



# RULE-MAKING ORDER EMERGENCY RULE ONLY

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

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: September 02, 2021

TIME: 3:08 PM

WSR 21-19-006

**Agency:** Washington Department of Fish and Wildlife (WDFW)

**Effective date of rule:**

**Emergency Rules**

- Immediately upon filing.
- Later (specify) \_\_\_\_\_

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

- Yes
  - No
- If Yes, explain:

**Purpose:** On September 1, 2021, the research team (SR3) contracted by WDFW to monitor Southern Resident killer whale (SRKW) body condition observed the two-year-old SRKW calf J56 with other members of J Pod near Point Roberts. This individual, J56, was born in May 2019. By September of 2020, her condition had declined by two condition states, bordering on “poor” classification, and she had developed a pale skin tone. When observed on September 1, 2021, J56’s condition had further declined, and her pale coloration had persisted. The Department verified the reports from SR3 on the morning of September 2, 2021 and determined that the designation of “sick or vulnerable” is appropriate. The best available science suggests that whales measured to be in the “poor condition” state had a significantly increased probability of subsequent mortality. Per WAC 220-460-110, the department is adopting an emergency rule to designate J56 as vulnerable and thereby prevent commercial whale watching operators from approaching this individual or a group containing the individual within 0.5 nautical mile. This designation and the additional distance is necessary to ensure that J56’s ability to survive is not hindered by the presence of vessels.

**Citation of rules affected by this order:**

New: WAC 220-460-110B  
 Repealed:  
 Amended:  
 Suspended:

**Statutory authority for adoption:** RCW 77.65.620

**Other authority:**

**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:** The imminent risk to an endangered species requires additional protection immediately. This emergency action is necessary to protect the public’s interest in the preservation of a vulnerable endangered animal.

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

New	<u>X</u>	Amended	___	Repealed	___
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**The number of sections adopted in order to clarify, streamline, or reform agency procedures:**

New	___	Amended	___	Repealed	___
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**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:** September 2, 2021

**Name:** Kelly Sussewind

**Title:** Director, WDFW

**Signature:**



NEW SECTION

**WAC 220-460-110B Southern Resident Killer Whale J56**

In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whale J56 as a vulnerable individual.