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WHATCOM COUNTY COUNCIL

AGENDA REVISION NOTICE FOR FEBRUARY 12, 2019

The items listed below have been added to the Council's evening meeting agenda:

Other Items

14. AB2019-133 Resolution requesting support for Washington State House and Senate bills related to: pollution prevention; increasing habitat and fish abundance; protection of southern resident orca whales from vessels; and improving the safety of oil transportation (paperwork attached)
15. AB2019-136 Request approval to send letter requesting state funding to support the work of the Whatcom County Marine Resources Committee (paperwork attached)

RESOLUTION NO. _____

**REQUESTING SUPPORT FOR WASHINGTON STATE HOUSE AND SENATE
BILLS RELATED TO: POLLUTION PREVENTION; INCREASING HABITAT AND
FISH ABUNDANCE; PROTECTION OF SOUTHERN RESIDENT ORCA WHALES
FROM VESSELS; AND IMPROVING THE SAFETY OF OIL TRANSPORTATION**

WHEREAS, in March 2018, Governor Inslee issued Executive Order 18-02 which directed state agencies to take immediate actions to help the endangered southern resident orca population and established the Southern Resident Orca Task Force to develop a long-term plan for recovering orcas; and

WHEREAS, the Task Force includes nearly 50 members representing a wide range of sectors including state agencies, the legislature, and state, tribal, federal and local governments, as well as private sector and non-profit organizations; and

WHEREAS, southern resident orcas primarily consume Chinook salmon, bioaccumulate toxics in their blubber, and communicate underwater with members of the pod; and

WHEREAS, there are currently 74 southern resident orcas, down from a healthy population of about 200; and

WHEREAS, the orcas are struggling to survive as a result of declining Chinook and other salmon runs, high-mortality rates due to relying upon their toxic blubber reserves to sustain them, and increasing vessel traffic impairing their ability to communicate amongst themselves while they hunt; and

WHEREAS, the Southern Resident Orca Task Force focused on addressing the above three key problems: prey availability (through habitat, hydropower, hatcheries, harvest, and forage fish), toxics in the water, and noise disturbance from boats and vessels; and

WHEREAS, during the Southern Resident Orca Task Force's deliberations last summer, Tahlequah (J35) carried her dead calf for 17 days around the Salish Sea in mourning and drew attention to the endangered population from around the world; and

WHEREAS, the declining population of the southern resident orcas is an indication of noise pollution interfering with the Orca's sonar used to find prey, the poor health of our salmon runs and the environment; and

1
2 **WHEREAS**, on November 16, 2018, the Southern Resident Orca Task Force
3 released their final 36 recommendations to Governor Inslee; and
4

5 **WHEREAS**, Governor Inslee and the Legislature have introduced the following
6 pieces of legislation based on recommendations from the Southern Resident Orca Task
7 Force:
8

- 9 • HB 1194 preventing toxic pollution that affects public health or our environment.
10 • HB 1579, Implementing recommendations of the southern resident killer whale
11 task force related to increasing chinook abundance, and SB 5580, implementing
12 recommendations of the southern resident killer whale task force related to
13 increasing habitat and forage fish abundance.
14 • HB 1580 and SB 5577, concerning the protection of southern resident orca
15 whales from vessels.
16 • HB 1578 and SB 5578, Reducing threats to southern resident killer whales by
17 improving the safety of oil transportation.
18

19 **NOW, THEREFORE BE IT RESOLVED** that the Whatcom County Council will
20 forward this resolution in support of the above legislation to our 40th and 42nd
21 Legislators and members of the Senate Agriculture, Water, Natural Resources & Parks,
22 Senate Environment, Energy & Technology, House Environment & Energy, and House
23 Rural Development, Agriculture, & Natural Resources Committees.
24

25 **ADOPTED** this ____ day of _____, 2019.
26

27
28 ATTEST:

WHATCOM COUNTY COUNCIL
WHATCOM COUNTY, WASHINGTON

29
30
31 _____
32 Dana Brown-Davis, Clerk of the Council
33

Rud Browne, Council Chair

34 WHATCOM COUNTY EXECUTIVE
35 APPROVED AS TO FORM:
36
37
38 _____
39 Civil Deputy Prosecutor
40
41
42
43

HOUSE BILL 1194

State of Washington

66th Legislature

2019 Regular Session

By Representatives Doglio, Fitzgibbon, Slatter, Fey, Peterson, Hudgins, Lekanoff, Macri, Shewmake, Dolan, Jenkins, Pollet, Goodman, Robinson, and Stanford

Read first time 01/16/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to preventing toxic pollution that affects public
2 health or the environment; amending RCW 70.240.040 and 43.21B.110;
3 adding a new chapter to Title 70 RCW; and prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires
7 otherwise.

8 (1) "Consumer product" means any item, including any component
9 parts and packaging, sold for residential or commercial use.

10 (2) "Department" means the department of ecology.

11 (3) "Director" means the director of the department.

12 (4) "Manufacturer" means any person, firm, association,
13 partnership, corporation, governmental entity, organization, or joint
14 venture that produces a product or is an importer or domestic
15 distributor of a product sold or offered for sale in or into the
16 state.

17 (5) "Organohalogen" means a class of chemicals that includes any
18 chemical containing one or more halogen elements bonded to carbon.

19 (6) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS
20 chemicals" means a class of fluorinated organic chemicals containing
21 at least one fully fluorinated carbon atom.

1 (7) "Phenolic compounds" means alkylphenol ethoxylates and
2 bisphenols.

3 (8) "Phthalates" means synthetic chemical esters of phthalic
4 acid.

5 (9) "Polychlorinated biphenyls" or "PCBs" means chemical forms
6 that consist of two benzene rings joined together and containing one
7 to ten chlorine atoms attached to the benzene rings.

8 (10) "Priority chemical" means a chemical or chemical class used
9 as, used in, or put in a consumer product including:

- 10 (a) Perfluoroalkyl and polyfluoroalkyl substances;
- 11 (b) Phthalates;
- 12 (c) Organohalogen flame retardants;
- 13 (d) Flame retardants, as identified by the department under
14 chapter 70.240 RCW;
- 15 (e) Phenolic compounds;
- 16 (f) Polychlorinated biphenyls; or
- 17 (g) A chemical identified by the department as a priority
18 chemical under section 2 of this act.

19 (11) "Safer alternative" means an alternative that is less
20 hazardous to humans or the environment than the existing chemical or
21 chemical process. A safer alternative to a particular chemical may
22 include a chemical substitute or a change in materials or design that
23 eliminates the need for a chemical alternative.

24 (12) "Sensitive population" means a category of people that is
25 identified by the department that may be or is disproportionately or
26 more severely affected by priority chemicals, such as:

- 27 (a) Men and women of childbearing age;
- 28 (b) Infants and children;
- 29 (c) Pregnant women;
- 30 (d) Communities that are highly impacted by toxic chemicals;
- 31 (e) Persons with occupational exposure; and
- 32 (f) The elderly.

33 (13) "Sensitive species" means a species or grouping of animals
34 that is identified by the department that may be or is
35 disproportionately or more severely affected by priority chemicals,
36 such as:

- 37 (a) Southern resident killer whales;
- 38 (b) Salmon; and
- 39 (c) Forage fish.

1 NEW SECTION. **Sec. 2.** Every five years, and consistent with the
2 timeline established in section 5 of this act, the department must
3 identify at least five priority chemicals that meet at least one of
4 the following:

5 (1) The chemical or a member of a class of chemicals are
6 identified by the department as a:

7 (a) High priority chemical of high concern for children under
8 chapter 70.240 RCW; or

9 (b) Persistent, bioaccumulative toxin under chapter 70.105 RCW;

10 (2) The chemical or members of a class of chemicals are
11 regulated:

12 (a) In consumer products under chapter 70.240, 70.76, 70.95G,
13 70.280, 70.285, 70.95M, or 70.75A RCW; or

14 (b) As a hazardous substance under chapter 70.105 or 70.105D RCW;
15 or

16 (3) The department determines the chemical or members of a class
17 of chemicals are a concern for sensitive populations and sensitive
18 species after considering the following factors:

19 (a) A chemical's or members of a class of chemicals' hazard
20 traits or environmental or toxicological endpoints;

21 (b) A chemical's or members of a class of chemicals' aggregate
22 effects;

23 (c) A chemical's or members of a class of chemicals' cumulative
24 effects with other chemicals with the same or similar hazard traits
25 or environmental or toxicological endpoints;

26 (d) A chemical's or members of a class of chemicals'
27 environmental fate;

28 (e) The potential for a chemical or members of a class of
29 chemicals to degrade, form reaction products, or metabolize into
30 another chemical or a chemical that exhibits one or more hazard
31 traits or environmental or toxicological endpoints, or both;

32 (f) The potential for the chemical or class of chemicals to
33 contribute to or cause adverse health or environmental impacts;

34 (g) The chemical's or class of chemicals' potential impact on
35 sensitive populations, sensitive species, or environmentally
36 sensitive habitats;

37 (h) Potential exposures to the chemical or members of a class of
38 chemicals based on:

39 (i) Reliable information regarding potential exposures to the
40 chemical or members of a class of chemicals; and

1 (ii) Reliable information demonstrating occurrence, or potential
2 occurrence, of multiple exposures to the chemical or members of a
3 class of chemicals.

4 NEW SECTION. **Sec. 3.** (1) Every five years, and consistent with
5 the timeline established in section 5 of this act, the department
6 shall identify priority consumer products that are a significant
7 source of or use of priority chemicals.

8 (2) When identifying priority consumer products under this
9 section, the department must consider, at a minimum, the following
10 criteria:

11 (a) The estimated volume of a priority chemical or priority
12 chemicals added to, used in, or present in the consumer product;

13 (b) The estimated volume or number of units of the consumer
14 product sold or present in the state;

15 (c) The potential for exposure to priority chemicals by sensitive
16 populations or sensitive species when the consumer product is used,
17 disposed of, or has decomposed;

18 (d) The potential for priority chemicals to be found in the
19 outdoor environment, with priority given to surface water,
20 groundwater, marine waters, sediments, and other ecologically
21 sensitive areas, when the consumer product is used, disposed of, or
22 has decomposed;

23 (e) If another state or nation has identified or taken regulatory
24 action to restrict or otherwise regulate the priority chemical in the
25 consumer product; and

26 (f) Whether the department has already identified the consumer
27 product in a chemical action plan completed under chapter 70.105 RCW
28 as a source of a priority chemical or other reports or information
29 gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M,
30 or 70.75A RCW.

31 (3) The department is not required to give equal weight to each
32 of the criteria in subsection (2)(a) through (f) of this section when
33 identifying priority consumer products that use or are a significant
34 source of priority chemicals.

35 (4) To assist with identifying priority consumer products under
36 this section and making determinations as authorized under section 4
37 of this act, the department may request a manufacturer to submit a
38 notice to the department that contains the information specified in
39 RCW 70.240.040 (1) through (6) or other information relevant to

1 subsection (2)(a) through (d) of this section. The manufacturer must
2 provide the notice to the department no later than six months after
3 receipt of such a demand by the department.

4 (5)(a) Except as provided in (b) of this subsection, the
5 department may not identify the following as priority consumer
6 products under this section:

7 (i) Food or beverages;

8 (ii) Tobacco products;

9 (iii) Drug or biological products regulated by the United States
10 food and drug administration;

11 (iv) Finished products regulated by the federal aviation
12 administration; and

13 (v) Chemical products used to produce an agricultural commodity,
14 as defined in RCW 17.21.020.

15 (b) The department may identify the packaging of products listed
16 in (a) of this subsection as priority consumer products.

17 NEW SECTION. **Sec. 4.** (1) Every five years, and consistent with
18 the timeline established in section 5 of this act, the department
19 must determine regulatory actions to increase transparency and to
20 reduce the use of priority chemicals in priority consumer products.
21 The department may:

22 (a) Determine that no regulatory action is currently required;

23 (b) Require a manufacturer to provide notice of the use of a
24 priority chemical or class of priority chemicals consistent with RCW
25 70.240.040; or

26 (c) Restrict or prohibit the manufacture, wholesale,
27 distribution, sale, retail sale, or use, or any combination thereof,
28 of a priority chemical or class of priority chemicals in a consumer
29 product.

30 (2)(a) The department may order a manufacturer to submit
31 information consistent with section 3(4) of this act.

32 (b) The department may require a manufacturer to provide:

33 (i) A list of products containing priority chemicals;

34 (ii) Product ingredients;

35 (iii) Information regarding exposure and chemical hazard; and

36 (iv) A description of the amount and the function of the high
37 priority chemical in the product.

1 (3) The department may restrict or prohibit a priority chemical
2 or members of a class of priority chemicals in a priority consumer
3 product when it determines:

4 (a) Safer alternatives are feasible and available;

5 (b) The priority chemical or members of a class of priority
6 chemicals is not functionally necessary in the priority consumer
7 product;

8 (c) Another state or nation has restricted the priority chemical
9 or members of a class of priority chemicals in a product; or

10 (d) It is necessary to protect the health of sensitive
11 populations or sensitive species.

12 (4) A restriction or prohibition on a priority chemical in a
13 consumer product may include exemptions or exceptions, including
14 exemptions to address existing stock of a product in commerce at the
15 time that a restriction takes effect.

16 NEW SECTION. **Sec. 5.** (1)(a) By June 1, 2020, and consistent
17 with section 3 of this act, the department shall identify priority
18 consumer products that are a significant source of or use of priority
19 chemicals specified in section 1(10) (a) through (f) of this act.

20 (b) By June 1, 2022, and consistent with section 4 of this act,
21 the department must determine regulatory actions regarding the
22 priority chemicals and priority consumer products identified in (a)
23 of this subsection.

24 (c) By June 1, 2023, the department must adopt rules to implement
25 regulatory actions determined under (b) of this subsection.

26 (2)(a) By June 1, 2024, and every five years thereafter, the
27 department shall identify at least five priority chemicals specified
28 in section 1(10) (a) through (g) of this act that are identified
29 consistent with section 2 of this act.

30 (b) By June 1, 2025, and every five years thereafter, the
31 department must identify priority consumer products that contain
32 priority chemicals, consistent with section 3 of this act.

33 (c) By June 1, 2027, and every five years thereafter, the
34 department must determine regulatory actions for the priority
35 chemicals in priority consumer products identified under (b) of this
36 subsection, consistent with section 4 of this act.

37 (d) By June 1, 2028, and every five years thereafter, the
38 department must adopt rules to implement regulatory actions
39 identified under (c) of this subsection.

