

Exhibit E

**Supplemental Public Correspondence
Received as of August 13, 2025**

July 28, 2025

To: Howard Takata, Oregon Department of Fish and Wildlife
Laurel Hillmann, Oregon Parks and Recreation Department
Andrea Hanson, Oregon Parks and Recreation Department
Nataliya Stranadko, Oregon Department of State Lands
Dana Hicks, Oregon Department of State Lands
Kaegan Scully-Engelmeyer, Department of Environmental Quality
Connie Dou, Department of Environmental Quality
Andy Lanier, Department of Land Conservation and Development
Lisa Phipps, Department of Land Conservation and Development
Phil Hudspeth, Oregon State Marine Board
Alan Hanson, Oregon State Marine Board
Lieutenant Ryan Howell, Oregon State Police

CC: Oregon Fish and Wildlife Commission

Re: Southern Resident Orca Conservation Plans

On behalf of the signatories of this letter, we respectfully ask the three land owning or managing agencies and the five non-land owning or managing agencies (collectively “the agencies”) who have a role to play in Southern Resident Orca (SRO) conservation to incorporate the following into the development or refinement of their respective SRO conservation plans,¹ where applicable.

Management actions to be taken – We recommend the agencies identify specific actions to be taken. For example, an agency could propose rule amendments to account for SRO recovery, or an agency could state they will develop a plan to account for SRO or the major threats to their recovery when issuing certain permits or setting certain guidelines. We also recommend that the agencies identify actions that can be taken immediately and those that can be implemented in the event the agencies acquire additional capacity, either through increased funding or additional staff.² Finally, we recommend agencies incorporate adaptive management strategies to refine actions during plan implementation.

¹ OAR 635-100-0140 (Endangered Species Management Plans for State Land Owning or Managing Agencies); OAR 635-100-0150 (Endangered Species Requirements for Agencies Other than State Land Owning or Managing Agencies).

² See e.g., Section 4 “ODFW Management Actions Contributing to SRO Conservation.” *Oregon Department of Fish and Wildlife Endangered Species Management Plan for Southern Resident Orcas (*Orcinus orca* ater)*, Oregon Dep’t of Fish & Wildlife (August 2025) https://dfw.state.or.us/MRP/mammals/docs/SRO%20Endangered%20Species%20Management%20Plan_ODFW_DRAFT_061825.pdf

Monitoring – We recommend that the agencies identify and include measurable, outcome-based indicators and goals specific to SRO population recovery throughout relevant sections of their plans. The inclusion of these indicators will enable the public and agencies to evaluate the effectiveness of specific actions related to SRO recovery.

Coordination of plans – We recommend that the agencies clearly define how they will work in coordination to ensure all eight plans are integrated. This coordination could involve joint planning, data sharing, and shared implementation timelines. Moreover, we encourage the agencies to collectively convene recurring meetings or workshops to review progress, align priorities, and adapt strategies based on each agency's role, capacity, and available resources. We believe regular coordination amongst all agencies along with the public, academia, and NGO stakeholders will be critical to maximizing the effectiveness of Oregon's collective recovery efforts. We also believe that interagency coordination is essential to avoid a siloed approach and to ensure that efforts are complementary, not duplicative, or conflicting.

Once the Oregon Fish and Wildlife Commission approves an agency's endangered species management plan (ESMP), the agency's plan will supersede the survival guidelines for SRO.³ We regard the survival guidelines as a floor, not a ceiling; they are also intended to be temporary protections ESMPs are adopted. To that end, the ESMPs must be at least as protective as the survival guidelines. Given that these ESMPs are informed by each relevant agency's expertise, they should be significantly more protective and specific than the general survival guidelines.

Sincerely,

Ian Giancarlo
Oceans Advocate
Environment Oregon

Colin Reynolds
Senior Advisor, Northwest Program
Defenders of Wildlife

Cindy Hansen
Education & Advocacy Coordinator
Orca Network

John Rosapepe
Pacific Northwest Representative
Endangered Species Coalition

Amie Kusch
Master's Student, Marine Affairs
University of Washington

³ <https://regulations.justia.com/states/oregon/chapter-635/division-100/section-635-100-0138/>.

August 7, 2025

Ms. Mary Wahl, Chair
Oregon Fish and Wildlife Commission
4034 Fairview Industrial Drive SE
Salem, OR 97302

RE: Oregon Southern Resident Orca Endangered Species Management Plan

Dear Chair Wahl and members of the Commission:

Oceana appreciates the opportunity to comment on the Oregon Department of Fish and Wildlife (ODFW) draft Endangered Species Management Plan (ESMP) for Southern Resident Orcas (SRO).¹ We largely agree with ODFW's list of current and planned actions. However, the actions in the draft management plan are described in very general terms and it will be difficult to measure success. More information is needed to fully assess the conservation impact of the current and proposed actions, including specific project details and timelines to ensure implementation.

Only 73 individuals remain in this distinct orca population (Figure 1)² and under status quo conditions these orcas are likely to go extinct.³ Southern Resident Orca recovery requires bold actions and a long-term commitment to restore Chinook salmon populations and to reduce vessel noise, disturbance, and contaminant exposure. Oregon's coastal ocean waters are critical for Southern Resident Orca feeding and migration, and Oregon's salmon, particularly those in the Columbia River Basin, are critical orca prey. As such, the State of Oregon has an essential role in the conservation and recovery of this endangered species.

ODFW identifies 11 actions the agency is currently taking or planning to implement to contribute to SRO conservation. Consistent with the federal recovery plan,⁴ these actions are designed to

¹ Draft, Oregon Department of Fish and Wildlife Endangered Species Management Plan for Southern Resident Orcas (*Orcinus orca*). August 2025. Available at: https://www.dfw.state.or.us/MRP/mammals/docs/SRO%20Endangered%20Species%20Management%20Plan_ODFW_DRAFT_061825.pdf

² SRKW Population (July 1, 2024): Center for Whale Research 2024 Orca Survey Results, Available: <https://www.whaleresearch.com/orca-population>

³ Williams, R., Lacy, R.C., Ashe, E. *et al.* Warning sign of an accelerating decline in critically endangered killer whales (*Orcinus orca*). *Commun Earth Environ* 5, 173 (2024). <https://doi.org/10.1038/s43247-024-01327-5>

⁴ National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.

alleviate the greatest threats to orca recovery by increasing prey availability, reducing vessel noise and disturbance and reducing contamination.

