



AGENDA ITEM SUMMARY

BACKGROUND

Southern Resident orcas (SRO; *Orcinus orca ater*) were listed as endangered under the Oregon Endangered Species Act (OESA) in February 2024 by the Oregon Fish and Wildlife Commission (Commission). An OESA listing primarily affects management decisions made on state-owned, managed, or leased lands, including lands where state agencies hold recorded easements. For the purposes of the OESA, lands include state waters.

In June 2024, the Commission determined that the Oregon Department of Fish and Wildlife (ODFW), Oregon Department of State Lands (proprietary programs), and the Oregon Parks and Recreation Department were state-land-owning or managing agencies with a role to play in SRO conservation (ORS 496.182(8)(a)(A), OAR 635-100-0140(1)), and these agencies are required to prepare endangered species management plans (ESMP). (ORS 496.182(8), OAR 635-100-0140(6)). However, the OESA also recognizes the important role that agencies other than state land owning or managing agencies (ORS 496.182(8)(b); hereafter referred to as state non-land-owning agencies) have in the conservation of an endangered species. Therefore, the Commission, in consultation and cooperation with the applicable agencies, must determine which state non-land-owning or managing agencies can play a role in SRO conservation (OAR 635-100-0150 (1)).

The Commission delegated consultation and coordination duties related to the SRO listing to ODFW's Director at the March 2024 meeting (Attachment 2). ODFW engaged with the appropriate state non-land owning or managing agencies and developed a recommended list of agencies that can play a role in the conservation of SRO. **At this time, ODFW staff are seeking the Oregon Fish and Wildlife Commission's approval of the list of non-land-owning state agencies with a role to play in SRO conservation.**

Following Commission approval of the list, these agencies will need to determine their role in SRO conservation and provide the Commission with a written description of their role and proposed actions (OAR 635-100-0150(3)). Although the rule does not give a timeline for agencies to submit this document to the Commission, the department plans to work with the agencies so that the documents can be presented to the Commission along with the ESMPs in August 2025. The department anticipates a brief memorandum from each agency's director to the Commission to be provided at that time identifying that agency's role and including the other requirements of OAR 635-100-0150.

PUBLIC INVOLVEMENT

- The department consulted with the state non-land-owning or managing agencies that have a potential role to play in SRO conservation.
- Addressed questions from interested persons.

- All materials for the Commission’s review, including this Agenda Item Summary, were posted to the ODFW website to provide the public with the opportunity to review the materials and provide comment prior to (in writing, see Attachment 3) or (orally) during the March 14, 2025 Commission meeting.

ISSUE

Determination of state non-land-owning or managing agencies that can play a role in SRO conservation.

ANALYSIS

For analysis of this issue, OAR 635-100-0160(2) requires that the Commission consider the following agencies:

- (a) Oregon Department of Environmental Quality;
- (b) Oregon Department of Agriculture;
- (c) Oregon Department of Geology and Mineral Industries;
- (d) Oregon Department of Land Conservation and Development;
- (e) Oregon State Marine Board;
- (f) Oregon Department of Energy and Energy Facility Siting Council;
- (g) Columbia River Gorge Commission; and
- (h) Oregon Department of State Lands (removal and fill program).

This list is not exhaustive, and the department believes that the Oregon State Police should also be considered by the Commission.

The criteria that the department used to identify state non-land-owning or managing agencies with a potential role to play in SRO conservation included agencies whose actions or programs can benefit the species or its habitat, particularly with respect to the key threats facing SRO (lack of prey, noise and vessel disturbance, environmental contaminants). Department staff identified five agencies which meet these criteria and consulted and coordinated with them. We discussed components of SRO biology and habitat use (as summarized in the department’s January 2024 Biological Assessment), the key threats to the SRO population, and the relationship of these factors to the agency’s management responsibilities and actions.

After consideration of input received during agency consultations, staff recommends that the Commission approve and notify the following state non-land owning or managing agencies that they have a role to play in the conservation of SRO in Oregon:

1. Oregon Department of Environmental Quality (DEQ);
2. Oregon Department of Land Conservation and Development (DLCD);
3. Oregon State Marine Board (OSMB);
4. Oregon Department of State Lands (DSL, removal-fill program); and
5. Oregon State Police (OSP).

The department makes this recommendation for the following reasons:

- DEQ is the state agency responsible for protecting and improving Oregon's water quality for multiple beneficial uses, including aquatic habitat for fish and wildlife. The agency develops and implements water quality standards and clean water plans, regulates sewage treatment systems and industrial dischargers, and evaluates water quality. DEQ's programs and actions can help address the threat that environmental contaminants pose for SRO, not only in Oregon's territorial sea but also in freshwater and estuarine environments where their preferred prey, Chinook salmon, spends the first part of its life.
- DLCD's Oregon Coastal Management Program (OCMP) works to ensure that development within Oregon's coastal zone (seaward three nautical miles and inland to the crest of the coast range) occurs in a responsible manner and that natural resources are protected and restored. The program plays a lead role in coordinating the work of the Oregon Ocean Policy Advisory Council (OPAC), which provides advice to the Governor, state agencies, and local governments on ocean policy and resource management. In addition, through the federal consistency review process, OCMP ensures that Oregon's interests are considered when federal government activities are proposed in waters off the Oregon Coast. DLCD's programs and actions can help address the potential impacts that noise associated with proposed projects in the territorial sea may have on SRO.
- OSMB serves Oregon's recreational boating public by providing education on boater safety and environmental stewardship, coordinating with law enforcement agencies on the enforcement of boating laws and regulations, and providing access to boating facilities. The agency also regulates charters, outfitters, and guides. OSMB can play an important role in educating boaters (including whale-watching charters and guides) on the current federal viewing guidelines for whales and orcas off the Oregon Coast (100 yd between vessels and whales or orcas). This could help to address potential noise and vessel disturbance of SRO. The agency would also play a key role in planning and implementing any future state vessel regulations related to orcas.
- DSL's removal-fill program administers permits for removal and fill projects in Oregon's waters. Dredging activities near the mouths of rivers and bays along the Oregon Coast can generate noise that could potentially impact SRO. Although SRO do not typically enter enclosed bays or rivers, they have been found in nearshore waters as shallow as 20 ft. DSL can play a role in SRO conservation by ensuring that removal-fill permits are reviewed with an eye toward avoiding or minimizing noise disturbance of SRO.

- OSP’s Fish and Wildlife Division ensures compliance with laws and regulations that protect Oregon’s fish and wildlife resources. They conduct patrols in Oregon’s marine waters and can enforce both state and federal regulations, including state boating regulations. Although the current federal viewing recommendations for whales and orcas off the Oregon Coast are guidelines and not enforceable regulations, OSP can play an important role by providing on-the-water outreach and education to help increase boaters’ awareness of the guidelines and their importance. In addition, the agency would play a key role in the enforcement of any future state or federal vessel regulations related to orcas.

OPTIONS

1. Approve the staff recommended list of state non-land owning or managing agencies that can play a role in the conservation of SRO.
2. Modify the staff recommended list of state non-land owning or managing agencies that can play a role in the conservation of SRO.

STAFF RECOMMENDATION

Option 1. Approve the staff recommended list of state non-land owning or managing agencies that can play a role in the conservation of SRO.

DRAFT MOTION:

I move to determine that DEQ, DLCD, OSMB, DSL (removal-fill program), and OSP can play a role in the conservation of SRO. Staff is directed to prepare, on behalf of the Commission, a letter for signature by Chair Wahl to notify these agencies of the Commission’s determination.

Effective Date: *Upon Approval*