
SUBSTITUTE SENATE BILL 5577

State of Washington

66th Legislature

2019 Regular Session

By Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Rolfes, Frockt, Llias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor)

READ FIRST TIME 02/22/19.

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740 and 43.384.050; adding
3 new sections to chapter 77.70 RCW; adding a new section to chapter
4 77.15 RCW; prescribing penalties; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to
7 read as follows:

8 (1) Except as provided in subsection (2) of this section, it is
9 unlawful for a person to:

10 (a) Cause a vessel or other object to approach, in any manner,
11 within (~~two~~) three hundred yards of a southern resident orca whale;

12 (b) Position a vessel to be in the path of a southern resident
13 orca whale at any point located within four hundred yards of the
14 whale. This includes intercepting a southern resident orca whale by
15 positioning a vessel so that the prevailing wind or water current
16 carries the vessel into the path of the whale at any point located
17 within four hundred yards of the whale;

18 (c) Position a vessel behind a southern resident orca whale at
19 any point located within four hundred yards;

20 (d) Fail to disengage the transmission of a vessel that is within
21 (~~two~~) three hundred yards of a southern resident orca whale; (~~or~~

1 ~~(d))~~ (e) Cause a vessel or other object to exceed a speed
2 greater than seven knots over ground at any point located within one-
3 half nautical mile (one thousand thirteen yards) of a southern
4 resident orca whale; or

5 (f) Feed a southern resident orca whale.

6 (2) A person is exempt from subsection (1) of this section if
7 that person is:

8 (a) Operating a federal government vessel in the course of (~~his~~
9 ~~or her~~) official duties, or operating a state, tribal, or local
10 government vessel when engaged in official duties involving law
11 enforcement, search and rescue, or public safety;

12 (b) Operating a vessel in conjunction with a vessel traffic
13 service established under 33 C.F.R. and following a traffic
14 separation scheme, or complying with a vessel traffic service measure
15 of direction. This also includes support vessels escorting ships in
16 the traffic lanes, such as tug boats;

17 (c) Engaging in an activity, including scientific research,
18 pursuant to a permit or other authorization from the national marine
19 fisheries service and the department;

20 (d) Lawfully engaging in a treaty Indian or commercial fishery
21 that is actively setting, retrieving, or closely tending fishing
22 gear. Commercial fishing vessels in transit are not exempt from
23 subsection (1) of this section;

24 (e) Conducting vessel operations necessary to avoid an imminent
25 and serious threat to a person, vessel, or the environment, including
26 when necessary for overall safety of navigation and to comply with
27 state and federal navigation requirements; or

28 (f) Engaging in rescue or clean-up efforts of a beached southern
29 resident orca whale overseen, coordinated, or authorized by a
30 volunteer stranding network.

31 (3) For the purpose of this section, "vessel" includes aircraft
32 while on the surface of the water, and every description of
33 watercraft on the water that is used or capable of being used as a
34 means of transportation on the water. However, "vessel" does not
35 include inner tubes, air mattresses, sailboards, and small rafts, or
36 flotation devices or toys customarily used by swimmers.

37 (4) (a) A violation of this section is a natural resource
38 infraction punishable under chapter 7.84 RCW and carries a fine of
39 five hundred dollars, not including statutory assessments added
40 pursuant to RCW 3.62.090.

1 (b) A person who qualifies for an exemption under subsection (2)
2 of this section may offer that exemption as an affirmative defense,
3 which that person must prove by a preponderance of the evidence.

4 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.70
5 RCW to read as follows:

6 (1) A commercial whale watching license is required for
7 commercial whale watching operators. The annual fee is two hundred
8 dollars in addition to the annual application fee of seventy-five
9 dollars.

10 (2) The annual fees for a commercial whale watching license as
11 described in subsection (1) of this section must include fees for
12 each motorized or sailing vessel or vessels as follows:

13 (a) One to twenty-four passengers, three hundred twenty-five
14 dollars;

15 (b) Twenty-five to fifty passengers, five hundred twenty-five
16 dollars;

17 (c) Fifty-one to one hundred passengers, eight hundred twenty-
18 five dollars;

19 (d) One hundred one to one hundred fifty passengers, one thousand
20 eight hundred twenty-five dollars; and

21 (e) One hundred fifty-one passengers or greater, two thousand
22 dollars.

23 (3) The annual fees for a commercial whale watching license as
24 described in subsection (1) of this section must include fees for
25 each kayak as follows:

26 (a) One to ten kayaks, one hundred twenty-five dollars;

27 (b) Eleven to twenty kayaks, two hundred twenty-five dollars;

28 (c) Twenty-one to thirty kayaks, four hundred twenty-five
29 dollars; and

30 (d) Thirty-one or more kayaks, six hundred twenty-five dollars.

31 (4) A person who is not the license holder may operate a
32 motorized or sailing commercial whale watching vessel designated on
33 the license only if:

34 (a) The person holds an alternate operator license issued by the
35 director; and

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

38 (5) No individual may hold more than one alternate operator
39 license. An individual who holds an alternate operator license may be

1 designated as an alternate operator on an unlimited number of
2 commercial whale watching licenses.