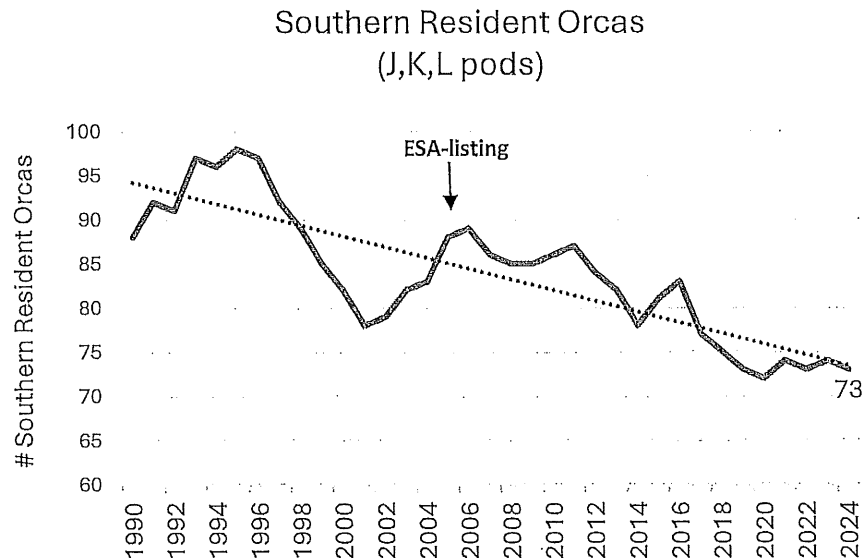


Figure 1. Southern Resident Orca population size, 1990 to July 2024 (adapted from Center for Whale Research).

We focused our review on actions to increase prey availability for SROs and offer the recommendations below.

Recommendations associated with increasing prey availability:

- 1) **Restore salmon habitat:** the management plan should document the specific projects underway that will protect and improve freshwater and estuarine habitat for wild salmon runs that may contribute to SRO prey needs *and* identify priority projects and funding needs for future habitat improvement projects that have the highest potential for increasing wild salmon populations and Southern Residents.
- 2) **Improve fish passage:** the management plan should identify priority fish passage projects underway plus identify priorities for future fish passage projects. We appreciate that this includes working with state, federal and tribal co-managers to improve passage conditions for migrating juvenile and adult salmonids at hydroelectric dams on the Columbia and Snake rivers. The list of priority salmon stocks for Southern Resident Orcas includes most

Columbia Basin Chinook stocks.⁵ Recognizing that decisions around dam removal and improved passage are complex, we recommend that ODFW and the Commission prioritize improved fish passage efforts including dam removal on the lower Snake River. As stated by ODFW scientists and others, lower Snake River dam removal “more so than any other mitigative action – would precipitate the rehabilitation of imperiled salmon and steelhead populations in the Snake River Basin.”⁶

- 3) **Support fishery management that considers the prey needs of SRO:** The management plan states that ODFW supports measures like the 2019-2028 Pacific Salmon Treaty Agreement and Amendment 21 of the Pacific Coast Salmon Fishery Management Plan to help ensure an adequate prey base for SRO. However, under the status quo conditions, including recent average Chinook abundance levels, the Southern Resident population is expected to continue to decline towards extinction.⁷ The threshold identified in Amendment 21 is too low and the management response is too little. Oceana recommends that ODFW commits in the draft plan to work with the Pacific Fishery Management Council to review the existing pre-season Chinook salmon abundance threshold developed under Amendment 21 and ensure that the threshold is sufficient for SRO foraging needs. We further recommend that ODFW commit to reviewing the management response for when Chinook abundance falls below this threshold; including the size, location, and timing of fishery closures inside SRO critical habitat.⁸
- 4) **Evaluate the potential environmental impact of enhanced hatchery production to increase prey availability:** In the SRO management plan, ODFW recommends both maintaining current hatchery salmon production as well as potentially increasing Chinook salmon hatchery production. Hatchery programs, however, can negatively impact natural salmon production through competition for food and habitat, predation, and disease. Oceana recommends the agency carefully evaluate current and proposed hatchery programs to ensure that hatchery production does not reduce natural salmon diversity, productivity, and fitness. And if ODFW increases hatchery production for SRO prey availability it should be made clear that the objective of the increased hatchery production is for SRO conservation and not increased ocean fishing opportunities. What is more, any SRO conservation hatchery production should be aligned with the orcas’ foraging

⁵ Southern Resident Killer Whale Priority Chinook Salmon Stocks, Available: <https://www.fisheries.noaa.gov/west-coast/endangered-species-conservation/southern-resident-killer-whale-priority-chinook-salmon>

⁶ Storch, AJ, HA Schaller, CE Petrosky, et al. 2022. A review of potential conservation and fisheries benefits of breaching four dams in the Lower Snake River. *Water Biology and Security* 1 (2002) 100030. Available: https://repository.library.noaa.gov/view/noaa/62863/noaa_62863_DS1.pdf

⁷ Murray et al. 2021. A cumulative effects model for population trajectories of resident killer whales in the Northeast Pacific. *Biological Conservation* (257):109124, <https://doi.org/10.1016/j.biocon.2021.109124>

⁸ For more information see: Independent Science Panel on SRKW Recovery (2025). Strengthening recovery actions for Southern Resident killer whales. <https://doi.org/10.70766/32.7300>

August 7, 2025

Oregon Southern Resident Orca Endangered Species Management Plan

Page 4 of 4

requirements in terms of Chinook salmon run timing, fat content, and the size and age of the returning adult fish.

Periodic Review of the Endangered Species Management Plan (ESMP)

Periodic review and adaptive management are essential for developing optimal management actions. However, ODFW states that it will review the SRO ESMP "as needed," based on undefined and subjective triggers including changes in SRO population status, changes in their conservation needs, or "dramatic changes" in ocean conditions. Oceana recommends ODFW commit to reviewing the ESMP as needed but no less than once every five years, in conjunction with the Commission's periodic five-year review of its threatened and endangered species list (OAR 635-100-0210).

