



PREPROPOSAL STATEMENT OF INQUIRY

CR-101 (October 2017)
(Implements RCW 34.05.310)
Do **NOT** use for expedited rule making

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DATE: March 17, 2020

TIME: 11:42 AM

WSR 20-07-093

Agency: Washington Department of Fish and Wildlife

Subject of possible rule making: Commercial whale watching licenses and activities

Statutes authorizing the agency to adopt rules on this subject: RCW 77.65

Reasons why rules on this subject may be needed and what they might accomplish: Southern Resident Killer Whales (SRKW) are listed as endangered under the Endangered Species Act, and the species' decline led to an Executive Order from Governor Inslee to establish the Southern Resident Killer Whale Task Force. The Task Force produced a report that emphasized the importance of the SRKW, stating:

“The extinction of these orcas would be an unacceptable loss. They are an essential component of our broader marine ecosystem, serving as an indicator of the health of our waters. If these creatures — the mammals who inhabit the top of the food chain — are unable to survive, it portends trouble for the rest of the inhabitants of this region. Their extinction would also be an irreplaceable cultural loss as these orcas are beloved and hold significant value as an iconic and treasured species in Washington and throughout the Pacific Northwest. The orcas have vital cultural and spiritual importance to many sovereign tribal nations. Inaction is not an option. Swift and bold near-term actions and effective long-term actions are urgently needed to not only help secure a healthy and sustained Southern Resident orca population, but also the entire ecosystem we depend upon.”

Some of the Task Force recommendations were incorporated into legislation passed during the 2019 session. Included was SSB5577, an act relating to the protection of SRKW from vessels. Quoting the Task Force report, “vessels transiting near Southern Resident orcas can produce underwater noise that masks or impairs orca communication and echolocation (the method orcas use to find their prey). This makes it harder for orcas to find food and reduces the time orcas devote to foraging by almost 20 percent, reducing their potential prey intake and increasing their energy expenditure.”

The purpose of rulemaking on this topic is to establish requirements for commercial whale watching license holders pursuant to 2019 legislation (codified as RCW 77.65.620). The purpose of such rules would be to enable sustainable whale watching while reducing the impacts of vessel noise and disturbance so whales can effectively forage, rest, and socialize.

Identify other federal and state agencies that regulate this subject and the process coordinating the rule with these agencies: WDFW is the sole state agency with authority to regulate this activity. The U.S. Coast Guard also has the authority to regulate maritime transportation, and the National Oceanic and Atmospheric Administration (NOAA) oversees conservation and management of marine mammals such as the Southern Resident Killer Whale. A government-to-government work group will be established that will include coordination of the rules with these agencies.

Process for developing new rule (check all that apply):

- Negotiated rule making
- Pilot rule making
- Agency study
- Other (describe)

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting:

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Additional comments:

Date: March 17, 2020

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