

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SUBSTITUTE SENATE BILL 5371**

68th Legislature  
2023 Regular Session

Passed by the Senate April 17, 2023  
Yeas 30 Nays 18

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**President of the Senate**

Passed by the House April 11, 2023  
Yeas 95 Nays 2

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**Speaker of the House of  
Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Sarah Bannister, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5371** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

**Secretary of State  
State of Washington**

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**ENGROSSED SUBSTITUTE SENATE BILL 5371**

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AS AMENDED BY THE HOUSE

Passed Legislature - 2023 Regular Session

**State of Washington**

**68th Legislature**

**2023 Regular Session**

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

READ FIRST TIME 02/17/23.

1       AN ACT Relating to protecting southern resident orcas from  
2 vessels; amending RCW 77.15.740, 77.65.615, and 77.15.815; adding new  
3 sections to chapter 77.12 RCW; creating new sections; prescribing  
4 penalties; providing an effective date; and providing an expiration  
5 date.

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

7       NEW SECTION.   **Sec. 1.**   (1) It is the intent of the legislature to  
8 support the recovery of endangered southern resident orcas by  
9 reducing underwater noise and disturbance from vessels, which is one  
10 of the three main threats to the population's recovery, along with  
11 availability of their preferred prey, Chinook salmon, and  
12 contaminants in their food and environment. In particular, the  
13 legislature intends to protect southern resident orcas from those  
14 boaters who intentionally harass, chase, and torment the whales.

15       (2) The legislature further finds that the state has a compelling  
16 interest in protecting the iconic southern resident orca from  
17 extinction by acting to implement recovery activities and adaptively  
18 managing the southern resident orca recovery effort using best  
19 available science. Studies conducted by the national oceanic and  
20 atmospheric administration have indicated that southern resident  
21 orcas significantly reduced their foraging behavior when moving

1 vessels were observed within 1,000 yards of the whale, with females  
2 being more likely than males to reduce their foraging activities when  
3 vessels were within an average of 400 yards.

4 (3) In 2019, the governor's southern resident orca task force  
5 produced 49 recommendations to address the three major threats to the  
6 population's recovery. While many investments have been made and  
7 implementation is ongoing, increased and sustained efforts are needed  
8 to advance salmon recovery, address water quality and contaminants in  
9 the environment, and reduce underwater noise and physical disturbance  
10 of orcas as they attempt to forage, communicate, and rest.

11 (4) The legislature finds that the threats to orcas are  
12 interrelated and they are inexorably linked with salmon recovery.  
13 Salmon face a diverse array of threats throughout their life cycle  
14 including the threat posed by pinnipeds, such as seals and sea lions,  
15 which are protected under federal law, but nevertheless pose a  
16 significant threat to salmon and orca recovery through ongoing and  
17 excessive predation. Salmon also face fish passage barriers,  
18 stormwater runoff, and spills from wastewater treatment plants, among  
19 other threats. It is in the best interest of all the people of  
20 Washington, including federally recognized tribes and private  
21 landowners, to increase the population of salmon and to ensure the  
22 survivability of salmon against all threats.

23 (5) The legislature directed the department of fish and wildlife  
24 to produce a report on the effectiveness of regulations designed to  
25 address underwater noise and disturbance from commercial whale  
26 watching and recreational vessels. The legislature received the first  
27 of three mandated reports in November of 2022, and it contained an  
28 assessment of the most recent science demonstrating the negative  
29 impact of vessels on southern resident orca foraging behavior and  
30 foraging success.

31 (6) While it takes time to see results from efforts to increase  
32 prey availability and reduce contaminants, reducing noise and  
33 disturbance from vessels can provide immediate support for the  
34 southern resident orcas by increasing their likelihood of successful  
35 foraging.

