

WSR 23-11-102
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 23-78—Filed May 19, 2023, 10:58 a.m., effective May 19, 2023, 10:58 a.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: The legislature adopted ESSB 5371 in April of 2023. This bill changes the fees for licensing of commercial whale watching and sea paddle tour businesses, operators, and guides. These fees go into effect for 2023; yet, many businesses, operators, and guides have already purchased 2023 licenses. Most of the remaining businesses, operators, or guides will purchase licenses in the coming months, between now and when the bill goes into effect July 23, 2023. This will create a substantial administrative burden requiring agency staff to process a large volume of reimbursements all at once and requiring avoidable reimbursements for those who purchase licenses between now and July 23, 2023. In sum, this creates a situation that will require more people to pay higher fees and wait for reimbursements, and require the many individuals and small businesses who already purchased licenses to wait longer for their reimbursement, potentially contributing to financial strain.

The purpose of this emergency rule is to proactively adopt the updated commercial whale watching and sea paddle tour fees in ESSB 5371 so that the Washington department of fish and wildlife (WDFW) can begin charging the reduced 2023 fees and begin refunding businesses and individuals and correcting the licenses for those who bought licenses under the outgoing fee structure. In addition, this emergency rule defines how the department will interpret chapter 220-460 WAC in relation to ESSB 5371 and clarifies commercial whale watching and sea paddle tour business, operator, and guide license documentation requirements for calendar year 2023 in recognition of the transition to implement the bill.

Citation of Rules Affected by this Order: New WAC 220-460-170.

Statutory Authority for Adoption: RCW 77.65.620.

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: Immediate adoption supports the general welfare of affected individuals while reducing the immediate administrative burden and cost that would be borne by continuing to charge outdated fees between the bill signing and effective date. Beginning to use the new fees sooner, and beginning to issue refunds to those who already purchased more expensive licenses, will alleviate administrative and financial burden on affected individuals and small businesses. This emergency action is necessary to protect the public's interest in efficient implementation of state licensing programs.

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 1, 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 0, 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: May 19, 2023.

Kelly Susewind
Director

NEW SECTION

WAC 220-460-17000A Transitional measures to implement ESSB 5371

(1) A commercial whale watching business license is required for commercial whale watching businesses. The annual fee for a commercial whale watching business license is \$200 in addition to the annual application fee of \$70.

(2) The annual application for a commercial whale watching business license as described in subsection (1) of this section must list each motorized or sailing vessel to be covered under the business license.

(3) The holder of a commercial whale watching business license for motorized or sailing vessels required under subsection (2) of this section may designate an additional vessel on the license if the license holder submits to the department an application that identifies the vessel proposed to be designated and any other information required by the department

(4) A commercial whale watching operator license is required for commercial whale watching operators. A person may operate a motorized or sailing commercial whale watching vessel designated on a commercial whale watching business license only if:

(a) The person holds a commercial whale watching operator license issued by the director; and

(b) The person is designated as an operator on the underlying commercial whale watching business license.

(5) No individual may hold more than one commercial whale watching operator license. An individual who holds an operator license may be designated as an operator on an unlimited number of commercial whale watching business licenses.

(6) The annual application fee for a commercial whale watching operator license is \$25.

(7) A paddle tour business license is required for businesses conducting paddle tours. The annual fee for a paddle tour business license is \$200 in addition to the annual application fee of \$70.

(8) A person may conduct guided paddle tours only if:

(a) The person holds a paddle guide license issued by the director; and

(b) The person is designated as a guide on the underlying paddle tour business license.

(9) No individual may hold more than one paddle guide license. An individual who holds a paddle guide license may be designated on an unlimited number of paddle tour business licenses.

(10) The annual application fee for a paddle guide license is \$25.

(11) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Commercial whale watching" means 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.

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

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

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

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

(f) "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.

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

(h) "Paddle guide" means a person who conducts guided tours on behalf of a paddle tour business.

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

(j) "Paddle tour business" means a business that conducts paddle tours.

(k) "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.

(12) The residency and business requirements of RCW 77.65.040 (2) and (3) do not apply to Canadian individuals or corporations applying for and holding Washington commercial whale watching licenses defined in this section.

(13) The license and application fees in this section may be waived for organizations whose relevant commercial whale watching or marine paddle tour activities are solely for bona fide nonprofit educational purposes.

(14) In order to implement these changes to the licensing program, the department may:

(a) use the definitions and charge the license fees described in this section in lieu of the previous, outgoing fee structure described in RCW 77.15.615 [2021 c 284 § 1];

(b) as appropriate, issue partial refunds equaling the difference in cost to licensees who purchased 2023 commercial whale watching business, operator, or guide licenses under the previous fee structure;

(c) convert 2023 kayak guide licenses to 2023 paddle guide licenses, and honor existing 2023 kayak guide license cards as 2023 paddle guide license cards; and

(d) as appropriate, convert existing 2023 commercial whale watching business licenses to a paddle tour business license, a commercial

whale watching business license, or one of each, and provide paper documentation in lieu of issuing a new hard card.

(15) The department may reasonably interpret and reconcile the definitions in WAC Chapter 220-460-010 with the definitions in subsection 11 above, including but not limited to:

(a) references to "kayak" in WAC 220-460 as "paddle";

(b) references to "business" in WAC 220-460 to refer to paddle tour businesses and licenses and/or commercial whale watching businesses and licenses;

(c) references to "commercial whale watching license" to refer to a paddle tour business license, commercial whale watching business license, paddle guide license, and/or operator license; and

(d) references to "commercial whale watching" to refer to both paddle tour activities and motorized commercial whale watching, unless "motorized" or "nonmotorized" is specified.

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Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.

Reviser's note: The typographical errors in the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.