

---

ENGROSSED SUBSTITUTE SENATE BILL 5371

---

State of Washington

68th Legislature

2023 Regular Session

**By** Senate Agriculture, Water, Natural Resources & Parks (originally sponsored by Senators Lovelett, Shewmake, Hasegawa, Hunt, Keiser, Kuderer, Nguyen, Pedersen, Randall, Robinson, Rolfes, Saldaña, Valdez, Wellman, and C. Wilson)

READ FIRST TIME 02/17/23.

1 AN ACT Relating to protecting southern resident orcas from  
2 vessels; amending RCW 77.15.740, 77.65.615, and 77.15.815; creating a  
3 new section; prescribing penalties; providing an effective date; and  
4 providing an expiration date.

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

6 **Sec. 1.** RCW 77.15.740 and 2019 c 291 s 1 are each amended to  
7 read as follows:

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

10 (a) Cause a vessel or other object to approach, in any manner,  
11 within (~~three hundred~~) 1,000 yards of a southern resident orca  
12 (~~whale~~);

13 (b) Position a vessel to be in the path of a southern resident  
14 orca (~~whale~~) at any point located within (~~four hundred~~) 1,000  
15 yards of the whale. This includes intercepting a southern resident  
16 orca (~~whale~~) by positioning a vessel so that the prevailing wind or  
17 water current carries the vessel into the path of the whale at any  
18 point located within (~~four hundred~~) 1,000 yards of the whale;

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

1       ~~(d)~~) Fail to disengage the transmission of a vessel that is  
2 within ~~((three hundred))~~ 400 yards of a southern resident orca  
3 ~~((whale))~~;

4       ~~((e))~~ (d) Cause a vessel or other object to exceed a speed  
5 greater than seven knots over ground at any point located within  
6 ~~((one-half nautical mile (one thousand thirteen yards))~~) 1,000 yards  
7 of a southern resident orca ~~((whale))~~; or

8       ~~((f))~~ (e) Feed a southern resident orca ~~((whale))~~.

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

11       (a) Operating a federal government vessel in the course of  
12 official duties, or operating a state, tribal, or local government  
13 vessel when engaged in official duties involving law enforcement,  
14 search and rescue, or public safety;

15       (b) Operating a vessel in conjunction with a vessel traffic  
16 service as a vessel traffic service user established under 33 C.F.R.  
17 and following a traffic separation scheme, or complying with a vessel  
18 traffic service or captain of the port measure ~~((of))~~ or direction,  
19 complying with the rules of the road or taking actions to ensure  
20 safety. This also includes ~~((support vessels escorting ships in the~~  
21 ~~traffic lanes))~~ vessel transits departing the lanes for safety  
22 reasons or to approach or depart a dock or anchorage area, including  
23 support vessels escorting or assisting vessels, such as tug boats;

24       (c) Engaging in an activity, including scientific research or oil  
25 spill response, pursuant to the conditions of a permit or other  
26 authorization from the national marine fisheries service ~~((and))~~ or  
27 the department;

28       (d) Lawfully engaging in a treaty Indian or commercial fishery  
29 that is actively setting, retrieving, or closely tending fishing  
30 gear. Commercial fishing vessels in transit are not exempt from  
31 subsection (1) of this section;

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

36       (f) Engaging in rescue or clean-up efforts of a beached southern  
37 resident orca ~~((whale))~~ overseen, coordinated, or authorized by a  
38 volunteer stranding network.

39       (3) For the purpose of this section, "vessel" includes aircraft  
40 while on the surface of the water, and every description of

1 watercraft on the water that is used or capable of being used as a  
2 means of transportation on the water. However, "vessel" does not  
3 include inner tubes, air mattresses, sailboards, and small rafts, or  
4 flotation devices or toys customarily used by swimmers.

5 (4) (a) A violation of this section is a natural resource  
6 infraction punishable under chapter 7.84 RCW and carries a fine of  
7 (~~five hundred dollars~~) up to \$250, not including statutory  
8 assessments added pursuant to RCW 3.62.090.