36 **Sec. 2.** RCW 77.15.740 and 2019 c 291 s 1 are each amended to  
37 read as follows:

38 (1) (~~Except~~) Beginning January 1, 2025, except as provided in  
39 subsection (2) of this section, it is unlawful for a person to:

1 (a) Cause a vessel or other object to approach, in any manner,  
2 within (~~three hundred~~) 1,000 yards of a southern resident orca  
3 (~~whale~~);

4 (b) Position a vessel to be in the path of a southern resident  
5 orca (~~whale~~) at any point located within (~~four hundred~~) 1,000  
6 yards of the whale. This includes intercepting a southern resident  
7 orca (~~whale~~) by positioning a vessel so that the prevailing wind or  
8 water current carries the vessel into the path of the whale at any  
9 point located within (~~four hundred~~) 1,000 yards of the whale;

10 (c) Position a vessel behind a southern resident orca (~~whale~~)  
11 at any point located within (~~four hundred~~) 1,000 yards;

12 (d) Fail to disengage the transmission of a vessel that is within  
13 (~~three hundred~~) 400 yards of a southern resident orca (~~whale~~);

14 (e) Cause a vessel or other object to exceed a speed greater than  
15 seven knots over ground at any point located within (~~one-half~~  
16 ~~nautical mile (one thousand thirteen yards)~~) 1,000 yards of a  
17 southern resident orca (~~whale~~); or

18 (f) Feed a southern resident orca (~~whale~~).

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

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

25 (b) Operating a vessel in conjunction with a vessel traffic  
26 service as a vessel traffic service user established under 33 C.F.R.  
27 and following a traffic separation scheme, or complying with a vessel  
28 traffic service or captain of the port measure (~~of~~) or direction,  
29 or complying with the rules of the road or taking actions to ensure  
30 safety. This also includes (~~support vessels escorting ships in the~~  
31 ~~traffic lanes~~) vessel transits departing the lanes for safety  
32 reasons or to approach or depart a dock or anchorage area, including  
33 support vessels escorting or assisting vessels, such as tug boats;

34 (c) Engaging in an activity, including scientific research or oil  
35 spill response, pursuant to the conditions of a permit or other  
36 authorization from the national marine fisheries service (~~and~~) or  
37 the department;

38 (d) Lawfully engaging in a treaty Indian or commercial fishery  
39 that is actively setting, retrieving, or closely tending fishing

1 gear. Commercial fishing vessels in transit are not exempt from  
2 subsection (1) of this section;

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

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

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

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

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

23 ~~((5) The enforcement actions required of the department from  
24 this section are subject to the availability of amounts appropriated  
25 for this specific purpose))~~ (c) The department may choose to offer  
26 educational materials in lieu of issuing an infraction, at the  
27 officer's discretion.

28 (d) An officer may not issue an infraction to the operator of a  
29 vessel that is within 400 yards of a southern resident orca who has  
30 immediately disengaged the transmission of the vessel pursuant to  
31 subsection (1)(d) of this section and waits for the whale to leave  
32 the vicinity.

33 (5) The department must post signs at public boat launches and  
34 marinas that provide information regarding the vessel setbacks and  
35 speed limits required by this section. However, the requirements of  
36 this section apply whether or not a sign is present and the absence  
37 of a sign is not a defense to any violation of this section.

38 (6) The department shall conduct outreach and education regarding  
39 regulations and best practices for recreational boating in waters  
40 inhabited by southern resident orcas, including best practices for

1 avoiding or minimizing encounters closer than 1,000 yards from a  
2 southern resident orca consistent with the recommendations of the  
3 work group established in section 6 of this act. This may include the  
4 advancement and proliferation of tools for notifying boaters of  
5 southern resident orca presence, identifying orca ecotypes, and  
6 estimating distance on the water.

7 (7) If the operator of a motorized commercial whale watching  
8 vessel enters within 1,000 yards of a group of southern resident  
9 orcas, after taking reasonable measures to determine whether the  
10 whales are southern resident orcas, and then identifies the whales as  
11 southern resident orcas, the operator must:

12 (a) Immediately safely reposition the vessel to be 1,000 yards or  
13 farther from the southern resident orcas; and

14 (b) Immediately after repositioning the vessel, report the  
15 location of the southern resident orca or orcas to the WhaleReport  
16 application for the whale report alert system, or to a successor  
17 transboundary notification system designated by the department that  
18 is adopted by the international shipping community in the Salish Sea.

19 (8) The operator of a motorized commercial whale watching vessel  
20 may voluntarily log the incident, including measures taken to  
21 determine whether the whales were southern resident orcas, and submit  
22 the log to the department within 24 hours of the incident.

