

WSR 24-24-111  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 24-14—Filed December 4, 2024, 10:32 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 24-20-092.

Title of Rule and Other Identifying Information: Commercial whale watching license and restrictions on commercial viewing of southern resident killer whales.

Hearing Location(s): On January 10, 2025, 8:00 a.m., webinar and/or conference call. The public may participate in the meeting. Visit our website at <http://wdfw.wa.gov/about/commission/meetings> or contact the commission office at 360-902-2267 or [commission@dfw.wa.gov](mailto:commission@dfw.wa.gov) for instructions on how to join and/or comment at the meeting.

Date of Intended Adoption: February 14, 2025.

Submit Written Comments to: Julie Watson, P.O. Box 43200, Olympia, WA 98504-3200, email [2024SRKWCR102@publicinput.com](mailto:2024SRKWCR102@publicinput.com), fax 360-902-2946 Attn: Julie Watson, phone 855-925-2801 project code 10914, comment submission form available on <https://publicinput.com/2024srkwcr102>, beginning December 4, 2024, by 5:00 p.m. on January 13, 2025.

Assistance for Persons with Disabilities: Washington department of fish and wildlife (WDFW) ADA manager, phone 360-902-2349, fax 360-902-2946 Attn: Julie Watson, TTY 833-885-1012 or 711, email [CivilRightsTeam@dfw.wa.gov](mailto:CivilRightsTeam@dfw.wa.gov).

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2021, WDFW adopted a suite of rules to reduce the daily and cumulative impacts of commercial whale watching on southern resident orcas and consider the economic viability of license holders. That rule-making process created and populated new chapter 220-460 WAC that defined commercial whale watching licensing processes and rules for holders of commercial whale watching licenses. In 2023, the Washington state legislature adopted SB 5371 that modified the vessel setback from southern resident orcas and codified some requirements for commercial whale watching in statute. Specifically, the revised statute that takes effect January 1, 2025, will change the vessel setback from southern resident orcas to 1,000 yards. The changes to the statute require an update to chapter 220-460 WAC to align with the language in the statute and to remove sections that no longer provide a functional benefit to southern resident orcas or to the economic viability of license holders. This proposal clarifies the requirements for commercial whale watching and paddle tour license holders as authorized under RCW 77.65.620.

Reasons Supporting Proposal: This proposal is founded on five years of work that began with the initial rule making to establish chapter 220-460 WAC in 2020-2021. WDFW conducted an adaptive management process that included intergovernmental, stakeholder, and public engagement in 2022, leading to many of the recommended changes in this proposal. The 2024 adaptive management process included the development and recommendation of this proposed rule change. The proposal defines important administrative aspects of the commercial whale watching licensing program created in RCW 77.65.615. In addition, per the mandate in RCW 77.65.620, the proposal is designed using best available science to reduce the daily and cumulative impacts of commercial

whale watching on southern resident orca whales and also considers the economic viability of license holders.

Statutory Authority for Adoption: RCW 77.12.047, 77.65.615, 77.65.620, 77.15.020, RCW 77.15.160, 77.04.012, 77.04.55, 77.15.740.

Statute Being Implemented: RCW 77.65.615; RCW 77.65.620.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Julie Watson, 1111 Washington Street S.E., Olympia, WA 98501, 360-790-4528; Enforcement: Steve Bear, 1111 Washington Street S.E., Olympia, WA 98501, 360-338-2895.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule is not subject to RCW 34.05.328. Pursuant to RCW 34.05.328 (5)(a)(i), the only WDFW rules subject to RCW 34.05.328 are "legislative rules of the department of fish and wildlife implementing chapter 77.55 RCW" (i.e., "construction projects in state waters"). WDFW is not voluntarily making this proposal subject to RCW 34.05.328, as contemplated under RCW 34.05.328 (5)(a)(ii).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because the proposal:

Is exempt under RCW 19.85.025(3) as the rule content is explicitly and specifically dictated by statute.