1 (3) When identifying priority chemicals and priority consumer
2 products under this chapter, the department must notify the public of
3 the selection, the basis for the selection, and a draft schedule for
4 making determinations. The notice must be published in the Washington
5 State Register. The department shall provide the public with an
6 opportunity for review and comment of the regulatory determinations.

7 NEW SECTION. **Sec. 6.** (1) A manufacturer that submits
8 information or records to the department under this chapter may
9 request that the information or records be made available only for
10 the confidential use of the department, the director, or the
11 appropriate division of the department. The director shall give
12 consideration to the request and if this action is not detrimental to
13 the public interest and is otherwise within accord with the policies
14 and purposes of chapter 43.21A RCW, the director must grant the
15 request for the information to remain confidential as authorized in
16 RCW 43.21A.160. Under the procedures established under RCW
17 43.21A.160, the director must keep confidential any records furnished
18 by a manufacturer under this chapter that relate to proprietary
19 manufacturing processes or chemical formulations used in products or
20 processes.

21 (2) For records or other information furnished to the department
22 by a federal agency on the condition that the information be afforded
23 the same confidentiality protections as under federal law, the
24 director may determine that the information or records be available
25 only for the confidential use of the director, the department, or the
26 appropriate division of the department. All such records and
27 information are exempt from public disclosure. The director is
28 authorized to enter into an agreement with the federal agency
29 furnishing the records or information to ensure the confidentiality
30 of the records or information.

31 NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement
32 of this chapter, a rule adopted under this chapter, or an order
33 issued under this chapter, is subject to a civil penalty not to
34 exceed five thousand dollars for each violation in the case of a
35 first offense. Manufacturers who are repeat violators are subject to
36 a civil penalty not to exceed ten thousand dollars for each repeat
37 offense.

1 (2) Any penalty provided for in this section, and any order
2 issued by the department under this chapter, may be appealed to the
3 pollution control hearings board.

4 (3) All penalties collected under this chapter shall be deposited
5 in the state toxics control account created in RCW 70.105D.070.

6 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as
7 necessary for the purpose of implementing, administering, and
8 enforcing this chapter.

9 (2) The department must adopt rules to implement the
10 determinations of regulatory actions specified in section 4(1) (b) or
11 (c) of this act.

12 **Sec. 9.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to
13 read as follows:

14 ~~((Beginning six months after the department has adopted rules~~
15 ~~under section 8(5) of this act,))~~ A manufacturer of a children's
16 product or a consumer product containing a priority chemical subject
17 to a rule adopted to implement a determination made consistent with
18 section 4(1)(b) of this act, or a trade organization on behalf of its
19 member manufacturers, shall provide notice to the department that the
20 manufacturer's product contains a high priority chemical or a
21 priority chemical identified under chapter 70.--- RCW (the new
22 chapter created in section 12 of this act). The notice must be filed
23 annually with the department and must include the following
24 information:

25 (1) The name of the chemical used or produced and its chemical
26 abstracts service registry number;

27 (2) A brief description of the product or product component
28 containing the substance;

29 (3) A description of the function of the chemical in the product;

30 (4) The amount of the chemical used in each unit of the product
31 or product component. The amount may be reported in ranges, rather
32 than the exact amount;

33 (5) The name and address of the manufacturer and the name,
34 address, and phone number of a contact person for the manufacturer;
35 and

36 (6) Any other information the manufacturer deems relevant to the
37 appropriate use of the product.

1 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
2 read as follows:

3 (1) The hearings board shall only have jurisdiction to hear and
4 decide appeals from the following decisions of the department, the
5 director, local conservation districts, the air pollution control
6 boards or authorities as established pursuant to chapter 70.94 RCW,
7 local health departments, the department of natural resources, the
8 department of fish and wildlife, the parks and recreation commission,
9 and authorized public entities described in chapter 79.100 RCW:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
12 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
13 90.56.310, 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act,
16 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70.95.300.

25 (d) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (e) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70.95J.080.

30 (f) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70.95.205.

34 (g) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW.

14 (l) Decisions of the department of natural resources that are
15 reviewable under RCW 78.44.270.

16 (m) Decisions of an authorized public entity under RCW 79.100.010
17 to take temporary possession or custody of a vessel or to contest the
18 amount of reimbursement owed that are reviewable by the hearings
19 board under RCW 79.100.120.

20 (2) The following hearings shall not be conducted by the hearings
21 board:

22 (a) Hearings required by law to be conducted by the shorelines
23 hearings board pursuant to chapter 90.58 RCW.

24 (b) Hearings conducted by the department pursuant to RCW
25 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
26 90.44.180.

27 (c) Appeals of decisions by the department under RCW 90.03.110
28 and 90.44.220.

29 (d) Hearings conducted by the department to adopt, modify, or
30 repeal rules.

31 (3) Review of rules and regulations adopted by the hearings board
32 shall be subject to review in accordance with the provisions of the
33 administrative procedure act, chapter 34.05 RCW.

34 NEW SECTION. **Sec. 11.** If any provision of this act or its
35 application to any person or circumstance is held invalid, the
36 remainder of the act or the application of the provision to other
37 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 12.** Sections 1 through 8 and 13 of this act
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 13.** This act may be known and cited as the
4 pollution prevention for healthy people and Puget Sound act.

--- END ---

HOUSE BILL 1579

State of Washington

66th Legislature

2019 Regular Session

By Representatives Fitzgibbon, Peterson, Lekanoff, Doglio, Macri, Stonier, Tharinger, Stanford, Jenkins, Robinson, Pollet, Valdez, Cody, Kloba, Slatter, Frame, and Davis; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to implementing recommendations of the southern
2 resident killer whale task force related to increasing chinook
3 abundance; amending RCW 77.08.020, 77.32.010, and 43.21B.110; adding
4 new sections to chapter 77.55 RCW; creating a new section; repealing
5 RCW 77.55.141 and 77.55.291; and prescribing penalties.

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

7 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
8 population of southern resident killer whales has declined in recent
9 years and currently stands at a thirty-year low of seventy-four
10 animals.

11 (2) The governor convened the southern resident killer whale task
12 force after the 2018 legislative session to study and identify
13 actions that could be taken to help sustain and recover this
14 important species. In the course of its work, the task force found
15 that chinook salmon compose the largest portion of the whales' diet,
16 and are therefore critical to the recovery of the species. Further,
17 several runs of chinook salmon in Washington state are listed under
18 the federal endangered species act, making chinook recovery all the
19 more urgent.

20 (3) The task force identified four overarching southern resident
21 killer whale recovery goals and adopted several recommendations for

specific actions under each goal. Goal one identified by the task force is to increase chinook abundance, and actions under that goal relate to habitat protection, protection of chinook prey, such as forage fish, and reducing impacts of nonnative chinook predators.

(4) To address the need identified by the task force to increase chinook abundance, the legislature intends to take initial, important steps consistent with recommendations made by the governor's southern resident killer whale task force.

Sec. 2. RCW 77.08.020 and 1989 c 218 s 2 are each amended to read as follows:

(1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

Scientific Name	Common Name
Ambloplites rupestris	rock bass
Coregonus clupeaformis	lake white fish
Ictalurus furcatus	blue catfish
Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
((Ictalurus punctatus	channel catfish))
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or freshwater ling
((Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass))
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie
Prosopium williamsoni	mountain white fish
Oncorhynchus aquabonita	golden trout

1	Oncorhynchus clarkii	cutthroat trout
2	Oncorhynchus mykiss	rainbow or steelhead trout
3	Salmo salar (in its	Atlantic salmon
4	landlocked form)	
5	Salmo trutta	brown trout
6	Salvelinus fontinalis	eastern brook trout
7	Salvelinus malma	Dolly Varden trout
8	Salvelinus namaycush	lake trout
9	((Stizostedion vitreum	Walleye))
10	Thymallus articus	arctic grayling

11 (2) Private sector cultured aquatic products as defined in RCW
12 15.85.020 are not game fish.

13 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to
14 read as follows:

15 (1) Except as otherwise provided in this chapter or department
16 rule, a recreational license issued by the director is required to
17 hunt, fish, or take wildlife or seaweed. A recreational fishing or
18 shellfish license is not required for carp(~~((7-smelt,7))~~) and crawfish,
19 and a hunting license is not required for bullfrogs.

20 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
21 79A.80.040 is required to park or operate a motor vehicle on a
22 recreation site or lands, as defined in RCW 79A.80.010.

23 (3) The commission may, by rule, indicate that a fishing permit
24 issued to a nontribal member by the Colville Tribes shall satisfy the
25 license requirements in subsection (1) of this section on the waters
26 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and
27 that a Colville Tribes tribal member identification card shall
28 satisfy the license requirements in subsection (1) of this section on
29 all waters of Lake Rufus Woods.

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55
31 RCW to read as follows:

32 (1) When the department determines that a violation of this
33 chapter, or of any of the rules that implement this chapter, has
34 occurred or is about to occur, it shall first attempt to achieve
35 voluntary compliance. The department shall offer information and
36 technical assistance to the project proponent, identifying one or

1 more means to accomplish the project proponent's purposes within the
2 framework of the law. The department shall provide a reasonable
3 timeline to achieve voluntary compliance that takes into
4 consideration factors specific to the violation, such as the
5 complexity of the hydraulic project, the actual or potential harm to
6 fish life or fish habitat, and the environmental conditions at the
7 time.

8 (2) If a person violates this chapter, or any of the rules that
9 implement this chapter, or deviates from a permit, the department may
10 issue a notice of correction in accordance with chapter 43.05 RCW, a
11 notice of violation in accordance with chapter 43.05 RCW, a stop work
12 order, a notice to comply, or a notice of civil penalty as authorized
13 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

14 (3) For purposes of this section, the term "project proponent"
15 means a person who has applied for a hydraulic project approval, a
16 person identified as an authorized agent on an application for a
17 hydraulic project approval, a person who has obtained a hydraulic
18 project approval, or a person who undertakes a hydraulic project
19 without a hydraulic project approval.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55
21 RCW to read as follows:

22 (1) The department may serve upon a project proponent a stop work
23 order, which is a final order of the department, if:

24 (a) There is any violation of this chapter or of the rules
25 implementing this chapter;

26 (b) There is a deviation from the hydraulic project approval; or

27 (c) Immediate action is necessary to prevent continuation of or
28 to avoid more than minor harm to fish life or fish habitat.

29 (2)(a) The stop work order must set forth:

30 (i) The specific nature, extent, and time of the violation,
31 deviation, harm, or potential harm;

32 (ii) The specific course of action needed to correct or prevent a
33 continuing violation, deviation, harm, or potential harm; and

34 (iii) The right to an appeal.

35 (b) A stop work order may require that any project proponent stop
36 all work connected with the violation until corrective action is
37 taken.

38 (3) Within five business days of issuing the stop work order, the
39 department shall mail a copy of the stop work order to the last known

1 address of any project proponent, to the last known address of the
2 owner of the land on which the hydraulic project is located, and to
3 the local jurisdiction in which the hydraulic project is located.
4 Substantial compliance with these mailing requirements is deemed
5 satisfactory compliance with this subsection. For purposes of this
6 subsection, "substantial compliance" means mailing to the last known
7 address of the owner of the land on which the hydraulic project is
8 located, to the local jurisdiction in which the hydraulic project is
9 located, and to the last known address of any project proponent who
10 has applied for a hydraulic project approval, who is identified as an
11 authorized agent on an application for a hydraulic project approval,
12 or who has obtained a hydraulic project approval.

13 (4) Issuance of a stop work order may be informally appealed by a
14 project proponent who was served with the stop work order or who
15 received a copy of the stop work order from the department, or by the
16 owner of the land on which the hydraulic project is located, to the
17 department within thirty days from the date of receipt of the stop
18 work order. Requests for informal appeal must be filed in the form
19 and manner prescribed by the department by rule. A stop work order
20 that has been informally appealed to the department is appealable to
21 the board within thirty days from the date of receipt of the
22 department's decision on the informal appeal.

23 (5) The project proponent who was served with the stop work order
24 or who received a copy of the stop work order from the department, or
25 the owner of the land on which the hydraulic project is located, may
26 commence an appeal to the board within thirty days from the date of
27 receipt of the stop work order. If such an appeal is commenced, the
28 proceeding is an adjudicative proceeding under the administrative
29 procedure act, chapter 34.05 RCW. The recipient of the stop work
30 order must comply with the order of the department immediately upon
31 being served, but the board may stay, modify, or discontinue the
32 order, upon motion, under such conditions as the board may impose.

33 (6) For the purposes of this section, "project proponent" has the
34 same meaning as defined in section 4(3) of this act.

35 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
36 RCW to read as follows:

37 (1)(a) If a violation of this chapter or of the rules
38 implementing this chapter, a deviation from the hydraulic project
39 approval, damage to fish life or fish habitat, or potential damage to

1 fish life or fish habitat, has occurred and the department determines
2 that a stop work order is unnecessary, the department may issue and
3 serve upon a project proponent a notice to comply, which must clearly
4 set forth:

5 (i) The nature, extent, date, and time of the violation;

6 (ii) Any necessary corrective action; and

7 (iii) The right to an appeal.

8 (b) The notice to comply may require that any project proponent
9 take corrective action to prevent, correct, or compensate for adverse
10 impacts to fish life or fish habitat.

11 (2) Within five business days of issuing the notice to comply,
12 the department shall mail a copy of the notice to comply to the last
13 known address of any project proponent, to the last known address of
14 the owner of the land on which the hydraulic project is located, and
15 to the local jurisdiction in which the hydraulic project is located.
16 Substantial compliance with these mailing requirements is deemed
17 satisfactory compliance with this subsection. For purposes of this
18 subsection, "substantial compliance" means mailing to the last known
19 address of the owner of the land on which the hydraulic project is
20 located, to the local jurisdiction in which the hydraulic project is
21 located, and to the last known address of any project proponent who
22 has applied for a hydraulic project approval, who is identified as an
23 authorized agent on an application for a hydraulic project approval,
24 or who has obtained a hydraulic project approval.

25 (3) Issuance of a notice to comply may be informally appealed by
26 a project proponent who was served with the notice to comply or who
27 received a copy of the notice to comply from the department, or by
28 the owner of the land on which the hydraulic project is located, to
29 the department within thirty days from the date of receipt of the
30 notice to comply. Requests for informal appeal must be filed in the
31 form and manner prescribed by the department by rule. A notice to
32 comply that has been informally appealed to the department is
33 appealable to the board within thirty days from the date of receipt
34 of the department's decision on the informal appeal.

