

SENATE BILL REPORT

SB 5371

As of January 29, 2023

Title: An act relating to protecting southern resident orcas from vessels.

Brief Description: Protecting southern resident orcas from vessels.

Sponsors: Senators Lovelett, Shewmake, Hasegawa, Hunt, Keiser, Kuderer, Nguyen, Pedersen, Randall, Robinson, Rolfes, Saldaña, Valdez, Wellman and Wilson, C..

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 1/30/23.

Brief Summary of Bill

- Increases the distance a vessel must maintain away from a southern resident orca from 400 yards to 1000 yards.
- Modifies commercial whale watching business license fees by removing fee structures for each vessel based on the number of passengers and eliminating certain other fees.
- Adds a paddle tour business license for businesses conducting paddle tours to view marine mammals for a fee.
- Increases penalties for violations of commercial whale watching rules and authorizes the Department of Fish and Wildlife to revoke licenses under certain circumstances.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Staff: Jeff Olsen (786-7428)

Background: Southern Resident Orca. The federal government listed the southern

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

resident orca as endangered under the Endangered Species Act in November 2005. In January 2008 the federal government released a recovery plan for these orcas. The recovery plan identifies vessel effects as having potential detrimental impacts on the orca population. In 2019, the Department of Fish and Wildlife (DFW) was directed to implement a commercial whale watching license for Puget Sound and related inland marine waters of Washington to protect southern resident orcas.

Vessel Distance Regulations. It is unlawful for a person to cause a vessel to approach within 300 yards of a southern resident orca. It is unlawful to position a vessel in the path of a southern resident orca within 400 yards. 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 Whale Watching Licenses and Fees. All businesses that engage in commercial whale watching must acquire an annual commercial whale watching business license, with an additional license fee for each vessel designated under a whale watching license. 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.

To conduct commercial whale watching via guided kayak tours, a person must obtain a kayak guide license and be designated as a kayak guide on the underlying commercial whale watching business license. The kayak guide license is \$25, with a \$25 application fee. A person who holds a kayak guide license may be designated on an unlimited number of commercial whale watching business licenses, but may hold only one kayak guide license.

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

License and application fees were waived in calendar years 2021 and 2022.

Penalties. Commercial whale watching without a permit, or violating DFW rules regarding commercial whale watching, is a misdemeanor, and doing so within one year of the date of a prior conviction is a gross misdemeanor. Upon conviction of a gross misdemeanor, DFW must deny applications for a commercial whale watching license or alternate operator

license for up to two years from the conviction. Several exemptions exist, including for government vessels on official duty, permitted scientific research, and for navigational safety.

Review and Reporting. In November of 2022, DFW provided the first of three adaptive management reports containing an analysis on the effectiveness and recommendations for changes to the whale watching rules, license fee structures, and approach distance rules.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): Vessel Speed and Distance. It is unlawful for a person to cause a vessel to approach, position a vessel, or cause a vessel to exceed a speed of seven knots within 1000 yards of a southern resident orca. It is also unlawful to fail to disengage the transmission of a vessel that is within 400 yards of a southern resident orca. If an operator of a vessel has entered within 1000 yards of a southern resident orca, they must immediately safely reposition the vessel to be 1000 yards or farther away. However, a person operating a state government vessel in the course of official duties is exempt from the requirement to immediately reposition their vessel.

Commercial Whale Watching Licenses and Fees. A commercial whale watching business license must list each motorized and sailing vessel to be covered under the business license. The requirement for annual fees for a commercial whale watching business license for each vessel with graduated fees based on the number of passengers is eliminated.

A commercial whale watching license holder may designate an additional vessel on the license. Fees of \$35 and an application fee of \$105 for substituting vessels designated under a license are repealed. The restriction that DFW may only change a vessel designation on a commercial whale watching license once per calendar year is repealed. The annual fee and application fee for a commercial whale watching operator license is consolidated and reduced from \$175 to \$25.

A paddle tour business license is required for a business conducting paddle tours. The annual fee for a paddle tour business license is \$200 plus an annual application fee of \$70 . The kayak guide license is renamed a paddle guide license. A person may conduct paddle tours in waters inhabited by marine mammals if the person holds a paddle guide license. A paddle tour is defined as the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson in waters inhabited by marine mammals in their natural habitat, for a fee. A person who holds a paddle guide license may be designated on an unlimited number of paddle tour business licenses.

A commercial whale watching license or application fee may be waived for organizations whose commercial whale watching or marine paddle tour activities are solely for nonprofit educational purposes.

Penalties. A person is guilty of unlawfully engaging in commercial whale watching or unlawfully engaging in a paddle tour in the first degree if they do not possess required licenses and permits, or violate DFW rules regarding commercial whale watching, and the violation occurs within five years of the date of a prior conviction, a finding of guilt, or under certain circumstances the disposition of a case originally charged as a violation. In addition to penalties for unlawful commercial whale watching or engaging in a paddle tour in the first degree, DFW shall revoke a license and order a two-year suspension.

Appropriation: None.

Fiscal Note: Requested on January 28, 2023.

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

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