
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;
3 prescribing penalties; and providing an effective date.

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

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

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

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

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

18 (c) (~~Position a vessel behind a southern resident orca whale at~~
19 ~~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 **Sec. 2.** RCW 77.65.615 and 2021 c 284 s 1 are each amended to
30 read as follows:

31 (1) A commercial whale watching business license is required for
32 commercial whale watching businesses. The annual fee for a commercial
33 whale watching business license is (~~two hundred dollars~~) \$200 in
34 addition to the annual application fee of (~~seventy-five dollars~~)
35 \$70.

36 (2) The annual fees for a commercial whale watching business
37 license as described in subsection (1) of this section must (~~include~~
38 ~~fees for~~) list each motorized or sailing vessel (~~or vessels as~~
39 ~~follows:~~

1 ~~(a) One to twenty-four passengers, three hundred twenty-five~~
2 ~~dollars;~~
3 ~~(b) Twenty-five to fifty passengers, five hundred twenty-five~~
4 ~~dollars;~~
5 ~~(c) Fifty-one to one hundred passengers, eight hundred twenty-~~
6 ~~five dollars;~~
7 ~~(d) One hundred one to one hundred fifty passengers, one thousand~~
8 ~~eight hundred twenty-five dollars; and~~
9 ~~(e) One hundred fifty-one passengers or greater, two thousand~~
10 ~~dollars)) to be covered under the business license.~~

11 (3) The holder of a commercial whale watching business license
12 for motorized or sailing vessels required under subsection (2) of
13 this section may ~~((substitute the vessel designated))~~ designate an
14 additional vessel on the license ~~((, or designate a vessel if none has~~
15 ~~previously been designated,))~~ if the license holder ~~((;~~

16 ~~(a) Surrenders the previously issued license to the department;~~
17 ~~(b) Submits))~~ submits to the department an application that
18 identifies the ~~((currently designated vessel, the))~~ vessel proposed
19 to be designated ~~((,))~~ and any other information required by the
20 department ~~((; and~~

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

23 (4) ~~((Unless the business license holder owns all vessels~~
24 ~~identified on the application described in subsection (3) (b) of this~~
25 ~~section, the department may not change the vessel designation on the~~
26 ~~license more than once per calendar year.~~

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

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

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

35 ~~((+6))~~ (5) No individual may hold more than one commercial whale
36 watching operator license. An individual who holds an operator
37 license may be designated as an operator on an unlimited number of
38 commercial whale watching business licenses.

1 ~~((7))~~ (6) The annual application fee for a commercial whale
2 watching operator license is ~~((one hundred dollars in addition to an~~
3 ~~annual application fee of seventy-five dollars))~~ \$25.

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

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

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

11 (b) The person is designated as a ~~((kayak))~~ guide on the
12 underlying ~~((commercial whale watching))~~ paddle tour business
13 license.

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

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

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

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

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

28 (c) "Commercial whale watching business license" means a
29 department-issued license to operate a commercial whale watching
30 business.

31 (d) "Commercial whale watching license" means a commercial whale
32 watching business license~~((7))~~ or a commercial whale watching
33 operator license~~((7 or a kayak guide license))~~ as defined in this
34 section.

35 (e) "Commercial whale watching operator" means a person who
36 operates a motorized or sailing vessel engaged in the business of
37 whale watching.

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

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

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

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

10 (j) "Paddle tour business" means a business that conducts paddle
11 tours.

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

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

20 (13) The license and application fees in this section ~~((are~~
21 ~~waived for calendar years 2021 and 2022))~~ may be waived for
22 organizations whose relevant commercial whale watching or marine
23 paddle tour activities are solely for bona fide nonprofit educational
24 purposes.

25 **Sec. 3.** RCW 77.15.815 and 2019 c 291 s 4 are each amended to
26 read as follows:

27 (1) This section applies only to persons and activities defined
28 in RCW 77.65.615, including commercial whale watching and paddle
29 tours.

30 (2) A person is guilty of unlawfully engaging in commercial whale
31 watching in the second degree if the person conducts commercial whale
32 watching activities and:

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

35 (b) Violates any department rule regarding ~~((the operation of a))~~
36 commercial whale watching ~~((vessel near a southern resident orca~~
37 ~~whale)).~~

38 ~~((+2))~~ (3) A person is guilty of engaging in commercial whale
39 watching in the first degree if the person commits the act described

1 in subsection ~~((1))~~ (2) of this section and the violation occurs
2 within ~~((one year of the date of a prior conviction under this~~
3 ~~section))~~ five years of any of the following:

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

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

10 (c) The date of any disposition of a case arising from an act
11 originally charged as a violation of this section, whereby the
12 offender enters into a disposition that continues or defers the case
13 for dismissal upon the successful completion of specific terms or
14 conditions.

15 ~~((3))~~ (4)(a) Unlawful commercial whale watching in the second
16 degree is a misdemeanor.

17 (b) Unlawful commercial whale watching in the first degree is a
18 gross misdemeanor. ~~((Upon conviction))~~ In addition to the appropriate
19 criminal penalties, the director shall ~~((deny applications submitted~~
20 by the person for a commercial whale watching license or alternate
21 operator license for two years from the date of conviction)) revoke
22 any operator license, business license, or both, and order a
23 suspension of the person's privilege to engage in commercial whale
24 watching for two years.

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

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

29 (b) Violates any department rule regarding the operation of
30 paddle tours in marine waters.

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

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

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

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

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

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

13 NEW SECTION. Sec. 4. Section 1 of this act takes effect January
14 1, 2024.

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