35 (4) The project proponent who was served with the notice to
36 comply, the project proponent who received a copy of the notice to
37 comply from the department, or the owner of the land on which the
38 hydraulic project is located may commence an appeal to the board
39 within thirty days from the date of receipt of the notice to comply.
40 If such an appeal is commenced, the proceeding is an adjudicative

1 proceeding under the administrative procedure act, chapter 34.05 RCW.
2 The recipient of the notice to comply must comply with the notice to
3 comply immediately upon being served, but the board may stay, modify,
4 or discontinue the notice to comply, upon motion, under such
5 conditions as the board may impose.

6 (5) For the purposes of this section, "project proponent" has the
7 same meaning as defined in section 4(3) of this act.

8 NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55
9 RCW to read as follows:

10 (1) The department may levy civil penalties of up to ten thousand
11 dollars for every violation of this chapter or of the rules that
12 implement this chapter. Each and every violation is a separate and
13 distinct civil offense.

14 (2) The penalty provided must be imposed by notice in writing by
15 the department, provided either by certified mail or by personal
16 service, to the person incurring the penalty and to the local
17 jurisdiction in which the hydraulic project is located, describing
18 the violation. The civil penalty notice must set forth:

19 (a) The basis for the penalty;

20 (b) The amount of the penalty; and

21 (c) The right of the person incurring the penalty to appeal the
22 civil penalty.

23 (3)(a) Except as provided in (b) of this subsection, any person
24 incurring any penalty under this chapter may appeal the penalty to
25 the board pursuant to chapter 34.05 RCW. Appeals must be filed within
26 thirty days from the date of receipt of the notice of civil penalty
27 in accordance with RCW 43.21B.230.

28 (b) Issuance of a civil penalty may be informally appealed by the
29 person incurring the penalty to the department within thirty days
30 from the date of receipt of the notice of civil penalty. Requests for
31 informal appeal must be filed in the form and manner prescribed by
32 the department by rule. A civil penalty that has been informally
33 appealed to the department is appealable to the board within thirty
34 days from the date of receipt of the department's decision on the
35 informal appeal.

36 (4) The penalty imposed becomes due and payable thirty days after
37 receipt of a notice imposing the penalty unless an appeal is filed.
38 Whenever an appeal of any penalty incurred under this chapter is
39 filed, the penalty becomes due and payable only upon completion of

1 all review proceedings and the issuance of a final order confirming
2 the penalty in whole or in part. When the penalty becomes past due,
3 it is also subject to interest at the rate allowed by RCW 43.17.240
4 for debts owed to the state.

5 (5) If the amount of any penalty is not paid within thirty days
6 after it becomes due and payable, the attorney general, upon the
7 request of the director, shall bring an action in the name of the
8 state of Washington in the superior court of Thurston county or of
9 the county in which such a violation occurred, to recover the
10 penalty. In all such actions, the rules of civil procedure~~s~~ and the
11 rules of evidence are the same as in an ordinary civil action. The
12 department is also entitled to recover reasonable attorneys' fees and
13 costs incurred in connection with the penalty recovered under this
14 section. All civil penalties received or recovered by state agency
15 action for violations as prescribed in subsection (1) of this section
16 must be deposited into the state's general fund. The department is
17 authorized to retain any attorneys' fees and costs it may be awarded
18 in connection with an action brought to recover a civil penalty
19 issued pursuant to this section.

20 (6) The department shall adopt by rule a penalty schedule to be
21 effective by January 1, 2020. The penalty schedule must be developed
22 in consideration of the following:

- 23 (a) Previous violation history;
- 24 (b) Severity of the impact on fish life and fish habitat;
- 25 (c) Whether the violation of this chapter or of its rules was
26 intentional;
- 27 (d) Cooperation with the department;
- 28 (e) Reparability of any adverse effects resulting from the
29 violation; and
- 30 (f) The extent to which a penalty to be imposed on a person for a
31 violation committed by another should be reduced if the person was
32 unaware of the violation and has not received a substantial economic
33 benefit from the violation.

34 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55
35 RCW to read as follows:

36 The department may apply for an administrative inspection warrant
37 in either Thurston county superior court or the superior court in the
38 county in which the hydraulic project is located. The court may issue
39 an administrative inspection warrant where:

1 (1) Department personnel need to inspect the hydraulic project
2 site to ensure compliance with this chapter or with rules adopted to
3 implement this chapter; or

4 (2) Department personnel have probable cause to believe that a
5 violation of this chapter or of the rules that implement this chapter
6 is occurring or has occurred.

7 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.55
8 RCW to read as follows:

9 (1) The department may disapprove an application for hydraulic
10 project approval submitted by a person who has failed to comply with
11 a final order issued pursuant to section 5 or 6 of this act or who
12 has failed to pay civil penalties issued pursuant to section 7 of
13 this act. Applications may be disapproved for up to one year from the
14 issuance of a notice of intent to disapprove applications under this
15 section, or until all outstanding civil penalties are paid and all
16 outstanding notices to comply and stop work orders are complied with,
17 whichever is longer.

18 (2) The department shall provide written notice of its intent to
19 disapprove an application under this section to the applicant and to
20 any authorized agent or landowner identified in the application.

21 (3) The disapproval period runs from thirty days following the
22 date of actual notice of intent or when all administrative and
23 judicial appeals, if any, have been exhausted.

24 (4) Any person provided the notice may seek review from the board
25 by filing a request for review within thirty days of the date of the
26 notice of intent to disapprove applications.

27 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.55
28 RCW to read as follows:

29 Any violation of this chapter or of the rules adopted to
30 implement this chapter is declared to be a public nuisance.

31 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55
32 RCW to read as follows:

33 The remedies under this chapter are not exclusive and do not
34 limit or abrogate any other civil or criminal penalty, remedy, or
35 right available in law, equity, or statute.

1 **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
2 read as follows:

3 (1) The hearings board shall only have jurisdiction to hear and
4 decide appeals from the following decisions of the department, the
5 director, local conservation districts, the air pollution control
6 boards or authorities as established pursuant to chapter 70.94 RCW,
7 local health departments, the department of natural resources, the
8 department of fish and wildlife, the parks and recreation commission,
9 and authorized public entities described in chapter 79.100 RCW:

10 (a) Civil penalties imposed pursuant to RCW 18.104.155,
11 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~77.55.291~~) section 7
12 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
13 90.56.310, 90.56.330, and 90.64.102.

14 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
15 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
16 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

17 (c) Except as provided in RCW 90.03.210(2), the issuance,
18 modification, or termination of any permit, certificate, or license
19 by the department or any air authority in the exercise of its
20 jurisdiction, including the issuance or termination of a waste
21 disposal permit, the denial of an application for a waste disposal
22 permit, the modification of the conditions or the terms of a waste
23 disposal permit, or a decision to approve or deny an application for
24 a solid waste permit exemption under RCW 70.95.300.

25 (d) Decisions of local health departments regarding the grant or
26 denial of solid waste permits pursuant to chapter 70.95 RCW.

27 (e) Decisions of local health departments regarding the issuance
28 and enforcement of permits to use or dispose of biosolids under RCW
29 70.95J.080.

30 (f) Decisions of the department regarding waste-derived
31 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
32 decisions of the department regarding waste-derived soil amendments
33 under RCW 70.95.205.

34 (g) Decisions of local conservation districts related to the
35 denial of approval or denial of certification of a dairy nutrient
36 management plan; conditions contained in a plan; application of any
37 dairy nutrient management practices, standards, methods, and
38 technologies to a particular dairy farm; and failure to adhere to the
39 plan review and approval timelines in RCW 90.64.026.

1 (h) Any other decision by the department or an air authority
2 which pursuant to law must be decided as an adjudicative proceeding
3 under chapter 34.05 RCW.

4 (i) Decisions of the department of natural resources, the
5 department of fish and wildlife, and the department that are
6 reviewable under chapter 76.09 RCW, and the department of natural
7 resources' appeals of county, city, or town objections under RCW
8 76.09.050(7).

9 (j) Forest health hazard orders issued by the commissioner of
10 public lands under RCW 76.06.180.

11 (k) Decisions of the department of fish and wildlife to issue,
12 deny, condition, or modify a hydraulic project approval permit under
13 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
14 comply, to issue a civil penalty, or to issue a notice of intent to
15 disapprove applications.

16 (l) Decisions of the department of natural resources that are
17 reviewable under RCW 78.44.270.

18 (m) Decisions of an authorized public entity under RCW 79.100.010
19 to take temporary possession or custody of a vessel or to contest the
20 amount of reimbursement owed that are reviewable by the hearings
21 board under RCW 79.100.120.

22 (2) The following hearings shall not be conducted by the hearings
23 board:

24 (a) Hearings required by law to be conducted by the shorelines
25 hearings board pursuant to chapter 90.58 RCW.

26 (b) Hearings conducted by the department pursuant to RCW
27 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
28 90.44.180.

29 (c) Appeals of decisions by the department under RCW 90.03.110
30 and 90.44.220.

31 (d) Hearings conducted by the department to adopt, modify, or
32 repeal rules.

33 (3) Review of rules and regulations adopted by the hearings board
34 shall be subject to review in accordance with the provisions of the
35 administrative procedure act, chapter 34.05 RCW.

36 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
37 each repealed:

1 (1) RCW 77.55.141 (Marine beach front protective bulkheads or
2 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;
3 and
4 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
5 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
6 173 s 6.

--- END ---

SENATE BILL 5580

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Palumbo, Frockt, Dhingra, Keiser, Kuderer, and Saldaña; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to implementing recommendations of the southern
2 resident killer whale task force related to increasing habitat and
3 forage fish abundance; amending RCW 77.08.020, 77.32.010, and
4 43.21B.110; adding new sections to chapter 77.55 RCW; creating a new
5 section; repealing RCW 77.55.141 and 77.55.291; and prescribing
6 penalties.

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

8 NEW SECTION. **Sec. 1.** (1) The legislature finds that the
9 population of southern resident killer whales has declined in recent
10 years and currently stands at a thirty-year low of seventy-four
11 animals.

12 (2) The governor convened the southern resident killer whale task
13 force after the 2018 legislative session to study and identify
14 actions that could be taken to help sustain and recover this
15 important species. In the course of its work, the task force found
16 that chinook salmon compose the largest portion of the whales' diet,
17 and are therefore critical to the recovery of the species. Further,
18 several runs of chinook salmon in Washington state are listed under
19 the federal endangered species act, making chinook recovery all the
20 more urgent.

(3) The task force identified four overarching southern resident killer whale recovery goals and adopted several recommendations for specific actions under each goal. Goal one identified by the task force is to increase chinook abundance, and actions under that goal relate to habitat protection, protection of chinook prey, such as forage fish, and reducing impacts of nonnative chinook predators.

(4) To address the need identified by the task force to increase chinook abundance, the legislature intends to take initial, important steps consistent with recommendations made by the governor's southern resident killer whale task force.

Sec. 2. RCW 77.08.020 and 1989 c 218 s 2 are each amended to read as follows:

(1) As used in this title or rules of the commission, "game fish" means those species of the class Osteichthyes that shall not be fished for except as authorized by rule of the commission and includes:

Scientific Name	Common Name
Ambloplites rupestris	rock bass
Coregonus clupeaformis	lake white fish
Ictalurus furcatus	blue catfish
Ictalurus melas	black bullhead
Ictalurus natalis	yellow bullhead
Ictalurus nebulosus	brown bullhead
((Ictalurus punctatus	channel catfish))
Lepomis cyanellus	green sunfish
Lepomis gibbosus	pumpkinseed
Lepomis gulosus	warmouth
Lepomis macrochirus	bluegill
Lota lota	burbot or freshwater ling
((Micropterus dolomieu	smallmouth bass
Micropterus salmoides	largemouth bass))
Oncorhynchus nerka (in its landlocked form)	kokanee or silver trout
Perca flavescens	yellow perch
Pomixis annularis	white crappie
Pomixis nigromaculatus	black crappie

1	Prosopium williamsoni	mountain white fish
2	Oncorhynchus aquabonita	golden trout
3	Oncorhynchus clarkii	cutthroat trout
4	Oncorhynchus mykiss	rainbow or steelhead trout
5	Salmo salar (in its	Atlantic salmon
6	landlocked form)	
7	Salmo trutta	brown trout
8	Salvelinus fontinalis	eastern brook trout
9	Salvelinus malma	Dolly Varden trout
10	Salvelinus namaycush	lake trout
11	((Stizostedion vitreum	Walleye))
12	Thymallus arcticus	arctic grayling

13 (2) Private sector cultured aquatic products as defined in RCW
14 15.85.020 are not game fish.

15 **Sec. 3.** RCW 77.32.010 and 2014 c 48 s 26 are each amended to
16 read as follows:

17 (1) Except as otherwise provided in this chapter or department
18 rule, a recreational license issued by the director is required to
19 hunt, fish, or take wildlife or seaweed. A recreational fishing or
20 shellfish license is not required for carp(~~(7-smelt,7)~~) and crawfish,
21 and a hunting license is not required for bullfrogs.

22 (2) A pass or permit issued under RCW 79A.80.020, 79A.80.030, or
23 79A.80.040 is required to park or operate a motor vehicle on a
24 recreation site or lands, as defined in RCW 79A.80.010.

25 (3) The commission may, by rule, indicate that a fishing permit
26 issued to a nontribal member by the Colville Tribes shall satisfy the
27 license requirements in subsection (1) of this section on the waters
28 of Lake Rufus Woods and on the north shore of Lake Rufus Woods, and
29 that a Colville Tribes tribal member identification card shall
30 satisfy the license requirements in subsection (1) of this section on
31 all waters of Lake Rufus Woods.

32 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.55
33 RCW to read as follows:

34 (1) When the department determines that a violation of this
35 chapter, or of any of the rules that implement this chapter, has
36 occurred or is about to occur, it shall first attempt to achieve

1 voluntary compliance. The department shall offer information and
2 technical assistance to the project proponent, identifying one or
3 more means to accomplish the project proponent's purposes within the
4 framework of the law. The department shall provide a reasonable
5 timeline to achieve voluntary compliance that takes into
6 consideration factors specific to the violation, such as the
7 complexity of the hydraulic project, the actual or potential harm to
8 fish life or fish habitat, and the environmental conditions at the
9 time.

10 (2) If a person violates this chapter, or any of the rules that
11 implement this chapter, or deviates from a permit, the department may
12 issue a notice of correction in accordance with chapter 43.05 RCW, a
13 notice of violation in accordance with chapter 43.05 RCW, a stop work
14 order, a notice to comply, or a notice of civil penalty as authorized
15 by law and subject to chapter 43.05 RCW and RCW 34.05.110.

