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SECOND SUBSTITUTE SENATE BILL 6268

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State of Washington

65th Legislature

2018 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Rolfes, Chase, Van De Wege, Conway, Keiser, Lias, Frockt, Hasegawa, Hunt, Palumbo, and Saldaña)

READ FIRST TIME 02/06/18.

1 AN ACT Relating to creating the orca protection act; amending RCW  
2 77.15.740; adding a new section to chapter 77.15 RCW; creating new  
3 sections; and providing expiration dates.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that southern  
6 resident killer whales, also known as orcas, are critically  
7 endangered with the population at a thirty-year low of seventy-six  
8 whales and scientific evidence building that they are nutritionally  
9 stressed. These marine icons are an apex predator species that  
10 indicate the overall health of Washington state's marine ecosystems.  
11 They also are culturally significant to many Washington tribes and  
12 the region as a whole, and are the foundation of an estimated sixty  
13 million dollar tourist industry. Existing threats to the orca include  
14 a decline in food sources, including Chinook salmon, as well as  
15 environmental and human pressures. Therefore, the legislature intends  
16 to take immediate action to reverse this emergency.

17 NEW SECTION. **Sec. 2.** A new section is added to chapter 77.15  
18 RCW to read as follows:

19 (1) In order to facilitate the enforcement of RCW 77.15.740,  
20 provide extra protection to newborn calves, and protect critical

1 feeding areas, and subject to the availability of amounts  
2 appropriated for this specific purpose, the department must conduct a  
3 minimum of one hundred patrols during the twenty-two most active  
4 weeks for southern resident killer whale viewing activity each year.  
5 In doing so, the department must prioritize Wednesday through Monday  
6 patrols when recreational whale watching activity is most active.

7 (2) The legislature recognizes that weather and sea conditions  
8 may impact the department's ability to conduct the number of patrols  
9 identified in subsection (1) of this section. If the department does  
10 not complete the identified number of patrols during a given annual  
11 period, the department must provide a written explanation for, and  
12 documentation of, the reasons for the missed patrols to the  
13 commission and appropriate committees of the legislature.

14 **Sec. 3.** RCW 77.15.740 and 2014 c 48 s 22 are each amended to  
15 read as follows:

16 (1) Except as provided in subsection (2) of this section, it is  
17 unlawful to:

18 (a) Cause a vessel, aircraft, remotely controlled aerial vehicle,  
19 or other object to approach, in any manner, within two hundred yards  
20 of a southern resident orca whale;

21 (b) Position a vessel to be in the path of a southern resident  
22 orca whale at any point located within four hundred yards of the  
23 whale. This includes intercepting a southern resident orca whale by  
24 positioning a vessel so that the prevailing wind or water current  
25 carries the vessel into the path of the whale at any point located  
26 within four hundred yards of the whale;

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

29 (d) Feed a southern resident orca whale; or

30 (e) Cause a vessel to exceed a speed over ground of seven knots  
31 within four hundred yards of a southern resident orca whale.

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

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

38 (b) Operating a vessel in conjunction with a vessel traffic  
39 service established under 33 C.F.R. and following a traffic

1 separation scheme, or complying with a vessel traffic service measure  
2 of direction. This also includes support vessels escorting ships in  
3 the traffic lanes, such as tug boats;

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

7 (d) Lawfully engaging in a treaty Indian or commercial fishery  
8 that is actively setting, retrieving, or closely tending fishing  
9 gear;

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

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

17 (3) For the purpose of this section, "vessel" includes aircraft  
18 while on the surface of the water, and every description of  
19 watercraft on the water that is used or capable of being used as a  
20 means of transportation on the water. However, "vessel" does not  
21 include inner tubes, air mattresses, sailboards, and small rafts, or  
22 flotation devices or toys customarily used by swimmers.

23 (4)(a) A violation of this section is a natural resource  
24 infraction punishable under chapter 7.84 RCW and carries a fine of  
25 five hundred dollars, not including statutory assessments added  
26 pursuant to RCW 3.62.090.

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

30 NEW SECTION. **Sec. 4.** (1) Subject to the availability of amounts  
31 appropriated for this specific purpose, the department of fish and  
32 wildlife must coordinate with appropriate federal, tribal, county,  
33 and nongovernmental partners to identify research and management  
34 actions undertaken since the federal southern resident killer whale  
35 recovery plan adoption in 2008 that relate to impacts from human-  
36 generated marine noise. The department of fish and wildlife must  
37 identify any relevant research findings and management actions  
38 undertaken. Additionally, the department must identify options and  
39 recommendations on potential actions the state can take, through

1 departmental or legislative action, to further killer whale recovery  
2 efforts by addressing impacts from noise.

3 (2) The department of fish and wildlife must provide its  
4 analysis, options, and recommendations to the appropriate committees  
5 of the legislature by December 1, 2018.

6 (3) This section expires June 30, 2019.

7 NEW SECTION. **Sec. 5.** (1) The Salish Sea institute at Western  
8 Washington University must convene a meeting to improve the  
9 coordination of recovery strategies for southern resident killer  
10 whales between Washington and British Columbia, and to establish  
11 timelines for recovery actions. The meeting must occur by December  
12 31, 2018. The institute must provide a summary of the meeting and  
13 outcomes to the appropriate committees of the legislature within  
14 thirty days of the conclusion of the meeting.

15 (2) This section expires June 30, 2019.

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