restore Oregon's native fish populations and the aquatic systems that support them to productive and sustainable levels.¶

(c) "Pacific Coastal Salmon Recovery Fund" refers to a fund established by the U.S. Congress in 2000 to reverse the declines of Pacific salmon and steelhead.¶

(d) "Federal Columbia River Power System (FCRPS) Biological Opinion" refers to 2008 guidance for Action Agencies in operating the FCRPS and requires a series of mitigation measures to address effects on ESA-listed salmon, steelhead, and eulachon.¶

(e) "Amendment 21 of the Pacific Coast Salmon Fishery Management Plan" refers to a 2021 provision in the fishery management plan that establishes an annual Chinook salmon abundance threshold below which the Pacific

Fishery Management Council and NMFS will implement specific management measures to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for Southern Resident orcas (86 FR 51017).¶

(f) "2023 Presidential Memorandum" refers to a memorandum signed by U.S. President Joseph Biden on September 27, 2023 directing applicable Federal agencies to work with Tribal Nations, States, and local agencies to restore healthy and abundant salmon, steelhead, and other native fish populations in the Columbia River basin, and includes requirements to identify additional resources needed to carry out restoration activities (88 FR 67617).¶

(g) "Bioaccumulate" means an increase in the concentration of a chemical in a biological organism over time, which occurs when chemicals are taken up and stored faster than they are broken down (metabolized) or excreted.¶

(h) "National Pollutant Discharge Elimination System" refers to the system established by the 1972 Clean Water Act to regulate pollution from an identifiable source through permits that place limits on the types and amounts of pollutants discharged (33 U.S.C. §1251 et seq.).¶

(i) "Nonpoint source pollution" means pollution that is from anything that is not a "point source", as defined in Section 502(14) of the Clean Water Act (33 U.S.C. §1251 et seq.).¶

(j) "Vessel buffer" means the distance that vessels must keep from whales, including Southern Resident orcas, established by existing Federal guidelines or any future State regulation or guideline.

Statutory/Other Authority: ORS 496.172

Statutes/Other Implemented: ORS 496.176, ORS 496.182, ORS 496.012