

SSB 6395 - H COMM AMD

By Committee on Agriculture & Natural Resources

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that the resident
4 population of orca whales in Washington waters (*Orcinus orca*), commonly
5 referred to as the southern residents, are enormously significant to
6 the state. These highly social, intelligent, and playful marine
7 mammals, which the legislature designated as the official marine mammal
8 of the state of Washington, serve as a symbol of the Pacific Northwest
9 and illustrate the biological diversity and rich natural heritage that
10 all Washington citizens and its visitors enjoy.

11 However, the legislature also finds that the southern resident
12 orcas are currently in a serious decline. Southern residents
13 experienced an almost twenty percent decline between 1996 and 2001.
14 The federal government listed this orca population as depleted in 2003,
15 and as an endangered species in 2005. The federal government has
16 identified impacts from vessels as a potential threat to these marine
17 mammals.

18 In 2006, after listing the southern resident orcas as endangered,
19 the federal government designated critical orca habitat and released a
20 proposed recovery plan for the southern resident orcas. The federal
21 government has initiated the process to adopt orca conservation rules,
22 but this process may be lengthy. Additionally, although existing whale
23 and wildlife viewing guidelines are an excellent educational resource,
24 these guidelines are voluntary measures that cannot be enforced.

25 Therefore, the legislature intends to protect southern resident
26 orca whales from impacts from vessels, and to educate the public on how
27 to reduce the risk of disturbing these important marine mammals.

28 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15 RCW
29 to read as follows:

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

3 (a) Approach, by any means, within three hundred feet of a southern
4 resident orca whale (*Orcinus orca*);

5 (b) Cause a vessel or other object to approach within three hundred
6 feet of a southern resident orca whale;

7 (c) Intercept a southern resident orca whale. A person intercepts
8 a southern resident orca whale when that person places a vessel or
9 allows a vessel to remain in the path of a whale and the whale
10 approaches within three hundred feet of that vessel;

11 (d) Fail to disengage the transmission of a vessel that is within
12 three hundred feet of a southern resident orca whale, for which the
13 vessel operator is strictly liable; or

14 (e) Feed a southern resident orca whale, for which any person
15 feeding a southern resident orca whale is strictly liable.

16 (2) A person is exempt from subsection (1) of this section where:

17 (a) A reasonably prudent person in that person's position would
18 determine that compliance with the requirements of subsection (1) of
19 this section will threaten the safety of the vessel, the vessel's crew
20 or passengers, or is not feasible due to vessel design limitations, or
21 because the vessel is restricted in its ability to maneuver due to
22 wind, current, tide, or weather;

23 (b) That person is lawfully participating in a commercial fishery
24 and is engaged in actively setting, retrieving, or closely tending
25 commercial fishing gear;

26 (c) That person is acting in the course of official duty for a
27 state, federal, tribal, or local government agency; or

28 (d) That person is acting pursuant to and consistent with
29 authorization from a state or federal government agency.

30 (3) It is an affirmative defense to a violation of subsection
31 (1)(a), (b), and (c) of this section if the defendant can prove by a
32 preponderance of the evidence that he or she did not knowingly approach
33 or cause a vessel to approach within three hundred feet of a southern
34 resident orca whale.

35 (4) For the purpose of this section, "vessel" means every
36 description of watercraft on the water, including a seaplane, capable
37 of being used as a means of transportation on the water.

1 (5) A violation of this section is a natural resource infraction
2 punishable under chapter 7.84 RCW.

3 NEW SECTION. **Sec. 3.** The legislature encourages the state's law
4 enforcement agencies to utilize existing statutes and regulations to
5 protect southern resident orca whales from impacts from vessels,
6 including the vessel operation and enforcement standards contained in
7 chapter 79A.60 RCW.

8 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.12 RCW
9 to read as follows:

10 The department and the state parks and recreation commission shall
11 disseminate information about section 2 of this act, whale and wildlife
12 viewing guidelines, and other responsible wildlife viewing messages to
13 educate Washington's citizens on how to reduce the risk of disturbing
14 southern resident orca whales. The department and the state parks and
15 recreation commission must, at minimum, disseminate this information on
16 their internet sites and through appropriate agency publications,
17 brochures, and other information sources. The department and the state
18 parks and recreation commission shall also attempt to reach the state's
19 boating community by coordinating with appropriate state and
20 nongovernmental entities to provide this information at marinas, boat
21 shows, boat dealers, during boating safety training courses, and in
22 conjunction with vessel registration or licensing."

23 Correct the title.

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