
**Agriculture and Natural Resources
Committee**

ESSB 5371

Brief Description: Protecting southern resident orcas from vessels.

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

Brief Summary of Engrossed Substitute Bill

- Increases the distance that vessels and other objects must keep from southern resident orcas and provides additional exemptions from the distance restrictions.
- Reduces the natural resource infraction fine amount for violating the vessel distance and speed restrictions.
- Modifies the commercial whale watching business license fees by removing fee structures for each vessel based on the number of passengers and eliminating certain other fees.
- Creates paddle tour business and paddle guide licenses with associated fees in place of kayak guide licenses and distinct from commercial whale watching business licenses.
- Modifies enforcement provisions regarding commercial whale watching in the first degree.
- Creates enforcement provisions regarding conducting paddle tours.

Hearing Date: 3/15/23

Staff: Rebecca Lewis (786-7339).

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.

Background:

Southern Resident Orca.

The federal government listed the southern resident orca as endangered under the Endangered Species Act in November 2005. In January 2008 the federal government released a recovery plan for these orcas. The recovery plan identifies vessel effects as having potential detrimental impacts on the orca population.

In 2019 the Department of Fish and Wildlife (WDFW) was directed to implement a commercial whale watching license for Puget Sound and related inland marine waters of Washington to protect southern resident orcas. The WDFW was also directed to convene an independent science panel to complete an Adaptive Management Report to review the most current and best available science regarding impacts to orcas by small vessels and commercial whale watching vessels. The WDFW must use the review in both the rulemaking process and adaptive management of the commercial whale watching program. The first report was submitted in on November 30, 2022, and future reports are due in 2024 and 2026.

Vessel Approach Distances.

It is unlawful to approach a southern resident orca within 300 yards, position a vessel in the path of a southern resident within 400 yards, and fail to disengage the transmission of a vessel when it is within 300 yards of a southern resident orca. There are some exemptions to these distance restrictions, which include:

- the use of government and tribal vessels in the course of official duties such as law enforcement, search and rescue, and public safety;
- approaching a southern resident orca whale in accordance with certain federal vessel traffic laws;
- conducting scientific research under a permit from the National Marine Fisheries Service and the WDFW; and
- lawfully engaging in a treaty Indian or commercial fishery that is actively setting or tending to gear.

Violating the vessel distance and speed regulations is a natural resources infraction and carries a fine of \$500.

Whale Watching Licenses.

Motorized and Sailing Vessels.

Commercial whale watching businesses must be licensed by the WDFW. The annual fee for a commercial whale watching business license is \$200, with an application fee of \$75. In addition, a commercial whale watching business must pay a fee for each of their motorized or sailing vessels. The per-vessel fees range from \$325 to \$2,000 depending on the passenger capacity of the vessel. For example, the per-vessel fee for each motorized or sailing vessel with a capacity of one to 24 passengers is \$325, and the fee for each motorized or sailing vessel with a capacity of 151 passengers or more is \$2,000, with several price points for vessels with passenger capacity in between those two ranges.

A commercial whale watching business license holder may substitute the vessel designated on the business license by surrendering the previously issued vessel license to the WDFW, submits an application to the WDFW that identifies both the currently designated vessel and the vessel proposed to be designated, and pays a fee of \$35 with an application fee of \$105. A vessel designation may not be changed more than once per calendar year.

Operators of commercial whale watching vessels must also obtain a license from the WDFW, which costs \$100 with an annual application fee of \$75. Operators may only hold one license but may be designated as an operator on an unlimited number of vessels.

Kayak Guides.

A person may conduct guided kayak tours if they both obtain a kayak guide license and are designated as a kayak guide on a commercial whale watching business license. Kayak guide licenses cost \$25 with a \$25 annual application fee. No individual may hold more than one kayak guide license, and kayak guide license holders may be named on an unlimited number of commercial whale watching business licenses.

Commercial Whale Watching Enforcement.

A person is guilty of unlawful commercial whale watching in the second degree if the person does not have and possess all required licenses or violates any department rule regarding operating a vessel near a southern resident orca. Unlawful commercial whale watching in the second degree is a misdemeanor.

A person is guilty of unlawful commercial whale watching in the first degree if the person does not have and possess all required licenses or violates any department rule regarding operating a vessel near a southern resident orca, and the violation occurs within one year of a prior conviction. Unlawful commercial whale watching in the first degree is a gross misdemeanor. In addition to criminal penalties, the Director of the WDFW must deny applications for any whale watching licenses for two years from the date of conviction.

