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Feds make dramatic move to save orcas

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Puget Sound's orcas are in such danger of extinction that the federal government on Tuesday ended years of legal squabbling and agreed to protect them using its strongest and most controversial tool under the Endangered Species Act (ESA).

The National Marine Fisheries Service surprised orca advocates by listing the charismatic 4- to 6-ton "southern resident" killer whales as "endangered" — the ESA's most serious designation. It immediately turned what



STEVE RINGMAN / THE SEATTLE TIMES, 2004
Two orcas breach the surface off Stuart Island as whale watchers get a close-up view. The "endangered" designation protects about 90 orcas in Puget Sound.



ALAN BERNER / THE SEATTLE TIMES, 2002
A pod of orcas — one of three pods that frequent Puget Sound — rest together in a tight grouping in Haro Strait.

could have been a largely symbolic gesture into a move that could affect boating, pollution discharges, major construction projects and a host of other activities.

"Oh my goodness, that's beautiful," said Fred Felleman, regional director for the environmental group Ocean Advocates. "It's a recognition that we have an ecosystem problem, and whales are at the top of it."

Unlike the northern spotted owl or Puget Sound chinook salmon, both of which are given a less-strict "threatened" designation, Tuesday's orca listing gives the mammals the

full weight of the ESA and affords the government very little wiggle room if its own scientists determine that any sort of activity — such as a proposed expansion of a gravel pit on Maury Island — may be harmful to orcas.

But even though activists like to say the three pods of orcas that glide around Puget Sound are the most studied whales in the world, scientists are only beginning to understand the threats they face.

That means it's too soon to predict exactly what the government may curtail as a result of the listing.

"My gut feeling is there won't be a huge difference from before," because so much of the Sound is already under ESA protections for salmon, said Brian Gorman, a spokesman for the federal fisheries agency. "But that remains to be seen."

The impact of "endangered" listing

Designating orcas as endangered means the federal government must make sure that any action it takes, or allows other government agencies to take, won't contribute to the orcas' march toward extinction.

It's too soon to say how that will play out in reality, but the listing could affect:

- Major construction projects, such as a proposed gravel pit on Maury Island.
- Deep-water projects, such as a proposal withdrawn last year to run a natural-gas pipeline across Georgia Strait near San Juan County.
- Regulation of shipping and recreational boating traffic.
- Wastewater discharges by governments or industry.
- Enforcement of whale watching and Navy sonar tests.
- Regulations governing salmon runs that are important for whales but not yet protected under the ESA.

Unlike many other ESA listings, groups whose activities could impact whales — including salmon fishermen and whale-watching tour operators — applauded this listing.

"It's not like the spotted owl, where it's loggers versus owls," said David Bain, a University of Washington orca expert. "We're all on the same side on this one."

Then again, the listing could have no impact at all if Congress changes the ESA, Bain said. In October, the U.S. House of Representatives voted to significantly scale back the federal government's role in preventing species extinction. It's not clear how the Senate will side on the issue.

"It may be that we spent six years trying to get this listing only to have it not mean all that much," he said.

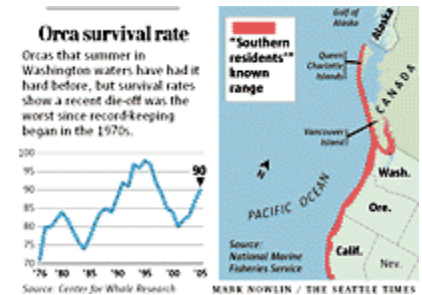
The listing Tuesday applies only to the roughly 90 "southern resident" orcas that make up three pods called J, K and L. It does not apply to other orca populations, including some "transient" orcas that sometimes enter Puget Sound but aren't considered residents.

The southern residents have struggled in Puget Sound since the middle of the 20th century, when they were shot at by fishermen and captured by commercial aquariums. But their numbers plummeted alarmingly during the late 1990s, from nearly 100 orcas to a low of 80 in 2001.

Scientists believed the whales were struggling because of a shortage of salmon to eat, the buzz of boats overhead, and years of chemical pollution, which accumulates in the long-lived creatures' blubber. In one case, a young male orca that washed ashore dead in Vancouver, B.C., was covered with sores — a sign that contamination had destroyed its immune system. It was also found to be sterile.

