

# HOUSE BILL REPORT

## 2SHB 1580

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**As Passed House:**  
March 7, 2019

**Title:** An act relating to the protection of southern resident orca whales from vessels.

**Brief Description:** Concerning the protection of southern resident orca whales from vessels.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Blake, Kretz, Kirby, Peterson, Appleton, Shewmake, Morris, Cody and Jinkins; by request of Office of the Governor).

**Brief History:**

**Committee Activity:**

Rural Development, Agriculture, & Natural Resources: 2/5/19, 2/20/19 [DPS];  
Appropriations: 2/26/19, 2/28/19 [DP2S(w/o sub RDAN)].

**Floor Activity:**

Passed House: 3/7/19, 78-20.

**Brief Summary of Second Substitute Bill**

- Increases the distance within which a vessel or other object may not approach a southern resident orca whale (orcas).
- Establishes commercial whale watching and alternate operator licenses, sets fees for the licenses, and requires the Department of Fish and Wildlife (DFW) to report on the license program.
- Directs the DFW to convene an independent science panel to analyze the most current and best available science regarding noise impacts to orcas by small vessels and whale watching vessels.
- Requires the topic of sustainable whale watching to be included in the statewide tourism marketing plan.

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**HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES**

*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Blake, Chair; Shewmake, Vice Chair; Chapman, Fitzgibbon, Lekanoff, Pettigrew, Ramos and Springer.

**Minority Report:** Do not pass. Signed by 7 members: Representatives Chandler, Ranking Minority Member; Dent, Assistant Ranking Minority Member; Dye, Kretz, Orcutt, Schmick and Walsh.

**Staff:** Rebecca Lewis (786-7339).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**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 Rural Development, Agriculture, & Natural Resources. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger and Ybarra.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Chandler, Dye, Kraft and Mosbrucker.

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member.

**Staff:** Dan Jones (786-7118).

### **Background:**

Southern resident orca whales (orcas) are the only known resident population in the United States, and are listed as an endangered species under federal and state law.

Under state law, it is unlawful to cause a vessel or other object to approach within 200 yards of an orca, to fail to disengage the transmission of a vessel within 200 yards of an orca, and to position a vessel to be in the path of an orca at any point within 400 yards. A "vessel" includes aircraft on the water surface and watercraft capable of being used for transportation. It does not include inner tubes, air mattresses, sailboards, small rafts, or flotation devices or toys usually used by swimmers.

Exemptions to the approach restrictions include conducting permitted scientific research activities, operating a government vessel when engaged in certain official duties, and lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear. A violation of this provision is a natural resource infraction enforced by the Department of Fish and Wildlife with a penalty of \$500 and statutory assessments.

Statewide Tourism Marketing Plan.

The Department of Commerce was directed by the Legislature in 2018 to contract with a statewide nonprofit organization to develop a Statewide Tourism Marketing Plan (Plan). The Plan must address a variety of tourism-related topics including: focuses on rural tourism-dependent counties; outdoor recreation opportunities; attraction of international tourists; and assistance for tourism areas adversely impacted by natural disasters.

### **Summary of Second Substitute Bill:**

#### Vessel Speed and Distance.

The distance within which a vessel or other object may not approach a southern resident orca whale (orca) is increased from within 200 yards to within 300 yards. It is unlawful to fail to disengage the transmission of a vessel within 300 yards, instead of 200 yards, of an orca. It is also unlawful to position a vessel within 400 yards behind an orca. A speed limit is established of 7 knots at any point located within one-half of a nautical mile of an orca. Commercial fishing vessels in transit are not exempt from the approach and speed restrictions.

#### Commercial Whale Watching.

##### *Commercial Whale Watching License.*

The Department of Fish and Wildlife (DFW) is directed to implement a commercial whale watching license for the inland waters of Washington. "Inland waters of Washington" means Puget Sound, related inland marine waters inside the international boundary line between Washington and British Columbia and east of the junction of the Pacific Ocean and Strait of Juan de Fuca, and the rivers and streams that flow into the Puget Sound. Annual license and application fees are established in the bill. There is an additional license fee for each vessel designated under a whale watching license. For motorized vessels, this fee is based on the number of passengers, and for kayaks, this fee is based on the number of kayaks. The application fee is \$75, and the annual license fee is \$200. The additional annual license fees are as follows:

- For motorized or sailing vessels:
  - \$325 for one to 24 passengers;
  - \$525 for 25 to 50 passengers;
  - \$825 for 51 to 100 passengers;
  - \$1,825 for 101 to 150 passengers; and
  - \$2,000 for 151 or more passengers.
- For kayaks:
  - \$125 for one to 10 kayaks;
  - \$225 for 11 to 20 kayaks;
  - \$425 for 21 to 30 kayaks; and
  - \$625 for 31 or more kayaks.

