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ENGROSSED HOUSE BILL 1031

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State of Washington

65th Legislature

2017 Regular Session

By Representatives Lytton, Morris, Tarleton, Fitzgibbon, Springer, Gregerson, and Hudgins

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1 AN ACT Relating to the use of unmanned aerial systems near  
2 certain protected marine species; and amending RCW 77.15.740.

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

4 **Sec. 1.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to  
5 read as follows:

6 (1) Except as provided in subsection (~~((2))~~) (3) of this section,  
7 it is unlawful to:

8 (a) Cause a vessel, unmanned aerial system, or other object to  
9 approach, in any manner, within two hundred yards as measured in any  
10 direction, including vertically, of a southern resident orca whale;

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

17 (c) Fail to disengage the transmission of a vessel that is within  
18 two hundred yards of a southern resident orca whale; or

19 (d) Feed a southern resident orca whale.

20 (2) It is not a violation of subsection (1)(a) of this section  
21 for a person to cause an unmanned aerial system to approach a

1 southern resident orca whale solely by virtue of the unmanned aerial  
2 system being in active transit to an unrelated destination.

3 (3) A person is exempt from subsection (1) of this section if  
4 that person is:

5 (a) Operating a federal government vessel in the course of his or  
6 her official duties, or operating a state, tribal, or local  
7 government vessel when engaged in official duties involving law  
8 enforcement, search and rescue, or public safety;

9 (b) Operating a vessel in conjunction with a vessel traffic  
10 service established under 33 C.F.R. and following a traffic  
11 separation scheme, or complying with a vessel traffic service measure  
12 of direction. This also includes support vessels escorting ships in  
13 the traffic lanes, such as tug boats;

14 (c) Engaging in an activity, including scientific research,  
15 pursuant to a permit or other authorization from the national marine  
16 fisheries service and the department;

17 (d) Lawfully engaging in a treaty Indian or commercial fishery  
18 that is actively setting, retrieving, or closely tending fishing  
19 gear;

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

24 (f) Engaging in rescue or clean-up efforts of a beached southern  
25 resident orca whale overseen, coordinated, or authorized by a  
26 volunteer stranding network.

27 ~~((3))~~ (4) For the purpose of this section~~((7))~~:

28 (a) "Unmanned aerial system" means an aircraft that is operated  
29 without the possibility of human intervention from on or within the  
30 aircraft, and any hardware or software associated with its operation;  
31 and

32 (b) "Vessel" includes aircraft while on the surface of the water,  
33 and every description of watercraft on the water that is used or  
34 capable of being used as a means of transportation on the water.  
35 However, "vessel" does not include inner tubes, air mattresses,  
36 sailboards, and small rafts, or flotation devices or toys customarily  
37 used by swimmers.

38 ~~((4))~~ (5)(a) A violation of this section is a natural resource  
39 infraction punishable under chapter 7.84 RCW and carries a fine of

1 five hundred dollars, not including statutory assessments added  
2 pursuant to RCW 3.62.090.

3 (b) A person who qualifies for an exemption under subsection  
4 (~~(2)~~) (3) of this section may offer that exemption as an  
5 affirmative defense, which that person must prove by a preponderance  
6 of the evidence.

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