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**ENGROSSED SECOND SUBSTITUTE SENATE BILL 6268**

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**State of Washington 65th Legislature 2018 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Rolfes, Chase, Van De Wege, Conway, Keiser, Liias, Frockt, Hasegawa, Hunt, Palumbo, and Saldaña)

AN ACT Relating to creating the orca protection act; amending RCW 77.15.740; adding a new section to chapter 77.15 RCW; creating new sections; and providing expiration dates.

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

NEW SECTION. **Sec.**  The legislature finds that southern resident killer whales, also known as orcas, are critically endangered with the population at a thirty-year low of seventy-six whales and scientific evidence building that they are nutritionally stressed. These marine icons are an apex predator species that indicate the overall health of Washington state's marine ecosystems. They also are culturally significant to many Washington tribes and the region as a whole, and are the foundation of an estimated sixty million dollar tourist industry. Existing threats to the orca include a decline in food sources, including Chinook salmon, as well as environmental and human pressures. Therefore, the legislature intends to take immediate action to reverse this emergency.

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

(1) In order to facilitate the enforcement of RCW 77.15.740, provide extra protection to newborn calves, and protect critical feeding areas, and subject to the availability of amounts appropriated for this specific purpose, the department must conduct a minimum of one hundred patrols during the twenty-two most active weeks for southern resident killer whale viewing activity each year. In doing so, the department must prioritize Wednesday through Monday patrols when recreational whale watching activity is most active.

(2) The legislature recognizes that weather and sea conditions may impact the department's ability to conduct the number of patrols identified in subsection (1) of this section. If the department does not complete the identified number of patrols during a given annual period, the department must provide a written explanation for, and documentation of, the reasons for the missed patrols to the commission and appropriate committees of the legislature.

**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) of this section, it is unlawful to:

(a) Cause a vessel, aircraft, or other object to approach, in any manner, within two hundred yards 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; or

(e) Cause a vessel to exceed a speed over ground of seven knots within four hundred yards of a southern resident orca whale.

(2) 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.

(g) A vessel or aircraft operator is not aware of their proximity to a southern resident orca due to lack of sightline, difficulty to gauge distance due to surrounding conditions or faulty equipment, or a southern resident orca approaches a vessel causing a violation of this section, all related fines must be waived.

(3) For the purpose of this section, "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)(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) of this section may offer that exemption as an affirmative defense, which that person must prove by a preponderance of the evidence.

NEW SECTION. **Sec.**  (1) Subject to the availability of amounts appropriated for this specific purpose, the department of fish and wildlife must coordinate with appropriate federal, tribal, county, and nongovernmental partners to identify research and management actions undertaken since the federal southern resident killer whale recovery plan adoption in 2008 that relate to impacts from human-generated marine noise. The department of fish and wildlife must identify any relevant research findings and management actions undertaken. Additionally, the department must identify options and recommendations on potential actions the state can take, through departmental or legislative action, to further killer whale recovery efforts by addressing impacts from noise.

(2) The department of fish and wildlife must provide its analysis, options, and recommendations to the appropriate committees of the legislature by December 1, 2018.

(3) This section expires June 30, 2019.

NEW SECTION. **Sec.**  (1) The Salish Sea institute at Western Washington University must convene a meeting to improve the coordination of recovery strategies for southern resident killer whales between Washington and British Columbia, and to establish timelines for recovery actions. The meeting must occur by December 31, 2018. The institute must provide a summary of the meeting and outcomes to the appropriate committees of the legislature within thirty days of the conclusion of the meeting.

(2) This section expires June 30, 2019.

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