

**WSR 21-19-051
EMERGENCY RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Filed September 13, 2021, 2:42 p.m., effective September 13, 2021, 2:42 p.m.]

Effective Date of Rule: Immediately upon filing.

Purpose: On September 6, 2021, the research team (SR3) that monitors southern resident killer whale (SRKW) body condition observed three female SRKW - J36, J37, and J19 - and determined these whales are in the latter stages of pregnancy. Of these whales, the SR3 research team provided photos and additional analysis of J36's condition on September 9, 2021, noting that she is likely very close to giving birth. The department verified the reports from SR3 and determined that the designation of "vulnerable" is appropriate. The best available science suggests that there is a high rate of failed pregnancies in SRKW, and failed pregnancy can be lethal. In addition, food consumption increases by 25 percent in the final month of gestation. Per WAC 220-460-110, the department is adopting an emergency rule to designate J36, J37, and J19 as vulnerable and thereby prevent commercial whale watching operators from approaching these individuals or a group containing any of these individuals within 0.5 nautical mile. This designation and the additional distance is necessary to ensure that J36, J37, and J19 are able to meet their late-stage pregnancy nutritional needs and to give these pregnant whales the best chance of success and survival in birthing.

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

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Number of Sections Adopted in Order to Comply with Federal Statute: New 0, Amended 0, Repealed 0; Federal Rules or Standards: New 0, Amended 0, Repealed 0; or Recently Enacted State Statutes: New 0, Amended 0, Repealed 0.

Number of Sections Adopted at the Request of a Nongovernmental Entity: New 0, Amended 0, Repealed 0.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 13, 2021.

Kelly Susewind
Director

NEW SECTION

WAC 220-460-110C Southern Resident Killer Whales J36, J37, and J19 In conjunction with WAC 220-460-110(2), the department designates the female Southern Resident Killer Whales J36, J37, and J19 as vulnerable individuals.

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