A commercial whale watching license holder may substitute a motorized or sailing vessel designated on their commercial whale watching license for a fee of \$35 instead of the applicable vessel fee to designate an additional vessel. The vessel operator must submit an

application to the DFW with the \$35 fee and a \$105 application fee. The DFW may only change a vessel designation on a commercial whale watching license once per calendar year.

A person may be designated as an alternate operator on a commercial whale watching license. The annual fee for an alternate operator license is \$200 with a \$75 application fee. No person may hold more than one annual alternate operator license, but a person may be designated as an alternate operator on an unlimited number of vessels.

The DFW must adopt rules governing the commercial whale watching program by January 1, 2021, and requirements may be phased in. The rules must be designed to reduce the daily and cumulative impacts to orcas, and must consider the economic viability of license holders. The rules must address, at a minimum, the number of commercial whale watching operators that may view orcas at one time, the number of days and hours when commercial whale watching operators can operate, the duration spent in the vicinity of orcas, and areas where commercial whale watching operators may operate. The DFW may consider the use of an automatic identification system to enable effective monitoring and compliance.

#### *Reporting.*

The DFW must convene an independent science panel before January 1, 2021, to review the most current and best available science regarding impacts to orcas by small vessels and commercial whale watching vessels. The DFW must use the review in the rulemaking process and for adaptive management of the commercial whale watching program.

The DFW must report on both the new approach distance limits and the whale watching license to the Governor and the Legislature by November 30, 2022, and every two years thereafter, until 2026. The report must contain an analysis of the effectiveness of the program and any recommendations for changes to the license fee structure.

The topic of sustainable whale watching must be included in the statewide tourism marketing plan.

The bill is null and void if specific funding is not provided in the omnibus appropriations act.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to vessel speed and distance, which contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

**Staff Summary of Public Testimony** (Rural Development, Agriculture, & Natural Resources):

(In support) This is one of the bills that came out of the work of the Governor's Southern Resident Killer Whale Task Force (Task Force). It is important to give hungry and stressed

southern resident orca whales (orcas) the space and quiet they need in order to find the food they need to survive. The Governor's Office would like to work with the whale watching industry, as well as other partners, to balance everybody's interests while putting orca recovery first. It is not an "either/or" question. Orca recovery requires sacrifices from everyone. Science supports the acoustic benefits to orcas of a 400-yard approach limit. Orcas appear to lose two hours of foraging time due to vessel noise, and reduced noise from increased approach limits would likely improve communication signals for orcas. Reducing vessel presence works to recover chinook salmon.

This year, action is critical because there are pregnant and malnourished orcas present. The actions in this bill will result in immediate benefits to the orcas. The Department of Fish and Wildlife (DFW) is willing to work with the industry to determine limits on the number of vessels present near orcas. The reports required in this bill will provide important information advising the best way to manage vessel noise as the temporary limits sunset. When law enforcement officers are present, people tend to automatically slow down. The DFW will be able to increase enforcement on the water, and the parameters in this bill are enforceable. This bill is important in order to address the long-term protection of orcas. It is important to invest in the recovery of orca habitat and their prey. The increased distances in this bill are based on the best available science, and vessel workgroup members are in agreement. While some people say that the speed limit is the only provision of the bill that will help the orcas, this view is not supported by science. Vessel noise masks the echolocation signals orcas use to hunt, and reduces foraging time. Given orcas are in such a dire state, there is not enough time to do extensive studies isolating the impact of specific factors on the orcas. There are often more than 20 vessels surrounding orcas during the peak whale watching season. It is common that an individual boat will inadvertently act as a magnet, attracting many other vessels. Orcas are constantly watched and pursued. While there is strong support for the whale watching industry, this bill is essential in protecting orcas. People can watch orcas from the shore, instead of from boats.

The orca is in crisis, and is approaching the historic low of 71 animals. Solutions to help recover orcas begin with the measures in this bill. Even when vessels abide by the Be Whale Wise guidelines, orcas are still impacted. When the state sued Sea World after the orca captures, the state did not ask how Sea World's business would be affected. Because the state acted boldly then, there are still orcas today. All vessels should remain 1,000 yards away from orcas. The most important measure of a society's character is whether it takes care of the most vulnerable things in the society. Creating a 650-yard approach limit only for commercial whale watchers creates confusion, and the 650-yard distance should apply to all vessels. The vast majority of boaters who violate approach restrictions are recreational boaters. Commercial whale watching vessels are a small proportion of violations. It is painful to see what orcas must deal with.