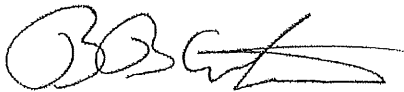
Conclusion

In finalizing the ESMP, the Commission must consider the critically endangered status and continuing decline of the endangered Southern Resident Orcas, including the population-level effects and harm to orcas from a lack of prey, vessel noise, and contaminants. And we encourage you to consider the important role Oregon can play in orca recovery in collaboration with federal partners, neighboring states, local government, Tribes and NGOs.

It is imperative comprehensive actions are taken quickly to recover Southern Residents and their primary prey, Chinook salmon. Conservation actions identified in the draft plan will not only benefit orcas, but healthy aquatic ecosystems, fisheries, and communities throughout the region.

Given the status of Southern Resident Orcas and threats to them, we urge you to consider the above recommendations to strengthen and then finalize the draft management plan.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ben Enticknap', with a stylized flourish at the end.

Ben Enticknap

Pacific Campaign Director and Senior Scientist



National Headquarters

1130 17th Street, N.W. | Washington, D.C. 20036-4604 | tel 202.682.9400 | fax 202.682.1331
www.defenders.org

August 13, 2025

Oregon Fish and Wildlife Commission
4034 Fairview Industrial Drive SE
Salem, OR 97302

Re: Southern Resident Orca Endangered Species Management Plans

Chair Wahl, Vice Chair Hatfield-Hyde, and Members of the Oregon Fish and Wildlife Commission:

I. Executive Summary

Defenders of Wildlife (Defenders) thanks the Oregon Fish and Wildlife Commission (Commission) for the opportunity to provide comments on the three draft Endangered Species Management Plans (ESMPs) for the Southern Resident Orcas (SRO). We also thank all agencies involved for the time and energy they invested in developing their ESMPs and conservation memoranda. It is clear that we share a common goal of protecting this iconic Pacific Northwest marine mammal, a symbol of the region's natural beauty, ecological richness, and cultural heritage.

SROs face multiple, compounding threats that place them at continued risk of extinction. Prey availability, sound and vessel disturbance, and environmental contamination remain the primary drivers of species decline, with additional threats—including oil spills, incidental take, climate change and ocean acidification, disease, and invasive species—further reducing the species' resilience.¹ With only 74 individuals remaining, the need for effective, coordinated action is urgent. Oregon's waters, including the Columbia River and adjacent coastal areas, provide important foraging habitat for L and K pods, making the state's role in recovery efforts essential.² Strong, science-based ESMPs with clear interagency and cross-jurisdictional coordination will be critical to ensuring the survival and long-term recovery of this culturally and ecologically significant species.

¹ *Recovery Plan for Southern Resident Killer Whales (Orcinus orca)*, NAT. MARINE FISHERIES SERV. (Jan. 2008), <https://www.fisheries.noaa.gov/resource/document/recovery-plan-southern-resident-killer-whales-orcinus-orca>.

² *Marine mammals - Southern Resident Orcas*, OREGON DEP'T OF FISH AND WILDLIFE, https://www.dfw.state.or.us/MRP/mammals/southern_resident_orcas.asp; Mapes, Lynda, *New research illuminates growing threat of extinction for Southern Resident orcas*. THE SEATTLE TIMES (Feb. 3, 2025), <https://www.seattletimes.com/seattle-news/climate-lab/new-research-illuminates-growing-threat-of-extinction-for-southern-resident-orcas>.

Per ORS 496.182(8)(a)(D) and OAR 635-100-0140(6)(h), the Commission is required to review each ESMP to determine whether the plan achieves the conservation role identified by the land-owning agency. This role may include, but is not limited to, conservation, contribution toward conservation, or take avoidance.³ Each ESMP must also meet the minimum requirements set forth in OAR 635-100-0140(6)(a-h). If the Commission determines that, based on the biology of the endangered species, the plan does not achieve the defined role, in consultation with the agency, it may modify the plan.⁴ In practice, we understand the Commission is limited in what it can request to agencies besides the Oregon Department of Fish and Wildlife (ODFW).⁵ Our intention is for this letter to provide both (1) an assessment of whether the ESMPs meet the legal requirements for approval and (2) additional science-based recommendations that agencies can incorporate to strengthen their plans to go beyond the minimum legal requirement and meet the needs to effectively achieve SRO conservation. As an option, the Commission could direct ODFW to modify its ESMP and or direct ODFW to work with the other participating agencies on an additional conservation memorandum clarifying management activities.

This letter is organized into the following sections:

1. **Comments on OAR 635-100-0140 compliance:** Reflects Defenders' assessment of how each agency's draft ESMP aligns with, diverges from, or could be improved to meet the requirements and intent of OAR 635-100-0140 (6) (a-h).
2. **Additional Comments on the Endangered Species Management Plans:** Provides additional recommendations for the three land-owning agencies ESMPs
3. **Comments on Conservation Memoranda:** Provides comments on conservation memoranda developed by the 5 non-landowning agencies

After a thorough review of the three plans, Defenders' found the following:

1. Each agency determined its role in SRO conservation, and generally speaking, each plan achieves that role, meeting the requirements of ORS 496.182(8)(a)(D).

³ OAR 635-100-0140(3).

⁴ OAR 635-100-0140(6)(h).

⁵ *ODFW Commission Meeting*, YouTube (April 21, 2023), <https://www.youtube.com/watch?v=cREDwE-m418> (At 4:47:00, former ODFW Director Melcher said regarding the Commission's role as regard to the draft Marbled Murrelet plans: "I do want to remind the Commission that these other main agencies don't work for me and they don't work for you. So, you can send us away to refine our plan because I work for you and the and the agency works for me, but there's no guarantee that you'll get something different from the other agencies. And I just want to point that out, I think you all understand that, but the statute is pretty clear that it lets them define their role, it says define their role and then you have to approve their plan, so maybe that's awkward but nonetheless it is what it is.").

