

**WSR 21-19-006  
EMERGENCY RULES  
DEPARTMENT OF  
FISH AND WILDLIFE**

[Filed September 2, 2021, 3:08 p.m., effective September 2, 2021, 3:08 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On September 1, 2021, the research team (SR3) contracted by the Washington department of fish and wildlife (WDFW) to monitor Southern Resident killer whale (SRKW) body condition observed the two-year-old SRKW calf J56 with other members of J Pod near Point Roberts. This individual, J56, was born in May 2019. By September of 2020, her condition had declined by two condition states, bordering on "poor" classification, and she had developed a pale skin tone. When observed on September 1, 2021, J56's condition had further declined, and her pale coloration had persisted. WDFW verified the reports from SR3 on the morning of September 2, 2021, and determined that the designation of "sick or vulnerable" is appropriate. The best available science suggests that whales measured to be in the "poor condition" state had a significantly increased probability of subsequent mortality. Per WAC 220-460-110, WDFW is adopting an emergency rule to designate J56 as vulnerable and thereby prevent commercial whale watching operators from approaching this individual or a group containing the individual within 0.5 nautical mile[s]. This designation and the additional distance is necessary to ensure that J56's ability to survive is not hindered by the presence of vessels.

Citation of Rules Affected by this Order: New WAC 220-460-110B.

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: 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.

Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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: September 2, 2021.

Kelly Susewind  
Director

NEW SECTION

**WAC 220-460-110B Southern Resident Killer Whale J56** In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whale J56 as a vulnerable individual.

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