Explanation of exemptions: As described above, in 2023, the Washington state legislature adopted SB 5371 that modified the vessel setback from southern resident orcas and codified some requirements for commercial whale watching in statute.

Scope of exemption for rule proposal:

Is partially exempt:

Explanation of partial exemptions: See explanations above about legislative amendments and below describing other proposed changes to the rules to increase clarity and improve internal agency administration.

The proposed rule does not impose more-than-minor costs on businesses. Following is a summary of the agency's analysis showing how costs were calculated. Besides changes proposed to align the rules with statutory amendments, the other proposed changes are designed to provide greater clarity for requirements already included in the regulations, and to make administrative changes to the commercial whale watch license program. None of the proposed amendments would impose more-than-minor costs for small businesses

December 3, 2024  
Scott Bird  
Rules Coordinator

**OTS-6001.2**

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-010 Definitions.** For the purposes of this chapter, the following definitions apply:

(1) **Commercial whale watching.**

"Commercial whale watching" shall be defined as the act of taking, or offering to take, passengers aboard a motorized or sailing vessel to view marine mammals in their natural habitat for a fee.

(2) **Commercial whale watching business.**

"Commercial whale watching business" means a business that engages in the activity of commercial whale watching.

(3) **Commercial whale watching operator.**

"Commercial whale watching operator" means a person who operates a motorized or sailing vessel engaged in the business of whale watching.

(4) **Paddle tour.**

"Paddle tour" means the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson that involves viewing marine mammals in their natural habitat for a fee.

(5) **Paddle tour business.**

"Paddle tour business" means a business that conducts paddle tours.

(6) **Paddle guide.**

"Paddle guide" means a person who conducts guided tours on behalf of a paddle tour business. The term paddle guide includes anyone who directs the movement or positioning of any nonmotorized commercial whale watching vessel(s) involved in a tour.

(7) **Commercial whale watching license.**

"Commercial whale watching license" means a commercial whale watching business license or a commercial whale watching operator license as defined in this section.

(a) "Commercial whale watching business license" means a department-issued license to operate a commercial whale watching business.

(b) "Commercial whale watching operator license" means a department-issued license to operate a commercial motorized or sailing vessel on behalf of a commercial whale watching business.

(8) **Paddle tour license.**

"Paddle tour license" means a paddle tour business license or a paddle guide license as defined in this section.

(a) "Paddle tour business license" means a department-issued license to operate a business that conducts paddle tours.

(b) "Paddle guide license" means a department-issued license to conduct commercial guided paddle tours on behalf of a paddle tour business.

(9) **Vessel.**

"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.

(a) "Commercial whale watching vessel" means any vessel that is being used as a means of transportation for individuals to engage in commercial whale watching.

(b) "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.

(c) "Nonmotorized vessel" or "paddle tour vessel" shall be defined as any vessel without an engine being used as a means of transportation for individuals to engage in a paddle tour. This definition includes human-powered watercraft such as kayaks and paddleboards.

(10) **Group of southern resident (~~(killer whales)~~) orcas.**

"Group of southern resident (~~(killer whales)~~) orcas" is defined as a single southern resident (~~(killer whale)~~) orca or an assemblage of southern resident (~~(killer whales)~~) orcas wherein each member is within one nautical mile of at least one other southern resident (~~(killer whale)~~) orca. Any individual(s) farther than one nautical mile constitutes a separate group.

(11) **Vicinity.**

"Vicinity" is defined as (~~(one-half nautical mile)~~) 1,000 yards from all southern resident (~~(killer whales)~~) orcas in the group. References to "vicinity" in this chapter do not permit operators to approach a southern resident (~~(killer whale)~~) orca closer than the statutorily defined distances in RCW 77.15.740.

(12) (~~(Vicinity instance)~~) **Encounter.** Each time any commercial whale watching vessel or nonmotorized vessel operating under a license identifies and/or enters within (~~(one-half nautical mile)~~) 1,000 yards of a southern resident (~~(killer whale)~~) orca will count as one (~~(vicinity instance)~~) encounter associated with that license.

