

HOUSE BILL REPORT

SSB 6307

As Reported by House Committee On:

Ecology & Parks
Appropriations Subcommittee on General Government & Audit Review

Title: An act relating to Puget Sound marine managed areas.

Brief Description: Regarding marine managed areas.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Rockefeller, Kilmer, Jacobsen and Kohl-Welles).

Brief History:

Committee Activity:

Ecology & Parks: 2/26/08, 2/27/08 [DPA];

Appropriations Subcommittee on General Government & Audit Review: 2/29/08, 3/3/08 [DPA(APPG w/o EPAR)].

Brief Summary of Substitute Bill (As Amended by House Committee)

- Requires the Puget Sound Partnership to incorporate into the Puget Sound Action Agenda a plan to coordinate and strengthen the various marine managed areas maintained by state and local governments.
- Provides the Department of Natural Resources with specific authority and guidance over the creation and management of aquatic reserves on state-owned aquatic lands.
- Directs permitting and rulemaking decisions by the Department of Ecology and the Washington Department of Fish and Wildlife over areas designated as a marine managed area.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 5 members: Representatives Uptegrove, Chair; Rolfes, Vice Chair; Dickerson, Eickmeyer and O'Brien.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Minority Report: Do not pass. Signed by 3 members: Representatives Sump, Ranking Minority Member; Kristiansen and Pearson.

Staff: Jason Callahan (786-7117).

Background:

The Puget Sound Partnership

The Puget Sound Partnership (PSP) is a state agency that was created in 2007 to oversee the restoration of the environmental health of the Puget Sound by the year 2020. The PSP is comprised of the executive director, the Leadership Council, the Ecosystem Coordinating Board, and the Puget Sound Science Panel (Science Panel).

The Leadership Council is made up of seven gubernatorial appointments and serves as the upper managing board for the overall PSP. One of the duties of the Leadership Council is to develop the Puget Sound Action Agenda (Action Agenda). The Action Agenda consists of goals, objectives, and implementation strategies required to meet measurable outcomes, benchmarks, and the identification of responsible entities by the year 2020.

Management of State-Owned Aquatic Lands

The Legislature has assigned the Department of Natural Resources (DNR) with the responsibility of managing the state's aquatic lands for the benefit of the public. The DNR manages over two million acres of tidelands, shorelands, and bedlands. This includes the beds of navigable rivers and lakes, along with the beds below the Puget Sound.

The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, environmental protection, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities.

The DNR may withhold state-owned aquatic lands from leasing if the land has significant natural values. In recent years, these areas have been designated as aquatic reserves and established in administrative orders.

The Washington Department of Fish and Wildlife

The Washington Department of Fish and Wildlife (WDFW) is authorized to establish policies regarding fish, shellfish, and wildlife species. Among other duties, the WDFW classifies wildlife and establishes the basic rules and regulations governing the time, place, manner, and methods used to harvest or enjoy fish and wildlife.

Current statute provides general direction to the WDFW regarding fish and wildlife management. The WDFW must manage the fishery resources of the state in a manner that does not impair the resource. Consistent with this objective, the WDFW must seek to maintain the economic well-being and stability of the fishing industry and promote orderly fisheries.

Summary of Amended Bill:

A marine managed area (MMA) is defined as a discrete marine or estuarine area that has been identified by a governmental entity as significant enough to warrant protection, conservation, or other special management considerations. An MMA can be designated in statute or ordinance, or through administrative actions such as resolutions or orders.

The PSP, the DNR, the Department of Ecology (DOE), and the WDFW are all assigned responsibilities relating to MMAs.

Responsibilities of the PSP

By July 1, 2010, the PSP is required to produce a plan to coordinate and strengthen the various MMAs managed by state and local governments. The plan must rely primarily on existing plans and objectives developed to guide the management of marine life in Puget Sound, including the plans developed by state and local governments for the existing MMAs in Puget Sound. Once developed, the plan must be included in the Action Agenda and can be amended over time using the procedures in place for amending the Action Agenda.

The contents of the MMA plan are not limited; however, there are nine required elements. These elements include items such as: guidelines for incorporating scientific information and for managing MMAs on an ecosystem basis, funding level recommendations, identifying key species of concern, strategies to address climate change and other potential future threats to MMAs, methodologies for synthesizing monitoring results, the development of a process for adaptive management, and the identification of coordinating objectives for existing and future MMAs that will result in a long-term conservation network of MMAs.

The plan must be developed by a work group (Work Group) assembled by the PSP. The Work Group must be chaired by a member of the Science Panel and include representatives from other state agencies and local governments with management responsibilities over MMAs along with a representative of the Biodiversity Council. In addition to the required participants, the PSP must invite participation from representatives of tribal and First Nations governments, federal agencies, Canadian provincial governments, cities, counties, and non-governmental entities to serve on the Work Group if they have a significant interest in the management of MMAs. Participants of the Work Group with a general interest in the management of MMAs in the Pacific Northwest, as opposed to a specific interest in Puget Sound, are to serve on the work group only as observers.

Responsibilities of the DNR

The DNR is provided with specific authority to create aquatic reserves on state-owned aquatic lands. In addition, an aquatic reserve system is formally recognized to include all aquatic reserves designated through an order of the Commissioner of Public Lands (Commissioner) issued both before and after the act's effective date. The Commissioner is also provided with

the authority to remove aquatic reserve designation from aquatic lands if the best available science indicates the purposes of the aquatic reserve are no longer being satisfied.