23 NEW SECTION. Sec. 3. A new section is added to chapter 77.12  
24 RCW to read as follows:

25 The department must coordinate with the department of licensing  
26 and the parks and recreation commission to mail information regarding  
27 the required vessel setbacks and speed limits required by RCW  
28 77.15.740, and whale warning flags, upon issuance or renewal of a  
29 vessel registration pursuant to chapter 88.02 RCW.

30 NEW SECTION. Sec. 4. The department of fish and wildlife must  
31 develop a transboundary and statewide plan to implement the vessel  
32 distance regulations in RCW 77.15.740, with input from British  
33 Columbia and international whale organizations. The department of  
34 fish and wildlife must submit a report to the legislature, in  
35 accordance with RCW 43.01.036, by January 1, 2025, that includes  
36 progress on plan development and a plan for implementation.

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 77.12  
2    RCW to read as follows:

3        If the population of southern resident orcas reaches a threshold  
4    of 70 individuals or fewer, the department must provide a report to  
5    the legislature within one year of the threshold being met,  
6    consistent with RCW 43.01.036, that includes a study of how mandatory  
7    1,000-yard setbacks for all vessels has been enforced and identifies  
8    gaps and solutions to support any improvements, the use of data  
9    science with respect to southern resident orca pod health, and  
10   evidence-based plans to address southern resident orca pod health.

11       NEW SECTION.    **Sec. 6.**    (1) The department of fish and wildlife  
12   must convene a diverse work group including, but not limited to,  
13   representatives from nongovernmental organizations, recreational  
14   boaters, the commercial whale watching industry, commercial fishers,  
15   ports and marinas, relevant government entities, tribes, and the  
16   southern resident orca research community to inform the development  
17   of outreach and education strategies to implement RCW 77.15.740(4). A  
18   report summarizing the work of the work group and the department of  
19   fish and wildlife's outreach strategies must be included in the 2024  
20   adaptive management report identified in RCW 77.65.620(5). The  
21   department of fish and wildlife must conduct intensive outreach and  
22   education in fiscal year 2024 and the first half of 2025 to implement  
23   the work group outreach recommendations.

24        (2) In coordination with the work group established in this  
25   section, the department of fish and wildlife must conduct education  
26   and outreach regarding compliance with the 1,000-yard setback from  
27   southern resident orcas established in RCW 77.15.740.

28        (3) The department of fish and wildlife must assess and report on  
29   the effectiveness of the mandatory 1,000-yard setback and  
30   recommendations for any further legislative action needed to protect  
31   southern resident orcas from the effects of vessels in the 2024  
32   adaptive management report identified in RCW 77.65.620(5).

33        (4) This section expires June 30, 2025.

34        **Sec. 7.**    RCW 77.65.615 and 2021 c 284 s 1 are each amended to  
35   read as follows:

36        (1) A commercial whale watching business license is required for  
37   commercial whale watching businesses. The annual fee for a commercial  
38   whale watching business license is (~~two hundred dollars~~) \$200 in

1 addition to the annual application fee of ~~((seventy-five dollars))~~  
2 \$70.

3 (2) The annual ~~((fees))~~ application for a commercial whale  
4 watching business license as described in subsection (1) of this  
5 section must ~~((include fees for))~~ list each motorized or sailing  
6 vessel ~~((or vessels as follows:~~

7 ~~(a) One to twenty-four passengers, three hundred twenty-five~~  
8 ~~dollars;~~

9 ~~(b) Twenty-five to fifty passengers, five hundred twenty-five~~  
10 ~~dollars;~~

11 ~~(c) Fifty-one to one hundred passengers, eight hundred twenty-~~  
12 ~~five dollars;~~

13 ~~(d) One hundred one to one hundred fifty passengers, one thousand~~  
14 ~~eight hundred twenty-five dollars; and~~

15 ~~(e) One hundred fifty-one passengers or greater, two thousand~~  
16 ~~dollars)) to be covered under the business license.~~

17 (3) The holder of a commercial whale watching business license  
18 for motorized or sailing vessels required under subsection (2) of  
19 this section may ~~((substitute the vessel designated))~~ designate an  
20 additional vessel on the license ~~((, or designate a vessel if none has~~  
21 ~~previously been designated,))~~ if the license holder ~~((:~~