16 (3) For purposes of this section, the term "project proponent"
17 means a person who has applied for a hydraulic project approval, a
18 person identified as an authorized agent on an application for a
19 hydraulic project approval, a person who has obtained a hydraulic
20 project approval, or a person who undertakes a hydraulic project
21 without a hydraulic project approval.

22 NEW SECTION. **Sec. 5.** A new section is added to chapter 77.55
23 RCW to read as follows:

24 (1) The department may serve upon a project proponent a stop work
25 order, which is a final order of the department, if:

26 (a) There is any violation of this chapter or of the rules
27 implementing this chapter;

28 (b) There is a deviation from the hydraulic project approval; or

29 (c) Immediate action is necessary to prevent continuation of or
30 to avoid more than minor harm to fish life or fish habitat.

31 (2)(a) The stop work order must set forth:

32 (i) The specific nature, extent, and time of the violation,
33 deviation, harm, or potential harm;

34 (ii) The specific course of action needed to correct or prevent a
35 continuing violation, deviation, harm, or potential harm; and

36 (iii) The right to an appeal.

37 (b) A stop work order may require that any project proponent stop
38 all work connected with the violation until corrective action is
39 taken.

1 (3) Within five business days of issuing the stop work order, the
2 department shall mail a copy of the stop work order to the last known
3 address of any project proponent, to the last known address of the
4 owner of the land on which the hydraulic project is located, and to
5 the local jurisdiction in which the hydraulic project is located.
6 Substantial compliance with these mailing requirements is deemed
7 satisfactory compliance with this subsection. For purposes of this
8 subsection, "substantial compliance" means mailing to the last known
9 address of the owner of the land on which the hydraulic project is
10 located, to the local jurisdiction in which the hydraulic project is
11 located, and to the last known address of any project proponent who
12 has applied for a hydraulic project approval, who is identified as an
13 authorized agent on an application for a hydraulic project approval,
14 or who has obtained a hydraulic project approval.

15 (4) Issuance of a stop work order may be informally appealed by a
16 project proponent who was served with the stop work order or who
17 received a copy of the stop work order from the department, or by the
18 owner of the land on which the hydraulic project is located, to the
19 department within thirty days from the date of receipt of the stop
20 work order. Requests for informal appeal must be filed in the form
21 and manner prescribed by the department by rule. A stop work order
22 that has been informally appealed to the department is appealable to
23 the board within thirty days from the date of receipt of the
24 department's decision on the informal appeal.

25 (5) The project proponent who was served with the stop work order
26 or who received a copy of the stop work order from the department, or
27 the owner of the land on which the hydraulic project is located, may
28 commence an appeal to the board within thirty days from the date of
29 receipt of the stop work order. If such an appeal is commenced, the
30 proceeding is an adjudicative proceeding under the administrative
31 procedure act, chapter 34.05 RCW. The recipient of the stop work
32 order must comply with the order of the department immediately upon
33 being served, but the board may stay, modify, or discontinue the
34 order, upon motion, under such conditions as the board may impose.

35 (6) For the purposes of this section, "project proponent" has the
36 same meaning as defined in section 4(3) of this act.

37 NEW SECTION. **Sec. 6.** A new section is added to chapter 77.55
38 RCW to read as follows:

1 (1)(a) If a violation of this chapter or of the rules
2 implementing this chapter, a deviation from the hydraulic project
3 approval, damage to fish life or fish habitat, or potential damage to
4 fish life or fish habitat, has occurred and the department determines
5 that a stop work order is unnecessary, the department may issue and
6 serve upon a project proponent a notice to comply, which must clearly
7 set forth:

8 (i) The nature, extent, date, and time of the violation;

9 (ii) Any necessary corrective action; and

10 (iii) The right to an appeal.

11 (b) The notice to comply may require that any project proponent
12 take corrective action to prevent, correct, or compensate for adverse
13 impacts to fish life or fish habitat.

14 (2) Within five business days of issuing the notice to comply,
15 the department shall mail a copy of the notice to comply to the last
16 known address of any project proponent, to the last known address of
17 the owner of the land on which the hydraulic project is located, and
18 to the local jurisdiction in which the hydraulic project is located.
19 Substantial compliance with these mailing requirements is deemed
20 satisfactory compliance with this subsection. For purposes of this
21 subsection, "substantial compliance" means mailing to the last known
22 address of the owner of the land on which the hydraulic project is
23 located, to the local jurisdiction in which the hydraulic project is
24 located, and to the last known address of any project proponent who
25 has applied for a hydraulic project approval, who is identified as an
26 authorized agent on an application for a hydraulic project approval,
27 or who has obtained a hydraulic project approval.

28 (3) Issuance of a notice to comply may be informally appealed by
29 a project proponent who was served with the notice to comply or who
30 received a copy of the notice to comply from the department, or by
31 the owner of the land on which the hydraulic project is located, to
32 the department within thirty days from the date of receipt of the
33 notice to comply. Requests for informal appeal must be filed in the
34 form and manner prescribed by the department by rule. A notice to
35 comply that has been informally appealed to the department is
36 appealable to the board within thirty days from the date of receipt
37 of the department's decision on the informal appeal.

38 (4) The project proponent who was served with the notice to
39 comply, the project proponent who received a copy of the notice to
40 comply from the department, or the owner of the land on which the

hydraulic project is located may commence an appeal to the board within thirty days from the date of receipt of the notice to comply. If such an appeal is commenced, the proceeding is an adjudicative proceeding under the administrative procedure act, chapter 34.05 RCW. The recipient of the notice to comply must comply with the notice to comply immediately upon being served, but the board may stay, modify, or discontinue the notice to comply, upon motion, under such conditions as the board may impose.

(5) For the purposes of this section, "project proponent" has the same meaning as defined in section 4(3) of this act.

NEW SECTION. **Sec. 7.** A new section is added to chapter 77.55 RCW to read as follows:

(1) The department may levy civil penalties of up to ten thousand dollars for every violation of this chapter or of the rules that implement this chapter. Each and every violation is a separate and distinct civil offense.

(2) The penalty provided must be imposed by notice in writing by the department, provided either by certified mail or by personal service, to the person incurring the penalty and to the local jurisdiction in which the hydraulic project is located, describing the violation. The civil penalty notice must set forth:

(a) The basis for the penalty;

(b) The amount of the penalty; and

(c) The right of the person incurring the penalty to appeal the civil penalty.

(3)(a) Except as provided in (b) of this subsection, any person incurring any penalty under this chapter may appeal the penalty to the board pursuant to chapter 34.05 RCW. Appeals must be filed within thirty days from the date of receipt of the notice of civil penalty in accordance with RCW 43.21B.230.

(b) Issuance of a civil penalty may be informally appealed by the person incurring the penalty to the department within thirty days from the date of receipt of the notice of civil penalty. Requests for informal appeal must be filed in the form and manner prescribed by the department by rule. A civil penalty that has been informally appealed to the department is appealable to the board within thirty days from the date of receipt of the department's decision on the informal appeal.

1 (4) The penalty imposed becomes due and payable thirty days after
2 receipt of a notice imposing the penalty unless an appeal is filed.
3 Whenever an appeal of any penalty incurred under this chapter is
4 filed, the penalty becomes due and payable only upon completion of
5 all review proceedings and the issuance of a final order confirming
6 the penalty in whole or in part. When the penalty becomes past due,
7 it is also subject to interest at the rate allowed by RCW 43.17.240
8 for debts owed to the state.

9 (5) If the amount of any penalty is not paid within thirty days
10 after it becomes due and payable, the attorney general, upon the
11 request of the director, shall bring an action in the name of the
12 state of Washington in the superior court of Thurston county or of
13 the county in which such a violation occurred, to recover the
14 penalty. In all such actions, the rules of civil procedures and the
15 rules of evidence are the same as in an ordinary civil action. The
16 department is also entitled to recover reasonable attorneys' fees and
17 costs incurred in connection with the penalty recovered under this
18 section. All civil penalties received or recovered by state agency
19 action for violations as prescribed in subsection (1) of this section
20 must be deposited into the state's general fund. The department is
21 authorized to retain any attorneys' fees and costs it may be awarded
22 in connection with an action brought to recover a civil penalty
23 issued pursuant to this section.

24 (6) The department shall adopt by rule a penalty schedule to be
25 effective by January 1, 2020. The penalty schedule must be developed
26 in consideration of the following:

- 27 (a) Previous violation history;
28 (b) Severity of the impact on fish life and fish habitat;
29 (c) Whether the violation of this chapter or of its rules was
30 intentional;
31 (d) Cooperation with the department;
32 (e) Reparability of any adverse effects resulting from the
33 violation; and
34 (f) The extent to which a penalty to be imposed on a person for a
35 violation committed by another should be reduced if the person was
36 unaware of the violation and has not received a substantial economic
37 benefit from the violation.

38 NEW SECTION. **Sec. 8.** A new section is added to chapter 77.55
39 RCW to read as follows:

1 The department may apply for an administrative inspection warrant
2 in either Thurston county superior court or the superior court in the
3 county in which the hydraulic project is located. The court may issue
4 an administrative inspection warrant where:

5 (1) Department personnel need to inspect the hydraulic project
6 site to ensure compliance with this chapter or with rules adopted to
7 implement this chapter; or

8 (2) Department personnel have probable cause to believe that a
9 violation of this chapter or of the rules that implement this chapter
10 is occurring or has occurred.

11 NEW SECTION. **Sec. 9.** A new section is added to chapter 77.55
12 RCW to read as follows:

13 (1) The department may disapprove an application for hydraulic
14 project approval submitted by a person who has failed to comply with
15 a final order issued pursuant to section 5 or 6 of this act or who
16 has failed to pay civil penalties issued pursuant to section 7 of
17 this act. Applications may be disapproved for up to one year from the
18 issuance of a notice of intent to disapprove applications under this
19 section, or until all outstanding civil penalties are paid and all
20 outstanding notices to comply and stop work orders are complied with,
21 whichever is longer.

22 (2) The department shall provide written notice of its intent to
23 disapprove an application under this section to the applicant and to
24 any authorized agent or landowner identified in the application.

25 (3) The disapproval period runs from thirty days following the
26 date of actual notice of intent or when all administrative and
27 judicial appeals, if any, have been exhausted.

28 (4) Any person provided the notice may seek review from the board
29 by filing a request for review within thirty days of the date of the
30 notice of intent to disapprove applications.

31 NEW SECTION. **Sec. 10.** A new section is added to chapter 77.55
32 RCW to read as follows:

33 Any violation of this chapter or of the rules adopted to
34 implement this chapter is declared to be a public nuisance.

35 NEW SECTION. **Sec. 11.** A new section is added to chapter 77.55
36 RCW to read as follows:

1 The remedies under this chapter are not exclusive and do not
2 limit or abrogate any other civil or criminal penalty, remedy, or
3 right available in law, equity, or statute.

4 **Sec. 12.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
5 read as follows:

6 (1) The hearings board shall only have jurisdiction to hear and
7 decide appeals from the following decisions of the department, the
8 director, local conservation districts, the air pollution control
9 boards or authorities as established pursuant to chapter 70.94 RCW,
10 local health departments, the department of natural resources, the
11 department of fish and wildlife, the parks and recreation commission,
12 and authorized public entities described in chapter 79.100 RCW:

13 (a) Civil penalties imposed pursuant to RCW 18.104.155,
14 70.94.431, 70.105.080, 70.107.050, 76.09.170, (~~(77.55.291)~~) section 7
15 of this act, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
16 90.56.310, 90.56.330, and 90.64.102.

17 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
18 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
19 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

20 (c) Except as provided in RCW 90.03.210(2), the issuance,
21 modification, or termination of any permit, certificate, or license
22 by the department or any air authority in the exercise of its
23 jurisdiction, including the issuance or termination of a waste
24 disposal permit, the denial of an application for a waste disposal
25 permit, the modification of the conditions or the terms of a waste
26 disposal permit, or a decision to approve or deny an application for
27 a solid waste permit exemption under RCW 70.95.300.

28 (d) Decisions of local health departments regarding the grant or
29 denial of solid waste permits pursuant to chapter 70.95 RCW.

30 (e) Decisions of local health departments regarding the issuance
31 and enforcement of permits to use or dispose of biosolids under RCW
32 70.95J.080.

33 (f) Decisions of the department regarding waste-derived
34 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
35 decisions of the department regarding waste-derived soil amendments
36 under RCW 70.95.205.

37 (g) Decisions of local conservation districts related to the
38 denial of approval or denial of certification of a dairy nutrient
39 management plan; conditions contained in a plan; application of any

1 dairy nutrient management practices, standards, methods, and
2 technologies to a particular dairy farm; and failure to adhere to the
3 plan review and approval timelines in RCW 90.64.026.

4 (h) Any other decision by the department or an air authority
5 which pursuant to law must be decided as an adjudicative proceeding
6 under chapter 34.05 RCW.

7 (i) Decisions of the department of natural resources, the
8 department of fish and wildlife, and the department that are
9 reviewable under chapter 76.09 RCW, and the department of natural
10 resources' appeals of county, city, or town objections under RCW
11 76.09.050(7).

12 (j) Forest health hazard orders issued by the commissioner of
13 public lands under RCW 76.06.180.

14 (k) Decisions of the department of fish and wildlife to issue,
15 deny, condition, or modify a hydraulic project approval permit under
16 chapter 77.55 RCW, to issue a stop work order, to issue a notice to
17 comply, to issue a civil penalty, or to issue a notice of intent to
18 disapprove applications.

19 (l) Decisions of the department of natural resources that are
20 reviewable under RCW 78.44.270.

21 (m) Decisions of an authorized public entity under RCW 79.100.010
22 to take temporary possession or custody of a vessel or to contest the
23 amount of reimbursement owed that are reviewable by the hearings
24 board under RCW 79.100.120.

25 (2) The following hearings shall not be conducted by the hearings
26 board:

27 (a) Hearings required by law to be conducted by the shorelines
28 hearings board pursuant to chapter 90.58 RCW.

29 (b) Hearings conducted by the department pursuant to RCW
30 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
31 90.44.180.

32 (c) Appeals of decisions by the department under RCW 90.03.110
33 and 90.44.220.

34 (d) Hearings conducted by the department to adopt, modify, or
35 repeal rules.

36 (3) Review of rules and regulations adopted by the hearings board
37 shall be subject to review in accordance with the provisions of the
38 administrative procedure act, chapter 34.05 RCW.