2. As a whole, each ESMP addresses OAR 635-100-0140(6)(a–h), thus meeting the Commission’s rules for ESMP; however, the following areas could be strengthened:⁶
 - ODFW could clearly state how implementation will be monitored (e.g., metrics, methods, etc.) and when (e.g., annual reviews, adaptive management cycles).⁷
 - The Oregon Parks and Recreation Department (OPRD) could include language explicitly describing how their plan relates to the ESMPs of ODFW and the Oregon Department of State Lands (ODSL).⁸
 - ODSL could include language explicitly describing how their plan relates to the ESMPs of ODFW and OPRD.⁹
3. We found that monitoring frameworks could be improved across all three ESMPs. While each agency includes some form of tracking, none provides a complete set of measurable outcome-based metrics and biological indicators tied directly to SRO recovery. Monitoring could be clarified in a subsequent memorandum drafted by ODFW.
4. Interagency coordination is underdeveloped. All three agencies include some coordination language, but none outline a clear, transparent, and recurring mechanism for cross-agency planning, data sharing, and joint action. Again, interagency coordination could be a topic for a subsequent memorandum drafted by ODFW.
5. ODFW is well-positioned to take a leadership role in coordinating SRO recovery among land-owning and non-land-owning agencies. In the event additional funding and staff are dedicated to SRO issues,¹⁰ the Commission should be ready to ask ODFW to reevaluate its position in relation to SRO conservation.

These findings guide the detailed comments and recommendations that follow, which aim to ensure the ESMPs not only meet the minimum requirements, but also position Oregon’s agencies for effective, science-based recovery of SRO.

⁶ For additional recommendations on improvements to each ESMP, see Section I.

⁷ OAR 635-100-0140(6)(d)

⁸ OAR 635-100-0140(6)(f)

⁹ *Id.*

¹⁰ *Oregon Department of Fish and Wildlife Endangered Species Management Plan for Southern Resident Orcas (Orcinus orca ater)*, OREGON DEP’T OF FISH AND WILDLIFE 9 (Aug. 2025), https://myodfw.com/sites/default/files/2025-08/Amended%20Exhibit%20E_%20Attachment%203a_8.7.25%20final.pdf (hereinafter ODFW Plan) (“ODFW is dedicated to its mission of protecting and enhancing Oregon’s fish and wildlife and their habitats for present and future generations; however, the agency must also operate within fiscal constraints. Given ODFW’s lack of funding and staff dedicated to SRO issues, the Department does not believe that actions needed for a conservation role can be taken at this time.”).

II. Comments on OAR 635-100-0140 compliance

On February 16, 2024, the Oregon Fish and Wildlife Commission listed SROs as endangered under the Oregon Endangered Species Act.¹¹ This listing triggered a multi-step process under ORS 496.182(8)(B), which requires state land-owning agencies to develop ESMPs when the listed species, or its habitat, is present on lands they own or manage. The Commission identified three agencies as having a role to play in the conservation of SROs: ODFW, OPRD, and ODSL.¹² Concurrently, under the direction of ORS 496.182(8)(b), the Commission determined that five non-land-owning agencies—the Department of Environmental Quality (DEQ), the Department of Land Conservation and Development (DLCD), the Oregon State Marine Board (OSMB), the Oregon State Police (OSP), and the non-proprietary component of ODSL—serve a role in the conservation of SRO.¹³ Under OAR 635-100-0150(3)(a–f), these agencies submitted individual conservation memoranda to the Commission.

Under ORS 496.182(8)(a)(C) and the implementing rule OAR 635-100-0140, each agency is required to develop its own ESMP for Commission review and approval. ODFW, OPRD, and ODSL have now submitted their draft ESMPs to the Commission for this review, as required under OAR 635-100-0140(6)(h). Pursuant to ORS 496.182(8)(d), the Commission must determine whether each plan, based on the biology of the SRO, achieves the role defined for the landowning agency and is consistent with the Commission’s rules for ESMPs. If the Commission finds a plan inconsistent, it may modify the plan in consultation with the agency before approving the original or modified plan within 24 months of the species’ listing. Unlike the ESMPs required of land-owning agencies, the memoranda submitted by the five non-land-owning agencies are not subject to formal Commission approval.¹⁴ Instead, they document each agency’s self-defined role in SRO conservation and outline how they plan to coordinate with the land-owning agencies.¹⁵

Overall, each ESMP addresses OAR 635-100-0140(6)(a–h), thus meeting the Commission’s rules for ESMP; however, the following areas could be strengthened.¹⁶ The comments reflect our assessment of how each agency’s draft ESMP aligns with, diverges from, or could be improved to meet the requirements and intent of OAR 635-100-0140 (6) (a-h).¹⁷

¹¹ *Commission lists Southern Resident orcas as endangered, adopts survival guidelines*, OREGON DEP’T OF FISH AND WILDLIFE (Feb. 16, 2024), https://www.dfw.state.or.us/news/2024/02_Feb/021624.asp.

¹² ODFW Plan at 7-8.

¹³ *Id.*

¹⁴ See OAR 635-100-0150.

¹⁵ *Id.*

¹⁶ For additional recommendations on improvements to each ESMP, see Section I.

¹⁷ If a paragraph of the OAR 635-100-0140(6) is not addressed in this section of the comment letter, it should be understood that we find the actions of the Commission and agencies, as well as the language in all three draft plans, to have met the minimum

a. OAR 635-100-0140 (6)(a) – (What State Lands are covered by their Plan)

Under OAR 635-100-0140(6)(a), the agencies must specify “[w]hat state land is covered by their ESMPs.”

We appreciate that OPRD clearly identifies its jurisdiction, geographic extent (above extreme low tide), and specific locations like the Depoe Bay Whale Watching Center.¹⁸ ODSL likewise provides a satisfactory description, including a visual reference of the lands under its jurisdiction.¹⁹

In contrast, ODFW’s plan could provide additional clarity.²⁰ We believe the current language does not provide enough information about what state land is covered by the ESMP. In the event the Commission requests modifications of ODFW’s plan, we recommend that ODFW follow the examples set by OPRD and ODSL, such as listing specific hatchery sites and including a map or spatial coordinates for the relevant coastal state waters it manages.

b. OAR 635-100-0140 (6)(b) – (Conservation Role)

Under OAR 635-100-0140(6)(b), agencies are required to state, “[w]hat role that state land is to play in conservation of the species and how the agency defined that role (i.e., how the agency balanced the factors listed in sections (3) and (4) of this rule).”