(13) **Automatic identification system (AIS).** AIS refers to a maritime navigation safety communications system standardized by the International Telecommunication Union, adopted by the International Maritime Organization, that:

(a) Provides vessel information, including the vessel's identity, type, position, course, speed, navigational status and other safety-related information automatically to appropriately equipped shore stations, other ships, and aircraft;

(b) Receives automatically such information from similarly fitted ships, monitors and tracks ships; and

(c) Exchanges data with shore-based facilities.

(14) **Inland waters of Washington.**

"Inland waters of Washington" means Puget Sound and related inland marine waters, including all salt waters of the state of Washington inside the international boundary line between Washington and British Columbia, and lying east of the junction of the Pacific Ocean and the Strait of Juan de Fuca, and the rivers and streams draining to Puget Sound as mapped by water resource inventory areas 1 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

NEW SECTION

**WAC 220-460-025 Fee waiver for nonprofit educational whale watching and paddle tours.** (1) In order to qualify for a fee waiver, an organization's relevant commercial whale watching or marine paddle tour activities must be solely for bona fide nonprofit educational purposes.

(2) In order to receive a fee waiver, the organization must submit documentation to the department:

(a) Demonstrating the organization's nonprofit status; and

(b) Explaining the relevant whale watching or paddle tour activities and the educational purpose of the activities.

(3) Each year after the initial application, when applying for an annual commercial whale watching and/or paddle tour business license, the organization must:

(a) Affirm that all relevant activities are for nonprofit educational purposes; and

(b) Ensure that all documentation remains up-to-date, and submit revised documentation if needed.

(4) Individuals that solely operate on behalf of an organization that qualifies for a fee waiver are eligible for a fee waiver for their operator or paddle guide license.

(a) Operator or paddle guide licenses issued under a nonprofit educational fee waiver may not be used by the individual to conduct for-profit activities. The license will be limited to nonprofit educational activities.

(b) In order to engage in for-profit whale watching or paddle tour activities, any operator or paddle guide operating under a license obtained by fee waiver must forfeit their license and apply and pay the relevant fees for a new operator or paddle guide license.

(5) In order to obtain a fee waiver for an operator or paddle guide license, the applicant must:

(a) Be designated as an operator or paddle guide on the qualifying organization's business license; and

(b) Not be designated as an operator or paddle guide for any for-profit commercial whale watching or paddle tour business.

(6) The applicant must indicate at the time of their application that they intend to apply for a fee waiver.

(7) Fee waivers may be issued in the form of reimbursements.

(8) Organizations and individuals who conduct commercial whale watching or paddle tour activities solely for nonprofit educational purposes are required to follow all laws and rules that apply to for-profit commercial whale watching and paddle tour licensees, including the requirements outlined in this chapter.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-050 Whale watching vessel designation requirements and required operator and paddle guide documentation.** (1) RCW

77.65.615 requires commercial whale watching businesses to designate the motorized vessel(s) that will be used for commercial whale watching. It is unlawful to engage in commercial whale watching activities unless:

(a) The licensee has designated all commercial whale watching motorized, including sailing, vessels to be used;

(b) The department has issued a commercial license to the licensee showing the motorized vessel so designated; and

(c) The person conducting commercial whale watching activities on behalf of the business has the appropriate documentation in physical possession.

The operator of a motorized or sailing vessel must have both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) The licensee does not have to own the vessel being designated on the license.

(3) For motorized or sailing vessels, the commercial whale watching business licensee must provide applicable documentation numbers such as a hull identification number (HIN), current United States Coast Guard or Transport Canada certification inspection documentation, and/or a vessel registration number.

(4) It is unlawful to engage in paddle tour activities unless the person conducting paddle tour activities on behalf of the business has the appropriate documentation in physical possession.

