

WSR 21-02-036
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 20-269—Filed December 29, 2020, 2:05 p.m., effective January 1, 2021]

Effective Date of Rule: January 1, 2021.

Purpose: The Washington department of fish and wildlife (WDFW) adopted a rule to create and populate a new chapter 220-460 WAC 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 WAC 220-460-00100A.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, 77.15.160, 77.04.012, 77.04.55 [77.04.055].

Other Authority: None.

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.

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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.

Number of Sections Adopted on the Agency's own Initiative: New 1, Amended 0, Repealed 0.

Number of Sections Adopted in Order to Clarify, Streamline, or Reform Agency Procedures: New 0, Amended 0, Repealed 0.

Number of Sections Adopted using Negotiated Rule Making: New 0, Amended 0, Repealed 0; Pilot Rule Making: New 0, Amended 0, Repealed 0; or Other Alternative Rule Making: New 0, Amended 0, Repealed 0.

Date Adopted: December 29, 2020.

Kelly Susewind
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.

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