
SUBSTITUTE SENATE BILL 6395

State of Washington

60th Legislature

2008 Regular Session

By Senate Natural Resources, Ocean & Recreation (originally sponsored by Senators Spanel, Swecker, Jacobsen, Morton, Hargrove, Brandland, Fraser, Shin, Kohl-Welles, Rasmussen, Sheldon, and Rockefeller)

READ FIRST TIME 02/06/08.

1 AN ACT Relating to protecting southern resident orca whales from
2 disturbances by vessels; adding a new section to chapter 77.15 RCW;
3 adding a new section to chapter 77.12 RCW; creating new sections; and
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the resident
7 population of orca whales in Washington waters (*Orcinus orca*), commonly
8 referred to as the southern residents, are enormously significant to
9 the state. These highly social, intelligent, and playful marine
10 mammals, which the legislature designated as the official marine mammal
11 of the state of Washington, serve as a symbol of the Pacific Northwest
12 and illustrate the biological diversity and rich natural heritage that
13 all Washington citizens and its visitors enjoy.

14 However, the legislature also finds that the southern resident
15 orcas are currently in a serious decline. Southern residents
16 experienced an almost twenty percent decline between 1996 and 2001.
17 The federal government listed this orca population as depleted in 2003,
18 and as an endangered species in 2005. The federal government has

1 identified impacts from vessels as a significant threat to these marine
2 mammals.

3 In 2006, after listing the southern resident orcas as endangered,
4 the federal government designated critical orca habitat and released a
5 proposed recovery plan for the southern resident orcas. The federal
6 government has initiated the process to adopt orca conservation rules,
7 but this process may be lengthy. Additionally, although existing whale
8 and wildlife viewing guidelines are an excellent educational resource,
9 these guidelines are voluntary measures that cannot be enforced.

10 Therefore, the legislature intends to protect southern resident
11 orca whales from impacts from vessels, and to educate the public on how
12 to reduce the risk of disturbing these important marine mammals.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15 RCW
14 to read as follows:

15 (1) Except as provided in subsection (2) of this section, it is
16 unlawful to:

17 (a) Approach, by any means, within three hundred feet of a southern
18 resident orca whale (*Orcinus orca*);

19 (b) Cause a vessel or other object to approach within three hundred
20 feet of a southern resident orca whale;

21 (c) Intercept a southern resident orca whale. A person intercepts
22 a southern resident orca whale when that person places a vessel or
23 allows a vessel to remain in the path of a whale and the whale
24 approaches within three hundred feet of that vessel;

25 (d) Fail to disengage the transmission of a vessel that is within
26 three hundred feet of a southern resident orca whale, for which the
27 vessel operator is strictly liable; or

28 (e) Feed a southern resident orca whale, for which any person
29 feeding a southern resident orca whale is strictly liable.

30 (2) A person is exempt from subsection (1) of this section where:

31 (a) A reasonably prudent person in that person's position would
32 determine that compliance with the requirements of subsection (1) of
33 this section will threaten the safety of the vessel, the vessel's crew
34 or passengers, or is not feasible due to vessel design limitations, or
35 because the vessel is restricted in its ability to maneuver due to
36 wind, current, tide, or weather;

1 (b) That person is lawfully participating in a commercial fishery
2 and is engaged in actively setting, retrieving, or closely tending
3 commercial fishing gear;

4 (c) That person is acting in the course of official duty for a
5 state, federal, tribal, or local government agency; or

6 (d) That person is acting pursuant to and consistent with
7 authorization from a state or federal government agency.

8 (3) For the purpose of this section, "vessel" means every
9 description of watercraft on the water, including a seaplane, capable
10 of being used as a means of transportation on the water.

11 (4) A violation of this section is a natural resource infraction
12 punishable under chapter 7.84 RCW.

13 NEW SECTION. **Sec. 3.** The legislature encourages the state's law
14 enforcement agencies to utilize existing statutes and regulations to
15 protect southern resident orca whales from impacts from vessels,
16 including the vessel operation and enforcement standards contained in
17 chapter 79A.60 RCW.

18 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.12 RCW
19 to read as follows:

20 The department and the state parks and recreation commission shall
21 disseminate information about section 2 of this act, whale and wildlife
22 viewing guidelines, and other responsible wildlife viewing messages to
23 educate Washington's citizens on how to reduce the risk of disturbing
24 southern resident orca whales. The department and the state parks and
25 recreation commission must, at minimum, disseminate this information on
26 their internet sites and through appropriate agency publications,
27 brochures, and other information sources. The department and the state
28 parks and recreation commission shall also attempt to reach the state's
29 boating community by coordinating with appropriate state and
30 nongovernmental entities to provide this information at marinas, boat
31 shows, boat dealers, during boating safety training courses, and in
32 conjunction with vessel registration or licensing.

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