3 (6) The annual fee for an alternate operator license is two
4 hundred dollars.

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

7 (a) "Commercial whale watching" means the act of taking, or
8 offering to take, passengers aboard a vessel in order to view marine
9 mammals in their natural habitat for a fee.

10 (b) "Commercial whale watching operators" includes commercial
11 vessels and kayak rentals that are engaged in the business of whale
12 watching.

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

16 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.70
17 RCW to read as follows:

18 (1) The department must adopt rules for holders of a commercial
19 whale watching license established in section 2 of this act for the
20 viewing of southern resident orca whales for the inland waters of
21 Washington by January 1, 2021. The rules must be designed to reduce
22 the daily and cumulative impacts on southern resident orca whales and
23 consider the economic viability of license holders. The department
24 shall at a minimum consider protections for southern resident orca
25 whales by establishing limitations on:

26 (a) The number of commercial whale watching operators;

27 (b) The number of days and hours that commercial whale watching
28 operators can operate;

29 (c) The duration spent in the vicinity of southern resident orca
30 whales; and

31 (d) The areas in which commercial whale watching operators may
32 operate.

33 (2) The department may phase in requirements, but must adopt
34 rules to implement this section. The department may consider the use
35 of an automatic identification system to enable effective monitoring
36 and compliance.

37 (3) The department may phase in requirements, but must adopt
38 rules pursuant to chapter 34.05 RCW to implement this section
39 including public, industry, and interested party involvement.

1 (4) Before January 1, 2021, the department shall convene an
2 independent panel of scientists to review the current body of best
3 available science regarding impacts to southern resident orcas by
4 small vessels and commercial whale watching due to disturbance and
5 noise. The department must use the best available science in the
6 establishment of the southern resident orca whale watching rules and
7 continue to adaptively manage the program using the most current and
8 best available science.

9 (5) The department shall complete an analysis and report to the
10 governor and the legislature on the effectiveness of and any
11 recommendations for changes to the whale watching rules, license fee
12 structure, and approach distance rules by November 30, 2022, and
13 every two years thereafter until 2026. This report must be in
14 compliance with RCW 43.01.036.

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

17 (a) "Commercial whale watching" has the same meaning as defined
18 in section 2 of this act.

19 (b) "Commercial whale watching operators" has the same meaning as
20 defined in section 2 of this act.

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

28 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15
29 RCW to read as follows:

30 (1) A person is guilty of unlawfully engaging in commercial whale
31 watching in the second degree if the person:

32 (a) Does not have and possess all licenses and permits required
33 under this title; or

34 (b) Violates any department rule regarding the operation of a
35 commercial whale watching vessel near a southern resident orca whale.

36 (2) A person is guilty of engaging in commercial whale watching
37 in the first degree if the person commits the act described in
38 subsection (1) of this section and the violation occurs within one
39 year of the date of a prior conviction under this section.

1 (3) (a) Unlawful commercial whale watching in the second degree is
2 a misdemeanor.

3 (b) Unlawful commercial whale watching in the first degree is a
4 gross misdemeanor. Upon conviction, the department shall deny
5 applications submitted by the person for a commercial whale watching
6 license or alternate operator license for up to two years from the
7 date of conviction.

8 **Sec. 5.** RCW 43.384.050 and 2018 c 275 s 6 are each amended to
9 read as follows:

10 (1) From amounts appropriated to the department for the authority
11 and from other moneys available to it, the authority may incur
12 expenditures for any purpose specifically authorized by this chapter
13 including:

14 (a) Entering into a contract for a multiple year statewide
15 tourism marketing plan with a statewide nonprofit organization
16 existing on June 7, 2018, whose sole purpose is marketing Washington
17 to tourists. The marketing plan must include, but is not limited to,
18 focuses on rural tourism-dependent counties, natural wonders and
19 outdoor recreation opportunities of the state, including sustainable
20 whale watching, attraction of international tourists, identification
21 of local offerings for tourists, and assistance for tourism areas
22 adversely impacted by natural disasters. In the event that no such
23 organization exists on June 7, 2018, or the initial contractor ceases
24 to exist, the authority may determine criteria for a contractor to
25 carry out a statewide marketing program;

26 (b) Contracting for the evaluation of the impact of the statewide
27 tourism marketing program; and

28 (c) Paying for administrative expenses of the authority, which
29 may not exceed two percent of the state portion of funds collected in
30 any fiscal year.

31 (2) All nonstate moneys received by the authority under RCW
32 43.384.060 or otherwise provided to the authority for purposes of
33 matching funding must be deposited in the authority's private local
34 account created under RCW 43.384.020(4) and are held in trust for
35 uses authorized solely by this chapter.

36 (3) "Sustainable whale watching" means an experience that
37 includes whale watching from land or aboard a vessel that reduces the
38 impact on whales, provides a recreational and educational experience,

1 and motivates participants to care about marine mammals, the sea, and
2 marine conservation.

3 NEW SECTION. **Sec. 6.** Section 1 of this act is necessary for the
4 immediate preservation of the public peace, health, or safety, or
5 support of the state government and its existing public institutions,
6 and takes effect immediately.

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