

RCW 77.15.740 Protection of southern resident orca whales—

Unlawful activities—Penalty. (1) Except as provided in subsection (2) of this section, it is unlawful for a person to:

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

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

(c) Position a vessel behind a southern resident orca whale at any point located within four hundred yards;

(d) Fail to disengage the transmission of a vessel that is within three hundred yards of a southern resident orca whale;

(e) Cause a vessel or other object to exceed a speed greater than seven knots over ground at any point located within one-half nautical mile (one thousand thirteen yards) of a southern resident orca whale; or

(f) Feed a southern resident orca whale.

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

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

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

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

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

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

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

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

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

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

(5) The enforcement actions required of the department from this section are subject to the availability of amounts appropriated for this specific purpose. [2019 c 291 § 1; 2014 c 48 § 22; 2012 c 176 § 37; 2008 c 225 § 2.]

Effective date—2019 c 291 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 8, 2019]." [2019 c 291 § 6.]

Findings—Intent—2008 c 225: "The legislature finds that the resident population of orca whales in Washington waters (*Orcinus orca*), commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals." [2008 c 225 § 1.]

Intent—2008 c 225: "The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW." [2008 c 225 § 3.]