We appreciate that each agency has clearly identified its selected role in the conservation of the SRO. However, we believe each plan would benefit from more robust language that demonstrates how the agency considered and balanced the factors listed in sections (3) and (4) of the rule.

Specifically, we recommend that all agencies provide a clearer rationale explaining how each factor—such as statutory authority, land purpose, conservation needs, and social or

requirements under OAR 635-100-0140. If we believe additional actions could further support SRO recovery, those suggestions can be found in the section titled ‘Additional Comments.’

¹⁸ *Southern Resident Orca Endangered Species Management Plan*, OREGON PARKS & RECREATION DEP’T 4 (2025), https://myodfw.com/sites/default/files/2025-07/Exhibit%20E_Attachment%203c_OPRD%20SRO%20Endangered%20Species%20Management%20Plan.pdf. (Hereinafter OPRD Plan).

¹⁹ *Southern Resident Orca Management Plan*, OREGON DEP’T OF STATE LANDS 15 (2025), https://myodfw.com/sites/default/files/2025-07/Exhibit%20E_Attachment%203b_DSL%20SRO%20Endangered%20Species%20Management%20Plan.pdf. (Hereinafter DSL Plan).

²⁰ ODFW Plan at 8.

economic impacts—influenced the decision to choose “contributing to conservation.” We also recommend that OPRD include an explicit statement that their selected role is consistent with the biological needs of SROs, as required under section (4).

Finally, we encourage ODFW to more thoroughly explore opportunities for conservation despite the fiscal limitations cited, such as taking a leadership role in coordinating agencies in this process. We appreciate ODFW creating partnerships with Shores Conservation Coalition and Adventure Scientists to collect data on SRO off the Oregon coast.²¹ This type of innovative collaboration during a time of limited funding reflects the adaptive strategies needed for successful SRO conservation.

c. OAR 635-100-0140 (6)(d) – (Monitoring Implementation)

Under OAR 635-100-0140(6)(d), agencies must state “[w]hether the agency will monitor implementation of the plan, and if so, how and when.”

We appreciate ODSL’s clear statement of whether, how, and when it will monitor the implementation of its plan.²² We also appreciate OPRD’s clarity in stating it will not actively monitor the implementation of its ESMP.²³ However, we believe it is imperative that the agency track the effectiveness of its actions. Without monitoring, it will be difficult to assess whether the measures are achieving their intended outcomes or to generate the data needed to adapt and improve management over time.

While ODFW states it “intends to monitor implementation of its ESMP and will keep the public informed on the progress of plan implementation through updates on its website,”²⁴ this does not address the “how” and “when” specified in the rule. This language must be included in order to comply with OAR 635-100-0140(6)(d). We recommend, in line with the Federal Recovery Plan for Southern Resident Killer Whales (“Federal Recovery Plan”),²⁵ that ODFW provide a more detailed description of how implementation will be monitored (e.g., metrics, reporting processes, data collection methods, responsible programs or staff) and when this monitoring will occur (e.g., through annual reviews, adaptive management cycles, or scheduled reporting intervals). We recommend ODFW, and all agencies review the research recommendations provided in an “Independent Science

²¹ ODFW Plan at 13.

²² DSL Plan at 22.

²³ OPRD Plan at 7-8 (“The agency does not plan to actively monitor implementation of the ESMP. However, OPRD will revisit the plan and its implementation and adaptively manage, as necessary.”).

²⁴ ODFW Plan at 13.

²⁵ *Recovery plan for southern resident killer whales (Orcinus orca)*, NAT. MARINE FISHERIES SERV. (2008). <https://repository.library.noaa.gov/view/noaa/15975>. For sections involving monitoring, see III-1; V-4-V-6.

Panel Report”²⁶ as it outlines effective ways to monitor the impacts of management actions.²⁷ We also encourage ODFW to replace “intends to monitor” with “will monitor” to reflect a stronger agency commitment.²⁸ Finally, we appreciate ODFW’s dedication to public transparency via website updates,²⁹ but we believe this should be understood as a communication tool, not a substitute for an effectiveness monitoring framework.³⁰

d. OAR 635-100-0140 (6)(e) – (Reassess and Review)

Under OAR 635-100-0140(6)(e), agencies must state “[w]hether the agency will reassess and review the plan and its implementation, and if so, how and when. For example, the agency may determine that new biological information, catastrophic events, changes in the species’ listing status, changes in land use practices, or other factors will trigger the agency’s reassessment and review of the plan.”

We appreciate OPRD’s clear language, which specifies whether, how, and when its plan will be reviewed, including a recurring 10-year review cycle and additional trigger-based reassessment criteria.³¹ However, we recommend the agency review its plan every five years to align with the Commission’s review schedule for the status of all threatened and endangered species under ORS 496.176(8).

We appreciate ODFW and ODSL’s commitment to reassess their ESMPs and language in both plans outlining triggers that would result in the agencies reviewing their plans.³² We believe that ODFW and ODSL’s plans could be strengthened by including a defined review interval (e.g., every 5 years) in addition to their existing “as needed” language. A regular review timeline helps ensure the plan remains relevant and accountable, even if the stated biological or jurisdictional triggers do not occur. This would improve transparency and provide greater confidence that the plans will be reassessed over time.

²⁶ INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY, *Strengthening recovery actions for Southern Resident killer whales* (July 7, 2025), <https://www.raincoast.org/wp-content/uploads/2025/07/Independent-Science-Panel-on-SRKW-Recovery.pdf>.

(Hereinafter INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY).

²⁷ *Id.* at 48-54.

²⁸ ODFW Plan at 13.

²⁹ *Id.*

³⁰ See Richard Hutto & R.T. Belote, *Distinguishing four types of monitoring based on the questions they address*, 189 FOREST ECOLOGY & MGMT., 183-189 (2013), <https://www.sciencedirect.com/science/article/abs/pii/S0378112712006020>.

³¹ OPRD Plan at 8.

