



RULE-MAKING ORDER EMERGENCY RULE ONLY

CR-103E (December 2017) (Implements RCW 34.05.350 and 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: December 29, 2020

TIME: 2:05 PM

WSR 21-02-036

Agency: Washington Department of Fish and Wildlife (WDFW 20-269)

Effective date of rule:

Emergency Rules

- Immediately upon filing.
- Later (specify) January 1, 2021

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
- No
- If Yes, explain:

Purpose: WDFW adopted a rule to create and populate a new chapter in WAC (220-460) that defines commercial whale watching licensing processes and rules for holders of commercial whale watching licenses. The purpose of this emergency rule is to apply immediate protections for Southern Resident Killer Whales (SRKW) to reduce the daily and cumulative impacts of commercial whale watching on SRKW during the period before the rule goes into effect.

Citation of rules affected by this order:

New: 220-460-00100A
 Repealed:
 Amended:
 Suspended:

Statutory authority for adoption: RCW 77.12.047; RCW 77.65.615; RCW 77.65.620; RCW 77.15.020; RCW 77.15.160; RCW 77.04.012; RCW 77.04.55

Other authority: None

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: This rule is necessary for the preservation of general welfare during a gap in time between WDFW adopting rules and the intended protections going into effect. This emergency rule will provide protections for SRKW beginning on January 1, 2021.

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New ____ Amended ____ Repealed ____

The number of sections adopted on the agency's own initiative:


New 1 Amended ____ Repealed ____

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New ____ Amended ____ Repealed ____

The number of sections adopted using:

Negotiated rule making:	New	____	Amended	____	Repealed	____
Pilot rule making:	New	____	Amended	____	Repealed	____
Other alternative rule making:	New	____	Amended	____	Repealed	____

Date Adopted: December 29, 2020	Signature: 
Name: Kelly Susewind	
Title: WDFW Director	

NEW SECTION

WAC 220-460-00100A Commercial whale watching of southern resident killer whales

From January 1, 2021 through January 23, 2021, the following definitions and rules regarding commercial whale watching shall be in effect:

1. **Definitions.** For the purposes of this chapter, the following definitions apply:
 - a. **Commercial whale watching.** "Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.
 - b. **Commercial whale watching vessel.** "Commercial whale watching vessel" shall be defined as any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching. "Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water.
 - i. "Motorized commercial whale watching vessel" shall be defined as any vessel with an engine being used as a means of transportation for individuals to engage in commercial whale watching, regardless of whether the engine is in use. This definition includes sailboats with inboard or outboard motors.
 - ii. "Nonmotorized commercial whale watching vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in commercial whale watching. This definition includes human-powered watercraft such as kayaks and paddleboards.
 - c. **Commercial whale watching vessel operators.** "Commercial whale watching vessel operators" shall be defined to include operators of commercial vessels and kayak rentals that are engaged in the business of commercial whale watching. The term "operators" shall be used to identify primary operators and alternate operators who conduct commercial whale watching tours, including operators who direct the movement or positioning of any nonmotorized commercial whale watching vessels involved in a tour.
2. It is unlawful for an operator of a motorized commercial whale watching vessel to approach within one-half nautical mile of a southern resident killer whale between January 1 and January 23, 2021.