
ENGROSSED SECOND SUBSTITUTE SENATE BILL 6268

State of Washington

65th Legislature

2018 Regular Session

By Senate Ways & Means (originally sponsored by Senators Ranker, Rolfes, Chase, Van De Wege, Conway, Keiser, Lias, Frockt, Hasegawa, Hunt, Palumbo, and Saldaña)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to creating the orca protection act; amending RCW
2 77.15.740; adding a new section to chapter 77.15 RCW; creating new
3 sections; and providing expiration dates.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that southern
6 resident killer whales, also known as orcas, are critically
7 endangered with the population at a thirty-year low of seventy-six
8 whales and scientific evidence building that they are nutritionally
9 stressed. These marine icons are an apex predator species that
10 indicate the overall health of Washington state's marine ecosystems.
11 They also are culturally significant to many Washington tribes and
12 the region as a whole, and are the foundation of an estimated sixty
13 million dollar tourist industry. Existing threats to the orca include
14 a decline in food sources, including Chinook salmon, as well as
15 environmental and human pressures. Therefore, the legislature intends
16 to take immediate action to reverse this emergency.

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

19 (1) In order to facilitate the enforcement of RCW 77.15.740,
20 provide extra protection to newborn calves, and protect critical

1 feeding areas, and subject to the availability of amounts
2 appropriated for this specific purpose, the department must conduct a
3 minimum of one hundred patrols during the twenty-two most active
4 weeks for southern resident killer whale viewing activity each year.
5 In doing so, the department must prioritize Wednesday through Monday
6 patrols when recreational whale watching activity is most active.

7 (2) The legislature recognizes that weather and sea conditions
8 may impact the department's ability to conduct the number of patrols
9 identified in subsection (1) of this section. If the department does
10 not complete the identified number of patrols during a given annual
11 period, the department must provide a written explanation for, and
12 documentation of, the reasons for the missed patrols to the
13 commission and appropriate committees of the legislature.

14 **Sec. 3.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to
15 read as follows:

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

18 (a) Cause a vessel, aircraft, or other object to approach, in any
19 manner, within two hundred yards of a southern resident orca whale;

20 (b) Position a vessel to be in the path of a southern resident
21 orca whale at any point located within four hundred yards of the
22 whale. This includes intercepting a southern resident orca whale by
23 positioning a vessel so that the prevailing wind or water current
24 carries the vessel into the path of the whale at any point located
25 within four hundred yards of the whale;

26 (c) Fail to disengage the transmission of a vessel that is within
27 two hundred yards of a southern resident orca whale; ((~~or~~))

28 (d) Feed a southern resident orca whale; or

29 (e) Cause a vessel to exceed a speed over ground of seven knots
30 within four hundred yards of a southern resident orca whale.

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

33 (a) Operating a federal government vessel in the course of his or
34 her official duties, or operating a state, tribal, or local
35 government vessel when engaged in official duties involving law
36 enforcement, search and rescue, or public safety;

37 (b) Operating a vessel in conjunction with a vessel traffic
38 service established under 33 C.F.R. and following a traffic
39 separation scheme, or complying with a vessel traffic service measure

1 of direction. This also includes support vessels escorting ships in
2 the traffic lanes, such as tug boats;

3 (c) Engaging in an activity, including scientific research,
4 pursuant to a permit or other authorization from the national marine
5 fisheries service and the department;

6 (d) Lawfully engaging in a treaty Indian or commercial fishery
7 that is actively setting, retrieving, or closely tending fishing
8 gear;

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

13 (f) Engaging in rescue or clean-up efforts of a beached southern
14 resident orca whale overseen, coordinated, or authorized by a
15 volunteer stranding network.

16 (g) A vessel or aircraft operator is not aware of their proximity
17 to a southern resident orca due to lack of sightline, difficulty to
18 gauge distance due to surrounding conditions or faulty equipment, or
19 a southern resident orca approaches a vessel causing a violation of
20 this section, all related fines must be waived.

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

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

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

34 NEW SECTION. Sec. 4. (1) Subject to the availability of amounts
35 appropriated for this specific purpose, the department of fish and
36 wildlife must coordinate with appropriate federal, tribal, county,
37 and nongovernmental partners to identify research and management
38 actions undertaken since the federal southern resident killer whale
39 recovery plan adoption in 2008 that relate to impacts from human-

1 generated marine noise. The department of fish and wildlife must
2 identify any relevant research findings and management actions
3 undertaken. Additionally, the department must identify options and
4 recommendations on potential actions the state can take, through
5 departmental or legislative action, to further killer whale recovery
6 efforts by addressing impacts from noise.

7 (2) The department of fish and wildlife must provide its
8 analysis, options, and recommendations to the appropriate committees
9 of the legislature by December 1, 2018.

10 (3) This section expires June 30, 2019.

11 NEW SECTION. **Sec. 5.** (1) The Salish Sea institute at Western
12 Washington University must convene a meeting to improve the
13 coordination of recovery strategies for southern resident killer
14 whales between Washington and British Columbia, and to establish
15 timelines for recovery actions. The meeting must occur by December
16 31, 2018. The institute must provide a summary of the meeting and
17 outcomes to the appropriate committees of the legislature within
18 thirty days of the conclusion of the meeting.

19 (2) This section expires June 30, 2019.

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