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**SENATE BILL 5577**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Rolfes, Frockt, Liias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor

AN ACT Relating to the protection of southern resident orca whales from vessels; amending RCW 77.15.740; adding a new section to chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and declaring an emergency.

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

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

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

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

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

(c) Fail to disengage the transmission of a vessel that is within ((~~two~~)) four hundred yards of a southern resident orca whale; ((~~or~~))

(d) Cause a vessel or other object to exceed a speed greater than seven knots over ground at any point located within one-half nautical mile (one thousand thirteen yards) of a southern resident orca whale; or

(e) Feed a southern resident orca whale.

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

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

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

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

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

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

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

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

(4)(a) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW and carries a fine of five hundred dollars, not including statutory assessments added pursuant to RCW 3.62.090.

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

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

(1) Commercial whale watching operators are prohibited from approaching or intercepting within six hundred fifty yards in any direction of a southern resident orca whale until January 1, 2023.

(2) By August 1, 2019, the department must adopt rules, including emergency rules if necessary, to implement this section.

(3) The department shall complete a report to the governor and the legislature on the effectiveness of the prohibition by November 30, 2022, including the best available science on commercial whale watching vessel disturbance and noise, and the current status of the population. This report must be in compliance with RCW 43.01.036.

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

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

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

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

NEW SECTION. **Sec.**  A new section is added to chapter 77.70 RCW to read as follows:

(1) A commercial whale watching license is required for all businesses engaged in commercial whale watching activities as permitted in section 4 of this act.

(2) The initial annual fee for a commercial whale watching license involving motorized or sailing vessels is:

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

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

(c) Fifty-one to one hundred passengers, nine hundred twenty-five dollars;

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

(e) One hundred fifty-one passengers or greater, two thousand nine hundred twenty-five dollars.

(3) The initial annual fee for commercial whale watching license involving kayaks is four hundred twenty-five dollars.

(4) The application fee for a commercial whale watching license is seventy-five dollars.

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

NEW SECTION. **Sec.**  A new section is added to chapter 77.70 RCW to read as follows:

(1) The department must implement a limited-entry whale watching license program for the inland waters of Washington for all whale species by January 1, 2021. The limited-entry whale watching license must be designed to reduce the daily and cumulative impacts on southern resident orca whales and consider the economic viability of license holders. In designing the program, the department may only license entities that have operated a commercial whale watch business for at least forty-five trips in Washington waters over 2016, 2017, and 2018. The department shall at a minimum consider limitations on:

(a) The number of commercial whale watching operators;

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

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

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

(2) The limited-entry whale watching license program must use an automatic identification system to enable effective monitoring and compliance.

(3) The limited-entry whale watching license program may consider options for the purchase and retirement of commercial whale watching operations.

(4) The department may phase in requirements, but must adopt rules to implement this section.

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

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

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

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

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

NEW SECTION. **Sec.**  Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

**--- END ---**