1 NEW SECTION. **Sec. 13.** The following acts or parts of acts are
2 each repealed:

3 (1) RCW 77.55.141 (Marine beach front protective bulkheads or
4 rockwalls) and 2010 c 210 s 28, 2005 c 146 s 501, & 1991 c 279 s 1;
5 and

6 (2) RCW 77.55.291 (Civil penalty) and 2010 c 210 s 31, 2005 c 146
7 s 701, 2000 c 107 s 19, 1993 sp.s. c 2 s 35, 1988 c 36 s 35, & 1986 c
8 173 s 6.

--- END ---

HOUSE BILL 1580

State of Washington

66th Legislature

2019 Regular Session

By Representatives Blake, Kretz, Kirby, Peterson, Appleton, Shewmake, Morris, Cody, and Jenkins; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Rural Development, Agriculture, & Natural Resources.

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740; adding a new section to
3 chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and
4 declaring an emergency.

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

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

8 (1) Except as provided in subsection (2) of this section, it is
9 unlawful for a person to:

10 (a) Cause a vessel or other object to approach, in any manner,
11 within ~~((two))~~ four hundred yards of a southern resident orca 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 yards of the
14 whale. This includes intercepting a southern resident orca whale by
15 positioning a vessel so that the prevailing wind or water current
16 carries the vessel into the path of the whale at any point located
17 within four hundred yards of the whale;

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

20 (d) Cause a vessel or other object to exceed a speed greater than
21 seven knots over ground at any point located within one-half nautical

1 mile (one thousand thirteen yards) of a southern resident orca whale;
2 or

3 (e) Feed a southern resident orca whale.

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

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

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

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

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

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

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

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

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

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

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

6 (1) Commercial whale watching operators are prohibited from
7 approaching or intercepting within six hundred fifty yards in any
8 direction of a southern resident orca whale until January 1, 2023.

9 (2) By August 1, 2019, the department must adopt rules, including
10 emergency rules if necessary, to implement this section.

11 (3) The department shall complete a report to the governor and
12 the legislature on the effectiveness of the prohibition by November
13 30, 2022, including the best available science on commercial whale
14 watching vessel disturbance and noise, and the current status of the
15 population. This report must be in compliance with RCW 43.01.036.

16 (4) The definitions in this subsection apply throughout this
17 section unless the context clearly requires otherwise.

18 (a) "Commercial whale watching" means the act of taking, or
19 offering to take, passengers aboard a vessel in order to view marine
20 mammals in their natural habitat for a fee.

21 (b) "Commercial whale watching operators" includes commercial
22 vessels and kayak rentals that are engaged in the business of whale
23 watching.

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

27 NEW SECTION. **Sec. 3.** A new section is added to chapter 77.70
28 RCW to read as follows:

29 (1) A commercial whale watching license is required for all
30 businesses engaged in commercial whale watching activities as
31 permitted in section 4 of this act.

32 (2) The initial annual fee for a commercial whale watching
33 license involving motorized or sailing vessels is:

34 (a) One to twenty-four passengers, four hundred twenty-five
35 dollars;

36 (b) Twenty-five to fifty passengers, six hundred twenty-five
37 dollars;

1 (c) Fifty-one to one hundred passengers, nine hundred twenty-five
2 dollars;

3 (d) One hundred to one hundred fifty passengers, one thousand
4 nine hundred twenty-five dollars; and

5 (e) One hundred fifty-one passengers or greater, two thousand
6 nine hundred twenty-five dollars.

7 (3) The initial annual fee for commercial whale watching license
8 involving kayaks is four hundred twenty-five dollars.

9 (4) The application fee for a commercial whale watching license
10 is seventy-five dollars.

11 (5) "Commercial whale watching" has the same meaning as defined
12 in section 2 of this act.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.70
14 RCW to read as follows:

15 (1) The department must implement a limited-entry whale watching
16 license program for the inland waters of Washington for all whale
17 species by January 1, 2021. The limited-entry whale watching license
18 must be designed to reduce the daily and cumulative impacts on
19 southern resident orca whales and consider the economic viability of
20 license holders. In designing the program, the department may only
21 license entities that have operated a commercial whale watch business
22 for at least forty-five trips in Washington waters over 2016, 2017,
23 and 2018. The department shall at a minimum consider limitations on:

24 (a) The number of commercial whale watching operators;

25 (b) The number of days and hours that commercial whale watching
26 operators can operate;

27 (c) The duration spent in the vicinity of southern resident orca
28 whales; and

29 (d) The areas in which commercial whale watching operators may
30 operate.

31 (2) The limited-entry whale watching license program must use an
32 automatic identification system to enable effective monitoring and
33 compliance.

34 (3) The limited-entry whale watching license program may consider
35 options for the purchase and retirement of commercial whale watching
36 operations.

37 (4) The department may phase in requirements, but must adopt
38 rules to implement this section.

1 (5) The department shall complete an analysis and report to the
2 governor and the legislature on the effectiveness of the limited
3 entry whale watching program and any recommendations for changes to
4 the license fee structure by November 30, 2022, and every two years
5 thereafter until 2026. This report must be in compliance with RCW
6 43.01.036.

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

9 (a) "Commercial whale watching" has the same meaning as defined
10 in section 2 of this act.

11 (b) "Commercial whale watching operators" has the same meaning as
12 defined in section 2 of this act.

13 (c) "Inland waters of Washington" means Puget Sound and related
14 inland marine waters, including all salt waters of the state of
15 Washington inside the international boundary line between Washington
16 and British Columbia, and lying east of the junction of the Pacific
17 Ocean and the Strait of Juan de Fuca, and the rivers and streams
18 draining to Puget Sound as mapped by water resource inventory areas 1
19 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

20 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act are necessary
21 for the immediate preservation of the public peace, health, or
22 safety, or support of the state government and its existing public
23 institutions, and take effect immediately.

--- END ---

SENATE BILL 5577

State of Washington

66th Legislature

2019 Regular Session

By Senators Rolfes, Frockt, Lillas, McCoy, Dhingra, Hunt, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to the protection of southern resident orca
2 whales from vessels; amending RCW 77.15.740; adding a new section to
3 chapter 77.15 RCW; adding new sections to chapter 77.70 RCW; and
4 declaring an emergency.

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

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

8 (1) Except as provided in subsection (2) of this section, it is
9 unlawful for a person to:

10 (a) Cause a vessel or other object to approach, in any manner,
11 within ((two)) four hundred yards of a southern resident orca 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 yards of the
14 whale. This includes intercepting a southern resident orca whale by
15 positioning a vessel so that the prevailing wind or water current
16 carries the vessel into the path of the whale at any point located
17 within four hundred yards of the whale;

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

20 (d) Cause a vessel or other object to exceed a speed greater than
21 seven knots over ground at any point located within one-half nautical

1 mile (one thousand thirteen yards) of a southern resident orca whale;
2 or

3 (e) Feed a southern resident orca whale.

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

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

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

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

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

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

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

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

35 (4)(a) A violation of this section is a natural resource
36 infraction punishable under chapter 7.84 RCW and carries a fine of
37 five hundred dollars, not including statutory assessments added
38 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.

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

(1) Commercial whale watching operators are prohibited from approaching or intercepting within six hundred fifty yards in any direction of a southern resident orca whale until January 1, 2023.

(2) By August 1, 2019, the department must adopt rules, including emergency rules if necessary, to implement this section.

(3) The department shall complete a report to the governor and the legislature on the effectiveness of the prohibition by November 30, 2022, including the best available science on commercial whale watching vessel disturbance and noise, and the current status of the population. This report must be in compliance with RCW 43.01.036.

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

(a) "Commercial whale watching" means the act of taking, or offering to take, passengers aboard a vessel in order to view marine mammals in their natural habitat for a fee.

(b) "Commercial whale watching operators" includes commercial vessels and kayak rentals that are engaged in the business of whale watching.

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

NEW SECTION. **Sec. 3.** A new section is added to chapter 77.70 RCW to read as follows:

(1) A commercial whale watching license is required for all businesses engaged in commercial whale watching activities as permitted in section 4 of this act.

(2) The initial annual fee for a commercial whale watching license involving motorized or sailing vessels is:

(a) One to twenty-four passengers, four hundred twenty-five dollars;

(b) Twenty-five to fifty passengers, six hundred twenty-five dollars;

1 (c) Fifty-one to one hundred passengers, nine hundred twenty-five
2 dollars;

3 (d) One hundred to one hundred fifty passengers, one thousand
4 nine hundred twenty-five dollars; and

5 (e) One hundred fifty-one passengers or greater, two thousand
6 nine hundred twenty-five dollars.

7 (3) The initial annual fee for commercial whale watching license
8 involving kayaks is four hundred twenty-five dollars.

9 (4) The application fee for a commercial whale watching license
10 is seventy-five dollars.

11 (5) "Commercial whale watching" has the same meaning as defined
12 in section 2 of this act.

13 NEW SECTION. **Sec. 4.** A new section is added to chapter 77.70
14 RCW to read as follows:

15 (1) The department must implement a limited-entry whale watching
16 license program for the inland waters of Washington for all whale
17 species by January 1, 2021. The limited-entry whale watching license
18 must be designed to reduce the daily and cumulative impacts on
19 southern resident orca whales and consider the economic viability of
20 license holders. In designing the program, the department may only
21 license entities that have operated a commercial whale watch business
22 for at least forty-five trips in Washington waters over 2016, 2017,
23 and 2018. The department shall at a minimum consider limitations on:

24 (a) The number of commercial whale watching operators;

25 (b) The number of days and hours that commercial whale watching
26 operators can operate;

27 (c) The duration spent in the vicinity of southern resident orca
28 whales; and

29 (d) The areas in which commercial whale watching operators may
30 operate.

31 (2) The limited-entry whale watching license program must use an
32 automatic identification system to enable effective monitoring and
33 compliance.

34 (3) The limited-entry whale watching license program may consider
35 options for the purchase and retirement of commercial whale watching
36 operations.

37 (4) The department may phase in requirements, but must adopt
38 rules to implement this section.

1 (5) The department shall complete an analysis and report to the
2 governor and the legislature on the effectiveness of the limited
3 entry whale watching program and any recommendations for changes to
4 the license fee structure by November 30, 2022, and every two years
5 thereafter until 2026. This report must be in compliance with RCW
6 43.01.036.

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

9 (a) "Commercial whale watching" has the same meaning as defined
10 in section 2 of this act.

11 (b) "Commercial whale watching operators" has the same meaning as
12 defined in section 2 of this act.

13 (c) "Inland waters of Washington" means Puget Sound and related
14 inland marine waters, including all salt waters of the state of
15 Washington inside the international boundary line between Washington
16 and British Columbia, and lying east of the junction of the Pacific
17 Ocean and the Strait of Juan de Fuca, and the rivers and streams
18 draining to Puget Sound as mapped by water resource inventory areas 1
19 through 19 in WAC 173-500-040 as it exists on July 1, 2007.

20 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act are necessary
21 for the immediate preservation of the public peace, health, or
22 safety, or support of the state government and its existing public
23 institutions, and take effect immediately.

--- END ---

HOUSE BILL 1578

State of Washington

66th Legislature

2019 Regular Session

By Representatives Lekanoff, Peterson, Doglio, Fitzgibbon, Shewmake, Robinson, Slatter, Valdez, Bergquist, Morris, Stanford, Tharinger, Cody, Jinkins, Kloba, Pollet, Frame, Davis, and Macri; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Environment & Energy.

1 AN ACT Relating to reducing threats to southern resident killer
2 whales by improving the safety of oil transportation; amending RCW
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;
5 creating a new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of
8 existing policies designed to reduce the risk of oil spills have
9 helped contribute to a relatively strong safety record for oil moved
10 by water, pipeline, and train in recent years in Washington state.
11 Nevertheless, gaps exist in our safety regimen, especially deriving
12 from shifts in the modes of overwater transportation of oil and the
13 increased transport of oils that may submerge or sink, contributing
14 to an unacceptable threat to Washington waters, where a catastrophic
15 spill would inflict potentially irreversible damage on the endangered
16 southern resident killer whales. In addition to the unique marine and
17 cultural resources in Puget Sound that would be damaged by an oil
18 spill, the geographic, bathometric, and other environmental
19 peculiarities of Puget Sound present navigational challenges that
20 heighten the risk of an oil spill incident occurring. Therefore, it
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing
2 infrastructure and activities of an oil spill that could eradicate
3 our whales, violate the treaty fishing rights of federally recognized
4 Indian tribes, damage commercial fishing prospects, undercut many
5 aspects of the economy that depend on the Salish Sea, and otherwise
6 harm the health and well-being of Washington residents. In enacting
7 such measures, however, it is not the intent of the legislature to
8 mitigate, offset, or otherwise encourage additional projects or
9 activities that would increase the frequency or severity of oil
10 spills in the Salish Sea. Furthermore, it is the intent of the
11 legislature for this act to spur international discussions among
12 federal, state, provincial, and industry leaders in the United States
13 and Canada to develop an agreement for the shared funding of an
14 emergency rescue tug available to vessels in distress in the narrow
15 Straits of the San Juan Islands and other boundary waters, which
16 would lessen oil spill risks to the marine environment in both the
17 United States and Canada.

18 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
19 as follows:

20 (1) Any oil tanker, whether enrolled or registered, of greater
21 than one hundred and twenty-five thousand metric deadweight tons
22 shall be prohibited from proceeding beyond a point east of a line
23 extending from Discovery Island light south to New Dungeness light.

24 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~
25 ~~one hundred and twenty-five thousand deadweight tons may proceed~~
26 ~~beyond the points enumerated in subsection (1) if such tanker~~
27 ~~possesses all of the following standard safety features:~~

28 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~
29 ~~and one-half deadweight tons; and~~

30 ~~(b) Twin screws; and~~

31 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
32 ~~compartments; and~~

33 ~~(d) Two radars in working order and operating, one of which must~~
34 ~~be collision avoidance radar; and~~

35 ~~(e) Such other navigational position location systems as may be~~
36 ~~prescribed from time to time by the board of pilotage commissioners;~~

37 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~
38 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
39 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~

1 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
2 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
3 ~~horsepower equivalencies may be required under certain conditions as~~
4 ~~established by rule and regulation of the Washington utilities and~~
5 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
6 ~~FURTHER, That))~~ (a)(i) An oil tanker of forty to one hundred twenty-
7 five thousand metric deadweight tons may operate in the waters east
8 of a line extending from Discovery Island light south to New
9 Dungeness light and all points in the Puget Sound area, including but
10 not limited to the San Juan Islands and connected waterways and the
11 waters south of Admiralty Inlet, to the extent that these waters are
12 within the territorial boundaries of Washington, only if the oil
13 tanker is under the escort of a tug or tugs that have an aggregate
14 shaft horsepower equivalent to at least five percent of the metric
15 deadweight tons of the escorted oil tanker.

