

SENATE BILL REPORT

SB 6395

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, February 04, 2008

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: Senators Spanel, Swecker, Jacobsen, Morton, Hargrove, Brandland, Fraser, Shin, Kohl-Welles, Rasmussen, Sheldon and Rockefeller.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/24/08, 2/04/08 [DPS-WM, DNP, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: That Substitute Senate Bill No. 6395 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Jacobsen, Chair; Hatfield, Vice Chair; Morton, Ranking Minority Member; Fraser, Hargrove, Rockefeller and Spanel.

Minority Report: Do not pass.

Signed by Senator Swecker.

Minority Report: That it be referred without recommendation.

Signed by Senator Stevens.

Staff: Curt Gavigan (786-7437)

Background: By statute, the southern resident orca whale (orca) is the official marine mammal of the state of Washington. During the spring, summer, and fall the orca's range includes the Puget Sound. The population is composed of three groups of whales that have been named the J, K and L pods.

The federal government listed the orca as endangered under the Endangered Species Act in November 2005. In November 2006 the federal government released a proposed recovery plan for these orcas. The proposed recovery plan identifies vessel effects as having potential detrimental impacts on the orca population. The federal government has also initiated a related rulemaking process, requesting public comment on whether and, if so, what type of regulations or other measures would be appropriate to protect orcas from vessel effects.

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.

In 2007 San Juan County passed an ordinance prohibiting actions including approaching within 300 feet of an orca, remaining or placing a vessel in the path of an orca, failing to yield to an orca, and feeding an orca.

Natural resource infractions are civil, not criminal, offenses. An infraction is initiated by issuing a notice of infraction. Such notice represents a determination that an infraction has been committed. A person may contest the violation. If so, the state must demonstrate that the violation occurred by a preponderance of the evidence.

Summary of Bill (Recommended Substitute): Subject to a natural resource infraction, persons may not:

- approach within 300 feet of an orca;
- cause a vessel or other object to approach within 300 feet of an orca;
- intercept an orca, which involves placing or allowing a vessel to remain in the path of an orca;
- fail to disengage the transmission of a vessel that is within 300 feet of an orca; or
- feed an orca.

Exemptions exist for vessel safety, persons participating in specified commercial fishery activities, persons acting in a law enforcement capacity, or persons acting with authorization from the state or federal government.

Washington's law enforcement agencies are encourage to utilize existing statutes and regulations, including current vessel operation requirements, to protect orcas from impacts from vessels.

The Department of Fish and Wildlife and the State Parks and Recreation Commission must disseminate information about the requirements of the bill, orca and wildlife viewing guidelines, and other responsible wildlife viewing messages.

EFFECT OF CHANGES MADE BY NATURAL RESOURCES, OCEAN & RECREATION COMMITTEE (Recommended Substitute): Removes the requirement that the infractions be committed knowingly. Specifies that the vessel safety exception applies from the perspective of a "reasonably prudent person."

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill: PRO: The southern resident orca population is declining, but there is still time to act. Although Washington cannot immediately address impacts to orcas, it can limit vessel impacts. This law will be very valuable while the federal government deliberates how to implement orca protections. The vessel buffer zones around orcas in the bill would provide the state with a valuable enforcement tool. The state should consider including transient orcas within the scope of the bill.

OTHER: Although the state should protect orcas, laws requiring large ships to veer off course could pose a safety and environmental threat.

Persons Testifying: PRO: Kevin Ranker, San Juan County; Mike Cenci, Department of Fish and Wildlife; Bruce Wishart, People for Puget Sound; Robin Baird, Cascadia Research.

OTHER: Randy Ray, Pacific Merchant Shipping Association.