

# HOUSE BILL REPORT

## 2SSB 5577

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### As Passed House - Amended:

April 15, 2019

**Title:** An act relating to the protection of southern resident orca whales from vessels.

**Brief Description:** Concerning the protection of southern resident orca whales from vessels.

**Sponsors:** Senate Committee on Ways & Means (originally sponsored by Senators Rolfes, Frockt, Lias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña and Wilson, C.; by request of Office of the Governor).

### Brief History:

#### Committee Activity:

Rural Development, Agriculture, & Natural Resources: 3/20/19, 3/27/19 [DP];  
Appropriations: 4/5/19, 4/8/19 [DPA].

#### Floor Activity:

Passed House - Amended: 4/15/19, 84-13.

### Brief Summary of Second Substitute Bill (As Amended by House)

- Increases the distance within which a vessel or other object may not approach a southern resident orca whale (orca).
- Establishes a speed limit of 7 knots within one-half of a nautical mile of an orca.
- Establishes commercial whale watching and alternate operator licenses, sets fees for the licenses, and requires the Department of Fish and Wildlife (DFW) to report on the license program.
- Directs the DFW to convene an independent science panel to analyze the most current and best available science regarding noise impacts to orcas by small vessels and whale watching vessels.
- Requires the topic of sustainable whale watching to be included in the statewide tourism marketing plan.

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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.*

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## HOUSE COMMITTEE ON RURAL DEVELOPMENT, AGRICULTURE, & NATURAL RESOURCES

**Majority Report:** Do pass. Signed by 12 members: Representatives Blake, Chair; Shewmake, Vice Chair; Dent, Assistant Ranking Minority Member; Chapman, Fitzgibbon, Kretz, Lekanoff, Orcutt, Pettigrew, Ramos, Springer and Walsh.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Chandler, Ranking Minority Member; Dye and Schmick.

**Staff:** Rebecca Lewis (786-7339).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** Do pass as amended. Signed by 25 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Senn, Springer, Stanford, Sullivan, Tarleton, Tharinger and Ybarra.

**Minority Report:** Do not pass. Signed by 6 members: Representatives Chandler, Dye, Kraft, Schmick, Steele and Sutherland.

**Minority Report:** Without recommendation. Signed by 1 member: Representative MacEwen, Assistant Ranking Minority Member.

**Staff:** Dan Jones (786-7118).

### **Background:**

Southern resident orca whales (orcas) are the only known resident population in the United States and are listed as an endangered species under federal and state law.

### Vessel Speed and Distance.

Under state law, it is unlawful to cause a vessel or other object to approach within 200 yards of an orca, to fail to disengage the transmission of a vessel within 200 yards of an orca, and to position a vessel to be in the path of an orca at any point within 400 yards. A "vessel" includes aircraft on the water surface and watercraft capable of being used for transportation. It does not include inner tubes, air mattresses, sailboards, small rafts, or flotation devices or toys usually used by swimmers.

Exemptions to the approach restrictions include conducting permitted scientific research activities, operating a government vessel when engaged in certain official duties, and lawfully engaging in a treaty Indian or commercial fishery that is actively setting, retrieving, or closely tending fishing gear. A violation of this provision is a natural resource infraction

enforced by the Department of Fish and Wildlife with a penalty of \$500 and statutory assessments.

### Statewide Tourism Marketing Plan.

The Department of Commerce was directed by the Legislature in 2018 to contract with a statewide nonprofit organization to develop a Statewide Tourism Marketing Plan (Plan). The Plan must address a variety of tourism-related topics including: focuses on rural tourism-dependent counties; outdoor recreation opportunities; attraction of international tourists; and assistance for tourism areas adversely impacted by natural disasters.

### **Summary of Amended Bill:**

#### Vessel Speed and Distance.

The distance within which a vessel or other object may not approach a southern resident orca whale (orca) is increased from within 200 yards to within 300 yards. It is unlawful to fail to disengage the transmission of a vessel within 300 yards, instead of 200 yards, of an orca. It is also unlawful to position a vessel within 400 yards behind an orca. A speed limit is established of 7 knots at any point located within one-half of a nautical mile of an orca. Commercial fishing vessels in transit are not exempt from the approach and speed restrictions.