The majority of whale watching companies are from Canada. The state can lead the way to steer the tourism industry away from invasive activities. A group is waiting for the National Oceanic and Atmospheric Administration to respond to a petition to create a sanctuary zone. All of the Task Force members learned from each other during the process. The "bubble" is a key component to recovering the orca. The Task Force considered many proposals all the way up to a complete closure of whale watching activities. A full closure isn't necessary, but the orcas need a break. This bill represents one of the best outcomes for everyone.

(Opposed) Everyone shares an interest in protecting orcas, but some people disagree on how to accomplish this. The two agencies charged with enforcing approach restrictions and guidelines say that whale watching boats model good behavior. Some vessel workgroup members disagree with some of the provisions of this bill. The whale watching industry contributes \$1 billion to the state's tourism industry. There are ways to protect orcas without harming whale watching businesses. One of the key principles of whale watching companies is to do what is best for the underwater soundscape. There would be support for creating no-boat zones in certain areas, limiting the time that vessels may be in certain areas, or installing voluntary guidelines such as a 1-kilometer approach distance. Vessel speed is the most important factor in orca disturbance. There is support for a go-slow zone, but the other requirements in this bill are problematic. Science shows that increasing vessel distances will not have a significant impact on the orcas. Whale watching companies are able to communicate orca locations with other vessels so that the orcas can be avoided. Additionally, whale watching companies can help document vessel approach infractions. There could be a sanctuary zone off the coast of San Juan Island.

(Other) The recreational boating community appreciates the work of the Task Force, and boaters came to the table in good faith. While there is support for the 7-knot speed limit, there are questions about increasing the approach distance to 400 yards. In some cases, the 650-yard approach limit for whale watching vessels may be counterproductive. Noise disturbance impacts orca feeding behavior and reduces their ability to forage. Orcas are facing a perfect storm, with lack of prey at the eye of the storm. At the root of the orca problem is a deficiency of Chinook salmon. Reducing noise disturbance will increase foraging efficiency, and will help orcas get to prey faster.

Kayak businesses were not included in the Task Force's process. It does not make sense to treat kayaks the same as motorized boats since kayaks do not have engines. There used to be bad behavior from whale watching boats, which resulted in orcas changing their behavior. Orcas are curious about boats, but kayakers stop paddling when they approach orcas.

**Staff Summary of Public Testimony (Appropriations):**

(In support) There are several different threats to southern resident orcas that will be addressed this session. Vessel noise is a significant stressor to the whales. Reducing vessel noise will give the whales the peace and quiet they need in order to find food. The bill has been well worked to make sure it achieves the goal of immediately reducing sound impacts to southern resident orca whales. Some of the recommendations in this bill are funded in the Governor's budget proposal. The fiscal impacts of this bill are trivial compared to the long-term cost. The orca population is crashing, and there are not very many adult females who can reproduce. Orcas no longer have access to habitat and food. This bill disregards recommendations from the Governor's Southern Resident Killer Whale Task Force (Task Force). One of the Task Force recommendations was a moratorium on commercial whale watching. A moratorium would not cost any money. This bill protects the whale watching industry more than it protects the orcas.

(Opposed) None.

**Persons Testifying** (Rural Development, Agriculture, & Natural Resources): (In support) Representative Blake, prime sponsor; Michael Jasny, Natural Resources Defense Council; Donna Sandstrom, The Whale Trail; Mindy Roberts, Washington Environmental Council; Nora Nickum, Seattle Aquarium; JT Austin, Office of the Governor; Todd Hass, Puget Sound Partnership; Amy Windrope and Taylor Kimball, Washington State Department of Fish and Wildlife; Kristin Swenddal, Washington State Department of Natural Resources; Ron Garner, Puget Sound Anglers; Tim Ragen; Rich Osbourne, Whale Museum; and Janet Thomas, Orca Relief Citizens' Alliance.

(Opposed) Tony Sermonti and Brian Goodremont, Pacific Whale Watch Association; Erin Gless, Island Adventures; Della Tall, San Juan and Victoria Clipper; and David Bain, University of Washington.

(Other) Doug Levy, Recreational Boating Association of Washington; Rob Williams, Oceans Initiative; and Samuel Kaviar.

**Persons Testifying** (Appropriations): Janet Thomas, Orca Relief Citizens Alliance; Tim Ragen; Morgan Stinson and Alan Meyers, Washington Department of Fish and Wildlife; Tony Sermonti, Pacific Whale Watch Association; and Danielle Shaw, Washington Environmental Council.

**Persons Signed In To Testify But Not Testifying** (Rural Development, Agriculture, & Natural Resources): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.