
SENATE BILL 5577

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Frockt, Liias, and McCoy; by request of Office of the Governor

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740; adding a new section to
3 chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and
4 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~~) four 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) Fail to disengage the transmission of a vessel that is within
19 (~~two~~) four hundred yards of a southern resident orca whale; (~~or~~)

20 (d) Cause a vessel or other object to exceed a speed greater than
21 seven knots over ground at any point located within one-half nautical

1 mile (one thousand thirteen yards) of a southern resident orca whale;
2 or

3 (e) Feed a southern resident orca whale.

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

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

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

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

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

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

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

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

35 (4)(a) A violation of this section is a natural resource
36 infraction punishable under chapter 7.84 RCW and carries a fine of
37 five hundred dollars, not including statutory assessments added
38 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 77.15
5 RCW to read as follows:

6 (1) Commercial whale watching operators are prohibited from
7 approaching or intercepting within six hundred fifty yards in any
8 direction of a southern resident orca whale until January 1, 2023.

9 (2) By August 1, 2019, the department must adopt rules, including
10 emergency rules if necessary, to implement this section.

11 (3) The department shall complete a report to the governor and
12 the legislature on the effectiveness of the prohibition by November
13 30, 2022, including the best available science on commercial whale
14 watching vessel disturbance and noise, and the current status of the
15 population. This report must be in compliance with RCW 43.01.036.

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

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

21 (b) "Commercial whale watching operators" includes commercial
22 vessels and kayak rentals that are engaged in the business of whale
23 watching.

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

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

29 (1) A commercial whale watching license is required for all
30 businesses engaged in commercial whale watching activities as
31 permitted in section 4 of this act.

32 (2) The initial annual fee for a commercial whale watching
33 license involving motorized or sailing vessels is:

34 (a) One to twenty-four passengers, four hundred twenty-five
35 dollars;

36 (b) Twenty-five to fifty passengers, six hundred twenty-five
37 dollars;

- 1 (c) Fifty-one to one hundred passengers, nine hundred twenty-five
2 dollars;
- 3 (d) One hundred to one hundred fifty passengers, one thousand
4 nine hundred twenty-five dollars; and
- 5 (e) One hundred fifty-one passengers or greater, two thousand
6 nine hundred twenty-five dollars.
- 7 (3) The initial annual fee for commercial whale watching license
8 involving kayaks is four hundred twenty-five dollars.
- 9 (4) The application fee for a commercial whale watching license
10 is seventy-five dollars.
- 11 (5) "Commercial whale watching" has the same meaning as defined
12 in section 2 of this act.

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

15 (1) The department must implement a limited-entry whale watching
16 license program for the inland waters of Washington for all whale
17 species by January 1, 2021. The limited-entry whale watching license
18 must be designed to reduce the daily and cumulative impacts on
19 southern resident orca whales and consider the economic viability of
20 license holders. In designing the program, the department may only
21 license entities that have operated a commercial whale watch business
22 for at least forty-five trips in Washington waters over 2016, 2017,
23 and 2018. The department shall at a minimum consider limitations on:

- 24 (a) The number of commercial whale watching operators;
- 25 (b) The number of days and hours that commercial whale watching
26 operators can operate;
- 27 (c) The duration spent in the vicinity of southern resident orca
28 whales; and
- 29 (d) The areas in which commercial whale watching operators may
30 operate.

31 (2) The limited-entry whale watching license program must use an
32 automatic identification system to enable effective monitoring and
33 compliance.

34 (3) The limited-entry whale watching license program may consider
35 options for the purchase and retirement of commercial whale watching
36 operations.

37 (4) The department may phase in requirements, but must adopt
38 rules to implement this section.

1 (5) The department shall complete an analysis and report to the
2 governor and the legislature on the effectiveness of the limited
3 entry whale watching program and any recommendations for changes to
4 the license fee structure by November 30, 2022, and every two years
5 thereafter until 2026. This report must be in compliance with RCW
6 43.01.036.

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

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

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

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

20 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act are necessary
21 for the immediate preservation of the public peace, health, or
22 safety, or support of the state government and its existing public
23 institutions, and take effect immediately.

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