

FINAL BILL REPORT

ESSB 5371

PARTIAL VETO

C 452 L 23

Synopsis as Enacted

Brief Description: Protecting southern resident orcas from vessels.

Sponsors: Senate Committee on Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Lovelett, Shewmake, Hasegawa, Hunt, Keiser, Kuderer, Nguyen, Pedersen, Randall, Robinson, Rolfes, Saldaña, Valdez, Wellman and Wilson, C.).

Senate Committee on Agriculture, Water, Natural Resources & Parks

House Committee on Agriculture and Natural Resources

House Committee on Appropriations

Background: Southern Resident Orca. The federal government listed the southern resident killer whale (SRKW) as endangered under the Endangered Species Act in November 2005. In January 2008, the federal government released a recovery plan for these orcas. The recovery plan identifies vessel effects as having potential detrimental impacts on the orca population. In 2019, the Department of Fish and Wildlife (DFW) was directed to implement a commercial whale watching license for Puget Sound and related inland marine waters of Washington to protect SRKWs.

Vessel Distance Regulations. DFW enforces the approach distance and speed of vessels operating near SRKWs. It is unlawful for a person to cause a vessel to approach within 300 yards of a SRKW or to position a vessel in the path of or behind a SRKW within 400 yards. It is also unlawful for a person to fail to disengage the transmission of a vessel that is within 300 yards of a SRKW or to cause a vessel to exceed a speed of seven knots at any point located within one-half of a nautical mile of a SRKW. Further, DFW has adopted rules limiting the time and distance an operator of a motorized commercial whale watching vessel must follow when watching a SRKW. A motorized, commercial whale watching vessel must not approach within one-half nautical mile of a SRKW, and it must be repositioned if it enters within one-half nautical mile.

There are some exemptions to these speed and distance restrictions, which include:

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- the use of government and tribal vessels in the course of official duties such as law enforcement, search and rescue, and public safety;
- approaching a SRKW in accordance with certain federal vessel traffic laws;
- conducting scientific research under a permit from the National Marine Fisheries Service and the DFW; and
- lawfully engaging in a treaty Indian or commercial fishery that is actively setting or tending to gear.

Commercial Whale Watching Licenses and Fees. All businesses that engage in commercial whale watching must acquire an annual commercial whale watching business license, with an additional license fee for each vessel designated under a whale watching license. 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.

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

To conduct commercial whale watching via guided kayak tours, a person must obtain a kayak guide license and be designated as a kayak guide on the underlying commercial whale watching business license. The kayak guide license is \$25, with a \$25 application fee. A person who holds a kayak guide license may be designated on an unlimited number of commercial whale watching business licenses, but may hold only one kayak guide license.

License and application fees were waived in calendar years 2021 and 2022.

Penalties. Commercial whale watching without a permit, or violating DFW rules regarding commercial whale watching, is a misdemeanor, and doing so within one year of the date of a prior conviction is a gross misdemeanor. Upon conviction of a gross misdemeanor, DFW must deny applications for a commercial whale watching license or alternate operator license for up to two years from the conviction.

Violating the vessel distance and speed regulations is a natural resources infraction and carries a fine of \$500.

Review and Reporting. In November of 2022, DFW provided the first of three adaptive

management reports containing an analysis on the effectiveness and recommendations for changes to the whale watching rules, license fee structures, and approach distance rules.

Summary: Vessel Distance Regulations. Effective January 1, 2025, it is unlawful for a person to cause a vessel to approach, position a vessel in the path or behind, or cause a vessel to exceed a speed of seven knots at any point located within 1000 yards of a SRKW. It is also unlawful to fail to disengage the transmission of a vessel that is within 400 yards of a SRKW. Operators of commercial whale watching vessels that enter within 1000 yards of a SRKW must immediately reposition the vessel and report the location of the SRKW. The operator may voluntarily provide an incident report to DFW. However, an oil spill response vessel, a vessel operating as a vessel traffic service user, or a vessel complying with a captain of the port measure are exempt from the vessel distance regulations.

