

SENATE BILL REPORT

HB 1341

As Reported by Senate Committee On:
Environment, Energy & Technology, March 26, 2019

Title: An act relating to the use of unmanned aerial systems near certain protected marine species.

Brief Description: Concerning the use of unmanned aerial systems near certain protected marine species.

Sponsors: Representatives Hudgins, Morris, Tarleton, Doglio and Kloba.

Brief History: Passed House: 3/01/19, 67-26.

Committee Activity: Environment, Energy & Technology: 3/20/19, 3/26/19 [DPA, DNP, w/oRec].

Brief Summary of Amended Bill

- Adds unmanned aerial systems to the types of objects currently prohibited from approaching a Southern Resident orca whale.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass as amended.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Billig, Das, Hobbs, Lias, McCoy, Nguyen, Rivers and Wellman.

Minority Report: Do not pass.

Signed by Senators Ericksen, Ranking Member; Short.

Minority Report: That it be referred without recommendation.

Signed by Senator Fortunato, Assistant Ranking Member, Environment.

Staff: Greg Vogel (786-7413)

Background: Unmanned Aerial Systems. An unmanned aerial system (UAS), often referred to as a drone, is an aircraft without a human pilot on board. The flight is controlled either autonomously by computers, or under remote control by a pilot. The federal government has

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broad authority to regulate the use of airspace, and the Federal Aviation Administration (FAA) has established regulations for a UAS, pursuant to federal authority. Any UAS that weighs more than 0.55 pounds must be registered with the FAA.

Regulations for a UAS can vary depending on its specific use. For recreational flyers, the UAS must fly at or below 400 feet when in an uncontrolled airspace, fly within visual line-of-sight, and never fly near other aircraft, fly over groups of people, public events, or stadiums full of people, or over emergency response efforts. For commercial flyers, the pilot must obtain a remote pilot certification or be supervised by the holder of the certificate; a UAS must be less than 55 pounds, including any payload; a UAS must yield right of way to other aircraft; a UAS may not be flown over people; and a UAS must be flown within visual line-of-sight. Flying is permitted in class G airspace, and in class B, C, D, and E airspace with air traffic control permission. Maximum flying altitude is 400 feet, or if higher than 400 feet, within 400 feet of a structure. Flying is permitted only in daylight for a UAS without lighting; but is allowed in civil twilight if the UAS has lighting. Flight speed is limited to 100 mph or less. Certified remote pilots may obtain waivers for some restrictions.

To fly a UAS that weighs 55 pounds or more for non-recreational purposes, operators must apply for an exemption under the Special Authority for Certain Unmanned Systems.

Government agencies, including federal, state, and tribal, law enforcement, and public safety entities have two options for operating a UAS under 55 pounds. Agencies and entities may either operate a UAS at or below 400 feet above ground level for visual line-of-sight operations under the rules for certified remote pilots, or fly under the statutory requirements for public aircraft and operate with a certificate of waiver or authorization to be able to self-certify a UAS and operators for flights performing governmental functions.

To support first responders and other entities affiliated with them, the FAA can quickly issue authorizations for natural disasters and other emergency situation responses.

Federal aviation regulations prohibit the unsafe or unauthorized operation of a UAS. Unsafe operations may result in substantial civil penalties and possible action against an operator's FAA-issued certificate, or may be subject to criminal response by law enforcement in accordance with local laws and ordinances.

Southern Resident Orca Whales. Southern Resident orca whales are the only known resident orca whale population in the United States. They are listed as an endangered species both by the Washington Fish and Wildlife Commission and under the federal Endangered Species Act, and their current number is estimated to be 74. Identified threats to the whales include food scarcity, exposure to toxic pollutants, and vessel presence and noise.

It is unlawful to conduct various activities in proximity to a southern resident orca whale, including causing a vessel or other object to approach within 200 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. Exempted activities include, but are not limited to, permitted scientific research and operating a government vessel when engaged in certain official duties.

A violation of this provision is a natural resource infraction enforced by the state Department of Fish and Wildlife, with a penalty of \$500 and statutory assessments.

Summary of Amended Bill: An "unmanned aerial system" is defined as 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.

A UAS is added to the types of objects prohibited from approaching a Southern Resident orca whale.

Approaching within 200 yards is specified as measured in any direction, including vertically.

It is not a violation if a UAS approaches a Southern Resident orca whale solely by virtue of the UAS being in active transit to an unrelated destination.

EFFECT OF ENVIRONMENT, ENERGY & TECHNOLOGY COMMITTEE AMENDMENT(S):

- Rewrites the distance limitation on unmanned aerial systems approaching within a certain distance of southern resident orca whales as its own subsection, rather than as an addition to the subsection prohibiting vessels and other objects from approaching within a certain distance of southern resident orca whales.
- Specifies that the subsection limiting unmanned aerial systems has no effect on the operation or application of the subsection limiting vessels and other objects.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: The situation for orcas is dire. Research shows that drones can cause distress and disturbance and affect eating habits. Drones are being used for important research and this bill does not affect permits for that research. It is an important component of the package to protect orcas.

CON: We are not aware of research that says flying drones within 200 feet of orcas disturbs them. We are not necessarily questioning the claim, but the bill is very general in scope. The underlying statute is focused on vessels or aircraft on the water, but nothing about about aircraft in the air, so there is the question of why drones are being singled out. Additionally, the penalty for a violation seems excessively high.

Persons Testifying: PRO: Nora Nickum, Seattle Aquarium.

CON: Charlie Brown, Consumer Technology Association.

Persons Signed In To Testify But Not Testifying: No one.