22 ~~(a) Surrenders the previously issued license to the department;~~

23 ~~(b) Submits))~~ submits to the department an application that  
24 identifies the ~~((currently designated vessel, the))~~ vessel proposed  
25 to be designated ~~((,))~~ and any other information required by the  
26 department ~~((; and~~

27 ~~(c) Pays to the department a fee of thirty-five dollars and an~~  
28 ~~application fee of one hundred five dollars)).~~

29 (4) ~~((Unless the business license holder owns all vessels~~  
30 ~~identified on the application described in subsection (3)(b) of this~~  
31 ~~section, the department may not change the vessel designation on the~~  
32 ~~license more than once per calendar year.~~

33 ~~(5))~~ A commercial whale watching operator license is required  
34 for commercial whale watching operators. A person may operate a  
35 motorized or sailing commercial whale watching vessel designated on a  
36 commercial whale watching business license only if:

37 (a) The person holds a commercial whale watching operator license  
38 issued by the director; and

39 (b) The person is designated as an operator on the underlying  
40 commercial whale watching business license.



1       ~~((6))~~ (5) No individual may hold more than one commercial whale  
2 watching operator license. An individual who holds an operator  
3 license may be designated as an operator on an unlimited number of  
4 commercial whale watching business licenses.

5       ~~((7))~~ (6) The annual application fee for a commercial whale  
6 watching operator license is ~~((one hundred dollars in addition to an  
7 annual application fee of seventy-five dollars))~~ \$25.

8       (7) A paddle tour business license is required for businesses  
9 conducting paddle tours. The annual fee for a paddle tour business  
10 license is \$200 in addition to the annual application fee of \$70.

11       (8) A person may conduct ~~((commercial whale watching via))~~ guided  
12 ~~((kayak))~~ paddle tours only if:

13       (a) The person holds a ~~((kayak))~~ paddle guide license issued by  
14 the director; and

15       (b) The person is designated as a ~~((kayak))~~ guide on the  
16 underlying ~~((commercial whale watching))~~ paddle tour business  
17 license.

18       (9) No individual may hold more than one ~~((kayak))~~ paddle guide  
19 license. An individual who holds a ~~((kayak))~~ paddle guide license may  
20 be designated on an unlimited number of ~~((commercial whale watching))~~  
21 paddle tour business licenses.

22       (10) The annual application fee for a ~~((kayak))~~ paddle guide  
23 license is \$25 ~~((in addition to an annual application fee of \$25))~~.

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

26       (a) "Commercial whale watching" means the act of taking, or  
27 offering to take, passengers aboard a motorized or sailing vessel  
28 ~~((or guided kayak tour in order))~~ to view marine mammals in their  
29 natural habitat for a fee.

30       (b) "Commercial whale watching business" means a business that  
31 engages in the activity of commercial whale watching.

32       (c) "Commercial whale watching business license" means a  
33 department-issued license to operate a commercial whale watching  
34 business.

35       (d) "Commercial whale watching license" means a commercial whale  
36 watching business license~~((7))~~ or a commercial whale watching  
37 operator license~~((7 or a kayak guide license))~~ as defined in this  
38 section.

1 (e) "Commercial whale watching operator" means a person who  
2 operates a motorized or sailing vessel engaged in the business of  
3 whale watching.

4 (f) "Commercial whale watching operator license" means a  
5 department-issued license to operate a commercial motorized or  
6 sailing vessel on behalf of a commercial whale watching business.

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

10 (h) "~~((Kayak))~~ Paddle guide" means a person who conducts guided  
11 ~~((kayak))~~ tours on behalf of a ~~((commercial whale watching))~~ paddle  
12 tour business.

13 (i) "~~((Kayak))~~ Paddle guide license" means a department-issued  
14 license to conduct commercial guided ~~((kayak))~~ paddle tours on behalf  
15 of a ~~((commercial whale watching))~~ paddle tour business.

16 (j) "Paddle tour business" means a business that conducts paddle  
17 tours.

18 (k) "Paddle tour" means the act of guiding or offering to take  
19 people aboard nonmotorized or human-powered vessels, such as kayaks  
20 or paddle boards, on a trip, tour, or guided lesson that involves  
21 viewing marine mammals in their natural habitat for a fee.

