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SECOND SUBSTITUTE HOUSE BILL 1580

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State of Washington

66th Legislature

2019 Regular Session

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

READ FIRST TIME 03/01/19.

1 AN ACT Relating to the protection of southern resident orca  
2 whales from vessels; amending RCW 77.15.740 and 43.384.050; adding  
3 new sections to chapter 77.65 RCW; adding a new section to chapter  
4 77.15 RCW; creating a new section; prescribing penalties; and  
5 declaring an emergency.

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

7 **Sec. 1.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to  
8 read as follows:

9 (1) Except as provided in subsection (2) of this section, it is  
10 unlawful for a person to:

11 (a) Cause a vessel or other object to approach, in any manner,  
12 within (~~two~~) three hundred yards of a southern resident orca whale;

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

19 (c) Position a vessel behind a southern resident orca whale at  
20 any point located within four hundred yards;

1        ~~(d)~~ (d) Fail to disengage the transmission of a vessel that is within  
2 ~~((two))~~ three hundred yards of a southern resident orca whale; ((or  
3 ~~(d))~~ (e) Cause a vessel or other object to exceed a speed  
4 greater than seven knots over ground at any point located within one-  
5 half nautical mile (one thousand thirteen yards) of a southern  
6 resident orca whale; or

7        (f) Feed a southern resident orca whale.

8        (2) A person is exempt from subsection (1) of this section if  
9 that person is:

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

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

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

22        (d) Lawfully engaging in a treaty Indian or commercial fishery  
23 that is actively setting, retrieving, or closely tending fishing  
24 gear. Commercial fishing vessels in transit are not exempt from  
25 subsection (1) of this section;

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

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

33        (3) For the purpose of this section, "vessel" includes aircraft  
34 while on the surface of the water, and every description of  
35 watercraft on the water that is used or capable of being used as a  
36 means of transportation on the water. However, "vessel" does not  
37 include inner tubes, air mattresses, sailboards, and small rafts, or  
38 flotation devices or toys customarily used by swimmers.

39        (4)(a) A violation of this section is a natural resource  
40 infraction punishable under chapter 7.84 RCW and carries a fine of

1 five hundred dollars, not including statutory assessments added  
2 pursuant to RCW 3.62.090.

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

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.65  
7 RCW to read as follows:

8 (1) A commercial whale watching license is required for  
9 commercial whale watching operators. The annual fee is two hundred  
10 dollars in addition to the annual application fee of seventy-five  
11 dollars.

12 (2) The annual fees for a commercial whale watching license as  
13 described in subsection (1) of this section must include fees for  
14 each motorized or sailing vessel or vessels as follows:

15 (a) One to twenty-four passengers, three hundred twenty-five  
16 dollars;

17 (b) Twenty-five to fifty passengers, five hundred twenty-five  
18 dollars;

19 (c) Fifty-one to one hundred passengers, eight hundred twenty-  
20 five dollars;

21 (d) One hundred one to one hundred fifty passengers, one thousand  
22 eight hundred twenty-five dollars; and

23 (e) One hundred fifty-one passengers or greater, two thousand  
24 dollars.

25 (3) The annual fees for a commercial whale watching license as  
26 described in subsection (1) of this section must include fees for  
27 each kayak as follows:

28 (a) One to ten kayaks, one hundred twenty-five dollars;

29 (b) Eleven to twenty kayaks, two hundred twenty-five dollars;

30 (c) Twenty-one to thirty kayaks, four hundred twenty-five  
31 dollars; and

32 (d) Thirty-one or more kayaks, six hundred twenty-five dollars.

33 (4) The holder of a commercial whale watching license for  
34 motorized or sailing vessels required under subsection (2) of this  
35 section may substitute the vessel designated on the license, or  
36 designate a vessel if none has previously been designated, if the  
37 license holder:

38 (a) Surrenders the previously issued license to the department;

1 (b) Submits to the department an application that identifies the  
2 currently designated vessel, the vessel proposed to be designated,  
3 and any other information required by the department; and

4 (c) Pays to the department a fee of thirty-five dollars and an  
5 application fee of one hundred five dollars.

6 (5) Unless the license holder owns all vessels identified on the  
7 application described in subsection (4)(b) of this section, the  
8 department may not change the vessel designation on the license more  
9 than once per calendar year.

10 (6) A person who is not the license holder may operate a  
11 motorized or sailing commercial whale watching vessel designated on  
12 the license only if:

13 (a) The person holds an alternate operator license issued by the  
14 director; and

15 (b) The person is designated as an alternate operator on the  
16 underlying commercial whale watching license.

17 (7) No individual may hold more than one alternate operator  
18 license. An individual who holds an alternate operator license may be  
19 designated as an alternate operator on an unlimited number of  
20 commercial whale watching licenses.

21 (8) The annual fee for an alternate operator license is two  
22 hundred dollars in addition to an annual application fee of seventy-  
23 five dollars.

24 (9) The definitions in this subsection apply throughout this  
25 section unless the context clearly requires otherwise.

26 (a) "Commercial whale watching" means the act of taking, or  
27 offering to take, passengers aboard a vessel in order to view marine  
28 mammals in their natural habitat for a fee.

29 (b) "Commercial whale watching operators" includes commercial  
30 vessels and kayak rentals that are engaged in the business of whale  
31 watching.

32 (c) "Commercial whale watching vessel" means any vessel that is  
33 being used as a means of transportation for individuals to engage in  
34 commercial whale watching.

