

# SENATE BILL REPORT

## E2SSB 6268

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As of Third Reading

**Title:** An act relating to creating the orca protection act.

**Brief Description:** Creating the orca protection act.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Ranker, Rolfes, Chase, Van De Wege, Conway, Keiser, Liias, Frockt, Hasegawa, Hunt, Palumbo and Saldaña).

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/23/18, 2/01/18 [DPS-WM, w/oRec].

Ways & Means: 2/05/18, 2/06/18 [DP2S, DNP, w/oRec].

**Brief Summary of Engrossed Second Substitute Bill**

- Directs the Department of Fish and Wildlife (DFW) to conduct marine-based education and enforcement patrols during peak orca viewing season.
- Extends existing restrictions on vessels approaching within 200 yards of an orca to also include aircraft and drones.
- Prohibits a person from exceeding a speed of seven knots within 400 yards of a southern resident orca whale.
- Requires a study on orca impacts from human-generated marine noise, and a meeting on coordination of recovery strategies between Washington and British Columbia.

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

**Majority Report:** That Substitute Senate Bill No. 6268 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; McCoy, Vice Chair; Warnick, Ranking Member; Nelson.

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*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.*

**Minority Report:** That it be referred without recommendation.  
Signed by Senator Honeyford.

**Staff:** Curt Gavigan (786-7437)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** That Second Substitute Senate Bill No. 6268 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen and Ranker.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Schoesler, Van De Wege, Wagoner and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Braun, Ranking Member; Rivers.

**Staff:** Jed Herman (786-7346)

**Background:** Role of the Department of Fish and Wildlife (DFW). 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. By statute, 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 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.

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 government vessels on official duty, permitted scientific research, and for navigational safety.

**Summary of Engrossed Second Substitute Bill:** Orca Education and Enforcement Patrols. DFW must conduct specified marine patrols during the 22 most active weeks for southern resident orca whale viewing activity each year.

Vessel Distance Regulations. In addition to the current prohibition that applies to vessels, a person may not cause an aircraft to approach within 200 yards of a southern resident orca whale. Additionally, a person may not cause a vessel to exceed a speed over ground of seven knots within 400 yards of a southern resident orca. In addition to current exemptions, provides that fines must be waived due to certain visibility or equipment issues.

Orca-Related Study Provisions. DFW must coordinate with appropriate agencies, tribal, and nongovernmental partners to identify research and management actions undertaken that relate to impacts from human-generated marine noise. DFW must identify options and recommendations on potential legislative or administrative actions the state can take to address impacts from noise. DFW must provide its analysis and recommendations by December 1, 2018.

Additionally, the Salish Sea Institute (Institute) at Western Washington must convene a meeting on coordination of southern resident killer whale recovery strategies between British Columbia and Washington. The meeting must occur by December 31, 2018, and the Institute must provide a meeting summary to the Legislature within 30 days of the meeting.

An intent section is included.

**EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):**

- Specifies that DFW must conduct a minimum of 100 annual enforcement patrols each year, subject to the availability of amounts appropriated for that purpose.
- Directs DFW to report if they do not meet that goal.
- Makes the direction to DFW for coordination exercises regarding the affect of human-generated marine noise subject to the availability of amounts appropriated for that purpose.
- Moves up the required completion date for a meeting on orca recovery coordination from 2020 to 2018.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):**

- Removes the requirement for DFW to conduct a specific number of orca-related education and enforcement patrols.
- Changes the date by which the Institute must host the joint meeting on orca recovery coordination between British Columbia and Washington from June 30, 2018, to December 31, 2020.
- Includes counties in the list of entities DFW must coordinate with during the study on orca impacts from human-generated marine noise.
- Removes appropriation sections.

**Appropriation:** None.

**Fiscal Note:** Available.

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

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

**Staff Summary of Public Testimony on Proposed Substitute (Agriculture, Water, Natural Resources & Parks):** *The committee recommended a different version of the bill than what was heard.* PRO: Declining orca populations is a huge issue. Major causes of the problem relate to toxics, lack of food, and noise issues. While we look at long term solutions, this bill provides some action items we can enact now. The chance to coordinate with British Columbia in the bill is valuable. No matter what the food source is, orcas won't be able to eat if they cannot find them because of noise issues. Food is the critical issue that must be solved in the long term. Local governments value orca presence, and want to be part of ongoing discussions. Vessel regulations have proven an effective tool to protect whales and change boater behavior.

**Persons Testifying (Agriculture, Water, Natural Resources & Parks):** PRO: Senator Kevin Ranker, Prime Sponsor; Donna Sandstrom, The Whale Trail; Mary Denend, citizen; Darren Nienaber, citizen; Brynn Brady, Washington Association of Counties/Coastal Caucus; Penny Becker, DFW; Mike Cenci, Deputy Chief, DFW; Ralph Munro, former Secretary of State; Darcy Nonemacher, Washington Environmental Council; Sheida Sahandy, Puget Sound Partnership; Kriss Kevorkian, citizen.

**Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks):** No one.

**Staff Summary of Public Testimony on First Substitute (Ways & Means):** *The committee recommended a different version of the bill than what was heard.* PRO: I have been working on orca recovery since the 2000s. This bill addresses one of the issues affecting recovery and that is excessive marine vessel noise.

CON: Marine vessel pilots are concerned about the provisions requiring a top speed of seven knots, which is effective if they are within 400 yards.

**Persons Testifying (Ways & Means):** PRO: Senator Kevin Ranker, Prime Sponsor.

CON: Brad Tower, Arrow Launch Service.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.