22 (12) The residency and business requirements of RCW 77.65.040 (2)  
23 and (3) do not apply to Canadian individuals or corporations applying  
24 for and holding Washington commercial whale watching licenses defined  
25 in this section.

26 (13) The license and application fees in this section ~~((are~~  
27 ~~waived for calendar years 2021 and 2022))~~ may be waived for  
28 organizations whose relevant commercial whale watching or marine  
29 paddle tour activities are solely for bona fide nonprofit educational  
30 purposes.

31 **Sec. 8.** RCW 77.15.815 and 2019 c 291 s 4 are each amended to  
32 read as follows:

33 (1) This section applies only to persons and activities defined  
34 in RCW 77.65.615, including commercial whale watching and paddle  
35 tours.

36 (2) A person is guilty of unlawfully engaging in commercial whale  
37 watching in the second degree if the person conducts commercial whale  
38 watching activities and:

1 (a) Does not have and possess all licenses and permits required  
2 under this title; or

3 (b) Violates any department rule regarding ~~((the operation of a))~~  
4 commercial whale watching ~~((vessel near a southern resident orca~~  
5 ~~whale))~~.

6 ~~((+2))~~ (3) A person is guilty of engaging in commercial whale  
7 watching in the first degree if the person commits the act described  
8 in subsection ~~((+1))~~ (2) of this section and the violation occurs  
9 within ~~((one year of the date of a prior conviction under this~~  
10 ~~section))~~ five years of any of the following:

11 (a) The date of a prior conviction under this section;

12 (b) The date of a finding of guilt or plea of guilty pursuant to  
13 an amended information, criminal complaint or citation, or infraction  
14 for any violation that was originally charged as a violation of this  
15 section, regardless of whether the imposition of the sentence is  
16 deferred or the penalty is suspended; or

17 (c) The date of any disposition of a case arising from an act  
18 originally charged as a violation of this section, whereby the  
19 offender enters into a disposition that continues or defers the case  
20 for dismissal upon the successful completion of specific terms or  
21 conditions.

22 ~~((+3))~~ (4)(a) Unlawful commercial whale watching in the second  
23 degree is a misdemeanor.

24 (b) Unlawful commercial whale watching in the first degree is a  
25 gross misdemeanor. ~~((Upon conviction))~~ In addition to the appropriate  
26 criminal penalties, the director shall ~~((deny applications submitted~~  
27 ~~by the person for a commercial whale watching license or alternate~~  
28 ~~operator license for two years from the date of conviction))~~ revoke  
29 any operator license, business license, or both, and order a  
30 suspension of the person's privilege to engage in commercial whale  
31 watching for two years.

32 (5) A person is guilty of unlawfully engaging in a paddle tour in  
33 the second degree if the person conducts paddle tour activities and:

34 (a) Does not have and possess all licenses and permits required  
35 under this title; or

36 (b) Violates any department rule regarding the operation of  
37 paddle tours in marine waters.

38 (6) A person is guilty of unlawfully engaging in a paddle tour in  
39 the first degree if the person commits an act described in subsection

1 (5) of this section and the violation occurs within five years of the  
2 date of any of the following:

3 (a) The date of a prior conviction under this section;

4 (b) The date of a finding of guilt or plea of guilty pursuant to  
5 an amended information, criminal complaint or citation, or infraction  
6 for any violation that was originally charged as a violation of this  
7 section, regardless of whether the imposition of sentence is deferred  
8 or the penalty is suspended; or

9 (c) The date of any disposition of a case arising from an act  
10 originally charged as a violation of this section, whereby the  
11 offender enters into a disposition that continues or defers the case  
12 for dismissal upon the successful completion of specific terms and  
13 conditions.

14 (7)(a) Unlawful engagement in a paddle tour in the second degree  
15 is a misdemeanor.

16 (b) Unlawful engagement in a paddle tour in the first degree is a  
17 gross misdemeanor. In addition to appropriate criminal penalties, the  
18 director shall revoke any paddle guide license, business license, or  
19 both, and order a suspension of the person's privilege to conduct  
20 paddle tours in marine waters for two years.

21 NEW SECTION. Sec. 9. Section 2 of this act takes effect January  
22 1, 2025.

--- END ---