

2SSB 5577 - H COMM AMD

By Committee on Appropriations

ADOPTED 04/15/2019

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

3 "Sec. 1. RCW 77.15.740 and 2014 c 48 s 22 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, it is
6 unlawful for a person to:

7 (a) Cause a vessel or other object to approach, in any manner,
8 within ~~((two))~~ three hundred yards of a southern resident orca whale;

9 (b) Position a vessel to be in the path of a southern resident
10 orca whale at any point located within four hundred yards of the
11 whale. This includes intercepting a southern resident orca whale by
12 positioning a vessel so that the prevailing wind or water current
13 carries the vessel into the path of the whale at any point located
14 within four hundred yards of the whale;

15 (c) Position a vessel behind a southern resident orca whale at
16 any point located within four hundred yards;

17 (d) Fail to disengage the transmission of a vessel that is within
18 ((two)) three hundred yards of a southern resident orca whale; ((or

19 +d+)) (e) Cause a vessel or other object to exceed a speed
20 greater than seven knots over ground at any point located within one-
21 half nautical mile (one thousand thirteen yards) of a southern
22 resident orca whale; or

23 (f) Feed a southern resident orca whale.

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

26 (a) Operating a federal government vessel in the course of ~~((his~~
27 ~~or her))~~ official duties, or operating a state, tribal, or local
28 government vessel when engaged in official duties involving law
29 enforcement, search and rescue, or public safety;

30 (b) Operating a vessel in conjunction with a vessel traffic
31 service established under 33 C.F.R. and following a traffic
32 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. Commercial fishing vessels in transit are not exempt from
9 subsection (1) of this section;

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

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

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

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

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

30 (5) The enforcement actions required of the department from this
31 section are subject to the availability of amounts appropriated for
32 this specific purpose.

33 NEW SECTION. Sec. 2. A new section is added to chapter 77.65
34 RCW to read as follows:

35 (1) A commercial whale watching license is required for
36 commercial whale watching operators. The annual fee is two hundred
37 dollars in addition to the annual application fee of seventy-five
38 dollars.

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

4 (a) One to twenty-four passengers, three hundred twenty-five
5 dollars;

6 (b) Twenty-five to fifty passengers, five hundred twenty-five
7 dollars;

8 (c) Fifty-one to one hundred passengers, eight hundred twenty-
9 five dollars;

10 (d) One hundred one to one hundred fifty passengers, one thousand
11 eight hundred twenty-five dollars; and

12 (e) One hundred fifty-one passengers or greater, two thousand
13 dollars.

14 (3) The annual fees for a commercial whale watching license as
15 described in subsection (1) of this section must include fees for
16 each kayak as follows:

17 (a) One to ten kayaks, one hundred twenty-five dollars;

18 (b) Eleven to twenty kayaks, two hundred twenty-five dollars;

19 (c) Twenty-one to thirty kayaks, four hundred twenty-five
20 dollars; and

21 (d) Thirty-one or more kayaks, six hundred twenty-five dollars.

22 (4) The holder of a commercial whale watching license for
23 motorized or sailing vessels required under subsection (2) of this
24 section may substitute the vessel designated on the license, or
25 designate a vessel if none has previously been designated, if the
26 license holder:

27 (a) Surrenders the previously issued license to the department;

28 (b) Submits to the department an application that identifies the
29 currently designated vessel, the vessel proposed to be designated,
30 and any other information required by the department; and

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

33 (5) Unless the license holder owns all vessels identified on the
34 application described in subsection (4)(b) of this section, the
35 department may not change the vessel designation on the license more
36 than once per calendar year.

37 (6) A person who is not the license holder may operate a
38 motorized or sailing commercial whale watching vessel designated on
39 the license only if:

1 (a) The person holds an alternate operator license issued by the
2 director; and

3 (b) The person is designated as an alternate operator on the
4 underlying commercial whale watching license.

5 (7) No individual may hold more than one alternate operator
6 license. An individual who holds an alternate operator license may be
7 designated as an alternate operator on an unlimited number of
8 commercial whale watching licenses.

9 (8) The annual fee for an alternate operator license is two
10 hundred dollars in addition to an annual application fee of seventy-
11 five dollars.

12 (9) The definitions in this subsection apply throughout this
13 section unless the context clearly requires otherwise.

14 (a) "Commercial whale watching" means the act of taking, or
15 offering to take, passengers aboard a vessel in order to view marine
16 mammals in their natural habitat for a fee.

17 (b) "Commercial whale watching operators" includes commercial
18 vessels and kayak rentals that are engaged in the business of whale
19 watching.

