

Individual State Agency Fiscal Note

Bill Number: 1580 2S HB	Title: Orca whales/vessels	Agency: 477-Department of Fish and Wildlife
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Part I: Estimates

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No Fiscal Impact

Estimated Cash Receipts to:

ACCOUNT		FY 2020	FY 2021	2019-21	2021-23	2023-25
State Wildlife Account-State	104-1		92,575	92,575	185,150	185,150
	Total \$		92,575	92,575	185,150	185,150

Estimated Operating Expenditures from:

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	5.0	4.4	4.7	4.2	4.2
Account					
General Fund-State	001-1	865,000	683,000	1,548,000	1,402,000
State Wildlife Account-State					
104-1	24,000	0	24,000	0	0
	Total \$	889,000	683,000	1,572,000	1,402,000

The cash receipts and expenditure estimates on this page represent the most likely fiscal impact. Factors impacting the precision of these estimates, and alternate ranges (if appropriate), are explained in Part II.

Check applicable boxes and follow corresponding instructions:

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If fiscal impact is greater than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete entire fiscal note form Parts I-V.

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If fiscal impact is less than \$50,000 per fiscal year in the current biennium or in subsequent biennia, complete this page only (Part I).

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Capital budget impact, complete Part IV.

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Requires new rule making, complete Part V.

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Part II: Narrative Explanation

II. A - Brief Description Of What The Measure Does That Has Fiscal Impact

Briefly describe by section number, the significant provisions of the bill, and any related workload or policy assumptions, that have revenue or expenditure impact on the responding agency.

Section 1 increases the approach distance between a vessel or other object and a southern resident orca from 200 to 300 yards and prohibits vessels from being positioned behind a whale at any point within 400 yards. The section also limits vessel speed to seven knots within one-half nautical mile (1,013 yards) of a southern resident orca whale. Commercial fishing vessels in transit are not exempt from this.

Section 2 creates and prescribes fees for commercial whale watching licenses for all businesses engaged in whale-watching activities. The section also creates and prescribes fees for an alternate operator license.

Section 3(1) directs the Department to adopt rules for holders of a commercial whale watching license established in Section 2 by January 1, 2021 and guides the Department to establish limitations on the number of commercial whale watching operators, the days and hours of their operation, the duration spent in the vicinity of Southern Resident orcas, and the areas in which they may operate.

Section 3(2) directs the Department to phase in requirements and adopt rules to implement the section. It also authorizes the use of an automatic identification system for monitoring and compliance.

Section 3(3) allows the Department to phase in the requirements, but specifies the rules must be established pursuant to 34.05 RCW to include involvement of the public, industry, and interested parties.

Section 3(4) directs that before January 1, 2021, the department shall convene an independent panel of scientists to review the current body of best available science regarding impacts to southern resident orcas by small vessels and commercial whale watching due to disturbance and noise. The department must use the best available science in the establishment of the southern resident orca whale watching rules and continue to adaptively manage the program using the most current and best available science. The department will coordinate an independent science panel to review and evaluate the best available science on vessel impacts to southern resident orcas by contracting with an entity such as the Washington Academy of Sciences.

Section 3(5) directs the Department to complete an analysis and report to the Governor and Legislature on the effectiveness of, and any recommendations for changes to, the whale watching rules, fee structure, and approach distance rules by November 30, 2022 and every two years thereafter until 2026.

Section 4 identifies engaging in commercial whale watching without a permit as a second degree misdemeanor. If there is a repeat violation within a year of a prior conviction, it becomes a gross misdemeanor. Upon conviction, the department will deny applications submitted by the offending individual or company for up to two years from the date of conviction. The Department seeks compliance through education, but in the cases where violations are processed through the county courts and the courts receive fines upon prosecution.

Section 6 directs the Department to implement Section 1 of the bill immediately.

CHANGE FROM PREVIOUS FISCAL NOTE

This fiscal note, 1580 2SHB, differs from the last fiscal note, which was 1580 SHB, in the following way(s):

Section 2(8) adds an annual application fee of \$75 in addition to the original \$200 license fee for alternate operators.

Sections 2 (4) and (5) allow a holder of a commercial whale watching license for motorized or sailing vessels to switch the license to another vessel. If the holder does not own both vessels, this can only happen once per calendar year. This fiscal impact is indeterminate as the agency does not know how often this would happen; the impact would most likely be negligible.

II. B - Cash receipts Impact

Briefly describe and quantify the cash receipts impact of the legislation on the responding agency, identifying the cash receipts provisions by section number and when appropriate the detail of the revenue sources. Briefly describe the factual basis of the assumptions and the method by which the cash receipts impact is derived. Explain how workload assumptions translate into estimates. Distinguish between one time and ongoing functions.

RCW 77.70 Section 2(1) directs the department to charge a fee for commercial whale watching license for all businesses engaged in whale watching activities. Assuming 100 commercial vessels operated by 60 owners (40 owning 2 vessels, and 20 owning 1). Assuming 5 kayak operators. Assumptions based on information from the Pacific Whale Watch Association, Distribution as follows:

Annual Fees for all operators (60 commercial, 5 kayak):

License: \$200

Application Fee: \$75

$65 \times \$200 = \$13,000$ in license revenue; $65 \times \$75 = \$4,875$ in application revenue.