Aquatic lands are required to have certain properties in order for the Commissioner to include them in an aquatic reserve. These properties include having a significant example of native ecological communities, hosting significant sites or features that are threatened with conversion to an incompatible use, and retaining or having had reestablished a natural character that features critically important geological, biological, recreational, scenic, or cultural attributes. In addition, proposed aquatic reserves must include aquatic lands that have been identified by the Science Panel as critical for recovering the Puget Sound and identified by the Commissioner as a high priority for conservation, wildlife, natural systems, or low-impact public uses.

The management of aquatic reserves is required to be coordinated with other MMAs and related regulatory programs. To accomplish this, the DNR must coordinate with other state agencies and local governments and manage the uses and activities allowed on aquatic reserves consistently with uses and activities managed by the other agencies and municipalities. In coordinating with local governments, the DNR must make shoreline master program update recommendations and provide recommendations for the establishment and management of local marine park reserves or voluntary stewardship areas.

The public is provided with an opportunity to propose and review decisions regarding aquatic reserves through a procedure developed by the Commissioner. In addition, for aquatic reserves located in the Puget Sound, management decisions must be guided by the elements of the MMA plan developed by the PSP and substantial weight must be given to any recommendations advanced by the PSP in regards to the designation and management of aquatic reserves. All existing aquatic reserves within the Puget Sound must, within two years of the PSP's development of an MMA plan, be reviewed for consistency with the elements of the MMA plan.

Responsibilities of the WDFW

The Commissioner is required to request rulemaking from the Fish and Wildlife Commission (FWC) if the Commissioner determines that management changes to the taking of fish, shellfish, or wildlife within or adjacent to an aquatic reserve would enhance the objectives of the aquatic reserve. Once a rule is requested by the Commissioner, the FWC must, within 60 days, consider the Commissioner's recommendations. The FWC may also independently initiate or adopt rules relating to aquatic reserves or other MMAs.

In addition, the WDFW is required to give special consideration to increasing protection and reducing pollution when permitting construction projects that occur within or affect an aquatic reserve.

Responsibilities of the DOE

As with the WDFW, the DOE is required to give special consideration to increasing protection and reducing pollution when permitting water discharges within or near an aquatic reserve.

Amended Bill Compared to Substitute Bill:

The amended bill adds language that directs the MMA plan to be linked closely to the Action Agenda, clarifies that the FWC is not required to adopt rules upon the request of the Commissioner, and makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) The Legislature established a comprehensive path for recovering Puget Sound in 2007, and this effort compliments past work and ties up loose ends by focusing on ongoing efforts to restore the actual waters of the Puget Sound. Many such efforts are already underway, and there is a need for a consistent, coherent overall approach. There has, in the past, been a great emphasis on coordinating the management efforts on terrestrial land, but the same effort is lacking when it comes to aquatic lands.

The PSP is the logical group to plan for MMAs. The planning would take place after the initial work on the Action Agenda is completed. It is important to the success of the PSP for marine habitats to be protected. The bill is the perfect blend of a top-down and bottom-up approach.

The Commissioner already operates an aquatic reserve program, but it is important that the Legislature provide guidance and clarification as to how the program operates and how it is to function within the Action Agenda. The Commissioner is not given a mandate, but it is appropriate for the Commissioner to give substantial weight to feedback from the PSP. The bill reflects what the DNR already does in terms of recognizing grassroots efforts to establish aquatic reserves.

(With concerns) This bill is not included in the Governor's budget.

(Opposed) None.

Persons Testifying: (In support) Senator Rockefeller, prime sponsor; Jim Cahill, Puget Sound Partnership; Rich Doenges, Department of Natural Resources; Naki Stevens, People for Puget Sound; and Bill Robinson, The Nature Conservancy.

(With concerns) Morris Barker, Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON APPROPRIATIONS SUBCOMMITTEE ON GENERAL GOVERNMENT & AUDIT REVIEW

Majority Report: Do pass as amended by Committee on Appropriations Subcommittee on General Government & Audit Review and without amendment by Committee on Ecology & Parks. Signed by 8 members: Representatives Linville, Chair; Ericks, Vice Chair; Blake, Lantz, Miloscia, Morris, Nelson and Van De Wege.

Minority Report: Do not pass. Signed by 5 members: Representatives Armstrong, Ranking Minority Member; Skinner, Assistant Ranking Minority Member; Alexander, Chandler and Kretz.

Staff: Alicia Dunkin (786-7178).

Summary of Recommendation of Committee On Appropriations Subcommittee on General Government & Audit Review Compared to Recommendation of Committee On Ecology & Parks:

A null and void clause was added, making the bill null and void unless funded in the budget.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of session in which bill is passed. However, the bill is null and void unless funded in the budget.

Staff Summary of Public Testimony:

(In support) This bill would align exiting existing marine managed areas with the various agencies through the oversight of the Puget Sound Partnership. The marine managed areas would focus on ecosystem management and would clarify the nature of the existing statutes and align actions with the goals of the Puget Sound Partnership Action Agenda.

(Opposed) None.

Persons Testifying: Morris Barker, Washington Department of Fish and Wildlife; and Naki Stevens, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.