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

12 (c) The department may choose to offer educational materials in  
13 lieu of issuing an infraction, at the officer's discretion.

14 (~~The enforcement actions required of the department from~~  
15 ~~this section are subject to the availability of amounts appropriated~~  
16 ~~for this specific purpose.)) The department must post signs at public  
17 boat launches and marinas that provide information regarding the  
18 vessel setbacks and speed limits required by this section. However,  
19 the requirements of this section apply whether or not a sign is  
20 present and the absence of a sign is not a defense to any violation  
21 of this section.~~

22 (6) The department shall conduct outreach and education regarding  
23 regulations and best practices for recreational boating in waters  
24 inhabited by southern resident orcas, including best practices for  
25 inadvertent encounters closer than 1,000 yards from a southern  
26 resident orca. This may include the advancement and proliferation of  
27 tools for notifying boaters of southern resident orca presence,  
28 identifying orca ecotypes, and estimating distance on the water.

29 NEW SECTION. Sec. 2. (1) The department of fish and wildlife  
30 must convene a diverse work group including, but not limited to,  
31 representatives from nongovernmental organizations, recreational  
32 boaters, the commercial whale watching industry, commercial fishers,  
33 ports and marinas, relevant government entities, tribes, and the  
34 southern resident orca research community to inform the development  
35 of outreach and education strategies to implement RCW 77.15.740(6). A  
36 report summarizing the work of the work group and the department of  
37 fish and wildlife's outreach strategies must be included in the 2024  
38 adaptive management report identified in RCW 77.65.620(5). The  
39 department of fish and wildlife must conduct intensive outreach and

1 education in fiscal year 2024 and the first half of 2025 to implement  
2 the work group outreach recommendations.

3 (2) This section expires June 30, 2025.

4 **Sec. 3.** RCW 77.65.615 and 2021 c 284 s 1 are each amended to  
5 read as follows:

6 (1) A commercial whale watching business license is required for  
7 commercial whale watching businesses. The annual fee for a commercial  
8 whale watching business license is ~~((two hundred dollars))~~ \$200 in  
9 addition to the annual application fee of ~~((seventy-five dollars))~~  
10 \$70.

11 (2) The annual ~~((fees))~~ application for a commercial whale  
12 watching business license as described in subsection (1) of this  
13 section must ~~((include fees for))~~ list each motorized or sailing  
14 vessel ~~((or vessels as follows:~~

15 ~~(a) One to twenty-four passengers, three hundred twenty-five~~  
16 ~~dollars;~~

17 ~~(b) Twenty-five to fifty passengers, five hundred twenty-five~~  
18 ~~dollars;~~

19 ~~(c) Fifty-one to one hundred passengers, eight hundred twenty-~~  
20 ~~five dollars;~~

21 ~~(d) One hundred one to one hundred fifty passengers, one thousand~~  
22 ~~eight hundred twenty-five dollars; and~~

23 ~~(e) One hundred fifty-one passengers or greater, two thousand~~  
24 ~~dollars)) to be covered under the business license.~~

25 (3) The holder of a commercial whale watching business license  
26 for motorized or sailing vessels required under subsection (2) of  
27 this section may ~~((substitute the vessel designated))~~ designate an  
28 additional vessel on the license ~~((, or designate a vessel if none has~~  
29 ~~previously been designated,))~~ if the license holder ~~((:~~

30 ~~(a) Surrenders the previously issued license to the department;~~

31 ~~(b) Submits))~~ submits to the department an application that  
32 identifies the ~~((currently designated vessel, the))~~ vessel proposed  
33 to be designated ~~((,))~~ and any other information required by the  
34 department ~~((; and~~

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

37 (4) ~~((Unless the business license holder owns all vessels~~  
38 ~~identified on the application described in subsection (3)(b) of this~~

1 ~~section, the department may not change the vessel designation on the~~  
2 ~~license more than once per calendar year.~~

3 ~~(5))~~ A commercial whale watching operator license is required  
4 for commercial whale watching operators. A person may operate a  
5 motorized or sailing commercial whale watching vessel designated on a  
6 commercial whale watching business license only if:

7 (a) The person holds a commercial whale watching operator license  
8 issued by the director; and

9 (b) The person is designated as an operator on the underlying  
10 commercial whale watching business license.