35 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.65  
36 RCW to read as follows:

37 (1) The department must adopt rules for holders of a commercial  
38 whale watching license established in section 2 of this act for the  
39 viewing of southern resident orca whales for the inland waters of

1 Washington by January 1, 2021. The rules must be designed to reduce  
2 the daily and cumulative impacts on southern resident orca whales and  
3 consider the economic viability of license holders. The department  
4 shall at a minimum consider protections for southern resident orca  
5 whales by establishing limitations on:

6 (a) The number of commercial whale watching operators that may  
7 view southern resident orca whales at one time;

8 (b) The number of days and hours that commercial whale watching  
9 operators can operate;

10 (c) The duration spent in the vicinity of southern resident orca  
11 whales; and

12 (d) The areas in which commercial whale watching operators may  
13 operate.

14 (2) The department may phase in requirements, but must adopt  
15 rules to implement this section. The department may consider the use  
16 of an automatic identification system to enable effective monitoring  
17 and compliance.

18 (3) The department may phase in requirements, but must adopt  
19 rules pursuant to chapter 34.05 RCW to implement this section  
20 including public, industry, and interested party involvement.

21 (4) Before January 1, 2021, the department shall convene an  
22 independent panel of scientists to review the current body of best  
23 available science regarding impacts to southern resident orcas by  
24 small vessels and commercial whale watching due to disturbance and  
25 noise. The department must use the best available science in the  
26 establishment of the southern resident orca whale watching rules and  
27 continue to adaptively manage the program using the most current and  
28 best available science.

29 (5) The department shall complete an analysis and report to the  
30 governor and the legislature on the effectiveness of and any  
31 recommendations for changes to the whale watching rules, license fee  
32 structure, and approach distance rules by November 30, 2022, and  
33 every two years thereafter until 2026. This report must be in  
34 compliance with RCW 43.01.036.

35 (6) The definitions in this subsection apply throughout this  
36 section unless the context clearly requires otherwise.

37 (a) "Commercial whale watching" has the same meaning as defined  
38 in section 2 of this act.

39 (b) "Commercial whale watching operators" has the same meaning as  
40 defined in section 2 of this act.

1 (c) "Inland waters of Washington" means Puget Sound and related  
2 inland marine waters, including all salt waters of the state of  
3 Washington inside the international boundary line between Washington  
4 and British Columbia, and lying east of the junction of the Pacific  
5 Ocean and the Strait of Juan de Fuca, and the rivers and streams  
6 draining to Puget Sound as mapped by water resource inventory areas 1  
7 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15  
9 RCW to read as follows:

10 (1) A person is guilty of unlawfully engaging in commercial whale  
11 watching in the second degree if the person:

12 (a) Does not have and possess all licenses and permits required  
13 under this title; or

14 (b) Violates any department rule regarding the operation of a  
15 commercial whale watching vessel near a southern resident orca whale.

16 (2) A person is guilty of engaging in commercial whale watching  
17 in the first degree if the person commits the act described in  
18 subsection (1) of this section and the violation occurs within one  
19 year of the date of a prior conviction under this section.

20 (3)(a) Unlawful commercial whale watching in the second degree is  
21 a misdemeanor.

22 (b) Unlawful commercial whale watching in the first degree is a  
23 gross misdemeanor. Upon conviction, the director shall deny  
24 applications submitted by the person for a commercial whale watching  
25 license or alternate operator license for two years from the date of  
26 conviction.

27 **Sec. 5.** RCW 43.384.050 and 2018 c 275 s 6 are each amended to  
28 read as follows:

29 (1) From amounts appropriated to the department for the authority  
30 and from other moneys available to it, the authority may incur  
31 expenditures for any purpose specifically authorized by this chapter  
32 including:

33 (a) Entering into a contract for a multiple year statewide  
34 tourism marketing plan with a statewide nonprofit organization  
35 existing on June 7, 2018, whose sole purpose is marketing Washington  
36 to tourists. The marketing plan must include, but is not limited to,  
37 focuses on rural tourism-dependent counties, natural wonders and  
38 outdoor recreation opportunities of the state, including sustainable

1 whale watching, attraction of international tourists, identification  
2 of local offerings for tourists, and assistance for tourism areas  
3 adversely impacted by natural disasters. In the event that no such  
4 organization exists on June 7, 2018, or the initial contractor ceases  
5 to exist, the authority may determine criteria for a contractor to  
6 carry out a statewide marketing program;

7 (b) Contracting for the evaluation of the impact of the statewide  
8 tourism marketing program; and

9 (c) Paying for administrative expenses of the authority, which  
10 may not exceed two percent of the state portion of funds collected in  
11 any fiscal year.

12 (2) All nonstate moneys received by the authority under RCW  
13 43.384.060 or otherwise provided to the authority for purposes of  
14 matching funding must be deposited in the authority's private local  
15 account created under RCW 43.384.020(4) and are held in trust for  
16 uses authorized solely by this chapter.

17 (3) "Sustainable whale watching" means an experience that  
18 includes whale watching from land or aboard a vessel that reduces the  
19 impact on whales, provides a recreational and educational experience,  
20 and motivates participants to care about marine mammals, the sea, and  
21 marine conservation.

22 NEW SECTION. Sec. 6. Section 1 of this act is necessary for the  
23 immediate preservation of the public peace, health, or safety, or  
24 support of the state government and its existing public institutions,  
25 and takes effect immediately.

26 NEW SECTION. Sec. 7. If specific funding for the purposes of  
27 this act, referencing this act by bill or chapter number, is not  
28 provided by June 30, 2019, in the omnibus appropriations act, this  
29 act is null and void.

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