

HOUSE BILL REPORT

HB 2514

As Reported by House Committee On:

Agriculture & Natural Resources
Appropriations Subcommittee on General Government & Audit Review

Title: An act relating to protecting southern resident orca whales from disturbances by vessels.

Brief Description: Protecting orca whales from the impacts from vessels.

Sponsors: Representatives Quall, Appleton, McCoy, Morris, McIntire, Nelson, Kagi and Upthegrove.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/17/08, 1/24/08 [DPS];

Appropriations Subcommittee on General Government & Audit Review: 2/5/08, 2/7/08 [DP2S(w/o sub AGNR)].

Brief Summary of Second Substitute Bill

- Prohibits people and their vessels from being within 300 feet of any southern Orca whale, or feeding any southern Orca whale without an express exemption.
- Requires the Washington State Parks and Recreation Commission and the Washington Department of Fish and Wildlife to disseminate information about the prohibitions, exemptions, and other regulations regarding southern Orca whales.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Grant, Lantz, Loomis, McCoy and Nelson.

Minority Report: Do not pass. Signed by 4 members: Representatives Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Newhouse and Orcutt.

Staff: Jaclyn Ford (786-7339).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

The Orca (*Orcinus orca*)

The Orca is the official marine mammal of Washington.

The federal government listed a population of Orcas, known as the Southern Residents, as "endangered" under the Endangered Species Act in December 2005. These Orcas spend each summer and fall in Washington's Puget Sound. The population is composed of three family groups of whales that have been named J, K, and L pods.

Some of the possible causes of the Southern Resident's decline are: reduced quantity and quality of prey; persistent pollutants that cause immune or reproductive system dysfunction; oil spills; and noise and disturbance from vessels. Federal rule implementation is estimated to occur by late 2009.

In the summer of 2007, San Juan County passed a local ordinance to protect the endangered Southern Resident Orca whale population from boaters. The San Juan County ordinance is based on the "Be Whale Wise" guidelines developed by the Whale Watch Operators Association Northwest and the Whale Museum Sound Watch Boater Education Program. County marine enforcement can issue citations for those boaters harassing the whales within San Juan County waters.

Boating Safety Laws

Washington's boating safety laws are administered by the Washington State Parks and Recreation Commission (State Parks). Every law enforcement officer in Washington and its political subdivisions has the authority to enforce the boating laws, including county sheriffs, officers of other local law enforcement entities, the Washington State Patrol, state park rangers, and the Washington Department of Fish and Wildlife (WDFW).

Natural Resource Infractions

A natural resource infraction is a monetary penalty of no more than \$500 for each offense, unless specifically authorized by statute. Natural resource infractions are non-criminal offenses.

Summary of Substitute Bill:

It is a natural resource infraction to approach or cause a vessel to approach a southern Orca whale within 300 feet. It is also a natural resource infraction to intercept, feed, or fail to disengage the transmission of a vessel within 300 feet of a southern Orca whale.

A person is exempt from these requirements if the safety of the vessel or its crew or passengers is in jeopardy, or because of vessel design limitations, or weather conditions make complying infeasible. Also exempt are commercial fishers actively tending to their gear, officials on duty, and people authorized by a state or federal agency.

The WDFW and the State Parks will disseminate information about the new regulations regarding southern Orca whales, current whale and wildlife viewing guidelines, and other responsible wildlife viewing messages.

Washington law enforcement is encouraged to utilize all existing statutes and regulations, including the boating safety laws, to protect southern Orca whales from impacts of vessels.

Substitute Bill Compared to Original Bill:

This bill eliminates "knowingly" from the enforcement section, and removes a grammatically incorrect placement of "the."

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) Orcas are enjoyed by citizens in this state as well as the rest of the country. Washington needs to protect the Orcas. Washington is lucky to have these magical creatures. Interim measures must be taken to protect the Orca while waiting for the federal rules to be implemented. There is a negative impact on the health of the Orcas from harassing boats. Boating harassment issues are real. Current state and federal law is inadequate to protect the Orcas. The WDFW should be given rule-making authority, in order to make the current bill the minimum standard and to help define "knowingly." "Knowingly" is difficult to enforce, and the WDFW should have the tools to make this more enforceable.

(With concerns) Ocean-going vessels should not have to comply with the regulations in this bill. Large boats do not have the same effect on Orcas as smaller vessels do.

(Opposed) None.

Persons Testifying: (In support) Representative Appleton, prime sponsor; Chuck Williams, King County; Kevin Ranker, San Juan County; Mike Cenci, Washington Department of Fish and Wildlife; Bruce Wishart, People for Puget Sound; Paul Pearce, Scamania County; Kari Koski, Soundwatch; and David Dicks, Puget Sound Partnership.

(With concerns) Randy Roy, Pacific Merchant Shipping Association

(Opposed) None.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & AUDIT REVIEW

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Agriculture & Natural Resources. Signed by 10 members: Representatives Linville, Chair; Ericks, Vice Chair; Armstrong, Ranking Minority Member; Blake, Lantz, Lias, Miloscia, Morris, Nelson and Van De Wege.

Minority Report: Do not pass. Signed by 4 members: Representatives Skinner, Assistant Ranking Minority Member; Alexander, Chandler and Kretz.

Staff: Alicia Dunkin (786-7178).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Audit Review Compared to Recommendation of Committee On Agriculture & Natural Resources:

The second substitute states that the bill is not intended to conflict with existing safe vessel operation or navigation rules, and it defines "vessel" more narrowly.

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Second Substitute Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) There are 30 to 40 marine patrols to decrease harassment by boaters to orcas, and this bill addresses the harassment issues that are real. The current guidelines and state regulations are not adequate and neither is the outreach and education material. This bill brings us closer to being able to provide local and state enforcement tools, as work on the federal level may take years to implement any action. We are concerned that by adding the word "knowingly" to the bill when people approach orcas that it would be difficult to enforce. How would people know a southern orca from any other type? There is language in the underlying bill that states that if one is approached by a whale and not able to get out of their path then this interaction is exempt from enforcement. This bill was modeled after the San Juan county ordinance.

(Opposed) If there is an oil tanker or container ship, we do not want them to go into neutral or swerve as this will become a safety issue. State statutes should be clear. There also may be a Federal maritime law issue with this bill because states are not generally permitted to regulate commercial vessels.

Persons Testifying: (In support) Mike Cenci, Washington Department of Fish and Wildlife; and Bruce Wishart, People for Puget Sound.

(Opposed) Randy Ray, Pacific Marine Science Association.

Persons Signed In To Testify But Not Testifying: None.