³² ODFW Plan at 13-14; ODSL Plan at 22.

e. OAR 635-100-0140 (6)(f) – (How Plan Relates to Other Plans)

Under OAR 635-100-0140(6)(f), agencies must state “[h]ow the agency’s plan relates to other state agency endangered species management plans, federal recovery plans, and state and other recovery efforts.”

We appreciate ODFW’s thorough language describing how its plan relates to the federal recovery plan.³³ We also appreciate that ODFW includes language describing coordination with non-landowning agencies such as DEQ and OSMB.³⁴ The plan also outlines how it supports broader recovery efforts and includes collaborations with other organizations.³⁵ We think including clearer language on how ODFW plans to coordinate with the OPRD and ODSL—in addition to the examples it provided of different agency unique responsibilities—would strengthen their ESMP.

We appreciate OPRD’s language in its plan outlining how its actions align with several management measures in the federal recovery plan.³⁶ OPRD’s plan currently lacks language that explicitly describes how its plan relates to the ESMPs developed by ODFW and ODSL. This language must be included in order to comply with OAR 635-100-0140(6)(f). Additionally, we believe OPRD’s plan could be improved by committing to advancing its outreach and education efforts beyond the current stage of “initial discussions.”³⁷

While ODSL’s plan acknowledges the differing directives and goals of the other landowning agencies, as well as the current international, federal, and state protective measures,³⁸ it lacks language that explicitly describes how its plan relates to the ESMPs developed by ODFW and OPRD. This language must be included in order to comply with OAR 635-100-0140(6)(f). In addition, the plan would benefit from a more detailed explanation of which specific elements align with the federal recovery plan.

We acknowledge and appreciate the time, expertise, and effort each agency dedicated to developing its ESMP. These plans represent an important step forward in Oregon’s commitment to the recovery of SROs. However, in order for the Oregon Fish and Wildlife Commission to legally approve the submitted ESMPs under ORS 496.182(7)(c) and OAR 635-100-0140(6), the following compliance gaps should be addressed:

- ODFW should
 - Clearly state how implementation will be monitored (e.g., metrics, methods, etc.) and when (e.g., annual reviews, adaptive management cycles).

³³ ODFW Plan at 14-15.

³⁴ *Id.*

³⁵ *Id.*

³⁶ OPRD Plan at 4.

³⁷ *Id.*

³⁸ ODSL Plan at 12-13.

- OPRD should
 - Include language explicitly describing how their plan relates to the ESMPs of ODFW and ODSL.
- ODSL should
 - Include language explicitly describing how their plan relates to the ESMPs of ODFW and OPRD.

III. Additional Comments on the Endangered Species Management Plans

The previous section of this comment letter assessed whether the three state agency plans meet the minimum requirements outlined in OAR 635-100-0140(6) for ESMPs. In this section, we offer additional recommendations grounded in best available science, including findings from the recent “Independent Science Panel Report”³⁹ as well as the federal recovery plan and Washington’s Southern Resident Killer Whale (SRKW) Task Force Recommendations.⁴⁰ While these measures are not legally required, they represent critical actions needed to support the long-term recovery and conservation of SROs. Should the Commission approve the submitted plans, we strongly encourage ODFW, OPRD, and ODSL to consider the following recommendations to strengthen their plans and enhance their effectiveness, or should the Commission not approve the plans at this time, the agencies, while revising the necessary language for legal compliance, should incorporate the following recommendations into their plans.

a. General Comments to All Three Plans

i. Monitoring

We recommend that all three plans include measurable, outcome-based metrics for their agency actions, along with biological indicators specific to SRO population recovery, throughout relevant sections of their plans. Outcome-based metrics, such as compliance rates, habitat protection measures, or participation in outreach programs, allow agencies to track the direct results of their management actions. Biological indicators, such as changes in SRO body condition, prey availability, or disturbance levels, demonstrate whether those actions are contributing to species recovery.⁴¹

We further recommend that each agency compare its outcome-based metrics to the biological indicators tracked by ODFW to evaluate whether its actions are producing the intended conservation benefits. Failure to meet these goals should trigger the review and

³⁹ INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY.

⁴⁰ ; National Marine Fisheries Service. 2008. Recovery Plan for Southern Resident Killer Whales (*Orcinus orca*). National Marine Fisheries Service, Northwest Region, Seattle, Washington.; Washington Governor’s Southern Resident Killer Whale Task Force. (2019). *Final report and recommendations: 2019*. <https://www.orca.wa.gov/wp-content/uploads/TaskForceFinalReport-2019.pdf>.

⁴¹ INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY at 48-54.

reassessment of the ESMP in accordance with the plan's adaptive management provisions. Whenever possible, we encourage the agencies to align both metrics and indicators with the standards adopted by Washington State, British Columbia, and the broader scientific community.⁴² Where we see specific monitoring actions as essential, these are noted within the individual recommendations for each agency's ESMP.

ii. Cross-agencies coordination

SROs travel across state, national, and international waters, encountering multiple jurisdictions and management authorities. Because of this wide-ranging habitat, alignment between Oregon's recovery plans and interagency documents, as well as conservation frameworks, such as Washington State's SRO Task Force recommendations and British Columbia's Recovery plan, is essential for geographically cohesive conservation.⁴³

Although all three agencies include some discussion of coordination in their ESMPs, the scope and detail vary. It is imperative that ODFW, OPRD, and ODSL proactively develop a transparent, cross-agency coordination framework to support effective implementation of their ESMPs and avoid duplicative or conflicting efforts. We urge the agencies, including the five non-land-owning agencies, to incorporate specific language outlining coordination mechanisms, including joint planning efforts, data sharing protocols, and aligned implementation timelines. We appreciate ODFW showing leadership by adding language in their ESMP stating that they will convene an annual meeting of the state agencies involved in SRO conservation to review progress, align priorities, and coordinate management actions.⁴⁴ Sustained coordination will be critical to maximizing the impact of Oregon's collective conservation efforts.

⁴² 2025 management measures to protect Southern Resident killer whales, Gov. of Canada, <https://www.pac.dfo-mpo.gc.ca/fm-gp/mammals-mammiferes/whales-baleines/srkw-measures-mesures-ers-eng.html>; INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY; *Final report and recommendations*, SOUTHERN RESIDENT KILLER WHALE TASK FORCE (Nov. 2019), <https://www.orca.wa.gov/wp-content/uploads/TaskForceFinalReport-2019.pdf>.

