

SENATE BILL REPORT

SB 5577

As Reported by Senate Committee On:
Agriculture, Water, Natural Resources & Parks, February 21, 2019
Ways & Means, February 28, 2019

Title: An act relating to the protection of southern resident orca whales from vessels.

Brief Description: Concerning the protection of southern resident orca whales from vessels.

Sponsors: Senators Rolfes, Frockt, Lias, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña and Wilson, C.; by request of Office of the Governor.

Brief History:

Committee Activity: Agriculture, Water, Natural Resources & Parks: 2/12/19, 2/21/19 [DPS-WM, w/oRec].
Ways & Means: 2/27/19, 2/28/19 [DP2S, w/oRec, DNP].

Brief Summary of Second Substitute Bill

- Makes it unlawful for a person to cause a vessel to approach or fail to disengage a vessel within 300 yards of a southern resident orca and specifies that it is unlawful to position a vessel within 400 yards behind a southern resident orca.
- Makes it unlawful for a person to cause a vessel to exceed a 7 knot speed limit within one-half nautical mile of a southern resident orca.
- Establishes a commercial whale watching license and sets fees for the license.
- Requires the Department of Fish and Wildlife to adopt rules by January 1, 2021, for holders of a commercial whale watching license to reduce the daily and cumulative impacts on southern resident orca whales and consider the economic viability of license holders.

SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

Majority Report: That Substitute Senate Bill No. 5577 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

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.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; McCoy, Rolfes and Short.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Karen Epps (786-7424)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5577 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Van De Wege, Wagoner and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senators Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker and Wilson, L..

Minority Report: Do not pass.

Signed by Senator Schoesler.

Staff: Jed Herman (786-7346)

Background: Role of the Department of Fish and Wildlife. The Department of Fish and Wildlife (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. 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.

Southern Resident Killer Whale Task Force. The Governor issued an executive order in 2018 convening the Southern Resident Killer Whale Task Force (Task Force). The Task Force was directed to identify, prioritize, and support implementing a plan to address three threats to southern resident orca whales identified in the order: (1) prey availability; (2) contaminants; and (3) disturbance from vessel noise.

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 for government vessels on official duty, permitted scientific research, and for navigational safety.

Summary of Bill (Second Substitute): Vessel Speed and Distance. It is unlawful for a person to cause a vessel to approach or fail to disengage the transmission of a vessel within 300 yards of a southern resident orca. It is unlawful to position a vessel behind a southern resident orca within 400 yards. Additionally, it is unlawful for a person to cause a vessel to exceed a speed of seven knots at any point located within one-half of a nautical mile of a southern resident orca. Commercial fishing vessels in transit are not exempt from the approach and speed restrictions.

Commercial Whale Watching. DFW must implement a commercial whale watching license. License and application fees are established in the bill and are based upon the type of vessel and number of passengers. The application fee is \$75. The annual license fee is \$200 and the annual per vessel fees are:

- for kayaks:
 1. \$125 for one to 10 kayaks;
 2. \$225 for 11 to 20 kayaks;
 3. \$425 for 21 to 30 kayaks; and
 4. \$625 for 31 or more kayaks.
- for motorized or sailing vessels:
 1. \$325 for one to 24 passengers;
 2. \$525 for 25 to 50 passengers;
 3. \$825 for 51 to 100 passengers;
 4. \$1,825 for 101 to 150 passengers; and
 5. \$2,825 for 151 or more passengers.

A person operating a commercial whale watching vessel who is not the license holder must hold an alternate operator license or be designed as an alternate operator on the commercial whale watch license. The annual fee for an alternate operator license is \$200.

Commercial whale watching without a permit, or violating DFW rules regarding commercial whale watching, is a misdemeanor, and doing so within one year of the date of a prior conviction is a gross misdemeanor. Upon conviction of a gross misdemeanor, DFW must deny applications for a commercial whale watching license or alternate operator license for up to two years from the conviction.

DFW must adopt rules for holders of a rules for holders of a commercial whale watching license for the viewing of southern resident orca whales for the inland waters of Washington by January 1, 2021. The rules must be designed to reduce the daily and cumulative impacts

on southern resident orca whales and consider the economic viability of license holders. DFW must consider protections for southern resident orca whales by establishing limitations on:

- the number of commercial whale watching operators;
- the number of days and hours that commercial whale watching operators can operate;
- the duration spent in the vicinity of southern resident orca whales; and
- the areas in which commercial whale watching operators may operate.

Before January 1, 2021, DFW must convene an independent panel of scientists to review the current body of best available science regarding impacts to Southern Resident orcas by small vessels and commercial whale watching due to disturbance and noise. DFW must report on the effectiveness of and any recommendations for changes to the whale watching rules, license fee structure, and approach distance regulations to the Governor and the Legislature by November 30, 2022. DFW must continue to report every two years until 2026. The tourism marketing plan must include sustainable whale watching as a focus in the plan.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Second Substitute):

- Establishes an application fee of \$75 for the alternate operator license.
- Provides a process to substitute a motorized or sailing vessel designated on a commercial whale watching license for a fee of \$35 instead of the applicable vessel fee to designate an additional vessel. The vessel operator must submit an application to DFW with the \$35 fee and a \$105 application fee. DFW may only change a vessel designation once per calendar year.
- Provides that DFW must adopt rules regarding the number of commercial whale watching operators that may view southern resident orcas at the same time.
- Codifies the new license in the commercial license chapter rather than the limited-entry license chapter.
- Makes certain requirements of the bill subject to the availability of amounts appropriated.

EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):

- Changes the distance within which it is unlawful to approach or to fail to disengage the transmission of a vessel to 300 yards of a southern resident orca and specifies that it is unlawful to position a vessel within 400 yards behind an orca.
- Deletes the provision establishing a temporary 650 yard approach limit for commercial whale watching vessels.
- Provides that the commercial whale watching license is not a limited-entry license and changes the license fees.
- Creates an alternate operator license for a designated alternate operator to operate a commercial whale watching vessel.
- Specifies that commercial whale watching without a permit, or violating department rules regarding commercial whale watching, is a misdemeanor.
- Requires DFW to establish rules to implement the commercial whale watching license program that are designed to reduce the daily and cumulative impacts to orcas

and requires DFW to involve the public, industry, and other interested parties in any rulemaking process.

- Requires DFW to convene an independent science panel to review the most current and best available science regarding impacts to orcas by small vessels and commercial whale watching vessels.
- Adds sustainable whale watching to the topics required the statewide tourism marketing plan.

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 Original Bill (Agriculture, Water, Natural Resources & Parks): *The committee recommended a different version of the bill than what was heard.* PRO: This bill deals with vessel noise and disturbance. Boats get disproportionately louder and their noise spreads farther at high throttle. The waters need to be quieter for the orcas to be able to locate their prey. Orcas lose about two hours per day to the effects of small vessels and reducing noise should allow for an increase in the range and reliability of communication signals between orcas. This bill promotes a three pronged approach to protecting orca whale foraging behavior by establishing a short term protective minimum distance bubble for whale watching operators, slower speeds for all vessels around the whales, and rulemaking for DFW to establish a whale watching license for long term noise management that considers economic viability of license holders. Reducing noise and disturbance is the most effective action can be taken to protect the orcas, giving them more acoustic and physical space to make it easier for the orcas to find food, share their prey, and tend to their young. A limited entry system provides tools to manage the activities of commercial whale watching vessels so the activities can be more sustainably managed. Prolonged exposure to noise and disturbance for more than 12 hours a day impacts foraging, social cohesion, reproductive success, and fetal growth. Boats affect orcas through noise, exhaust, and vessel strikes, and boats change orca whale behavior by just being present on the water.

CON: There are unintended consequences to the whales in this bill. The increased viewing distance will not provide acoustical benefits for the orcas. Washington waters are very busy and a whale watching moratorium will not take the noise and disturbance out of the water. Eliminating whale watching boats would result in the loss of a buffer between the orcas and Navy sonar testing. This bill does not address the sound impacts from large commercial, fishing, military, and shipping vessels. Whale watching boats show other boaters how they should motor around orcas in a safe manner. Many recreational boaters are unfamiliar with whale watching best practices and they do not realize the impacts of high speeds or distances to the orcas.

OTHER: The go slow provisions of the bill are supported. Whale watching boats provide a protective bubble around the orcas and model good boating behavior around the orcas. The

400 yard bubble is a large area and boaters could be forced into a vessel traffic zone in order to maintain this bubble around multiple orcas. There is no correlation between distance of a vessel and sound level received by the orca.

Persons Testifying (Agriculture, Water, Natural Resources & Parks): PRO: Senator Christine Rolfes, Prime Sponsor; JT Austin, Governor's Office; Todd Hass, Puget Sound Partnership; Amy Windrope, DFW; Captain Alan Myers, DFW Marine Law Enforcement; Kristen Swenddal, DNR; Dr. Joe Gaydos, Seadoc Society; Will Hall, City of Shoreline, Mayor; Captain Alan "Hobbes" Buchanan, whale watch operator; Donna Sandstrom, The Whale Trail; Nora Nickum, Seattle Aquarium; Joanna Schoettler, citizen.

CON: Tony Sermonti, Pacific Whale Watch Association; Shane Aggregard, Island Adventures Whale Watching; Whitney Neugebauer, San Juan Island Outfitters; Della Tall, San Juan and Victoria Clipper; Jeff Friedman, Pacific Whale Watch Association; Brian Goodremont, Pacific Whale Watch Association and San Juan Island Outfitters.

OTHER: Steve Finney, Recreational Boating Association of Washington; George Harris, Northwest Marine Trade Association; Monika Wieland Shields, Orca Behavior Institute; Amanda Colbert, citizen.

Persons Signed In To Testify But Not Testifying (Agriculture, Water, Natural Resources & Parks): No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): *The committee recommended a different version of the bill than what was heard.* PRO: The Department of Fish and Wildlife supports the bill. The agency costs are for enforcement, outreach and rule making. This bill is a main component of the Southern Resident Killer Whale Task Force recommendations. The investment of \$1.3 million is an effective way to treat the most urgent need. Vessel noise is a primary threat, the noise can disturb foraging behavior for hours. We were looking for a total moratorium on whale watching vessels. Do not go less than the 300 yards. I support the bill, but it is too weak to do what it is intended to do. We know vessel noise within 400 meters affect orca behavior. Speed is the issue related to noise.

OTHER: The whales are being subjected to acoustic hell. There are too many vessels harassing the whales.

Persons Testifying (Ways & Means): PRO: Penny Becker, DFW; Danielle Shaw, Washington Environmental Council; Donna Sandstrom, The Whale Trail, Director; Jim Cahill, Office of Financial Management; Tim Ragen, citizen; Tony Sermonti, Pacific Whale Watch Association.

OTHER: Janet Thomas, Orca Relief Citizens' Alliance.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.