Additional Fees

Motorized and Sailing Operators

Capacity of 1-24: annual fee of \$325, assumption of 75 vessels: \$24,375

Capacity of 25-50: annual fee of \$525, assumption of 15 vessels: \$7,875

Capacity of 51-100: annual fee of \$825, assumption of 5 vessels: \$4,125

Capacity of 101-150: annual fee of \$1,825, assumption of 4 vessels: \$7,300

Capacity of 151 or more: annual fee of \$2,000, assumption of 1 vessels: \$2,000

TOTAL motorized or sailing: assumed 100 vessels, total revenue \$45,675

Kayak Operators

1-10 kayaks: annual fee of \$125, assume 2 operators: \$250

11-20 kayaks: annual fee of \$225, assume 1 operator: \$225

21-30 kayaks: annual fee of \$425, assume 1 operator: \$425

31 kayaks: annual fee of \$625, assume 1 operator: \$625

TOTAL kayak operators: 5, total revenue \$1,525

Alternate Operator Fees: (assume 100 operators)

License: \$200,

Application Fee: \$75

$100 \times \$200 = \$20,000$ in license revenue; $100 \times \$75 = \$7,500$ in application fee revenue

Grand total: \$80,200 in license fees + \$12,375 in application fees = total revenue of \$92,575

While not explicit in the bill itself, RCW 77.12.170 directs all fees collected in Chapter 77.70 be deposited in the state wildlife account.

II. C - Expenditures

Briefly describe the agency expenditures necessary to implement this legislation (or savings resulting from this legislation), identifying by section number the provisions of the legislation that result in the expenditures (or savings). Briefly describe the factual basis of the assumptions and the method by which the expenditure impact is derived. Explain how workload assumptions translate into cost estimates. Distinguish between one time and ongoing functions.

CONNECTION TO THE ORCA TASK FORCE RECOMMENDATIONS AND GOVERNOR'S PROPOSED BUDGET

1580 2SHB relates to three recommendations that appeared in the Governor's Southern Resident Killer Whale Task

Force's November 2018 report, all of which the Governor funded in his proposed 2019-21 budget:

- 2-17: Establish a statewide "go-slow" bubble for small vessels and commercial whale watching vessels, funded at \$238,000 per biennium, is in Section 1 (funded in Governor's Budget).
- 2-18: Establish a limited-entry whale-watching permit system for commercial whale-watching vessels and kayak groups, funded at \$721,000 in the 2019-21 biennium and \$556,000 per biennium thereafter, is in Section 3 (funded in Governor's Budget).
- 2-28: While the original recommendation called for a commercial whale watching suspension, 2SHB 1580 imposes flexible limitations on the number of commercial whale watching vessels, the times and locations they may operate, and who may operate them. Additionally, with the new alternate operator license requires time intensive on the water vessel boardings to ensure compliance. This will require the Department to intensify its enforcement efforts at costs equivalent to the \$600,000 per biennium included in the Governor's proposed budget (funded in Governor's Budget).

In addition to what the Governor funded in his proposed budget, 1580 2SHB establishes fees for the commercial whale watching and alternate operator license in Section 2, which carries a cost of \$24,000 in FY 2020 to establish the collection system.

1580 2SHB includes the Task Force recommendation 2-26 to increase the buffer to 400 yards behind orcas.

EXPENDITURES BY SECTION

Section 1(a),(c), and (d) detail changes in vessel operation requirements around southern resident orcas. The Department will require an additional 0.5 FTE Fish & Wildlife Enforcement Officer per year to enforce these changes, which are detailed in \$32,000 per year for vessel operation and maintenance appears in object E. Object P, debt services, includes \$9,125 per year, per officer, which covers the patrol vehicle use. New Fish and Wildlife rules require officers to make additional public contact for outreach, education, and compliance in emphasis patrols. In order to amplify outreach efforts and effectively educate the public about the new whale watching regulations and license requirements, WDFW will contract with the non-profit The Whale Museum's Soundwatch Program at a one-time cost of \$100,000 (object N).

Section 1(1)(e) assumes that with establishing a go-slow zone, WDFW will need to have more enforcement on the water. Sufficient coverage will require an additional 0.5 FTE Fish & Wildlife Enforcement Officer per fiscal year and vessel operation. \$32,000 per year for vessel operation and maintenance appears in object E. Object P, debt services, includes \$9,125 per year, per officer, which covers the patrol vehicle use. In addition to compliance work, officers will coordinate among Washington state agencies and partners, as well as federal and Canadian authorities, to align regulations and outreach. Costs for Section 1 total \$119,000 per year starting in FY 2020.

Section 2, which specifies a tiered fee structure based on vessel capacity and also creates an alternate operator license, will require the Department to dedicate more resources to enforcement of commercial whale watching, to include boarding vessels to check for compliance. This will require an additional 0.9 FTE Fish and Wildlife

Enforcement Officer per fiscal year and vessel operation costs. \$47,000 per year for vessel operation and maintenance appears in Object E. Object P, debt services, includes \$9,125 per year, per officer, which covers the patrol vehicle. The costs for Section 2 total \$102,000 starting January 1, 2021, and \$201,000 each fiscal year thereafter.

