



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 13, 2021

TIME: 2:42 PM

WSR 21-19-051

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 6, 2021, the research team (SR3) that monitors Southern Resident killer whale (SRKW) body condition observed three female SRKW- J36, J37, and J19- and determined these whales are in the latter stages of pregnancy. Of these whales, the SR3 research team provided photos and additional analysis of J36's condition on September 9, 2021, noting that she is likely very close to giving birth. The Department verified the reports from SR3 and determined that the designation of "vulnerable" is appropriate. The best available science suggests that there is a high rate of failed pregnancies in SRKW, and failed pregnancy can be lethal. In addition, food consumption increases by 25% in the final month of gestation. Per WAC 220-460-110, the department is adopting an emergency rule to designate J36, J37, and J19 as vulnerable and thereby prevent commercial whale watching operators from approaching these individuals or a group containing any of these individuals within 0.5 nautical mile. This designation and the additional distance is necessary to ensure that J36, J37, and J19 are able to meet their late-stage pregnancy nutritional needs and to give these pregnant whales the best chance of success and survival in birthing.

Citation of rules affected by this order:

New: WAC 220-460-110C
 Repealed: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 13, 2021
Name: Kelly Susewind
Title: Director, WDFW

Signature:



NEW SECTION

WAC 220-460-110C Southern Resident Killer Whales J36, J37, and J19

In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whales J36, J37, and J19 as vulnerable individuals.