

# SENATE BILL REPORT

## ESB 5330

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As Passed Senate, April 3, 2021

**Title:** An act relating to commercial whale watching licenses.

**Brief Description:** Regarding commercial whale watching licenses.

**Sponsors:** Senators Van De Wege, Salomon, Warnick and Wilson, C..

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/04/21, 2/11/21 [DPS, DNP].

**Floor Activity:** Passed Senate: 4/3/21, 45-2.

**Brief Summary of Engrossed Bill**

- Requires a business engaged in commercial whale watching to obtain a commercial whale watching business license.
- Requires operators of commercial whale watching vessels to obtain an operator license.
- Requires a commercial whale watching kayak guide to obtain a kayak guide license.
- Waives all license and application fees for calendar years 2021 and 2022.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** That Substitute Senate Bill No. 5330 be substituted therefor, and the substitute bill do pass.

Signed by Senators Van De Wege, Chair; Warnick, Ranking Member; Honeyford, Rolfe and Short.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

**Minority Report:** Do not pass.

Signed by Senators Salomon, Vice Chair; Stanford.

**Staff:** Karen Epps (786-7424)

**Background:** In 2019, the Legislature required the Department of Fish and Wildlife (DFW) to implement a commercial whale watching license. License and application fees are based on 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 vary based on the number of vessels and whether the vessels are motorized or human-powered.

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.

The Legislature directed DFW to adopt 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.

The rules took effect on January 23, 2021 and establish licensing, training, reporting, and compliance monitoring procedures, including reporting of southern resident orca whale sightings. The training and reporting requirements go into effect May 1, 2021. The rules also set limitations on commercial whale watching operators viewing southern resident orca whales, including:

- making it unlawful for more than three motorized commercial whale watching vessels to be within the vicinity of a group of southern resident orca whales or for any operator to be in the vicinity of a group of southern resident orca whales that contains a calf under one year of age or if there is a whale designated as sick or vulnerable;
- setting a no-go zone on the west side of San Juan Island for motorized commercial whale watching vessels, allowing a 100-yard corridor along the shore for commercial kayak tours;
- making it unlawful for motorized commercial whale watching vessels to approach within one-half nautical mile of a southern resident orca whale except during two, two-hour periods from July to September; and
- establishing, for human-powered vessels, a no launching requirement within one-half nautical mile of southern resident orca whales and a raft-up requirement if southern resident orca whales are encountered.

**Summary of Engrossed Bill:** A commercial whale watching business license is required for businesses that engage in the activity of commercial whale watching. A person who operates a motorized or sailing vessel engaged in the business of whale watching must hold

a commercial whale watching operator license. Fees for operator licenses are \$100 with a \$75 annual application fee.

A person conducting commercial whale watching via guided kayak tours must hold a kayak guide license issued by the DFW. The person must be designated as a kayak guide on the commercial whale watching business license. The fee for a kayak guide license is \$25 with annual application fee of \$25. Fees based on the number of kayaks owned by a commercial whale watching operation are deleted.

Residency and business requirements do not apply to Canadian individuals or corporations applying for and holding commercial whale watching licenses. Commercial whale watching licenses includes a commercial whale watching business license, a commercial whale watching operator license, or a kayak guide license.

All license and application fees for commercial whale watching businesses waived for calendar years 2021 and 2022.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Effective Date:** The bill contains an emergency clause and takes effect immediately.

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: This bill will stop southern resident orca whales from being watched by commercial whale watch operators. Commercial whale watch operators will be able to watch grey whales, blue whales, and transient orcas. Due to lost revenue because of the pandemic and in part due to negative publicity over this issue, commercial operators want the opportunity to opt out of watching southern resident orcas. Some commercial whale watch operators would rather go look at other marine mammals flourishing in the Salish Sea. The industry provides vital income to the state's ecotourism sector as well as much needed and critical scientific data on southern resident orca whales. There needs to be a closer look at the impact of private boaters. There is an important sentinel role for commercial whale watch operators that helps recreational boaters know how, when, and where to keep their distance. This bill will allow those operators viewing southern resident orca whales to continue to be out on the water, while also allowing other commercial operators viewing other marine mammals to be on the water. As salmon continues to decline, southern resident orca whales are infrequent visitors and commercial whale watch operators are seeing them very few times. Opting out from viewing southern resident orca whales is something many organizations asked the industry to do and this bill would allow operators to do it.

CON: The licensing system is designed to reduce noise and disturbance around the southern resident orca whales. This bill will allow operators to watch southern resident orca whales incidentally and it would be up to enforcement to prove their intent. The concern with this bill is that it will complicate the process in terms of licensing. The whales need our protection and relying only on enforcement in a system where everyone does not have a license is not a good way to set up a regulatory scheme. This bill will undermine and undo taxpayer-funded work that went into developing and finalizing the rules to give the critically endangered orca more uninterrupted time to find scarce food, socialize, travel, and raise their calves. If industry has concerns about fees, then the bill should address those concerns. Fee concerns should be addressed in a way that does not undermine protections for southern resident orca whales. These compromised rules were negotiated by all parties and no one was happy, which means the rules were a true compromise. This bill would undo the no go zone on the west side of San Juan Island which provides critical foraging, socializing, and resting habitat for the southern resident orca whales. The orca moms, aunts, and calves deserve the protection of the recently adopted rules from commercial whale watching.

OTHER: This bill proposes to alter the program just as it takes effect and poses some challenges, including how to identify operators who elect to view southern resident orca whales and operators who do not but view incidentally. The rules radically impact the kayaking industry and the industry had no voice in the process. The bill would allow commercial whale watching operators who are not licensed and who casually encounter southern residents to avoid reporting such sightings to the alert system that notifies the shipping sector of whale sightings in real time.

**Persons Testifying:** PRO: Senator Kevin Van De Wege, Prime Sponsor; Monika Shields, Orca Behavior Institute; Shari Tarantino, Orca Conservancy; Cindy Hansen, Orca Network; Erin Gless, Island Adventures Whale Watching; Jeff Friedman, Maya's Legacy Whale Watching; Kelley Balcomb-Bartok, Pacific Whale Watch Association; Doug Levy, Outcomes By Levy, LLC and Recreational Boating Association of Washington; Tony Sermonti, Pacific Whale Watch Association; Peter Hanke, Puget Sound Express, Inc.; Peter Schrapen, Northwest Marine Trade Association.

CON: Donna Sandstrom, The Whale Trail; Janet Thomas, Orca Relief Citizens Alliance; Les Purce, former co-chair of the Governor's Orca Taskforce; Sorrel North, Southern Resident Protection; Lovel Pratt, Friends of the San Juans; Sophia Ressler, Center for Biological Diversity; Will Hall, Mayor, City of Shoreline; Rein Attemann, Washington Environmental Council; Stephanie Solien, former co-chair of Governor's Orca Task Force; Nora Nickum, Seattle Aquarium.

OTHER: Tom McBride, Washington Department of Fish and Wildlife; Julie Watson, Washington Department of Fish and Wildlife; Samuel Kaviar, Kayak Nisqually and Olympic Kayak Tours; Todd Hass, Puget Sound Partnership.

**Persons Signed In To Testify But Not Testifying:** PRO: Erik Schorr, Anacortes Kayak Tours; Drew Schmidt, San Juan Cruises; Amanda Colbert, The Salish Sea School; Alisa Lemire Brooks, Orca Network.

CON: Michael Jasny, Natural Resources Defense Council; David Linn.