16 (ii) Effective October 1, 2019, oil tankers of less than forty
17 thousand metric deadweight tons, and articulated tug barges and
18 waterborne vessels or barges of greater than five thousand metric
19 deadweight tons may operate in Rosario Strait and connected waterways
20 to the east only if the vessel is under the escort of a tug or tugs
21 that have an aggregate shaft horsepower equivalent to at least five
22 percent of the metric deadweight tons of a forty thousand metric
23 deadweight ton oil tanker. The requirements of this subsection may be
24 adjusted by rule by the board of pilotage commissioners, consistent
25 with section 3(3)(b) of this act.

26 (b) An oil tanker, articulated tug barge, or waterborne vessel or
27 barge in ballast is not required to be under the escort of a tug.

28 (c) A tanker assigned a deadweight of less than forty thousand
29 metric deadweight tons at the time of construction or reconstruction
30 as reported in Lloyd's Register of Ships is not subject to the
31 provisions of RCW 88.16.170 ((through 88.16.190)) and 88.16.180.

32 (3) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Articulated tug barge" means a tank barge and a towing
35 vessel joined by hinged or articulated fixed mechanical equipment
36 affixed or connecting to the stern of the tank barge.

37 (b) "Oil tanker" means a self-propelled deep draft tank vessel
38 designed to transport oil in bulk. "Oil tanker" does not include an
39 articulated tug barge tank vessel.

1 (c) "Waterborne vessel or barge" includes any ship, barge, or
2 other watercraft capable of traveling on the navigable waters of this
3 state and capable of transporting any crude oil or petroleum product
4 in quantities of ten thousand gallons or more for purposes other than
5 providing fuel for its motor or engine.

6 NEW SECTION. **Sec. 3.** A new section is added to chapter 88.16
7 RCW to read as follows:

8 (1)(a) By December 31, 2025, the board of pilotage commissioners,
9 in consultation with the department of ecology, must adopt rules
10 regarding tug escorts to address the peculiarities of Puget Sound for
11 oil tankers of less than forty thousand metric deadweight tons,
12 articulated tug barges, and waterborne vessels or barges of greater
13 than five thousand metric deadweight tons operating in the waters
14 east of the line extending from Discovery Island light south to New
15 Dungeness light and all points in the Puget Sound area. This rule
16 making must address the tug escort requirements applicable to Rosario
17 Strait and connected waterways to the east established in RCW
18 88.16.190(2)(a)(ii), and may adjust those requirements.

19 (b) To achieve the rule-making deadline in (a) of this
20 subsection, the board of pilotage commissioners must adhere to the
21 following interim milestones:

22 (i) By September 1, 2020, identify and define the zones,
23 specified in subsection (3)(a) of this section, to inform the
24 analysis required under subsection (5) of this section; and

25 (ii) By September 1, 2023, consult with stakeholders as required
26 under subsection (6) of this section and complete the analysis
27 required under subsection (5) of this section. By September 1, 2023,
28 the department of ecology must submit a summary of the results of the
29 analysis required under subsection (5) of this section to the
30 legislature consistent with RCW 43.01.036.

31 (2) When developing rules, the board of pilotage commissioners
32 must consider:

33 (a) The results of the most recently completed vessel traffic
34 risk assessments;

35 (b) The report developed by the department of ecology as required
36 under section 206, chapter 262, Laws of 2018;

37 (c) The recommendations of tribes with usual and accustomed
38 fishing rights in these areas; and

1 (d) The recommendations included in the southern resident orca
2 task force report, November 2018.

3 (3) In the rules adopted under this section, the board of
4 pilotage commissioners must:

5 (a) Make decisions about risk protection on the basis of
6 geographic zones in the waters specified in subsection (1)(a) of this
7 section. As the initial foci of the rules, the board of pilotage
8 commissioners must equally prioritize geographic zones encompassing
9 (i) Rosario Strait and connected waterways to the east; and (ii) Haro
10 Strait and Boundary Pass;

11 (b) Specify operational requirements, such as tethering, for tug
12 escorts;

13 (c) Include functionality requirements for tug escorts, such as
14 aggregate shaft horsepower for tethered tug escorts; and

15 (d) Be designed to achieve best achievable protection, as defined
16 under RCW 88.46.010, as informed by consideration of:

17 (i) Accident records in British Columbia and Washington waters;

18 (ii) Existing propulsion and design standards for covered tank
19 vessels; and

20 (iii) The characteristics of the waterways.

21 (4) The rules adopted under this section may not require oil
22 tankers, articulated tug barges, waterborne vessels, or barges to be
23 under the escort of a tug when these vessels are in ballast.

24 (5) To inform rule making, the board of pilotage commissioners
25 must conduct an analysis of tug escorts using the model developed by
26 the department of ecology under section 5 of this act. The board of
27 pilotage commissioners may:

28 (a) Develop subsets of oil tankers of less than forty thousand
29 metric deadweight tons, and articulated tug barges and waterborne
30 vessels or barges of greater than five thousand metric deadweight
31 tons, and situations that could preclude the requirements of the rule
32 making for a given zone or vessel; and

33 (b) Enter into an interagency agreement with the department of
34 ecology to assist with conducting the analysis and developing the
35 rules.

36 (6) The board of pilotage commissioners must consult with the
37 United States coast guard, the Puget Sound harbor safety committee,
38 treaty tribes, ports, local governments, state agencies, and other
39 appropriate entities before adopting tug escort rules for Puget
40 Sound. Considering relevant information elicited during the

1 consultations required under this subsection, the board of pilotage
2 commissioners must also design the rules with a goal of avoiding or
3 minimizing the impacts of underwater noise from vessels in the Salish
4 Sea, focusing vessel traffic into established shipping lanes,
5 protecting and minimizing vessel traffic impacts to established
6 treaty fishing areas, and respecting and preserving the treaty-
7 protected fishing rights of federally recognized Indian tribes in the
8 Salish Sea.

9 (7) Rules adopted under this section must be periodically updated
10 consistent with section 6 of this act.

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

13 (a) "Articulated tug barge" means a tank barge and a towing
14 vessel joined by hinged or articulated fixed mechanical equipment
15 affixed or connecting to the stern of the tank barge.

16 (b) "Oil tanker" means a self-propelled deep draft tank vessel
17 designed to transport oil in bulk. "Oil tanker" does not include an
18 articulated tug barge tank vessel.

19 (c) "Waterborne vessels or barges" includes any ship, barge, or
20 other watercraft capable of traveling on the navigable waters of this
21 state and capable of transporting any crude oil or petroleum product
22 in quantities of ten thousand gallons or more for purposes other than
23 providing fuel for its motor or engine.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46
25 RCW to read as follows:

26 (1) The department may adopt rules to require the owners and
27 operators of covered vessels transiting to or from a Washington port
28 through Haro Strait, Boundary Pass, or Rosario Strait to collectively
29 establish and fund an emergency response system that provides for an
30 emergency response towing vessel in a manner similar to the
31 requirements of RCW 88.46.125 through 88.46.139. These rules must:

32 (a) Require that an emergency response towing vessel be stationed
33 in the vicinity of the San Juan Islands and be able to respond
34 immediately to a vessel in distress in Haro Strait, Boundary Pass,
35 Rosario Strait, and connected navigable waterways;

36 (b) Establish minimum deployment and equipment standards for an
37 emergency response towing vessel, which may include requirements
38 related to the speed and availability of the vessel for deployment,

1 the functionality of the vessel in severe weather conditions, and
2 other operational capabilities;

3 (c) Allow the requirements of this section to be fulfilled by one
4 or more private organizations or nonprofit cooperatives providing
5 umbrella coverage under contract to single or multiple covered
6 vessels;

7 (d) Allow the department, at its discretion, to contract with the
8 emergency response towing vessel in response to a potentially
9 emerging maritime casualty or as a precautionary measure during
10 severe storms. In all instances of use by the department, the
11 department must be responsible for the cost of its use of an
12 emergency response towing vessel;

13 (e) Not allow the emergency response towing vessel to be
14 restricted from responding to distressed vessels that are not covered
15 vessels;

16 (f) Require the owner or operator of a vessel that receives
17 assistance from the emergency response towing vessel to submit a
18 written report to the department as soon as practicable regarding the
19 deployment of the emergency response system;

20 (g) Be designed with a goal of avoiding or minimizing the impacts
21 of underwater noise from vessels in the Salish Sea, focusing vessel
22 traffic into established shipping lanes, protecting and minimizing
23 vessel traffic impacts to established fishing areas, and respecting
24 and preserving the treaty-protected fishing rights of federally
25 recognized Indian tribes in the Salish Sea;

26 (h) Be designed to maximize the incremental risk reduction
27 offered by an emergency response system in light of the requirements
28 established in or authorized by RCW 88.16.190;

29 (i) Consider whether the adoption of rules under this section
30 would establish the perverse effects of either:

31 (i) Encouraging the development of or mitigating the impacts of
32 oil infrastructure in British Columbia; or

33 (ii) Discouraging regulatory authorities in Canada from
34 establishing tug escorts, emergency response systems, or similar
35 maritime safety requirements for vessels operating in international
36 boundary waters;

37 (j) Consider input received during the 2019 Salish Sea shared
38 waters forum;

39 (k) Be carried out in consultation with the entities identified
40 in section 3(6) of this act; and

1 (1) Rely, in part, upon analysis of the emergency response towing
2 vessel using the model developed by the department under section 5 of
3 this act.

4 (2) Rules adopted under this section must be periodically updated
5 consistent with section 6 of this act.

6 (3) The department must prioritize Haro Strait and Boundary Pass
7 as the initial focus of analysis conducted in support of rule-making
8 processes under this section.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46
10 RCW to read as follows:

11 The department must develop and maintain a model to
12 quantitatively assess current and potential future risks of oil
13 spills from covered vessels in Washington waters, as it conducts
14 ongoing oil spill risk assessments. The department must consult with
15 the United States coast guard, tribes, and stakeholders to: Determine
16 model assumptions; develop scenarios to show the likely impacts of
17 changes to model assumptions, including potential changes in vessel
18 traffic, commodities transported, and vessel safety and risk
19 reduction measures; and update the model periodically.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46
21 RCW to read as follows:

22 (1) By October 1, 2028, and every ten years thereafter, the board
23 of pilotage commissioners and the department must together consider:

24 (a) The effects of rules established under RCW 88.16.190 and
25 sections 3 and 4 of this act on vessel traffic patterns and oil spill
26 risks in the Salish Sea. Factors considered must include modeling
27 developed by the department under section 5 of this act and may
28 include: (i) Vessel traffic data; (ii) vessel accident and incident
29 data, such as incidents where tug escorts or an emergency response
30 towing vessel acted to reduce spill risks; and (iii) consultation
31 with the United States coast guard, federally recognized Indian
32 tribes, and stakeholders; and

33 (b) Whether experienced or forecasted changes to vessel traffic
34 patterns or oil spill risk in the Salish Sea necessitate an update to
35 the tug escort rules adopted under RCW 88.16.190 and section 3 of
36 this act, or to the emergency response towing vessel requirements
37 adopted under section 4 of this act.

1 (2) In the event that the department or board of pilotage
2 commissioners determines that updates are merited to the rules, the
3 department or board, as appropriate, must notify the appropriate
4 standing committees of the house of representatives and the senate,
5 and must thereafter adopt rules consistent with the requirements of
6 RCW 88.16.190, section 3 of this act, including the consultation
7 process outlined in section 3(6) of this act, and section 4 of this
8 act.

9 **Sec. 7.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
10 read as follows:

11 (1) The department must establish the Salish Sea shared waters
12 forum to address common issues in the cross-boundary waterways
13 between Washington state and British Columbia such as: Enhancing
14 efforts to reduce oil spill risk; addressing navigational safety; and
15 promoting data sharing.

16 (2) The department must:

17 (a) Coordinate with provincial and federal Canadian agencies when
18 establishing the Salish Sea shared waters forum; and

19 (b) Seek participation from stakeholders that, at minimum,
20 includes representatives of the following: State, provincial, and
21 federal governmental entities, regulated entities, environmental
22 organizations, tribes, and first nations.

23 (3) The Salish Sea shared waters forum must meet at least once
24 per year to consider the following:

25 (a) Gaps and conflicts in oil spill policies, regulations, and
26 laws;

27 (b) Opportunities to reduce oil spill risk, including requiring
28 tug escorts for oil tankers, articulated tug barges, and other
29 waterborne vessels or barges;

30 (c) Enhancing oil spill prevention, preparedness, and response
31 capacity; and

32 (d) Whether an emergency response system in Haro Strait, Boundary
33 Pass, and Rosario Strait, similar to the system implemented by the
34 maritime industry pursuant to RCW 88.46.130, will decrease oil spill
35 risk and how to fund such a shared system.

36 (4) The definitions in this subsection apply throughout this
37 section unless the context clearly requires otherwise.

1 (a) "Articulated tug barge" means a tank barge and a towing
2 vessel joined by hinged or articulated fixed mechanical equipment
3 affixed or connecting to the stern of the tank barge.

4 (b) "Waterborne vessel or barge" (~~means~~) includes any ship,
5 barge, or other watercraft capable of traveling on the navigable
6 waters of this state and capable of transporting any crude oil or
7 petroleum product in quantities of ten thousand gallons or more for
8 purposes other than providing fuel for its motor or engine.

9 (5) In advance of the 2019 meeting of the Salish Sea shared
10 waters forum, the department must partner with the coast Salish
11 gathering, which is the transboundary natural resource policy
12 dialogue of elected officials representing federal, state,
13 provincial, first nations, and tribal governments within the Salish
14 Sea, to discuss the specifics of how the shared system described in
15 subsection (3)(d) of this section could be funded. The 2019 meeting
16 of the Salish Sea shared waters forum must include continued
17 discussion of the specifics covered on this topic during the coast
18 Salish gathering.

19 (6) This section expires July 1, 2021.

