

# SENATE BILL REPORT

## SB 5577

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As of February 19, 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:** Senators Rolfes, Frockt, Liias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña and Wilson, C.; by request of Office of the Governor.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/12/19.

**Brief Summary of Bill**

- Makes it unlawful for a person to cause a vessel to approach or fail to disengage a vessel within 400 yards of a southern resident orca.
- Makes it unlawful for a person to cause a vessel to exceed a 7 knot speed limit within one-half nautical mile of a southern resident orca.
- Establishes temporary approach limits for commercial whale watching vessels, and requires the Department of Fish and Wildlife (DFW) to report on the effectiveness of the approach limits.
- Establishes a limited-entry commercial whale watching license, sets fees for the license, and requires DFW to report on the license program.

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**SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS**

**Staff:** Karen Epps (786-7424)

**Background:** Role of the Department of Fish and Wildlife. DFW serves as manager of the state's fish and wildlife resources. Among other duties, DFW must protect and manage fish and wildlife, including establishing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

Background on Orca Whales. The orca or killer whale is the official marine mammal of the state of Washington. Southern resident orca whales are the only known resident population

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of orcas in the United States. They spend the spring and summer months primarily in the inland marine waters of Washington and British Columbia, and spend the winter months primarily in the coastal waters of the Pacific Ocean between northern California and British Columbia. Southern resident orcas are listed as an endangered species under federal and state law.

Southern Resident Killer Whale Task Force. The Governor issued an executive order in 2018 convening the Southern Resident Killer Whale Task Force (Task Force). The Task Force was directed to identify, prioritize, and support implementing a plan to address three threats to southern resident orca whales identified in the order: (1) prey availability; (2) contaminants; and (3) disturbance from vessel noise.

Vessel Distance Regulations. Current state law prohibits several actions in the vicinity of a southern resident orca whale including:

- causing a vessel or other object to approach within 200 yards of a southern resident orca;
- positioning a vessel to be in the path of a southern resident orca at any point located within 400 yards of a whale; and
- failing to disengage the transmission of a vessel within 200 yards of a southern resident orca whale.

A violation of this law is a natural resources infraction with a fine of \$500. Several exemptions exist, including for government vessels on official duty, permitted scientific research, and for navigational safety.

**Summary of Bill:** Vessel Speed and Distance. It is unlawful for a person to cause a vessel to approach within 400 yards of a southern resident orca. It is unlawful to fail to disengage the transmission of a vessel within 400 yards, instead of 200 yards, of a southern resident orca. Additionally, it is unlawful for a person to cause a vessel to exceed a speed of seven knots at any point located within one-half of a nautical mile of a southern resident orca. Commercial fishing vessels in transit are not exempt from the approach and speed restrictions.

Commercial Whale Watching. Commercial whale watching operators may not approach within 650 yards in any direction of a southern resident orca until January 1, 2023. DFW must adopt rules, including emergency rules, if necessary, to implement the temporary approach restriction by August 1, 2019. Commercial whale watching is defined as the act of taking, or offering to take, passengers aboard a vessel to view marine mammals in their natural habitat for a fee, and includes operators of commercial vessels as well as kayak rentals.

DFW must implement a limited-entry commercial whale watching license for the inland waters of Washington. Inland waters of Washington means Puget Sound and 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 flowing into Puget Sound. The license must be designed to both reduce the daily and cumulative impacts on orca whales and consider the economic viability of license holders. DFW may only license those who have operated a commercial whale

watching business for at least 45 trips in Washington waters over 2016, 2017, and 2018. License and application fees are established in the bill and are based upon the type of vessel and number of passengers. The application fee is \$75. The annual license fees are:

- for kayaks, \$425; and
- for motorized or sailing vessels:
  1. \$425 for one to 24 passengers;
  2. \$625 for 25 to 50 passengers;
  3. \$925 for 51 to 100 passengers;
  4. \$1,925 for 101 to 150 passengers; and
  5. \$2,925 for 151 or more passengers.

DFW must report on both the commercial whale watching approach restriction and the limited-entry whale watching license. The report on the approach restriction must analyze its effectiveness and include the best available science on disturbance from commercial whale watching vessel noise and the current status of the population. The report on the limited-entry whale watching license must contain an analysis of the effectiveness of the program and any recommendations for changes to the license fee structure. Both reports are due to the Governor and the Legislature by November 30, 2022. The DFW must continue to report every two years until 2026.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains several effective dates. Please refer to the bill.

**Staff Summary of Public Testimony:** PRO: This bill deals with vessel noise and disturbance. Boats get disproportionately louder and their noise spreads farther at high throttle. The waters need to be quieter for the orcas to be able to locate their prey. Orcas lose about two hours per day to the effects of small vessels and reducing noise should allow for an increase in the range and reliability of communication signals between orcas. This bill promotes a three pronged approach to protecting orca whale foraging behavior by establishing a short term protective minimum distance bubble for whale watching operators, slower speeds for all vessels around the whales, and rulemaking for DFW to establish a whale watching license for long term noise management that considers economic viability of license holders. Reducing noise and disturbance is the most effective action can be taken to protect the orcas, giving them more acoustic and physical space to make it easier for the orcas to find food, share their prey, and tend to their young. A limited entry system provides tools to manage the activities of commercial whale watching vessels so the activities can be more sustainably managed. Prolonged exposure to noise and disturbance for more than 12 hours a day impacts foraging, social cohesion, reproductive success, and fetal growth. Boats affect orcas through noise, exhaust, and vessel strikes, and boats change orca whale behavior by just being present on the water.

CON: There are unintended consequences to the whales in this bill. The increased viewing distance will not provide acoustical benefits for the orcas. Washington waters are very busy

and a whale watching moratorium will not take the noise and disturbance out of the water. Eliminating whale watching boats would result in the loss of a buffer between the orcas and Navy sonar testing. This bill does not address the sound impacts from large commercial, fishing, military, and shipping vessels. Whale watching boats show other boaters how they should motor around orcas in a safe manner. Many recreational boaters are unfamiliar with whale watching best practices and they do not realize the impacts of high speeds or distances to the orcas.

OTHER: The go slow provisions of the bill are supported. Whale watching boats provide a protective bubble around the orcas and model good boating behavior around the orcas. The 400 yard bubble is a large area and boaters could be forced into a vessel traffic zone in order to maintain this bubble around multiple orcas. There is no correlation between distance of a vessel and sound level received by the orca.

**Persons Testifying:** PRO: Senator Christine Rolfes, Prime Sponsor; JT Austin, Governor's Office; Todd Hass, Puget Sound Partnership; Amy Windrope, DFW; Captain Alan Myers, DFW Marine Law Enforcement; Kristen Swenddal, DNR; Dr. Joe Gaydos, Seadoc Society; Will Hall, City of Shoreline, Mayor; Captain Alan "Hobbes" Buchanan, whale watch operator; Donna Sandstrom, The Whale Trail; Nora Nickum, Seattle Aquarium; Joanna Schoettler, citizen.

CON: Tony Sermonti, Pacific Whale Watch Association; Shane Aggregard, Island Adventures Whale Watching; Whitney Neugebauer, San Juan Island Outfitters; Della Tall, San Juan and Victoria Clipper; Jeff Friedman, Pacific Whale Watch Association; Brian Goodremont, Pacific Whale Watch Association and San Juan Island Outfitters.

OTHER: Steve Finney, Recreational Boating Association of Washington; George Harris, Northwest Marine Trade Association; Monika Wieland Shields, Orca Behavior Institute; Amanda Colbert, citizen.

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