⁴³ Pedersen, D., Temby, O., Sohns, A., Roozee, E., & Hickey, G. M. *Assessing inter-organizational collaboration within the transboundary network governing the conservation of Southern Resident Killer Whales*. MARINE POLICY, 171, 106469, <https://www.sciencedirect.com/science/article/pii/S0308597X2400469X?via%3Dihub>. (Paper's findings include SRO governance network relies heavily on personal relationships and social control mechanisms while being fragmented by jurisdiction, social expectations, unclear communication channels, and competition for resources, requiring careful network management attention. Opportunities for integrating additional trust-building activities and social control mechanisms, combined with inclusive deliberative processes are identified.).

⁴⁴ ODFW Plan at 13.

b. Comments on the Oregon Department of Fish and Wildlife ESMP
i. Section 3

ODFW attributes its role of “contributing to conservation” to the SRO population’s movement beyond ODFW’s jurisdiction, as well as to limited funding and staff capacity.⁴⁵ We understand ODFW’s rationale for selecting this role; however, successful recovery will require one agency to take a clear leadership role in guiding SRO conservation. Of the three land-owning agencies, ODFW is best positioned to fulfill this function.

ODFW’s ESMP already demonstrates elements of leadership, such as committing to convene an annual meeting of all agencies involved and maintaining partnerships with other agencies and Washington State. Even if ODFW cannot formally adopt a “conservation” role at this time, explicitly committing to a leadership role in its ESMP would improve the likelihood of success across all three plans by providing a clear point of coordination.

As part of this leadership role, ODFW could develop a memorandum outlining interagency coordination processes. As part of this leadership role, and consistent with its statutory obligation under ORS 496.176(8) to review the biological status of SRO every five years, ODFW should serve as the central hub for aligning other agencies’ monitoring results with species recovery indicators. For example, if OPRD tracks social metrics such as public engagement, or ODSL tracks permit outcomes in SRO critical habitat, these results should be compared with ODFW’s biological assessment data to assess whether such actions are contributing to measurable conservation success.

ii. Sections 4.A.1-4 & Section 7

On page 9 of ODFW’s ESMP, the section titled “Restore salmon habitat” references several salmon habitat restoration plans; however, none of these plans include measurable indicators tied to SRO population outcomes, nor do they explicitly reference SRO recovery. In addition to our general ask of interagency coordination, we recommend that ODFW deepen integration between its own internal salmon recovery efforts and SRO recovery strategies.

For example, the Coastal Multi-Species Conservation and Management Plan should include a robust foundation for Chinook salmon recovery on the northern Oregon coast. This may require revisiting the sliding scale harvest model to ensure that sufficient numbers of adult Chinook return to spawn and support SRO prey needs. Similarly, both the Rogue Fall Chinook Plan (2013) and Rogue Spring Chinook Plan (2007) should be updated to reflect the latest data and to ensure they are contributing effectively to the recovery of both Chinook and the SRO population that depends on them.

⁴⁵ ODFW Plan at 9.

For ODFW's ESMP, specifically, we recommend ODFW:

- Clarify how success will be measured in relation to SRO recovery.
- Establish monitoring indicators that link salmon habitat restoration to SRO prey availability.
- Incorporate population metrics such as birth and death rates and calf survival into its evaluation framework.

Strengthening the connection between ODFW's salmon recovery strategies and SRO conservation outcomes will ensure that management actions are not only complementary but also mutually reinforcing.

iii. Section 4.B.1

While ODFW's intent to increase hatchery production of spring Chinook aligns with expert identification of this stock as a key prey source for SROs, we encourage the agency to also consider the importance of wild salmon as prey.⁴⁶ Should ODFW determine that hatchery production cannot be successfully increased, we recommend that the agency proactively outline alternative steps to enhance spring Chinook abundance in its ESMP. These should include:

- Maintaining low marine harvest rates (1–5%) or reducing higher rates to this level until exploitation and recovery analyses identify appropriate quantitative targets; and
- Reviewing and refining the size, location, and timing of fishery closures in critical habitat to ensure alignment with SRO foraging areas and implementing precautionary buffers.

If hatchery production is expanded, we urge ODFW to adopt expert recommendations consistent with science-based recovery priorities. This includes:

- Explicitly prioritizing hatchery production for SRO nutritional needs over fishery access.
- Ensuring that run timing, fat content, size, and age of hatchery Chinook align with documented SRO prey preferences.
- Evaluating effectiveness based on SRO population outcomes, not solely hatchery survival or fishery contribution.
- Where possible, incorporate emerging methods of determining prey origin (hatchery vs. wild) in the Southern Residents' diet.

Additionally, we ask ODFW to institute a clear and transparent process for public review of any potential increase in production.

⁴⁶ INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY at 21-24.

c. Comments on the Oregon Parks and Recreation Department ESMP

In the Adaptive Management section of the agency's ESMP, OPRD states it "does not plan to actively monitor implementation of the ESMP."⁴⁷ However, without clearly established indicators and ongoing monitoring activities, such as their coastwide volunteer cleanups or educational programming focused on SROs, the agency will lack the tools to assess whether its efforts are effective or whether adjustments are needed. This gap directly affects the agency's ability to "revisit the ESMP's effectiveness and compatibility with management needs every 10 years."⁴⁸ Without defined success indicators for its conservation role, OPRD will be unable to determine whether its efforts are achieving the intended outcomes.

To better understand and demonstrate how its activities contribute to SRO conservation, we recommend that OPRD implement monitoring mechanisms for its planned actions. These could include tracking social indicators, such as the number of individuals reached through Oregon Whale Watch Week, volunteer training participation rates, and changes in public awareness of SRO threats. OPRD could establish measurable goals, such as reaching 50,000 people annually through interpretive programming, and assess progress using survey data, program attendance records, and digital outreach analytics. These monitoring results should be compared to the biological assessment developed by ODFW to ensure that agency efforts are contributing to measurable SRO recovery.