Section 3 will require 0.2 FTE Environmental Planner 5 in FY 2020 and 2021 to support rulemaking. his section will also require 0.1 FTE Customer Service Specialist 2, 0.1 FTE Management Analyst 2, and 0.1 FTE IT Specialist 5 to create the license type, application, and register programming, as well as establish the licensing process. These costs are a one-time expenditure of \$24,000 that are assumed to be paid from the State Wildlife Account. Section 3 will also require 1.0 FTE WMS 2 to collate, review, and analyze documents to determine historical commercial whale watching activity; coordinate with commercial whale watching interests to develop appropriate criteria for rules; develop and evaluate alternatives for different amounts and criteria for rules; and coordinate economic impact assessment, as well as the rule-making process.

Salaries and benefits for Section 3 total \$174,000 per year. Object C includes \$80,000 to contract for an economic impact analysis. \$32,000 per year for vessel operation and maintenance appears in object E, as do outreach costs, rulemaking costs and associated legal advice, for \$45,500. Object P, debt services, includes \$9,125 per year, per officer, which covers the patrol vehicle. Object E also includes funding of \$85,000 in FY2020 for science review panel coordination and contracts with an independent scientific entity. Object E also includes \$80,000 annually through 2026 in order to support additional monitoring and research on southern resident orcas to be considered by the science panel, and to be used by the department to adaptively manage rules within the commercial whale watching licensing program.

Total costs for section 3 are \$770,000 in FY 2020, \$462,000 in FY 2021, and \$381,000 each year thereafter.

Object E, goods and services, includes \$6,000 per FTE, per year, for WDFW standard costs, which cover an average employee's space, supplies, communications, training, and subscription costs per year, as well as central agency costs. For Fish and Wildlife Enforcement Officers an additional \$11,000 per FTE per year is included for standard costs due to specialized equipment requirements.

An infrastructure and administrative program support rate of 28.78 percent is included in object T, and is calculated based on WDFW's federally-approved indirect rate. Administrative FTEs are calculated proportional to the infrastructure and program support figures and are included as Fiscal Analyst 2 and Administrative Assistant 4 job classifications.

Part III: Expenditure Detail

III. A - Operating Budget Expenditures

Account	Account Title	Type	FY 2020	FY 2021	2019-21	2021-23	2023-25
001-1	General Fund	State	865,000	683,000	1,548,000	1,402,000	1,402,000
104-1	State Wildlife Account	State	24,000	0	24,000	0	0
Total \$			889,000	683,000	1,572,000	1,402,000	1,402,000

III. B - Expenditures by Object Or Purpose

	FY 2020	FY 2021	2019-21	2021-23	2023-25
FTE Staff Years	5.0	4.4	4.7	4.2	4.2
A-Salaries and Wages	199,000	215,000	414,000	464,000	464,000
B-Employee Benefits	66,000	68,000	134,000	144,000	144,000
C-Professional Service Contracts	80,000		80,000		
E-Goods and Other Services	300,000	198,000	498,000	454,000	454,000
G-Travel					
J-Capital Outlays					
M-Inter Agency/Fund Transfers					
N-Grants, Benefits & Client Services	50,000	50,000	100,000		
P-Debt Service	8,000	12,000	20,000	32,000	32,000
S-Interagency Reimbursements					
T-Intra-Agency Reimbursements	186,000	140,000	326,000	308,000	308,000
9-					
Total \$	889,000	683,000	1,572,000	1,402,000	1,402,000

III. C - Operating FTE Detail: List FTEs by classification and corresponding annual compensation. Totals need to agree with total FTEs in Part I and Part IIIA

Job Classification	Salary	FY 2020	FY 2021	2019-21	2021-23	2023-25
ADMINISTRATIVE ASSISTANT 4	53,585	0.7	0.6	0.7	0.6	0.6
CUSTOMER SERVICE SPECIALIST 2	40,900	0.1		0.1		
ENVIRONMENTAL PLANNER 5	85,671	0.2	0.2	0.2		
FISCAL ANALYST 2	51,000	1.0	0.8	0.9	0.8	0.8
FISH & WILDLIFE ENFORCEMENT OFFICER 2	81,513	1.8	1.8	1.8	1.8	1.8
IT SPECIALIST 5	87,793	0.1		0.1		
MANAGEMENT ANALYST 2	56,256	0.1		0.1		
WMS-2	87,276	1.0	1.0	1.0	1.0	1.0
Total FTEs		5.0	4.4	4.7	4.2	4.2

Part IV: Capital Budget Impact

NONE

Part V: New Rule Making Required

Identify provisions of the measure that require the agency to adopt new administrative rules or repeal/revise existing rules.

Section 1 directs the Department to adopt rules, including emergency rules if necessary, to implement this section; Changing vessel distance and requirements when interacting southern resident orcas.

Section 2 directs the Department to implement a commercial whale watching licensing program and adopt rules to implement Section 3 by January 1, 2021.