

SSB 6395 - H COMM AMD

By Appropriations Subcommittee on General Government & Audit Review

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) Nothing in this section is intended to conflict with existing  
36 rules regarding safe operation of a vessel or vessel navigation rules.

37 (5) For the purpose of this section, "vessel" includes aircraft,  
38 canoes, fishing vessels, kayaks, personal watercraft, rafts,

1 recreational vessels, tour boats, whale watching boats, vessels engaged  
2 in whale watching activities, or other small craft including power  
3 boats and sail boats.

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

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

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

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

26 NEW SECTION. **Sec. 5.** If specific funding for the purposes of this  
27 act, referencing this act by bill or chapter number, is not provided by  
28 June 30, 2008, in the omnibus appropriations act, this act is null and  
29 void."

30 Correct the title.

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