11 ~~((6))~~ (5) No individual may hold more than one commercial whale  
12 watching operator license. An individual who holds an operator  
13 license may be designated as an operator on an unlimited number of  
14 commercial whale watching business licenses.

15 ~~((7))~~ (6) The annual application fee for a commercial whale  
16 watching operator license is ~~((one hundred dollars in addition to an~~  
17 ~~annual application fee of seventy-five dollars))~~ \$25.

18 (7) A paddle tour business license is required for businesses  
19 conducting paddle tours. The annual fee for a paddle tour business  
20 license is \$200 in addition to the annual application fee of \$70.

21 (8) A person may conduct ~~((commercial whale watching via))~~ guided  
22 ~~((kayak))~~ paddle tours only if:

23 (a) The person holds a ~~((kayak))~~ paddle guide license issued by  
24 the director; and

25 (b) The person is designated as a ~~((kayak))~~ guide on the  
26 underlying ~~((commercial whale watching))~~ paddle tour business  
27 license.

28 (9) No individual may hold more than one ~~((kayak))~~ paddle guide  
29 license. An individual who holds a ~~((kayak))~~ paddle guide license may  
30 be designated on an unlimited number of ~~((commercial whale watching))~~  
31 paddle tour business licenses.

32 (10) The annual application fee for a ~~((kayak))~~ paddle guide  
33 license is \$25 ~~((in addition to an annual application fee of \$25))~~.

34 (11) The definitions in this subsection apply throughout this  
35 section unless the context clearly requires otherwise.

36 (a) "Commercial whale watching" means the act of taking, or  
37 offering to take, passengers aboard a motorized or sailing vessel  
38 ~~((or guided kayak tour in order))~~ to view marine mammals in their  
39 natural habitat for a fee.

1 (b) "Commercial whale watching business" means a business that  
2 engages in the activity of commercial whale watching.

3 (c) "Commercial whale watching business license" means a  
4 department-issued license to operate a commercial whale watching  
5 business.

6 (d) "Commercial whale watching license" means a commercial whale  
7 watching business license(~~(r)~~) or a commercial whale watching  
8 operator license(~~(, or a kayak guide license)~~) as defined in this  
9 section.

10 (e) "Commercial whale watching operator" means a person who  
11 operates a motorized or sailing vessel engaged in the business of  
12 whale watching.

13 (f) "Commercial whale watching operator license" means a  
14 department-issued license to operate a commercial motorized or  
15 sailing vessel on behalf of a commercial whale watching business.

16 (g) "Commercial whale watching vessel" means any vessel that is  
17 being used as a means of transportation for individuals to engage in  
18 commercial whale watching.

19 (h) "~~((Kayak))~~ Paddle guide" means a person who conducts guided  
20 ~~((kayak))~~ tours on behalf of a ~~((commercial whale watching))~~ paddle  
21 tour business.

22 (i) "~~((Kayak))~~ Paddle guide license" means a department-issued  
23 license to conduct commercial guided ~~((kayak))~~ paddle tours on behalf  
24 of a ~~((commercial whale watching))~~ paddle tour business.

25 (j) "Paddle tour business" means a business that conducts paddle  
26 tours.

27 (k) "Paddle tour" means the act of guiding or offering to take  
28 people aboard nonmotorized or human-powered vessels, such as kayaks  
29 or paddle boards, on a trip, tour, or guided lesson that involves  
30 viewing marine mammals in their natural habitat for a fee.

