



# EXPEDITED RULE MAKING

## CR-105 (December 2017) (Implements RCW 34.05.353)

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STATE OF WASHINGTON  
FILED

DATE: July 31, 2023

TIME: 4:33 PM

WSR 23-16-111

**Agency:** Washington Department of Fish and Wildlife (WDFW) (P2023-15)

**Title of rule and other identifying information:** (describe subject) WAC chapter 220-460 Commercial Whale Watching

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The Washington State legislature adopted Engrossed Substitute Senate Bill (ESSB) 5371 in the 2023 legislative session. The bill changes the commercial whale watching license structure: It defines a paddle tour business license and separates the licensing of paddle tour businesses and guides from commercial watching businesses (where they were previously lumped together) and changes other licensing requirements. The bill also modifies the fee structure, changing some fees and eliminating others. Following the original legislation creating the commercial whale watching licenses in 2019 (2SSB 5577), WDFW initiated the rule making process directed in the bill, which resulted in the creation of a WAC chapter (220-460) on the commercial whale watching license and rules applicable to license-holders. This language was updated in 2021 due to ESB 5330. With the passage of ESSB 5371, some language in sections in WAC chapter 220-460 once again was no longer in alignment with RCW 77.65.615. In the drafting of the revisions to WAC chapter 220-460, the Department also edited typographical errors and clarified existing rule language.

This rule making process would do the following: 1) adopt content explicitly directed in Washington state statute by updating and aligning the definitions and language in WAC chapter 220-460 with the modifications to RCW 77.65.615, and 2) correct typographical errors and clarify language of the rule without changing its effect.

**Reasons supporting proposal:** ESSB 5371 was passed by the Washington legislature in April of 2023 and goes into effect in July 2023. The changes in this bill affect the current license year. This made WAC chapter 220-460 to be out of alignment with the 2023 revisions in RCW 77.65.615. These revisions have urgent effect on both license holders and WDFW, the entity responsible for providing licenses and enforcing requirements for license holders. This proposal modifies WAC chapter 220-460 to align with the modifications to RCW 77.65.615 while correcting some typographical errors and clarifying language of the rule without changing its effect

**Statutory authority for adoption:** RCWs 77.04.012, 77.04.055, 77.12.047, 77.65.620,

**Statute being implemented:** RCW 77.65.615, RCW 77.65.620

**Is rule necessary because of a:**

- Federal Law?  Yes  No
- Federal Court Decision?  Yes  No
- State Court Decision?  Yes  No

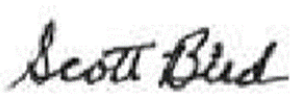
If yes, CITATION:

**Name of proponent:** (person or organization) Washington Dept. of Fish and Wildlife

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Julie Watson	Olympia, WA	360-902-2580

Implementation:	Peter Vernie	Olympia, WA	360-902-2302
Enforcement:	Capt. Alan Myers	Mill Creek, WA	425-775-1311, ext. 115
<p><b>Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:</b> Expedited rule making is appropriate because ESSB 5371 was passed in April of 2023 and affects the current license year. This made WAC chapter 220-460 to be made out of alignment with the 2023 revisions in RCW 77.65.615. These revisions have urgent effect on both license holders and WDFW, the entity responsible for providing licenses and enforcing requirements for license holders. This proposal modifies sections in WAC chapter 220-460 to align with the modifications to RCW 77.65.615 while correcting some typographical errors and clarifying language of the rule without changing its effect</p>			
<p><b>Expedited Adoption - Which of the following criteria was used by the agency to file this notice:</b></p> <p><input type="checkbox"/> Relates only to internal governmental operations that are not subject to violation by a person;</p> <p><input type="checkbox"/> Adopts or incorporates by reference without material change federal statutes or regulations, Washington state statutes, rules of other Washington state agencies, shoreline master programs other than those programs governing shorelines of statewide significance, or, as referenced by Washington state law, national consensus codes that generally establish industry standards, if the material adopted or incorporated regulates the same subject matter and conduct as the adopting or incorporating rule;</p> <p><input checked="" type="checkbox"/> Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect;</p> <p><input checked="" type="checkbox"/> Content is explicitly and specifically dictated by statute;</p> <p><input type="checkbox"/> Have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or</p> <p><input type="checkbox"/> Is being amended after a review under RCW 34.05.328.</p>			
<p><b>Expedited Repeal - Which of the following criteria was used by the agency to file notice:</b></p> <p><input type="checkbox"/> The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;</p> <p><input type="checkbox"/> The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;</p> <p><input type="checkbox"/> The rule is no longer necessary because of changed circumstances; or</p> <p><input type="checkbox"/> Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.</p>			
<p><b>Explanation of the reason the agency believes the expedited rule-making process is appropriate pursuant to RCW 34.05.353(4):</b> Expedited rule making is appropriate because the proposed rule adopts ESSB 5371 without any changes. An expedited rule making is preferred to ensure the timely implementation of the legislation.</p>			
<p><b>NOTICE</b></p> <p><b>THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO</b></p> <p>Name: Scott Bird, Agency Rule Coordinator  Agency: WDFW  Address: PO Box 43200 Olympia, WA 98506  Phone: (360) 995-2442  Fax: (360) 902-2155  Email: rules.coordinator@dfw.wa.gov  Other:</p> <p><b>AND RECEIVED BY</b> (date) <u>September 30, 2023</u></p>			
<p><b>Date:</b> 7/31/2023</p>		<p><b>Signature:</b></p> 	
<p><b>Name:</b> Scott Bird</p>			
<p><b>Title:</b> Agency Rules Coordinator</p>			