20 **Sec. 8.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
21 read as follows:

22 (1)(a) A facility that receives crude oil from a railroad car
23 must provide advance notice to the department that the facility will
24 receive crude oil from a railroad car, as provided in this section.
25 The advance notice must include the route taken to the facility
26 within the state, if known, and the scheduled time, location, volume,
27 region per bill of lading, type, and gravity as measured by standards
28 developed by the American petroleum institute, of crude oil received.
29 Each week, a facility that provides advance notice under this section
30 must provide the required information regarding the scheduled arrival
31 of railroad cars carrying crude oil to be received by the facility in
32 the succeeding seven-day period. A facility is not required to
33 provide advance notice when there is no receipt of crude oil from a
34 railroad car scheduled for a seven-day period.

35 (b) Twice per year, pipelines that transport crude oil must
36 report to the department the following information about the crude
37 oil transported by the pipeline through the state: The volume of
38 crude oil, gravity of the crude oil as measured by standards
39 developed by the American petroleum institute, type of crude oil, and

1 the state or province of origin of the crude oil. This report must be
2 submitted each year by July 31st for the period January 1st through
3 June 30th and by January 31st for the period July 1st through
4 December 31st.

5 (2) The department may share information provided by a facility
6 through the advance notice system established in this section with
7 the state emergency management division and any county, city, tribal,
8 port, or local government emergency response agency upon request.

9 (3) The department must publish information collected under this
10 section on a quarterly basis on the department's internet web site.
11 With respect to the information reported under subsection (1)(a) of
12 this section, the information published by the department must be
13 aggregated on a statewide basis by route through the state, by week,
14 and by type of crude oil. The report may also include other
15 information available to the department including, but not limited
16 to, place of origin, modes of transport, number of railroad cars
17 delivering crude oil, and number and volume of spills during
18 transport and delivery.

19 (4) A facility providing advance notice under this section is not
20 responsible for meeting advance notice time frame requirements under
21 subsection (1) of this section in the event that the schedule of
22 arrivals of railroad cars carrying crude oil changes during a seven-
23 day period.

24 (5) Consistent with the requirements of chapter 42.56 RCW, the
25 department and any state, local, tribal, or public agency that
26 receives information provided under this section may not disclose any
27 such information to the public or to nongovernmental entities that
28 contains proprietary, commercial, or financial information unless
29 that information is aggregated. The requirement for aggregating
30 information does not apply when information is shared by the
31 department with emergency response agencies as provided in subsection
32 (2) of this section.

33 (6) The department shall adopt rules to implement this section.
34 The advance notice system required in this section must be consistent
35 with the oil transfer reporting system adopted by the department
36 pursuant to RCW 88.46.165.

37 **Sec. 9.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
38 read as follows:

1 (1) The department's rules authorized under RCW 88.46.160 and
2 this section shall be scaled to the risk posed to people and to the
3 environment, and be categorized by type of transfer, volume of oil,
4 frequency of transfers, and such other risk factors as identified by
5 the department.

6 (2) The rules may require prior notice be provided before an oil
7 transfer, regulated under this chapter, occurs in situations defined
8 by the department as posing a higher risk. The notice may include the
9 time, location, and volume of the oil transfer, as well as the region
10 per bill of lading, gravity as measured by standards developed by the
11 American petroleum institute, and type of crude oil. The rules may
12 not require prior notice when marine fuel outlets are transferring
13 less than three thousand gallons of oil in a single transaction to a
14 ship that is not a covered vessel and the transfers are scheduled
15 less than four hours in advance.

16 (3) The department may require semiannual reporting of volumes of
17 oil transferred to ships by a marine fuel outlet.

18 (4) The rules may require additional measures to be taken in
19 conjunction with the deployment of containment equipment or with the
20 alternatives to deploying containment equipment. However, these
21 measures must be scaled appropriately to the risks posed by the oil
22 transfer.

23 (5) The rules shall include regulations to enhance the safety of
24 oil transfers over water originating from vehicles transporting oil
25 over private roads or highways of the state.

26 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
27 July 1, 2021.

28 NEW SECTION. **Sec. 11.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---

SENATE BILL 5578

State of Washington

66th Legislature

2019 Regular Session

By Senators Van De Wege, Liiias, Carlyle, Frockt, Billig, Conway, Hunt, Pedersen, Palumbo, McCoy, Dhingra, Keiser, Kuderer, Saldaña, and Wilson, C.; by request of Office of the Governor

Read first time 01/24/19. Referred to Committee on Environment, Energy & Technology.

1 AN ACT Relating to reducing threats to southern resident killer
2 whales by improving the safety of oil transportation; amending RCW
3 88.16.190, 88.46.240, 90.56.565, and 88.46.165; adding a new section
4 to chapter 88.16 RCW; adding new sections to chapter 88.46 RCW;
5 creating a new section; and providing an effective date.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that a variety of
8 existing policies designed to reduce the risk of oil spills have
9 helped contribute to a relatively strong safety record for oil moved
10 by water, pipeline, and train in recent years in Washington state.
11 Nevertheless, gaps exist in our safety regimen, especially deriving
12 from shifts in the modes of overwater transportation of oil and the
13 increased transport of oils that may submerge or sink, contributing
14 to an unacceptable threat to Washington waters, where a catastrophic
15 spill would inflict potentially irreversible damage on the endangered
16 southern resident killer whales. In addition to the unique marine and
17 cultural resources in Puget Sound that would be damaged by an oil
18 spill, the geographic, bathometric, and other environmental
19 peculiarities of Puget Sound present navigational challenges that
20 heighten the risk of an oil spill incident occurring. Therefore, it
21 is the intent of the legislature to enact certain new safety

1 requirements designed to reduce the current, acute risk from existing
2 infrastructure and activities of an oil spill that could eradicate
3 our whales, violate the treaty fishing rights of federally recognized
4 Indian tribes, damage commercial fishing prospects, undercut many
5 aspects of the economy that depend on the Salish Sea, and otherwise
6 harm the health and well-being of Washington residents. In enacting
7 such measures, however, it is not the intent of the legislature to
8 mitigate, offset, or otherwise encourage additional projects or
9 activities that would increase the frequency or severity of oil
10 spills in the Salish Sea. Furthermore, it is the intent of the
11 legislature for this act to spur international discussions among
12 federal, state, provincial, and industry leaders in the United States
13 and Canada to develop an agreement for the shared funding of an
14 emergency rescue tug available to vessels in distress in the narrow
15 Straits of the San Juan Islands and other boundary waters, which
16 would lessen oil spill risks to the marine environment in both the
17 United States and Canada.

18 **Sec. 2.** RCW 88.16.190 and 1994 c 52 s 1 are each amended to read
19 as follows:

20 (1) Any oil tanker, whether enrolled or registered, of greater
21 than one hundred and twenty-five thousand metric deadweight tons
22 shall be prohibited from proceeding beyond a point east of a line
23 extending from Discovery Island light south to New Dungeness light.

24 ~~(2) ((An oil tanker, whether enrolled or registered, of forty to~~
25 ~~one hundred and twenty-five thousand deadweight tons may proceed~~
26 ~~beyond the points enumerated in subsection (1) if such tanker~~
27 ~~possesses all of the following standard safety features:~~

28 ~~(a) Shaft horsepower in the ratio of one horsepower to each two~~
29 ~~and one-half deadweight tons; and~~

30 ~~(b) Twin screws; and~~

31 ~~(c) Double bottoms, underneath all oil and liquid cargo~~
32 ~~compartments; and~~

33 ~~(d) Two radars in working order and operating, one of which must~~
34 ~~be collision avoidance radar; and~~

35 ~~(e) Such other navigational position location systems as may be~~
36 ~~prescribed from time to time by the board of pilotage commissioners:~~

37 ~~PROVIDED, That, if such forty to one hundred and twenty-five~~
38 ~~thousand deadweight ton tanker is in ballast or is under escort of a~~
39 ~~tug or tugs with an aggregate shaft horsepower equivalent to five~~

1 ~~percent of the deadweight tons of that tanker, subsection (2) of this~~
2 ~~section shall not apply: PROVIDED FURTHER, That additional tug shaft~~
3 ~~horsepower equivalencies may be required under certain conditions as~~
4 ~~established by rule and regulation of the Washington utilities and~~
5 ~~transportation commission pursuant to chapter 34.05 RCW: PROVIDED~~
6 ~~FURTHER, That))~~ (a)(i) An oil tanker of forty to one hundred twenty-
7 five thousand metric deadweight tons may operate in the waters east
8 of a line extending from Discovery Island light south to New
9 Dungeness light and all points in the Puget Sound area, including but
10 not limited to the San Juan Islands and connected waterways and the
11 waters south of Admiralty Inlet, to the extent that these waters are
12 within the territorial boundaries of Washington, only if the oil
13 tanker is under the escort of a tug or tugs that have an aggregate
14 shaft horsepower equivalent to at least five percent of the metric
15 deadweight tons of the escorted oil tanker.

16 (ii) Effective October 1, 2019, oil tankers of less than forty
17 thousand metric deadweight tons, and articulated tug barges and
18 waterborne vessels or barges of greater than five thousand metric
19 deadweight tons may operate in Rosario Strait and connected waterways
20 to the east only if the vessel is under the escort of a tug or tugs
21 that have an aggregate shaft horsepower equivalent to at least five
22 percent of the metric deadweight tons of a forty thousand metric
23 deadweight ton oil tanker. The requirements of this subsection may be
24 adjusted by rule by the board of pilotage commissioners, consistent
25 with section 3(3)(b) of this act.

26 (b) An oil tanker, articulated tug barge, or waterborne vessel or
27 barge in ballast is not required to be under the escort of a tug.

28 (c) A tanker assigned a deadweight of less than forty thousand
29 metric deadweight tons at the time of construction or reconstruction
30 as reported in Lloyd's Register of Ships is not subject to the
31 provisions of RCW 88.16.170 ((through 88.16.190)) and 88.16.180.

32 (3) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Articulated tug barge" means a tank barge and a towing
35 vessel joined by hinged or articulated fixed mechanical equipment
36 affixed or connecting to the stern of the tank barge.

37 (b) "Oil tanker" means a self-propelled deep draft tank vessel
38 designed to transport oil in bulk. "Oil tanker" does not include an
39 articulated tug barge tank vessel.

1 (c) "Waterborne vessel or barge" includes any ship, barge, or
2 other watercraft capable of traveling on the navigable waters of this
3 state and capable of transporting any crude oil or petroleum product
4 in quantities of ten thousand gallons or more for purposes other than
5 providing fuel for its motor or engine.

6 **NEW SECTION.** **Sec. 3.** A new section is added to chapter 88.16
7 RCW to read as follows:

8 (1)(a) By December 31, 2025, the board of pilotage commissioners,
9 in consultation with the department of ecology, must adopt rules
10 regarding tug escorts to address the peculiarities of Puget Sound for
11 oil tankers of less than forty thousand metric deadweight tons,
12 articulated tug barges, and waterborne vessels or barges of greater
13 than five thousand metric deadweight tons operating in the waters
14 east of the line extending from Discovery Island light south to New
15 Dungeness light and all points in the Puget Sound area. This rule
16 making must address the tug escort requirements applicable to Rosario
17 Strait and connected waterways to the east established in RCW
18 88.16.190(2)(a)(ii), and may adjust those requirements.

19 (b) To achieve the rule-making deadline in (a) of this
20 subsection, the board of pilotage commissioners must adhere to the
21 following interim milestones:

22 (i) By September 1, 2020, identify and define the zones,
23 specified in subsection (3)(a) of this section, to inform the
24 analysis required under subsection (5) of this section; and

25 (ii) By September 1, 2023, consult with stakeholders as required
26 under subsection (6) of this section and complete the analysis
27 required under subsection (5) of this section. By September 1, 2023,
28 the department of ecology must submit a summary of the results of the
29 analysis required under subsection (5) of this section to the
30 legislature consistent with RCW 43.01.036.

31 (2) When developing rules, the board of pilotage commissioners
32 must consider:

33 (a) The results of the most recently completed vessel traffic
34 risk assessments;

35 (b) The report developed by the department of ecology as required
36 under section 206, chapter 262, Laws of 2018;

37 (c) The recommendations of tribes with usual and accustomed
38 fishing rights in these areas; and

1 (d) The recommendations included in the southern resident orca
2 task force report, November 2018.

3 (3) In the rules adopted under this section, the board of
4 pilotage commissioners must:

5 (a) Make decisions about risk protection on the basis of
6 geographic zones in the waters specified in subsection (1)(a) of this
7 section. As the initial foci of the rules, the board of pilotage
8 commissioners must equally prioritize geographic zones encompassing
9 (i) Rosario Strait and connected waterways to the east; and (ii) Haro
10 Strait and Boundary Pass;

11 (b) Specify operational requirements, such as tethering, for tug
12 escorts;

13 (c) Include functionality requirements for tug escorts, such as
14 aggregate shaft horsepower for tethered tug escorts; and

15 (d) Be designed to achieve best achievable protection, as defined
16 under RCW 88.46.010, as informed by consideration of:

17 (i) Accident records in British Columbia and Washington waters;

18 (ii) Existing propulsion and design standards for covered tank
19 vessels; and

20 (iii) The characteristics of the waterways.

21 (4) The rules adopted under this section may not require oil
22 tankers, articulated tug barges, waterborne vessels, or barges to be
23 under the escort of a tug when these vessels are in ballast.

24 (5) To inform rule making, the board of pilotage commissioners
25 must conduct an analysis of tug escorts using the model developed by
26 the department of ecology under section 5 of this act. The board of
27 pilotage commissioners may:

28 (a) Develop subsets of oil tankers of less than forty thousand
29 metric deadweight tons, and articulated tug barges and waterborne
30 vessels or barges of greater than five thousand metric deadweight
31 tons, and situations that could preclude the requirements of the rule
32 making for a given zone or vessel; and

33 (b) Enter into an interagency agreement with the department of
34 ecology to assist with conducting the analysis and developing the
35 rules.

36 (6) The board of pilotage commissioners must consult with the
37 United States coast guard, the Puget Sound harbor safety committee,
38 treaty tribes, ports, local governments, state agencies, and other
39 appropriate entities before adopting tug escort rules for Puget
40 Sound. Considering relevant information elicited during the

1 consultations required under this subsection, the board of pilotage
2 commissioners must also design the rules with a goal of avoiding or
3 minimizing the impacts of underwater noise from vessels in the Salish
4 Sea, focusing vessel traffic into established shipping lanes,
5 protecting and minimizing vessel traffic impacts to established
6 treaty fishing areas, and respecting and preserving the treaty-
7 protected fishing rights of federally recognized Indian tribes in the
8 Salish Sea.

9 (7) Rules adopted under this section must be periodically updated
10 consistent with section 6 of this act.