31 (12) The residency and business requirements of RCW 77.65.040 (2)  
32 and (3) do not apply to Canadian individuals or corporations applying  
33 for and holding Washington commercial whale watching licenses defined  
34 in this section.

35 (13) The license and application fees in this section ~~((are~~  
36 ~~waived for calendar years 2021 and 2022))~~ may be waived for  
37 organizations whose relevant commercial whale watching or marine  
38 paddle tour activities are solely for bona fide nonprofit educational  
39 purposes.

1       **Sec. 4.** RCW 77.15.815 and 2019 c 291 s 4 are each amended to  
2 read as follows:

3       (1) This section applies only to persons and activities defined  
4 in RCW 77.65.615, including commercial whale watching and paddle  
5 tours.

6       (2) A person is guilty of unlawfully engaging in commercial whale  
7 watching in the second degree if the person conducts commercial whale  
8 watching activities and:

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

11       (b) Violates any department rule regarding ~~((the operation of a))~~  
12 commercial whale watching ~~((vessel near a southern resident orca~~  
13 ~~whale))~~.

14       ~~((2))~~ (3) A person is guilty of engaging in commercial whale  
15 watching in the first degree if the person commits the act described  
16 in subsection ~~((1))~~ (2) of this section and the violation occurs  
17 within ~~((one year of the date of a prior conviction under this~~  
18 ~~section))~~ five years of any of the following:

19       (a) The date of a prior conviction under this section;

20       (b) The date of a finding of guilt or plea of guilty pursuant to  
21 an amended information, criminal complaint or citation, or infraction  
22 for any violation that was originally charged as a violation of this  
23 section, regardless of whether the imposition of the sentence is  
24 deferred or the penalty is suspended; or

25       (c) The date of any disposition of a case arising from an act  
26 originally charged as a violation of this section, whereby the  
27 offender enters into a disposition that continues or defers the case  
28 for dismissal upon the successful completion of specific terms or  
29 conditions.

30       ~~((3))~~ (4)(a) Unlawful commercial whale watching in the second  
31 degree is a misdemeanor.

32       (b) Unlawful commercial whale watching in the first degree is a  
33 gross misdemeanor. ~~((Upon conviction))~~ In addition to the appropriate  
34 criminal penalties, the director shall ~~((deny applications submitted~~  
35 ~~by the person for a commercial whale watching license or alternate~~  
36 ~~operator license for two years from the date of conviction))~~ revoke  
37 any operator license, business license, or both, and order a  
38 suspension of the person's privilege to engage in commercial whale  
39 watching for two years.

1 (5) A person is guilty of unlawfully engaging in a paddle tour in  
2 the second degree if the person conducts paddle tour activities and:

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  
6 paddle tours in marine waters.

7 (6) A person is guilty of unlawfully engaging in a paddle tour in  
8 the first degree if the person commits an act described in subsection  
9 (5) of this section and the violation occurs within five years of the  
10 date of any of the following:

11 (a) The date of a prior conviction under this section;

12 (b) The date of a finding of guilt or plea of guilty pursuant to  
13 an amended information, criminal complaint or citation, or infraction  
14 for any violation that was originally charged as a violation of this  
15 section, regardless of whether the imposition of sentence is deferred  
16 or the penalty is suspended; or

17 (c) The date of any disposition of a case arising from an act  
18 originally charged as a violation of this section, whereby the  
19 offender enters into a disposition that continues or defers the case  
20 for dismissal upon the successful completion of specific terms and  
21 conditions.

22 (7) (a) Unlawful engagement in a paddle tour in the second degree  
23 is a misdemeanor.

24 (b) Unlawful engagement in a paddle tour in the first degree is a  
25 gross misdemeanor. In addition to appropriate criminal penalties, the  
26 director shall revoke any paddle guide license, business license, or  
27 both, and order a suspension of the person's privilege to conduct  
28 paddle tours in marine waters for two years.

29 NEW SECTION. Sec. 5. Section 1 of this act takes effect January  
30 1, 2025.

--- END ---