The guide of a commercial paddle tour must have both their individual paddle guide license ~~((in physical possession and must have either the commercial whale watching))~~ and the paddle tour business license for the current calendar year, or a printed or digital scan thereof, in physical possession.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-070 Whale watching operator and paddle guide license requirements.** (1) A person may operate a motorized or sailing vessel ~~((designated on the))~~ engaging in commercial whale watching ~~((business license))~~ only if:

(a) The person holds a valid commercial whale watching operator license issued from the department;

(b) The vessel is designated in a valid commercial whale watching business license issued from the department;

(c) The operator is designated on the underlying commercial whale watching business license; and

~~((e))~~ (d) The person has both the commercial whale watching business license listing the vessel and their individual operator license for the current calendar year in physical possession.

(2) A person may lead a guided paddle tour on behalf of ~~((the commercial whale watching))~~ a paddle tour business only if:

(a) The person holds a valid paddle guide license issued from the department;

(b) The paddle tour business has a valid paddle tour business license;

(c) The paddle guide is designated on the underlying paddle tour business license; and

~~((e))~~ (d) The person has both their individual paddle guide license ~~((in physical possession and must have either))~~ and the paddle tour business license for the current calendar year, or a printed or digital scan thereof, in physical possession.

(3) Only an individual at least 16 years of age may hold an operator license or paddle guide license.

(4) An individual may hold only one commercial whale watching operator license. Holders of an operator license may be designated on an unlimited number of commercial whale watching business licenses.

(5) An individual may hold only one paddle guide license. Holders of a paddle guide license may be designated on an unlimited number of paddle tour business licenses.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-090 Commercial whale watching of southern resident ((killer whales)) orcas and paddle tours operating near southern resident ((killer whales)) orcas—General.** (1) It is unlawful for a commercial whale watching operator or paddle guide to violate any of the restrictions in RCW 77.15.740.

(2) Licenses issued by the department under this chapter are not an exemption under RCW 77.15.740 (2) (c).

(3) The rules and requirements outlined in this chapter regarding southern resident ((killer whales)) orcas apply to commercial whale watching and paddle tour activity in the inland waters of Washington.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-130 Nonmotorized paddle tour vessels.** (1) Tours involving any nonmotorized watercraft used for the purposes of paddle tours, such as kayaks, are subject to these requirements. Such watercraft constitute paddle tour vessels and are referred to as "vessels" in this chapter. Regardless of the type of nonmotorized watercraft involved, the person operating on behalf of the business to conduct the tour is referred to as a "paddle guide" in this chapter.

(2) Paddle guides must prevent all vessels in their tour group from disturbing southern resident ((killer whales)) orcas. All vessels in the tour group must adhere to the following requirements:

(a) It is unlawful to launch if southern resident ((killer whales)) orcas are within ((one-half nautical mile)) 1,000 yards of the launch location.

(b) Vessels are prohibited from being paddled, positioned, or waiting in the path of a southern resident ((killer whale)) orca. If a southern resident ((killer whale)) orca is moving towards a vessel, the vessel must immediately be moved out of the path of the whale.

(c) If ((a vessel or)) vessels inadvertently encounter a southern resident ((killer whale)) orca, they must immediately be moved as close to shore as possible and secured, or be rafted up close to shore or in a kelp bed, and paddling shall cease until any and all ((killer whales)) orcas have moved to at least 400 yards away from the vessels. Rafting up is defined as manually holding vessels close together, maintaining a tight grouping. Once any orcas are moving away from the vessel(s) and are at least 400 yards away, all paddlers must either remain rafted/secured until the whales are at least 1,000 yards away or must paddle in the opposite direction of travel from the orcas until all vessels are 1,000 yards away from the orcas.

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-140 Commercial whale watching and paddle tour compliance and reporting.** (1) An automatic identification system (AIS) must be fitted aboard all motorized commercial whale watching vessels.

The AIS must be capable of providing information about the vessel (including the vessel's identity, type, position, course, speed, and navigational status) to state and federal authorities automatically. Operators must maintain the AIS in operation at all times that the vessel is conveying passengers for a fee.

