

HOUSE BILL REPORT

SSB 6395

As Reported by House Committee On:

Agriculture & Natural Resources
Appropriations Subcommittee on General Government & Audit Review

Title: An act relating to protecting southern resident orca whales from disturbances by vessels.

Brief Description: Protecting orca whales from the impacts from vessels.

Sponsors: Senate Committee on Natural Resources, Ocean & Recreation (originally sponsored by Senators Spanel, Swecker, Jacobsen, Morton, Hargrove, Brandland, Fraser, Shin, Kohl-Welles, Rasmussen, Sheldon and Rockefeller).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/25/08, 2/27/08 [DPA];

Appropriations Subcommittee on General Government & Audit Review: 2/28/08, 2/29/08 [DPA(APPG w/o AGNR)].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Prohibits people and their vessels from being within 300 feet of or feeding any southern orca whale without an express exemption.
- Requires the Washington State Parks and Recreation Commission and the Washington Department of Fish and Wildlife to disseminate information about the prohibitions, exemptions, and other regulations regarding southern orca whales.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass as amended. Signed by 8 members: Representatives Blake, Chair; Van De Wege, Vice Chair; Eickmeyer, Grant, Lantz, Loomis, McCoy and Nelson.

Minority Report: Do not pass. Signed by 5 members: Representatives Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Kristiansen, Newhouse and Orcutt.

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.

Staff: Jaclyn Ford (786-7339).

Background:

The Orca (*Orcinus orca*)

The federal government listed a population of orcas, known as the Southern Residents, as "endangered" under the Endangered Species Act in December 2005. These orcas spend each summer and fall in Washington's Puget Sound. The population is composed of three family groups of whales that have been named J, K, and L pods.

Some of the possible causes of the Southern Resident's decline are: reduced quantity and quality of prey, persistent pollutants that cause immune or reproductive system dysfunction, oil spills, and noise and disturbance from vessels. Federal rule implementation is estimated to occur by late 2009.

In the summer of 2007, San Juan County passed a local ordinance to protect the endangered Southern Resident orca whale population from boaters. The San Juan County ordinance is based on the "Be Whale Wise" guidelines developed by the Whale Watch Operators Association Northwest and the Whale Museum Sound Watch Boater Education Program. County marine enforcement can issue citations for those boaters harassing the whales within San Juan County waters.

Boating Safety Laws

Washington's boating safety laws are administered by the Washington State Parks and Recreation Commission (State Parks). Every law enforcement officer in Washington and its political subdivisions has the authority to enforce the boating laws, including county sheriffs, officers of other local law enforcement entities, the Washington state patrol, state park rangers, and the Washington Department of Fish and Wildlife (WDFW).

Natural Resource Infractions

A natural resource infraction is a monetary penalty of no more than \$500 for each offense, unless specifically authorized by statute. Natural resource infractions are non-criminal offenses.

Summary of Amended Bill:

It is a natural resource infraction to approach or cause a vessel to approach a southern orca whale within 300 feet. It is also a natural resource infraction to intercept, feed, or fail to disengage the transmission of a vessel within 300 feet of a southern orca whale.

A person is exempt from these requirements if the safety of the vessel, crew, or passengers is in jeopardy; because of vessel design limitations; or weather conditions make complying infeasible. Also exempt are commercial fishers actively tending to their gear, officials on duty, and people authorized by a state or federal agency. In addition, if a boater can show by a preponderance of the evidence that he or she did not knowingly approach within 300 feet of an orca, the boater will not be penalized.

The WDFW and the State Parks will disseminate information about the new regulations regarding southern orca whales, current whale and wildlife viewing guidelines, and other responsible wildlife viewing messages.

Washington law enforcement is encouraged to utilize all existing statutes and regulations, including the boating safety laws, to protect southern orca whales from impacts of vessels.

Amended Bill Compared to Substitute Bill:

This bill changes the impacts of vessels on Orcas to a "potential" rather than a "significant" threat. This bill creates an affirmative defense available to a boater who can show by a preponderance of the evidence that he or she did not knowingly approach within 300 feet of an orca.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) If too many exemptions are added, enforceability may be difficult and federal law may preempt this law. The word "significant" should be changed to "potential" in the intent section. There is a problem with recreational boaters negatively affecting the Orcas. All boaters should be following this law anyway. Most boaters support this concept. The Marine Mammal Protection Act restricts all forms of harassment to Orcas. By lessening the enforcement section, this bill would be weaker than the federal standard. Intent of the boater is impossible to enforce. The WDFW will use its discretion in issuing citations and the Legislature should give the WDFW that opportunity.

(With concerns) Safety zones and good boating behavior is a must in protecting the Orcas. This bill should be extended to all Orcas, not just the Southern Residents. Education on this issue is key. "Knowingly" should be included in the enforcement section. Orcas can show up unexpectedly. It's difficult to know when Orcas will show up. "Intentionally" or "negligently" should be in the enforcement section to mimic federal standards. There should be a severability clause in this bill. This legislation is good for boaters and good for Orcas, but "knowingly" should be added to make the law clear for boaters. Ferries should also be exempt.

(Opposed) None.

Persons Testifying: (In support) Mike Cenci, Washington Department of Fish and Wildlife; Bruce Wishart, People for Puget Sound; and Darcie Larson, Whale Watch Operator's Association Northwest.

(With concerns) David Scott, David Kutz, Richard Marshall, Gordon Foundain, Jim King, Recreational Boater's Association of Washington; James Curry, Northwest Marine Trade Association; and Brad Tower, Arrow Marine Launch.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & AUDIT REVIEW

Majority Report: Do pass as amended by Committee on Appropriations Subcommittee on General Government & Audit Review and without amendment by Committee on Agriculture & Natural Resources. Signed by 8 members: Representatives Linville, Chair; Ericks, Vice Chair; Blake, Lantz, Liias, Miloscia, Morris and Nelson.

Minority Report: Do not pass. Signed by 4 members: Representatives Skinner, Assistant Ranking Minority Member; Alexander, Chandler and Kretz.

Staff: Alicia Dunkin (786-7178).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Audit Review Compared to Recommendation of Committee On Agriculture & Natural Resources:

A statement is made that the bill is not intended to conflict with existing safe vessel operation or navigation rules and "vessel" is more narrowly defined.

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) We are comfortable with the bill. We try hard to protect orcas which also helps the boating community. When "knowingly" was removed from the bill, boaters had concerns that orcas would come up to boats and people would get violations. We are now willing to accept the "affirmative defense" that this bill allows. The average boater can't tell the difference between a southern orca and any other type of orca, so our educational materials will just say to avoid all orcas. We did not want to put a large burden on the Department of Fish and Wildlife to prove that someone was in violation. The definition of vessel in the bill is different in the Senate bill and we would like to use the definition that was included in the House's companion bill.

(Opposed) None.

Persons Testifying: Brad Tower, Arrow Marine; Jim King, Recreational Boating Association of Washington; and Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.