Since the population of southern resident orcas already is so small, scientists then feared a major catastrophe such as an oil spill or disease outbreak might spell extinction.

But in 2002 the marine fisheries agency initially refused to protect orcas under the ESA. Only last year, after a judge ordered it to reconsider, did the agency propose listing the population as "threatened." That



would have given the government flexibility in how it invokes protections. The agency pointed out that despite a low number of breeding-age females, the orca population was slowly increasing.

The public, among them Bain, the UW whale researcher, countered that there are so many uncertainties that the mammals need stronger protection. For example, it's unknown what the future holds for salmon, a staple of the orca diet. There have been more discoveries of toxic threats in the Sound, such as flame retardants. And boat traffic is certain to increase.

Bain told the agency that "we simply didn't know enough, and some of the threats could increase," said Donna Darm, an assistant regional administrator with the fisheries agency.

So the agency changed its designation to endangered, a decision whose implications remain largely unclear.

Shane Aggergaard, who runs Island Adventure Cruises of Anacortes and is president of

Facts about orcas



Orcas are the ocean's top carnivores. They are social, traveling and hunting in defined groups called pods.

- **ADULT LENGTH**
Males: 28 feet
Females: 22-24 feet
- **ADULT WEIGHT**
Males: 13,000-15,000 pounds
Females: 8,000-10,000 pounds
- **LIFE EXPECTANCY:** up to 80 years
- **SPEED:** up to 30 mph
- **RANGE:** all oceans, but the "southern residents" reside in Puget Sound and usually forage in coastal waters.
- **STATUS:** Protected as "endangered" under the Endangered Species Act and protected by the Marine Mammal Protection Act, which makes it illegal to harass, hunt or kill orcas in U.S. waters.

MARK NOWLIN /
THE SEATTLE TIMES

Whale Watch Operators Association Northwest, said he was pleased with the listing because it might allow more funding for research and education.

"If whales become the poster child for salmon enhancement and bait-fish research, it may allow us to find the answers we

need quicker on toxins," he said.

Darm said it could also put more pressure on groups trying to protect salmon and control stormwater runoff into the Sound.

Major construction projects that could impact the deep part of the Sound could be required to be changed or killed. One example of such a project was a proposal approved by the U.S. government to run a natural-gas pipeline under Puget Sound. The project died last year when the Canadian government objected.

On the other hand, minor projects — the construction of bulkheads or docks, for example — are not likely to face any more scrutiny than they already do, because the so-called "nearshore" is already protected for salmon.

Even so, the listing will require other government agencies to check with the federal fisheries service before issuing any federal permits that might affect orcas. And it will allow environmental groups or other interested parties to sue if they think the government is failing to do enough to protect the orcas.

And several interest groups are already paying attention.

Brent Plater of the Center for Biological Diversity, an environmental group based in Arizona, said his group may watch how the fisheries agency reviews federal Clean Water Act permits for such things as

wastewater-treatment plants and discharges from industry.

"One of our concerns is the pollution that's accumulating in whales," Plater said. Some contamination that didn't affect salmon could hurt orcas, he noted.

Patti Goldman, an attorney for the environmental group Earthjustice, said other salmon runs near the San Juans may now warrant more protection because they are food sources for orcas.

And because the Coast Guard oversees shipping and pollution discharges from vessels on the Sound, "it may have to think about whether vessel traffic is posing risks to the orcas, and whether they need to regulate navigation more effectively," Goldman said.

Even though orcas appear susceptible to noise and disturbance, Aggergaard, the whale-watch president, said he is confident that steps whale-tour operators have already taken to decrease their impact on orcas will be enough, and stricter rules won't be imposed.

"There is a very vocal minority that keeps coming back to vessel traffic," he said. "But the commercial whale watchers have guidelines that are much more stringent than federal law."

On the other hand, Bain said, he has recently completed a study, currently undergoing peer review, that concludes "whale watching is a big enough factor

to be important" to the future of the southern residents.

In the meantime, Darm said the fisheries agency has a good working relationship with both the Navy and whale-watch operators, so it doesn't expect major changes to boating regulations.

But she wouldn't rule it out.

"Noise is a potential concern," she said.

Still, "if there are changes, it would only be after a thorough analysis and discussion with the whale-watching community."

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Staff reporter Warren Cornwall contributed to this report.