

SENATE BILL REPORT

ESSB 5886

As Passed Senate, March 3, 2018

Title: An act relating to creating the orca protection act.

Brief Description: Creating the orca protection act.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senator Ranker).

Brief History:

Committee Activity: Ways & Means: 2/22/18, 2/22/18 [DPS, DNP, w/oRec].

Floor Activity:

Passed Senate: 3/03/18, 34-15.

Brief Summary of Engrossed First Substitute Bill

- Directs the Department of Fish and Wildlife (DFW) to conduct specified marine-based education and enforcement patrols.
- Modifies existing vessel regulations by extending restrictions on vessels approaching within 200 yards of a southern resident orca whale to also include aircraft, prohibiting a person from exceeding a speed of seven knots within 400 yards of a southern resident orca whale, and provides exemptions.
- Requires a study on orca impacts from human-generated marine noise, and a meeting on coordination of recovery strategies between Washington and British Columbia.
- Increases the initial and renewal fee for an endangered wildlife special license plate by \$5.

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 5886 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair; Braun, Ranking Member; Billig, Carlyle, Conway, Darneille, Fain, Hasegawa, Hunt, Keiser, Mullet, Palumbo, Pedersen, Ranker and Van De Wege.

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.

Minority Report: Do not pass.

Signed by Senators Honeyford, Assistant Ranking Member; Bailey, Becker, Brown, Schoesler, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator Rivers.

Staff: Curt Gavigan (786-7437)

Background: Role of the Department of Fish and Wildlife (DFW). DFW serves as manager of the state's fish and wildlife resources. Among other duties, DFW must protect and manage fish and wildlife, including establishing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

Background on Orca Whales. By statute, the orca or killer whale is the official marine mammal of the state of Washington. Southern resident orca whales are the only known resident population of orcas in the United States. They spend the spring and summer months primarily in the inland marine waters of Washington and British Columbia, and spend the winter months primarily in the coastal waters of the Pacific Ocean between northern California and British Columbia. Southern resident orcas are listed as an endangered species under federal and state law.

Vessel Distance Regulations. Current state law prohibits several actions in the vicinity of a southern resident orca whale including:

- causing a vessel or other object to approach within 200 yards of a southern resident orca;
- positioning a vessel to be in the path of a southern resident orca at any point located within 400 yards of a whale; and
- failing to disengage the transmission of a vessel within 200 yards of a southern resident orca whale.

A violation of this law is a natural resources infraction with a fine of \$500. Several exemptions exist, including government vessels on official duty, permitted scientific research, and for navigational safety.

Endangered Wildlife Special License Plate. The Department of Licensing (DOL) issues special vehicle license plates that may be used in lieu of standard plates. DOL collects special license plate fees, and for administrative expenses, deducts an amount not to exceed \$12 for new plate issuance and \$2 for renewal. The existing endangered wildlife special plate includes an orca background. The current initial fee is \$40 and renewal fee is \$30, in addition to other registration fees, with funds used for DFW's endangered wildlife program activities.

Summary of Engrossed First Substitute Bill: Orca Education and Enforcement Patrols. DFW must generally conduct at least 100 patrols during the 22 most active weeks for southern resident orca whale viewing activity each year. This requirement is subject to appropriations, prioritization criteria, and DFW must provide a written explanation to the Legislature if it does not complete the 100 patrols each year.

Vessel Distance Regulations. In addition to the current prohibition that applies to vessels, a person may not cause an aircraft to approach within 200 yards of a southern resident orca whale. Additionally, a person may not cause a vessel to exceed a speed over ground of 7 knots within 400 yards of a southern resident orca. In addition to existing exemptions, a person is exempt if they make reasonable efforts to meet the distance requirements and fines for a violation must be waived if a person is not aware of their proximity to a southern resident orca whale due to specified visibility conditions.

Orca-Related Study Provisions. DFW must coordinate with appropriate agencies, tribal, and nongovernmental partners to identify research and management actions undertaken that relate to impacts from human-generated marine noise. DFW must identify options and recommendations on potential legislative or administrative actions the state can take to address impacts from noise. DFW must provide its analysis and recommendations by December 1, 2018. This work is subject to appropriations.

Additionally, the Salish Sea Institute (Institute) at Western Washington must convene a meeting on coordination of southern resident killer whale recovery strategies between British Columbia and Washington. The meeting must occur by December 31, 2018, and the Institute must provide a meeting summary to the Legislature within 30 days of the meeting.

Endangered Wildlife Special License Plate. The fees for initial and renewal endangered wildlife special license plates are each adjusted by \$5. The authorized use of revenue from the endangered species license plates is modified to provide that DFW must use at least \$5 from each plate used to fund orca-related activities.

An intent section is included.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Proposed Substitute: *The committee recommended a different version of the bill than what was heard.* PRO: We are seeing resident orca populations at very low levels, and this bill will provide some tools and revenue we can use now as longer term solutions are worked on. DFW has a ten year history of being reasonable in assessing violations and understanding circumstances.

Persons Testifying: PRO: Mike Cenci, Deputy Chief, Washington DFW.

Persons Signed In To Testify But Not Testifying: No one.