OPRD states in its Adaptive Management section of the ESMP that it plans to revisit the ESMP's effectiveness every 10 years. In addition to the issues outlined above, where the lack of monitoring makes it difficult to assess effectiveness, this interval is inconsistent with the review schedule established under ORS 496.176(8), which requires the Commission to review the status of all threatened and endangered species at least every five years. Because the Commission's five-year review will produce updated scientific findings and policy decisions, a 10-year ESMP review means OPRD's plan could be out of step with the most current information for up to half a decade. This misalignment risks leaving management actions outdated and less effective in addressing recovery needs for Southern Resident Orcas. We recommend that OPRD commit to reviewing and updating its ESMP on a cycle that matches the statutory five-year species review interval.

d. Comments on the Oregon Department of State Lands

We appreciate ODSL's tracking of permit types, locations, and consideration of potential effects on SROs during Joint Agency Review Team (JART) review.⁴⁹ However, the plan does not include SRO-specific indicators or outcome metrics to demonstrate whether these permitting and review processes are achieving the intended conservation benefits.

⁴⁷ OPRD Plan at 7-8.

⁴⁸ *Id.*

⁴⁹ ODSL Plan at 17-18; 22.

We recommend adding SRO-focused monitoring metrics, such as:

- Percentage of projects in SRO critical habitat that implement noise-reduction measures or seasonal work restrictions to avoid peak SRO presence.
- Area of critical habitat protected from new development due to permit conditions.
- Compliance rates with mitigation measures designed to minimize impacts on SRO foraging and communication.
- Post-project monitoring results showing no measurable degradation of habitat features important to SRO recovery.

These outcome metrics should be evaluated alongside clearly defined indicators of success, such as measurable improvements in habitat quality or reduced disturbance in key foraging areas. Finally, ODSL should compare these results to the biological assessment developed by ODFW to ensure its permitting and mitigation efforts are effectively contributing to SRO recovery.

IV. Comments on Conservation Memoranda

In addition to the three landowning state agencies' ESMPs, DEQ, DLCD, OSMB and OSP submitted conservation memoranda. We appreciate the time and effort each of these agencies dedicated to developing their memoranda, as well as their commitment to the conservation of SROs. These memoranda describe interagency collaboration that will be essential for the successful recovery and long-term conservation of the SRO population.

We recognize that the Commission has no authority to approve, deny, or modify these memoranda, and that ODFW does not have jurisdiction over these agencies' actions. However, given the urgency of ensuring that all plans and memoranda are as strong as possible, and without sufficient time to collaborate with agencies, we find it necessary to place our comments on record through this forum. That said, we only had substantive comments regarding the OSMB Conservation Memorandum.

a. Oregon State Marine Board Conservation Memorandum

We appreciate OSMB's clear commitment to active collaboration and partnership, its thorough documentation of monitoring efforts, and its acknowledgment of the critical role it plays in outreach and education on SROs. In addition to the actions outlined in its memorandum, we recommend that OSMB consider the following when developing vessel-related messaging and policies:

- ODFW states that they will "work with OSMB to organize a meeting with OSP and various stakeholders...to gather input that will help determine whether a vessel set-back regulation is needed in Oregon's marine waters."⁵⁰ As OSMB notes in its

⁵⁰ ODFW Plan at 13.

memorandum, enforceable measures may ultimately be necessary to support the recovery and conservation of this population.⁵¹ We recommend that Oregon adopt a mandatory 1000-yard setback regulation, aligning with the recommendations made by experts as well as current Washington State law.⁵² Until such a regulation is in place, OSMB should prioritize informing boaters of the recommended 1,000-yard setback through targeted outreach and education, ensuring that operators in Oregon waters are aware of and prepared to follow this best-practice standard. OSMB should, similar to the proposed action in ODFW’s draft ESMP, align its outreach and education with the State of Washington and British Columbia’s “Be Whale Wise” messaging.⁵³ Adopting this shared framework would save time and resources by building on existing materials, while also creating cohesive, recognizable guidance for boaters operating in Oregon, Washington, and Canadian waters. Consistent messaging across jurisdictions helps ensure that recreational and commercial operators receive clear, uniform instructions on how to minimize disturbance to SRO.

- Acoustic disturbances impair SROs’ ability to communicate and forage, compounding the challenges they already face due to insufficient prey availability.⁵⁴ We recommend that Oregon explore the logistics and feasibility of developing a program similar to Washington State’s Quiet Sound (led by Maritime Blue) and the Port of Vancouver’s ECHO Program.⁵⁵ These initiatives offer models for reducing underwater noise through voluntary vessel slowdowns and routing measures. A comparable Oregon program should be designed with reference to the 10 “recommendations for reducing acoustic and physical disturbance” made by experts in the July 2025 report, *Strengthening Recovery Actions for Southern Resident Killer Whales*, including the recommendation for an 11-knot slowdown for all vessel classes in the presence of SROs.⁵⁶

⁵¹ Oregon State Marine Board Conservation Memorandum at 2.

⁵² INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY at 33; RCW 77.15.740.

⁵³ <https://www.bewhalewise.org/>

⁵⁴ *Biological Assessment of the Southern Resident Orcas (Orcinus orca) in Oregon and Evaluation of Criteria to Classify the Species as Endangered under the Oregon Endangered Species Act*, OREGON DEP’T OF FISH AND WILDLIFE 6-7 (Sept 2023), https://dfw.state.or.us/agency/commission/minutes/24/02_Feb/Exhibit%20B/Ex%20B%20Att%204%20SRO%20Biological%20Assessment.pdf.

⁵⁵

<https://quietsound.org/#:~:text=Quiet%20Sound%20implements%20voluntary%20programs,endangered%20Southern%20Resident%20killer%20whales;>
<https://www.portvancouver.com/environment/healthy-ecosystem/echo>.

⁵⁶ INDEPENDENT SCIENCE PANEL ON SRKW RECOVERY at 7-8.

V. Conclusion

Defenders thanks the Commission for its careful consideration of these comments and for its leadership in advancing the recovery of SRO. We also extend our appreciation to ODFW, OPRD, ODSL, and the four non-land-owning agencies for their dedication and the substantial effort invested in developing these plans and memoranda.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Reynolds', with a stylized, cursive script.

Colin Reynolds

Senior Advisor, Northwest Program
Defenders of Wildlife