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

13 (a) "Articulated tug barge" means a tank barge and a towing
14 vessel joined by hinged or articulated fixed mechanical equipment
15 affixed or connecting to the stern of the tank barge.

16 (b) "Oil tanker" means a self-propelled deep draft tank vessel
17 designed to transport oil in bulk. "Oil tanker" does not include an
18 articulated tug barge tank vessel.

19 (c) "Waterborne vessels or barges" includes any ship, barge, or
20 other watercraft capable of traveling on the navigable waters of this
21 state and capable of transporting any crude oil or petroleum product
22 in quantities of ten thousand gallons or more for purposes other than
23 providing fuel for its motor or engine.

24 NEW SECTION. **Sec. 4.** A new section is added to chapter 88.46
25 RCW to read as follows:

26 (1) The department may adopt rules to require the owners and
27 operators of covered vessels transiting to or from a Washington port
28 through Haro Strait, Boundary Pass, or Rosario Strait to collectively
29 establish and fund an emergency response system that provides for an
30 emergency response towing vessel in a manner similar to the
31 requirements of RCW 88.46.125 through 88.46.139. These rules must:

32 (a) Require that an emergency response towing vessel be stationed
33 in the vicinity of the San Juan Islands and be able to respond
34 immediately to a vessel in distress in Haro Strait, Boundary Pass,
35 Rosario Strait, and connected navigable waterways;

36 (b) Establish minimum deployment and equipment standards for an
37 emergency response towing vessel, which may include requirements
38 related to the speed and availability of the vessel for deployment,

1 the functionality of the vessel in severe weather conditions, and
2 other operational capabilities;

3 (c) Allow the requirements of this section to be fulfilled by one
4 or more private organizations or nonprofit cooperatives providing
5 umbrella coverage under contract to single or multiple covered
6 vessels;

7 (d) Allow the department, at its discretion, to contract with the
8 emergency response towing vessel in response to a potentially
9 emerging maritime casualty or as a precautionary measure during
10 severe storms. In all instances of use by the department, the
11 department must be responsible for the cost of its use of an
12 emergency response towing vessel;

13 (e) Not allow the emergency response towing vessel to be
14 restricted from responding to distressed vessels that are not covered
15 vessels;

16 (f) Require the owner or operator of a vessel that receives
17 assistance from the emergency response towing vessel to submit a
18 written report to the department as soon as practicable regarding the
19 deployment of the emergency response system;

20 (g) Be designed with a goal of avoiding or minimizing the impacts
21 of underwater noise from vessels in the Salish Sea, focusing vessel
22 traffic into established shipping lanes, protecting and minimizing
23 vessel traffic impacts to established fishing areas, and respecting
24 and preserving the treaty-protected fishing rights of federally
25 recognized Indian tribes in the Salish Sea;

26 (h) Be designed to maximize the incremental risk reduction
27 offered by an emergency response system in light of the requirements
28 established in or authorized by RCW 88.16.190;

29 (i) Consider whether the adoption of rules under this section
30 would establish the perverse effects of either:

31 (i) Encouraging the development of or mitigating the impacts of
32 oil infrastructure in British Columbia; or

33 (ii) Discouraging regulatory authorities in Canada from
34 establishing tug escorts, emergency response systems, or similar
35 maritime safety requirements for vessels operating in international
36 boundary waters;

37 (j) Consider input received during the 2019 Salish Sea shared
38 waters forum;

39 (k) Be carried out in consultation with the entities identified
40 in section 3(6) of this act; and

1 (1) Rely, in part, upon analysis of the emergency response towing
2 vessel using the model developed by the department under section 5 of
3 this act.

4 (2) Rules adopted under this section must be periodically updated
5 consistent with section 6 of this act.

6 (3) The department must prioritize Haro Strait and Boundary Pass
7 as the initial focus of analysis conducted in support of rule-making
8 processes under this section.

9 NEW SECTION. **Sec. 5.** A new section is added to chapter 88.46
10 RCW to read as follows:

11 The department must develop and maintain a model to
12 quantitatively assess current and potential future risks of oil
13 spills from covered vessels in Washington waters, as it conducts
14 ongoing oil spill risk assessments. The department must consult with
15 the United States coast guard, tribes, and stakeholders to: Determine
16 model assumptions; develop scenarios to show the likely impacts of
17 changes to model assumptions, including potential changes in vessel
18 traffic, commodities transported, and vessel safety and risk
19 reduction measures; and update the model periodically.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 88.46
21 RCW to read as follows:

22 (1) By October 1, 2028, and every ten years thereafter, the board
23 of pilotage commissioners and the department must together consider:

24 (a) The effects of rules established under RCW 88.16.190 and
25 sections 3 and 4 of this act on vessel traffic patterns and oil spill
26 risks in the Salish Sea. Factors considered must include modeling
27 developed by the department under section 5 of this act and may
28 include: (i) Vessel traffic data; (ii) vessel accident and incident
29 data, such as incidents where tug escorts or an emergency response
30 towing vessel acted to reduce spill risks; and (iii) consultation
31 with the United States coast guard, federally recognized Indian
32 tribes, and stakeholders; and

33 (b) Whether experienced or forecasted changes to vessel traffic
34 patterns or oil spill risk in the Salish Sea necessitate an update to
35 the tug escort rules adopted under RCW 88.16.190 and section 3 of
36 this act, or to the emergency response towing vessel requirements
37 adopted under section 4 of this act.

1 (2) In the event that the department or board of pilotage
2 commissioners determines that updates are merited to the rules, the
3 department or board, as appropriate, must notify the appropriate
4 standing committees of the house of representatives and the senate,
5 and must thereafter adopt rules consistent with the requirements of
6 RCW 88.16.190, section 3 of this act, including the consultation
7 process outlined in section 3(6) of this act, and section 4 of this
8 act.

9 **Sec. 7.** RCW 88.46.240 and 2018 c 262 s 204 are each amended to
10 read as follows:

11 (1) The department must establish the Salish Sea shared waters
12 forum to address common issues in the cross-boundary waterways
13 between Washington state and British Columbia such as: Enhancing
14 efforts to reduce oil spill risk; addressing navigational safety; and
15 promoting data sharing.

16 (2) The department must:

17 (a) Coordinate with provincial and federal Canadian agencies when
18 establishing the Salish Sea shared waters forum; and

19 (b) Seek participation from stakeholders that, at minimum,
20 includes representatives of the following: State, provincial, and
21 federal governmental entities, regulated entities, environmental
22 organizations, tribes, and first nations.

23 (3) The Salish Sea shared waters forum must meet at least once
24 per year to consider the following:

25 (a) Gaps and conflicts in oil spill policies, regulations, and
26 laws;

27 (b) Opportunities to reduce oil spill risk, including requiring
28 tug escorts for oil tankers, articulated tug barges, and other
29 waterborne vessels or barges;

30 (c) Enhancing oil spill prevention, preparedness, and response
31 capacity; and

32 (d) Whether an emergency response system in Haro Strait, Boundary
33 Pass, and Rosario Strait, similar to the system implemented by the
34 maritime industry pursuant to RCW 88.46.130, will decrease oil spill
35 risk and how to fund such a shared system.

36 (4) The definitions in this subsection apply throughout this
37 section unless the context clearly requires otherwise.

1 (a) "Articulated tug barge" means a tank barge and a towing
2 vessel joined by hinged or articulated fixed mechanical equipment
3 affixed or connecting to the stern of the tank barge.

4 (b) "Waterborne vessel or barge" (~~means~~) includes any ship,
5 barge, or other watercraft capable of traveling on the navigable
6 waters of this state and capable of transporting any crude oil or
7 petroleum product in quantities of ten thousand gallons or more for
8 purposes other than providing fuel for its motor or engine.

9 (5) In advance of the 2019 meeting of the Salish Sea shared
10 waters forum, the department must partner with the coast Salish
11 gathering, which is the transboundary natural resource policy
12 dialogue of elected officials representing federal, state,
13 provincial, first nations, and tribal governments within the Salish
14 Sea, to discuss the specifics of how the shared system described in
15 subsection (3)(d) of this section could be funded. The 2019 meeting
16 of the Salish Sea shared waters forum must include continued
17 discussion of the specifics covered on this topic during the coast
18 Salish gathering.

19 (6) This section expires July 1, 2021.

20 **Sec. 8.** RCW 90.56.565 and 2015 c 274 s 8 are each amended to
21 read as follows:

22 (1)(a) A facility that receives crude oil from a railroad car
23 must provide advance notice to the department that the facility will
24 receive crude oil from a railroad car, as provided in this section.
25 The advance notice must include the route taken to the facility
26 within the state, if known, and the scheduled time, location, volume,
27 region per bill of lading, type, and gravity as measured by standards
28 developed by the American petroleum institute, of crude oil received.
29 Each week, a facility that provides advance notice under this section
30 must provide the required information regarding the scheduled arrival
31 of railroad cars carrying crude oil to be received by the facility in
32 the succeeding seven-day period. A facility is not required to
33 provide advance notice when there is no receipt of crude oil from a
34 railroad car scheduled for a seven-day period.

35 (b) Twice per year, pipelines that transport crude oil must
36 report to the department the following information about the crude
37 oil transported by the pipeline through the state: The volume of
38 crude oil, gravity of the crude oil as measured by standards
39 developed by the American petroleum institute, type of crude oil, and

1 the state or province of origin of the crude oil. This report must be
2 submitted each year by July 31st for the period January 1st through
3 June 30th and by January 31st for the period July 1st through
4 December 31st.

5 (2) The department may share information provided by a facility
6 through the advance notice system established in this section with
7 the state emergency management division and any county, city, tribal,
8 port, or local government emergency response agency upon request.

9 (3) The department must publish information collected under this
10 section on a quarterly basis on the department's internet web site.
11 With respect to the information reported under subsection (1)(a) of
12 this section, the information published by the department must be
13 aggregated on a statewide basis by route through the state, by week,
14 and by type of crude oil. The report may also include other
15 information available to the department including, but not limited
16 to, place of origin, modes of transport, number of railroad cars
17 delivering crude oil, and number and volume of spills during
18 transport and delivery.

19 (4) A facility providing advance notice under this section is not
20 responsible for meeting advance notice time frame requirements under
21 subsection (1) of this section in the event that the schedule of
22 arrivals of railroad cars carrying crude oil changes during a seven-
23 day period.

24 (5) Consistent with the requirements of chapter 42.56 RCW, the
25 department and any state, local, tribal, or public agency that
26 receives information provided under this section may not disclose any
27 such information to the public or to nongovernmental entities that
28 contains proprietary, commercial, or financial information unless
29 that information is aggregated. The requirement for aggregating
30 information does not apply when information is shared by the
31 department with emergency response agencies as provided in subsection
32 (2) of this section.

33 (6) The department shall adopt rules to implement this section.
34 The advance notice system required in this section must be consistent
35 with the oil transfer reporting system adopted by the department
36 pursuant to RCW 88.46.165.

37 **Sec. 9.** RCW 88.46.165 and 2006 c 316 s 1 are each amended to
38 read as follows:

1 (1) The department's rules authorized under RCW 88.46.160 and
2 this section shall be scaled to the risk posed to people and to the
3 environment, and be categorized by type of transfer, volume of oil,
4 frequency of transfers, and such other risk factors as identified by
5 the department.

6 (2) The rules may require prior notice be provided before an oil
7 transfer, regulated under this chapter, occurs in situations defined
8 by the department as posing a higher risk. The notice may include the
9 time, location, and volume of the oil transfer, as well as the region
10 per bill of lading, gravity as measured by standards developed by the
11 American petroleum institute, and type of crude oil. The rules may
12 not require prior notice when marine fuel outlets are transferring
13 less than three thousand gallons of oil in a single transaction to a
14 ship that is not a covered vessel and the transfers are scheduled
15 less than four hours in advance.

16 (3) The department may require semiannual reporting of volumes of
17 oil transferred to ships by a marine fuel outlet.

18 (4) The rules may require additional measures to be taken in
19 conjunction with the deployment of containment equipment or with the
20 alternatives to deploying containment equipment. However, these
21 measures must be scaled appropriately to the risks posed by the oil
22 transfer.

23 (5) The rules shall include regulations to enhance the safety of
24 oil transfers over water originating from vehicles transporting oil
25 over private roads or highways of the state.

26 NEW SECTION. **Sec. 10.** Sections 8 and 9 of this act take effect
27 July 1, 2021.

28 NEW SECTION. **Sec. 11.** If any provision of this act or its
29 application to any person or circumstance is held invalid, the
30 remainder of the act or the application of the provision to other
31 persons or circumstances is not affected.

--- END ---

CLERK OF THE COUNCIL
Dana Brown-Davis, C.M.C.

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WHATCOM COUNTY COUNCIL

February 12, 2019

Senator Liz Lovelett
Senator Doug J. Ericksen
P.O. Box 40442
Olympia, WA 98504

Representative Debra Lekanoff
Representative Jeff Morris
Representative Sharon Shewmake
Representative Luanne Van Werven
P.O. Box 40600
Olympia, WA 98504

Dear Senators and Representatives:

I am writing on behalf of the Whatcom County Council to express the importance of the Whatcom County Marine Resources Committee (MRC) in restoring and protecting our local marine and nearshore environment. The MRC is made up of local volunteers who prioritize and lead restoration, protection and education projects and serve as a marine resources advisory body to local elected officials. Among the many projects the Whatcom County MRC has implemented are:

- Executing a pilot Olympia oyster restoration project in North Chuckanut Bay to re-establish the native population, and enhance the bio-filtration capacity in the bay for improved water quality.
- Providing a source of education in the community on local marine resource issues
- Established a Pollution Identification and Correction program in the North Chuckanut Bay recreational shellfish area, which includes intensive water quality sampling and community outreach, in effort to open the area to shellfish harvest.
- Use of coordinated citizen science to fill important data gaps for critical marine habitats and species in our region, like bull kelp and forage fish.

Federal funding for this volunteer based effort has been reduced since 2011. Further, critical state funding for MRC projects ends this year and these funds provide 44% of the budget that MRCs receive from the Northwest Straits Commission. We urge you to support restoration of state funding during the 2019 Legislative session.

Project implementation through our MRC is a cost-effective way of contributing to recovery and protection of marine resources that are important to our county. We appreciate your past support and hope that we can count on your help to see that this important work will continue.

Sincerely,

Rud Browne, Chair
Whatcom County Council

cc. Eleanor Hines, Chair, Whatcom County Marine Resources Committee
Northwest Straits Commission