20 (c) "Commercial whale watching vessel" means any vessel that is
21 being used as a means of transportation for individuals to engage in
22 commercial whale watching.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.65
24 RCW to read as follows:

25 (1) The department must adopt rules for holders of a commercial
26 whale watching license established in section 2 of this act for the
27 viewing of southern resident orca whales for the inland waters of
28 Washington by January 1, 2021. The rules must be designed to reduce
29 the daily and cumulative impacts on southern resident orca whales and
30 consider the economic viability of license holders. The department
31 shall at a minimum consider protections for southern resident orca
32 whales by establishing limitations on:

33 (a) The number of commercial whale watching operators that may
34 view southern resident orca whales at one time;

35 (b) The number of days and hours that commercial whale watching
36 operators can operate;

37 (c) The duration spent in the vicinity of southern resident orca
38 whales; and

1 (d) The areas in which commercial whale watching operators may
2 operate.

3 (2) The department may phase in requirements, but must adopt
4 rules to implement this section. The department may consider the use
5 of an automatic identification system to enable effective monitoring
6 and compliance.

7 (3) The department may phase in requirements, but must adopt
8 rules pursuant to chapter 34.05 RCW to implement this section
9 including public, industry, and interested party involvement.

10 (4) Before January 1, 2021, the department shall convene an
11 independent panel of scientists to review the current body of best
12 available science regarding impacts to southern resident orcas by
13 small vessels and commercial whale watching due to disturbance and
14 noise. The department must use the best available science in the
15 establishment of the southern resident orca whale watching rules and
16 continue to adaptively manage the program using the most current and
17 best available science.

18 (5) The department shall complete an analysis and report to the
19 governor and the legislature on the effectiveness of and any
20 recommendations for changes to the whale watching rules, license fee
21 structure, and approach distance rules by November 30, 2022, and
22 every two years thereafter until 2026. This report must be in
23 compliance with RCW 43.01.036.

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

26 (a) "Commercial whale watching" has the same meaning as defined
27 in section 2 of this act.

28 (b) "Commercial whale watching operators" has the same meaning as
29 defined in section 2 of this act.

30 (c) "Inland waters of Washington" means Puget Sound and related
31 inland marine waters, including all salt waters of the state of
32 Washington inside the international boundary line between Washington
33 and British Columbia, and lying east of the junction of the Pacific
34 Ocean and the Strait of Juan de Fuca, and the rivers and streams
35 draining to Puget Sound as mapped by water resource inventory areas 1
36 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

37 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.15
38 RCW to read as follows:

1 (1) A person is guilty of unlawfully engaging in commercial whale
2 watching in the second degree if the person:

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

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

7 (2) A person is guilty of engaging in commercial whale watching
8 in the first degree if the person commits the act described in
9 subsection (1) of this section and the violation occurs within one
10 year of the date of a prior conviction under this section.

11 (3)(a) Unlawful commercial whale watching in the second degree is
12 a misdemeanor.

13 (b) Unlawful commercial whale watching in the first degree is a
14 gross misdemeanor. Upon conviction, the director shall deny
15 applications submitted by the person for a commercial whale watching
16 license or alternate operator license for two years from the date of
17 conviction.

18 **Sec. 5.** RCW 43.384.050 and 2018 c 275 s 6 are each amended to
19 read as follows:

20 (1) From amounts appropriated to the department for the authority
21 and from other moneys available to it, the authority may incur
22 expenditures for any purpose specifically authorized by this chapter
23 including:

24 (a) Entering into a contract for a multiple year statewide
25 tourism marketing plan with a statewide nonprofit organization
26 existing on June 7, 2018, whose sole purpose is marketing Washington
27 to tourists. The marketing plan must include, but is not limited to,
28 focuses on rural tourism-dependent counties, natural wonders and
29 outdoor recreation opportunities of the state, including sustainable
30 whale watching, attraction of international tourists, identification
31 of local offerings for tourists, and assistance for tourism areas
32 adversely impacted by natural disasters. In the event that no such
33 organization exists on June 7, 2018, or the initial contractor ceases
34 to exist, the authority may determine criteria for a contractor to
35 carry out a statewide marketing program;

36 (b) Contracting for the evaluation of the impact of the statewide
37 tourism marketing program; and

1 (c) Paying for administrative expenses of the authority, which
2 may not exceed two percent of the state portion of funds collected in
3 any fiscal year.

4 (2) All nonstate moneys received by the authority under RCW
5 43.384.060 or otherwise provided to the authority for purposes of
6 matching funding must be deposited in the authority's private local
7 account created under RCW 43.384.020(4) and are held in trust for
8 uses authorized solely by this chapter.

9 (3) "Sustainable whale watching" means an experience that
10 includes whale watching from land or aboard a vessel that reduces the
11 impact on whales, provides a recreational and educational experience,
12 and motivates participants to care about marine mammals, the sea, and
13 marine conservation.

14 NEW SECTION. Sec. 6. Section 1 of this act is necessary for the
15 immediate preservation of the public peace, health, or safety, or
16 support of the state government and its existing public institutions,
17 and takes effect immediately."

18 Correct the title.

EFFECT: Requires, instead of authorizes, the Department of Fish
and Wildlife to adopt rules for commercial whale watching license
holders for the viewing of southern resident orca whales in the
inland waters of Washington and removes the provision stating that
such rule making is subject to appropriation.

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