Commercial Whale Watching Licenses and Fees. A commercial whale watching business license must list each motorized and sailing vessel to be covered under the business license. The requirement for annual fees for a commercial whale watching business license for each vessel with graduated fees based on the number of passengers is eliminated.

A commercial whale watching license holder may designate an additional vessel on the license. Fees of \$35 and an application fee of \$105 for substituting vessels designated under a license are repealed. The restriction that DFW may only change a vessel designation on a commercial whale watching license once per calendar year is repealed. The annual fee and application fee for a commercial whale watching operator license is consolidated and reduced from \$175 to \$25.

A paddle tour business license is required for a business conducting paddle tours. The annual fee for a paddle tour business license is \$200 plus an annual application fee of \$70. A person may conduct paddle tours in waters inhabited by marine mammals if the person holds a paddle guide license. A paddle tour is defined as the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, such as kayaks or paddle boards, on a trip, tour, or guided lesson that involves viewing marine mammals in their natural habitat for a fee. The kayak guide license is renamed a paddle guide license. A person who holds a paddle guide license may be designated on an unlimited number of paddle tour business licenses.

A commercial whale watching license or application fee may be waived for organizations whose commercial whale watching or marine paddle tour activities are solely for nonprofit educational purposes.

Penalties. A person is guilty of unlawfully engaging in commercial whale watching or unlawfully engaging in a paddle tour in the first degree if they do not possess required licenses and permits, or violate DFW rules regarding commercial whale watching, and the violation occurs within five years of the date of a prior conviction, a finding of guilt or plea of guilty, or under certain other circumstances. In addition to penalties for unlawful

commercial whale watching or engaging in a paddle tour in the first degree, DFW must revoke a license and order a two-year suspension.

An officer may not issue an infraction to a vessel operator who immediately disengages the transmission of their vessel that is within 400 yards of a SRKW and waits for the whale to leave the vicinity. DFW may provide educational materials in lieu of issuing a natural resources infraction for a violation of vessel distance and speed requirements to protect SRKWs.

Outreach, Education and Reporting. DFW must post signs at public boat launches and marinas that provide information regarding the vessel setbacks and speed limit requirements to protect SRKWs. DFW must conduct outreach and education regarding regulations and best practices for recreational boating in waters inhabited by a SRKW, including the advancement of tools for notifying boaters of SRKW presence, identifying SRKW ecotypes, and estimating distance on the water.

If SRKW population drops to 70 or fewer animals, DFW must submit a report to the Legislature within a year that includes a study of how mandatory 1000-yard setbacks have been enforced, including gaps and solutions to support improvements, the use of data science with respect to southern resident pod health, and evidence-based plans to address southern resident pod health.

DFW must convene a diverse workgroup that includes representatives of nongovernmental organizations, recreational boaters, the commercial whale watching industry, commercial fishers, ports and marinas, relevant government entities, tribes, and the SRKW research community to inform the development of outreach and education strategies. The workgroup must include a report summarizing its work and DFW's outreach strategies in the adaptive management report that is due in 2024. DFW must conduct intensive outreach and education in fiscal year 2024 and the first half of 2025 to implement the outreach recommendations from the workgroup. DFW must also coordinate with the workgroup to assess compliance with and effectiveness of the 1000-yard setbacks from SRKWs with recommendations for further legislative action needed to protect them from vessels. DFW must include this report in the 2024 adaptive management report.

Votes on Final Passage:

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| Senate | 29 | 18 | |
| House | 95 | 2 | (House amended) |
| Senate | 30 | 18 | (Senate concurred) |

Effective: July 23, 2023
January 1, 2025 (Section 2)

Partial Veto Summary:

- Removes the requirement for DFW to coordinate with the Department of Licensing and the Parks and Recreation Commission to mail information upon issuance or renewal of a vessel including the required vessel setbacks, speed limits, and whale warning flags.
- Removes the requirement for DFW to develop a transboundary and statewide plan to implement the vessel distance regulations with input from British Columbia and international whale organizations, with a report to the Legislature due by January 1, 2025.