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**ENGROSSED HOUSE BILL 1031**

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**State of Washington 65th Legislature 2017 Regular Session**

**By** Representatives Lytton, Morris, Tarleton, Fitzgibbon, Springer, Gregerson, and Hudgins

AN ACT Relating to the use of unmanned aerial systems near certain protected marine species; and amending RCW 77.15.740.

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

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

(1) Except as provided in subsection ((~~(2)~~)) (3) of this section, it is unlawful to:

(a) Cause a vessel, unmanned aerial system, or other object to approach, in any manner, within two hundred yards as measured in any direction, including vertically, of a southern resident orca whale;

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

(c) Fail to disengage the transmission of a vessel that is within two hundred yards of a southern resident orca whale; or

(d) Feed a southern resident orca whale.

(2) It is not a violation of subsection (1)(a) of this section for a person to cause an unmanned aerial system to approach a southern resident orca whale solely by virtue of the unmanned aerial system being in active transit to an unrelated destination.

(3) A person is exempt from subsection (1) of this section if that person is:

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

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

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

(d) Lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear;

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

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

((~~(3)~~)) (4) For the purpose of this section((~~,~~)):

(a) "Unmanned aerial system" means an aircraft that is operated without the possibility of human intervention from on or within the aircraft, and any hardware or software associated with its operation; and

(b) "Vessel" includes aircraft while on the surface of the water, and every description of watercraft on the water that is used or capable of being used as a means of transportation on the water. However, "vessel" does not include inner tubes, air mattresses, sailboards, and small rafts, or flotation devices or toys customarily used by swimmers.

((~~(4)~~)) (5)(a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW and carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

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

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