Summary of Bill:

Vessel Approach Distances.

Distance Limit Modifications, Exemptions, and Enforcement.

It is unlawful to approach within 1,000 yards, instead of 300 yards, of a southern resident orca, position a vessel in the path of a southern resident orca within 1,000 yards instead of 400 yards, and fail to disengage the transmission of a vessel is within 400 yards of a southern resident orca instead of within 300 yards. The activities that are currently exempt from approach restrictions remain exempted and new exemptions are added for oil spill response vessels, vessels operating as vessel traffic service users, or vessels operating under a captain of the port measure.

Language regarding the scientific permit exemption is modified so a permit issued by either the National Marine Fisheries Service or, rather than and, the Department of Fish and Wildlife (WDFW) is required.

The natural resource infraction fine amount for a violation of vessel distance and speed requirements is decreased from \$500 to up to \$250. An officer may use their discretion to offer educational materials instead of issuing an infraction. A provision making enforcement of the vessel approach distance requirements subject to appropriation is removed.

Outreach and Education.

The WDFW must conduct outreach and education regarding the southern resident orca approach distance regulations and best practices for recreational boating in waters inhabited by southern resident orcas. Outreach and education includes best practices for inadvertent encounters within 1,000 yards, and advancing and proliferating tools to notify boaters of southern resident orca presence, identifying orca ecotypes, and estimating distance on the water.

The WDFW must convene a diverse workgroup that includes representatives of nongovernmental organizations, recreational boaters, the commercial whale watching industry, commercial fishers, ports and marinas, relevant government entities, tribes, and the southern resident orca research community to inform the development of outreach and education strategies. The workgroup must include a report summarizing its work and the WDFW's outreach strategies in the Adaptive Management Report that is due in 2024. The WDFW must conduct intensive outreach and education in fiscal year 2024 and the first half of 2025 to implement the outreach recommendations from the workgroup.

The WDFW must post signs at public boat launches and marinas that provide information on the vessel setbacks and speed limits. However, the limits apply whether or not a sign is present, and absence of a sign is not a defense to any violation of the limits.

Whale Watching Licenses.

Motorized and Sailing Vessels.

The application fee for commercial whale watching business licenses is reduced from \$75 to \$70, and the per-vessel fees based on vessel capacity are removed. The annual application for a commercial whale watching business license must list each vessel to be covered under the license. A commercial whale watching business license holder may designate an additional vessel on the license by submitting an application to the WDFW that identifies the vessel proposed to be designated and any other information required by the WDFW. There is no fee to designate an additional vessel.

The application fee for a commercial whale watching operator license is reduced from \$75 to \$25, and \$100 license fee is eliminated.

Paddle Tours.

In order to conduct paddle tours in state waters inhabited by marine mammals, a business must obtain a paddle tour business license. "Paddle tour" is defined as the act of guiding or offering to take people aboard nonmotorized or human-powered vessels, including kayaks, on a trip, tour, or guided lesson in waters inhabited by marine mammals for a fee. The fee for a paddle tour

business license is \$200 with a \$70 application fee.

A person may conduct guided paddle tours in waters inhabited by marine mammals only if the person both holds a paddle guide license and is designated as a guide on an underlying paddle tour business license. The annual application fee for paddle guide licenses is \$25. An individual may not hold more than one paddle guide license, but may be designated as a paddle guide on an unlimited number of paddle tour business licenses.

License Fees, Generally.

License and application fees for commercial whale watching and paddle tours may be waived for organizations whose activities are only for bona fide nonprofit educational purposes.

Commercial Whale Watching and Paddle Tour Enforcement.

A person is guilty of unlawfully engaging in a paddle tour in the second degree if they do not possess required licenses and permits or if they violate WDFW rules regarding commercial whale watching.

A person is guilty of unlawfully engaging in commercial whale watching or unlawfully engaging in a paddle tour in the first degree if they do not possess required licenses and permits, or violate WDFW rules regarding commercial whale watching, and the violation occurs within five years of the date of a prior conviction, a finding of guilt, or under certain circumstances the disposition of a case originally charged as a violation. In addition to penalties for unlawful commercial whale watching or engaging in a paddle tour in the first degree, the WDFW shall revoke a license and order a two-year suspension.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on March 1, 2023.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.