(2) All commercial whale watching and paddle tour license holders must complete annual training from the department on marine mammals, distances on the water, impacts of whale watching on marine mammals, and southern resident ((killer whale)) orca-related rules and reporting.

(a) At completion of training, license holders must demonstrate adequate understanding of course materials.

(b) It is unlawful to operate a commercial whale watching vessel or guide a tour of nonmotorized vessels without completing the training for the current calendar year.

~~((c) Naturalists and others who work upon commercial whale watching vessels but are not license holders are encouraged to participate in the annual training.))~~

(3) All commercial whale watching and paddle tour license holders ((shall)) are strongly encouraged to maintain accurate logs on each instance a vessel operating under a license ~~((enters within one-half nautical mile vicinity of))~~ encounters southern resident ((killer whales)) orcas and submit copies of the logs to the department within 24 hours of the encounter.

(4) Content of southern resident orca encounter logs:

(a) Logs ((must)) should, at minimum, include the business ((license holder)) name; vessel operator or paddle guide name; ~~((other staff names and roles;))~~ vessel name; ~~((port(s) of departure; departure time(s); return time(s); number of passengers;))~~ the location(s) ~~((Lat/Long))~~ of southern resident ((killer whales)) orcas encountered; ~~((time(s) entering and departing the one-half nautical mile vicinity of southern resident killer whales; time(s) entering and departing within 400 yards of southern resident killer whales))~~ and the time and duration of the encounter.

(b) If applicable, license holders are encouraged to log details regarding encounters within 1,000 yards of southern resident orcas, including time and duration within 1,000 yards vicinity of southern resident orcas; time and duration within 400 yards of southern resident orcas; and measures taken to determine whether the whales were southern resident orcas.

(c) License holders are also encouraged to log qualitative details of southern resident ((killer whale)) orca encounters including whale identification, whale behavior and health, other vessel behavior, and any operator behavior, including contact with other boaters or government entities, and resulting outcomes.

~~((b) Information from the logs shall be submitted to the department on the following schedule:~~

~~(i) All vicinity instances in July must be reported by August 15th.~~

~~(ii) All vicinity instances in August must be reported by September 15th.~~

~~(iii) All vicinity instances in September must be reported by October 15th.~~

~~(iv) Operators of motorized commercial whale watching vessels must report vicinity instances that happen outside of the permitted hours and days described in WAC 220-460-120 within 24 hours.~~



~~(v) Paddle guides must report vicinity instances that happen October through June within one week.~~

~~(c) It is unlawful to fail to report a vicinity instance or to fraudulently report the details of a vicinity instance.~~

~~(d) Logs must be provided for inspection on request of department law enforcement.~~

~~(4)) (5) All motorized commercial whale watching license holders must ((log)) report accurate, complete sighting information to the WhaleReport application for the whale report alert system (WRAS), or to a successor transboundary notification system designated by the department that is adopted by the international shipping community in the Salish Sea, immediately upon ((entering within one-half nautical mile of a southern resident killer whale)) encountering a southern resident orca.~~

AMENDATORY SECTION (Amending WSR 24-14-067, filed 6/27/24, effective 7/28/24)

**WAC 220-460-150 Penalties.** (1) Commercial whale watching or paddle tour license holders in violation of WAC 220-460-090 may be issued a notice of infraction punishable under chapter 7.84 RCW that carries a fine of \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(2) Commercial whale watching or paddle tour license holders out of compliance with WAC 220-460-100, ((220-460-110, 220-460-120,)) 220-460-130, or 220-460-140 may be issued a notice of infraction that carries a fine of up to \$500, not including statutory assessments added pursuant to RCW 3.62.090.

(3) Nothing in this chapter prohibits the filing of criminal charges for violations of RCW 77.15.815 in lieu of issuance of a notice of infraction.

REPEALER

The following sections of the Washington Administrative Code are repealed:

WAC 220-460-110	Limits on number of vessels in the vicinity of southern resident killer whales at once.
WAC 220-460-120	Time limitations on watching southern resident killer whales.