
SENATE BILL 5371

State of Washington

68th Legislature

2023 Regular Session

By Senators Lovelett and Shewmake

1 AN ACT Relating to protecting southern resident orcas from
2 vessels; amending RCW 77.15.740, 77.65.615, and 77.15.815; and
3 prescribing penalties.

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))~~) (3) of this section,
8 it is 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) An operator of a vessel that has entered within 1,000 yards
10 of a southern resident orca must immediately safely reposition the
11 vessel to be 1,000 yards or farther from any southern resident orca.

12 (3) A person is exempt from subsections (1) and (2) of this
13 section if that person is:

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

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

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

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

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

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

37 ~~((3))~~ (4) For the purpose of this section, "vessel" includes
38 aircraft while on the surface of the water, and every description of
39 watercraft on the water that is used or capable of being used as a
40 means of transportation on the water. However, "vessel" does not

1 include inner tubes, air mattresses, sailboards, and small rafts, or
2 flotation devices or toys customarily used by swimmers.

3 ~~((4))~~ (5)(a) A violation of this section is a natural resource
4 infraction punishable under chapter 7.84 RCW and carries a fine of
5 ~~((five hundred dollars))~~ \$500, not including statutory assessments
6 added pursuant to RCW 3.62.090.

7 (b) A person who qualifies for an exemption under subsection
8 ~~((2))~~ (3) of this section may offer that exemption as an
9 affirmative defense, which that person must prove by a preponderance
10 of the evidence.

11 ~~((5) The enforcement actions required of the department from
12 this section are subject to the availability of amounts appropriated
13 for this specific purpose.))~~

14 **Sec. 2.** RCW 77.65.615 and 2021 c 284 s 1 are each amended to
15 read as follows:

16 (1) A commercial whale watching business license is required for
17 commercial whale watching businesses. The annual fee for a commercial
18 whale watching business license is ~~((two hundred dollars))~~ \$200 in
19 addition to the annual application fee of ~~((seventy-five dollars))~~
20 \$70.

21 (2) The annual fees for a commercial whale watching business
22 license as described in subsection (1) of this section must include
23 ~~((fees))~~ a fee of \$200 for each motorized or sailing vessel ~~((or
24 vessels as follows:~~

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

27 ~~(b) Twenty-five to fifty passengers, five hundred twenty-five
28 dollars;~~

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

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

33 ~~(e) One hundred fifty-one passengers or greater, two thousand
34 dollars)).~~

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

1 (a) (~~Surrenders the previously issued license to the department;~~
2 ~~(b)~~) Submits to the department an application that identifies
3 the (~~currently designated vessel, the~~) vessel proposed to be
4 designated(~~(7)~~) and any other information required by the department;
5 and

6 (~~(e)~~) (b) Pays to the department a fee of (~~thirty-five~~
7 ~~dollars~~) \$130 and an application fee of (~~one hundred five dollars~~)
8 \$70.

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

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

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

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

21 (~~(6)~~) (5) No individual may hold more than one commercial whale
22 watching operator license. An individual who holds an operator
23 license may be designated as an operator on an unlimited number of
24 commercial whale watching business licenses.

25 (~~(7)~~) (6) The annual fee for a commercial whale watching
26 operator license is (~~one hundred dollars~~) \$100 in addition to an
27 annual application fee of (~~seventy-five dollars~~) \$25.

28 (7) A paddle tour business license is required for businesses
29 conducting paddle tours in waters of Washington state inhabited by
30 marine mammals. The annual fee for a paddle tour business license is
31 \$200 in addition to the annual application fee of \$70.

32 (8) A person may conduct (~~commercial whale watching via~~) guided
33 (~~kayak~~) paddle tours in waters inhabited by marine mammals only if:

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

36 (b) The person is designated as a (~~kayak~~) guide on the
37 underlying (~~commercial whale watching~~) paddle tour business
38 license.

39 (9) No individual may hold more than one (~~kayak~~) paddle guide
40 license. An individual who holds a (~~kayak~~) paddle guide license may

1 be designated on an unlimited number of (~~commercial whale watching~~)
2 paddle tour business licenses.

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

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

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

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

13 (c) "Commercial whale watching business license" means a
14 department-issued license to operate a commercial whale watching
15 business.

16 (d) "Commercial whale watching license" means a commercial whale
17 watching business license(~~(r)~~) or a commercial whale watching
18 operator license(~~(r, or a kayak guide license)~~) as defined in this
19 section.

20 (e) "Commercial whale watching operator" means a person who
21 operates a motorized or sailing vessel engaged in the business of
22 whale watching.

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

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

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

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

35 (j) "Paddle tour business" means a business that conducts paddle
36 tours.

37 (k) "Paddle tour" means the act of guiding or offering to take
38 people aboard nonmotorized or human-powered vessels, such as kayaks
39 or paddle boards, on a trip, tour, or guided lesson in waters
40 inhabited by marine mammals for a fee.

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

5 (13) The license and application fees in this section (~~are~~
6 ~~waived for calendar years 2021 and 2022~~) may be waived for
7 organizations whose relevant commercial whale watching or marine
8 paddle tour activities are solely for bona fide nonprofit educational
9 purposes.

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

12 (1) A person is guilty of unlawfully engaging in commercial whale
13 watching in the second degree if the person:

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

16 (b) Violates any department rule regarding (~~the operation of a~~)
17 commercial whale watching (~~vessel near a southern resident orca~~
18 ~~whale~~)).

19 (2) A person is guilty of engaging in commercial whale watching
20 in the first degree if the person commits the act described in
21 subsection (1) of this section and the violation occurs within (~~one~~
22 ~~year of the date of a prior conviction under this section~~) five
23 years of any of the following:

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

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

30 (c) The date of any disposition of a case arising from an act
31 originally charged as a violation of this section, whereby the
32 offender enters into a disposition that continues or defers the case
33 for dismissal upon the successful completion of specific terms or
34 conditions.

35 (3) (a) Unlawful commercial whale watching in the second degree is
36 a misdemeanor.

37 (b) Unlawful commercial whale watching in the first degree is a
38 gross misdemeanor. (~~Upon conviction~~) In addition to the appropriate
39 criminal penalties, the director shall (~~deny applications submitted~~

1 ~~by the person for a commercial whale watching license or alternate~~
2 ~~operator license for two years from the date of conviction)) revoke~~
3 ~~any operator license, business license, or both, and order a~~
4 ~~suspension of the person's privilege to engage in commercial whale~~
5 ~~watching for two years.~~

6 (4) A person is guilty of unlawfully engaging in a paddle tour in
7 the second degree if the person:

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

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

12 (5) A person is guilty of unlawfully engaging in a paddle tour in
13 the first degree if the person commits an act described in subsection
14 (4) of this section and the violation occurs within five years of the
15 date of any of the following:

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

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

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

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

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

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