



**Oregon Administrative Rules
Oregon Department of Fish and Wildlife**

OAR 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 shall 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:



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- 53 (a) Improve the effectiveness, implementation, and enforcement of any National Pollutant Discharge
54 Elimination System permits, as applicable, particularly for pollutants posing the highest risk for
55 Southern Resident orcas and their prey; and
- 56 (b) Refine nonpoint source pollution management plans and monitoring activities to address threats
57 to Southern Resident orcas and their prey.
- 58 (6) Large oil spills are a serious threat to Southern Resident orcas, especially when the orcas are
59 concentrated in foraging areas such as the mouth of the Columbia River. State land-owning or
60 managing agencies and agencies with statutory authority for oil spill planning and response shall
61 address the threat of oil spills by taking the following actions when actions are proposed on State
62 lands (in the absence of an approved endangered species management plan, if applicable) where
63 the threatened or endangered species or its habitat is present:
- 64 (a) Implement strategies that emphasize the prevention of oil spills and spills of other hazardous
65 materials; and
- 66 (b) Commit adequate resources to planning, training, and coordination with other government
67 agencies and industry to effectively respond to oil spills.
- 68 (7) Vocalizations by Southern Resident orcas are critical for communication between individuals,
69 navigation, and foraging. Disturbance and noise from vessels and activities such as dredging,
70 seismic testing, and construction can interfere with the Southern Resident orcas' ability to
71 communicate and forage efficiently. State agencies shall reduce vessel and noise disturbance of
72 Southern Resident orcas by taking the following actions when actions are proposed on State lands
73 (in the absence of an approved endangered species management plan, if applicable) where the
74 threatened or endangered species or its habitat is present:
- 75 (a) Educate boaters on the current Federal vessel buffer guideline off the Oregon Coast; and
- 76 (b) Ensure that the Joint Agency Review Team assesses the potential effects on Southern Resident
77 orca communication, navigation, and foraging, consistent with the Oregon Territorial Sea Plan,
78 when planning projects in Southern Resident orca critical habitat off the Oregon Coast.
- 79 (8) Public outreach and education are important in raising awareness of the presence of Southern
80 Resident orcas in Oregon waters and the issues confronting them. This can inspire Oregonians to
81 support conservation efforts for Southern Resident orcas. To the extent taking such actions are
82 consistent with the statutory authority of the relevant State agency, State agencies shall help educate
83 and inform the public by taking the following actions when actions are proposed on State lands (in
84 the absence of an approved endangered species management plan, if applicable):
- 85 (a) Create State agency web pages and use social media to provide scientific information on
86 Southern Resident orcas, the threats to their survival, and actions that can be taken to support
87 their conservation;
- 88 (b) Develop brochures and presentations for use in outreach programs regarding Southern Resident
89 orcas at whale watching venues on the Oregon Coast; and
- 90 (c) Increase awareness of Southern Resident orcas' connection with other environmental issues in
91 Oregon such as salmon restoration and pollution by partnering with existing programs designed
92 to educate, inform, and engage the public on these issues.
- 93 (9) It is important that management actions taken by State agencies to support the conservation of
94 Southern Resident orcas are carried out in a coordinated manner to maximize their impact and avoid
95 duplication of effort. ODFW can achieve this objective by pursuing funding to help implement the
96 Oregon Southern Resident Orca Conservation Initiative, which consists of the collective actions taken
97 by State agencies in Oregon to support Southern Resident orca conservation. A key part of the
98 Initiative is a working group comprised of representatives from State agencies that have a role to play
99 in Southern Resident orca conservation. Regular meetings of the working group help facilitate State
100 agency cooperation and coordination of management actions. Also, periodic meetings will be
101 conducted with interested parties to share information on Southern Resident orcas.
- 102 (10) For the purposes of implementing these survival guidelines, the following definitions apply:
- 103 (a) "State lands" means lands, including waters over such lands, owned or leased by a State agency,
104 or on lands for which the State agency holds a recorded easement.



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- 105 (b) “Oregon Plan for Salmon and Watersheds” refers to a plan established by the Oregon Legislature
106 in 1997 to restore Oregon’s native fish populations and the aquatic systems that support them to
107 productive and sustainable levels.
- 108 (c) “Pacific Coastal Salmon Recovery Fund” refers to a fund established by the U.S. Congress in
109 2000 to reverse the declines of Pacific salmon and steelhead.
- 110 (d) “Federal Columbia River Power System (FCRPS) Biological Opinion” refers to 2008 guidance for
111 Action Agencies in operating the FCRPS and requires a series of mitigation measures to address
112 effects on ESA-listed salmon, steelhead, and eulachon.
- 113 (e) “Amendment 21 of the Pacific Coast Salmon Fishery Management Plan” refers to a 2021
114 provision in the fishery management plan that establishes an annual Chinook salmon abundance
115 threshold below which the Pacific Fishery Management Council and NMFS will implement
116 specific management measures to limit ocean salmon fishery impacts on the availability of
117 Chinook salmon as prey for Southern Resident orcas (86 FR 51017).
- 118 (f) “2023 Presidential Memorandum” refers to a memorandum signed by U.S. President Joseph
119 Biden on September 27, 2023 directing applicable Federal agencies to work with Tribal Nations,
120 States, and local agencies to restore healthy and abundant salmon, steelhead, and other native
121 fish populations in the Columbia River basin, and includes requirements to identify additional
122 resources needed to carry out restoration activities (88 FR 67617).
- 123 (g) “Bioaccumulate” means an increase in the concentration of a chemical in a biological organism
124 over time, which occurs when chemicals are taken up and stored faster than they are broken
125 down (metabolized) or excreted.
- 126 (h) “National Pollutant Discharge Elimination System” refers to the system established by the 1972
127 Clean Water Act to regulate pollution from an identifiable source through permits that place limits
128 on the types and amounts of pollutants discharged (33 U.S.C. §1251 et seq.).
- 129 (i) “Nonpoint source pollution” means pollution that is from anything that is not a “point source”, as
130 defined in Section 502(14) of the Clean Water Act (33 U.S.C. §1251 et seq.).
- 131 (j) “Vessel buffer” means the distance that vessels must keep from whales, including Southern
132 Resident orcas, established by existing Federal guidelines or any future State regulation or
133 guideline.