

# Feds propose major habitat protections for killer whales

Waters along the West Coast

By SALLY HO  
Associated Press

SEATTLE — U.S. protections for the waters that a group of endangered orcas call home could soon expand beyond the Seattle area to encompass much of the West Coast, from the Canadian border to central California.

The National Oceanic and Atmospheric Administration issued a proposal Wednesday to increase the critical habitat designation for southern resident killer whales by more than sevenfold under the Endangered Species Act.

Just 73 orcas remain in the Pacific Northwest population, the lowest number in more than three decades. They're struggling with a lack of Chinook salmon, their preferred prey, as well as toxic contamination and vessel noise.

The NOAA proposal calls for an additional 15,626 square miles of federally protected habitat that would run from the border with Canada, down south to Point Sur, California.

The designation means federal agencies must ensure that activities they pay for, permit or carry out do not harm the habitat, but it does not generally affect approved recreational or commercial activity such as whale watching and shipping, said Lynne Barre, NOAA Fisheries' recovery coordinator for the whales.

"It only affects federal actions, so where there is a federal permit or grant or federal decision, that's what's protected," Barre said.

The orcas that return to the inland waters of Washington state every summer are genetically distinct from other killer



Elaine Thompson/AP Photo

Habitat protections for an endangered population of orcas would be greatly expanded under a proposal advanced by NOAA.

whale populations around the world and differ from some of the others in eating primarily salmon, rather than seals or other marine mammals.

The survival of the three orca pods that make up the so-called southern resident population have been under intense scrutiny recently. One orca, known as J35, drew international attention last year as she carried her dead newborn on her head for more than two weeks.

The whales were listed as endangered in 2005 after the Center for Biological Diversity sued for the status. The following year, NOAA Fisheries designated Puget Sound as critical habitat, which covered about 2,560 square miles around Seattle.

The environmental group sued again last year to force the agency to act on its 2014 petition to expand protections to where the orcas look for food and migrate off the coasts of Washington state, Oregon and California.

The group said the protections would help reduce water pollution and restrict vessel traffic that can interfere with the animals. NOAA Fisheries agreed in 2015 that such a move was necessary.

Species with critical habitat protections like those proposed Wednesday are twice as likely to recover, said Julie Teel Simmonds, a senior attorney at the Center for Biological Diversity. The plan is largely in line with what her group has pushed for.

"It's an independent requirement that really focuses on the recovery aspect, so we're not just trying to keep these orcas limping along at 73 individuals," she said. "We want to see them grow to the point where these protections won't be needed."

National security concerns exempt a large area in and around the U.S. Navy's Quinalt Range Site, which conducts underwater testing in western Washington. The

potential protection zone also overlaps with tribal fishing rights in Washington state, but that area is not exempted, said Barre of NOAA Fisheries.

Idaho, Oregon and California were notified of the proposal, though Barre said there hasn't been official feedback yet. The 90-day public comment period opens Thursday and approval is not expected until at least next year.

An economic impact study projects the proposal would create about \$68,000 in administrative costs a year. Barre said that number takes into account how federal authorities assess the effect to whales when considering projects and any possible changes to their habitat, such as water quality and passageways.

"I don't want to overplay it and create a perception that there'll be sweeping regulatory changes," Barre said. "We're already analyzing impacts."

# Gov. Brown drops special session on death penalty bill

By CLAIRE WITHYCOMBE  
Oregon Capital Bureau

Gov. Kate Brown will not call a special session to change a controversial bill limiting the state's death penalty before the law takes effect on Sept. 29.

Senate Bill 1013, which lawmakers approved this year, changed when prosecutors can charge someone with aggravated murder — the only charge in Oregon for which the death penalty can be sought.

During legislative hearings, lawmakers supporting the bill said it wouldn't apply to old cases where defendants had already been sentenced. But, after the legislative session ended, the Oregon Department of Justice said the law could apply to people on Oregon's death row who have been granted a new trial on appeal.

Brown said in late August that she would call a special session if lawmakers could round up support for a change to clarify the law. But by Wednesday evening, it was apparent that there wasn't enough support for that change, she said.

"While it is clear there is a misunderstanding regarding the intent of the words in Senate Bill 1013, it is also clear there is not sufficient support for a special session to pass a fix," Brown said in a statement as lawmakers wrapped up three days of interim committee meetings at the Capitol. "When announcing my support for a special session, I said that it was conditional on stakeholders and legislators crafting bill language that had the votes to pass. That has not been achieved."

"I cannot justify the addi-

tional cost and time a special session requires without that support, and I will not be calling the Legislature into a special session this month before the law goes into effect," Brown said.

Late last month, Sen. Floyd Prozanski, D-Eugene, said he sought a change to the law to have it apply only to offenses committed on or after Sept. 29, when the law takes effect. Reached after the governor's announcement, Prozanski said that a special session to pass the tweak had support in the Senate, but not in the House.

"When we are faced with these type of situations, we look at it, we measure it, and then if we determine that something needs to be done, that we are willing to put politics to the side and actually finish and make certain that the policy we actually passed is actually interpreted the way we intended it to be," Prozanski said of his colleagues in the Senate. "We were not willing to play the politics that apparently is being played in the House."

Brown's announcement was met with criticism from Republicans. "I am disappointed the governor did not take the opportunity to call lawmakers into session to fix the bungled death penalty bill," tweeted new House Republican Leader Christine Drazen. "This was a lost opportunity to protect victims' families, achieve a bipartisan solution and uphold the will of the voters."

Senate Republican Leader Herman Baertschiger Jr., of Grants Pass, claimed the bill "will inflict even more pain on the victims' families who have already been horribly damaged and traumatized."

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