#### Commercial Whale Watching.

##### *Commercial Whale Watching License.*

The Department of Fish and Wildlife (DFW) is directed to implement a commercial whale watching license for the inland waters of Washington. "Inland waters of Washington" means Puget Sound, related inland marine waters inside the international boundary line between Washington and British Columbia and east of the junction of the Pacific Ocean and Strait of Juan de Fuca, and the rivers and streams that flow into the Puget Sound. Annual license and application fees are established in the bill. There is an additional license fee for each vessel designated under a whale watching license. For motorized vessels, this fee is based on the number of passengers, and for kayaks, this fee is based on the number of kayaks. 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.
- For kayaks:
  - \$125 for one to 10 kayaks;
  - \$225 for 11 to 20 kayaks;
  - \$425 for 21 to 30 kayaks; and
  - \$625 for 31 or more kayaks.

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

A person who holds an alternate operator license may be designated as an alternate operator on a vessel designated under a commercial whale watching license. The annual fee for an alternate operator license is \$200 with a \$75 application fee. No person may hold more than one annual alternate operator license, but a person may be designated as an alternate operator on an unlimited number of vessels.

The DFW must adopt rules governing the commercial whale watching program by January 1, 2021, and requirements may be phased in. The rules must be designed to reduce the daily and cumulative impacts to orcas, and must consider the economic viability of license holders. The rules must address, at a minimum, the number of commercial whale watching operators that may view orcas at one time, the number of days and hours when commercial whale watching operators can operate, the duration spent in the vicinity of orcas, and areas where commercial whale watching operators may operate. The DFW may consider the use of an automatic identification system to enable effective monitoring and compliance.

#### *Reporting.*

The DFW must convene an independent science panel before January 1, 2021, to review the most current and best available science regarding impacts to orcas by small vessels and commercial whale watching vessels. The DFW must use the review in the rulemaking process and for adaptive management of the commercial whale watching program.

The DFW must report on both the new approach distance limits and the whale watching license to the Governor and the Legislature by November 30, 2022, and every two years thereafter, until 2026. The report must contain an analysis of the effectiveness of the program and any recommendations for changes to the license fee structure.

#### Statewide Tourism Marketing Plan.

The topic of sustainable whale watching must be included in the statewide tourism marketing plan.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** This bill takes effect 90 days after adjournment of the session in which the bill is passed, except for section 1, relating to vessel speed and distance, which contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony (Rural Development, Agriculture, & Natural Resources):**

(In support) This is a good bill, and there has been a team effort to come up with negotiated language that various parties have agreed to. Elements of this bill came from the Southern Resident Orca Task Force recommendations. A lot of work has been done to balance the need to protect whales and to support an environmentally sustainable whale watching industry. This bill also helps to balance known benefits of reducing vessel noise and southern resident orca whale (orca) disturbance with potential unintended consequences. Disturbance, even if it is not noise, changes orca foraging behavior. Orca survival should not be left to luck. There could be an amendment to align with more protective language in the House companion bill. The Department of Fish and Wildlife is pleased to support this bill along with the industry to reduce vessel noise. The license program is a new tool to gather data related to help reduce orca disturbance. The Pacific Whale Watch Association communicates with the Navy when orcas are in areas where training occurs. New distance requirements are precautionary and will work.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) None.

(Opposed) None.

**Persons Testifying (Rural Development, Agriculture, & Natural Resources):** Senator Rolfes, prime sponsor; JT Austin, Office of the Governor; Todd Hass, Puget Sound Partnership; Amy Windrope, Department of Fish and Wildlife; Mindy Roberts, Washington Environmental Council; and Tony Sermonti, Pacific Whale Watch Association.

**Persons Testifying (Appropriations):** None.

**Persons Signed In To Testify But Not Testifying (Rural Development, Agriculture, & Natural Resources):** None.

**Persons Signed In To Testify But Not Testifying (Appropriations):** None.