

FINAL BILL REPORT

SHB 1022

FULL VETO

Brief Description: Prohibiting the department of natural resources from entering into certain agreements with the federal government without prior legislative and gubernatorial approval.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Buck, Johnson, Mitchell, McMorris, Talcott, Hickel, Chandler, Mastin, Lambert, Sheldon, Schoesler, Hatfield, Kessler, Mulliken, Honeyford, Thompson, Koster, DeBolt, D. Sommers, Carrell, L. Thomas, Dunn, Mielke, Clements, O'Brien and Doumit.)

House Committee on Natural Resources
Senate Committee on Natural Resources & Parks

Background: The Endangered Species Act.

The federal Endangered Species Act (ESA) makes it unlawful for a person subject to the jurisdiction of the United States to "take" any endangered species of fish or wildlife. By federal regulation, the secretary of the Department of the Interior extended this prohibition on take— to threatened species of fish or wildlife. The ESA defines the term "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." By regulation, the U.S. Fish and Wildlife Service defines the term "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."

The northern spotted owl was listed as a threatened species under the ESA in 1990. The marbled murrelet was listed as a threatened species in 1992. A number of salmon species are currently under review for possible listing under the act. These listings and the potential for future listings pose difficulties for forest land managers trying to determine what harvesting and other forest management activities are permissible without violating the take— prohibition of the ESA.

Habitat Conservation Plans. The ESA offers land managers a conservation planning option as a way to be in compliance with the act. A provision of the ESA allows the secretary of the Department of the Interior (secretary of the Department of Commerce, for salmon species) to permit a person to violate the take— prohibition of the act if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. To allow for this taking of a listed species, the secretary must issue an incidental take permit. The secretary may not issue a permit unless the person

seeking the permit provides the secretary with a conservation plan that specifies: 1) the impact that will result from the taking of the species; 2) the steps the applicant will take to minimize and mitigate these impacts, and the funding that will be available to implement those steps; 3) the alternatives the applicant considered and the reasons why those alternatives were not selected; and 4) any other measures that the secretary requires. The plan supplied to the secretary by the applicant is called a habitat conservation plan (HCP).

An applicant for an incidental take permit must negotiate an agreement with the U.S. Fish and Wildlife Service and with the National Marine Fisheries Service, if salmon species are involved in the proposed plan. The applicant, rather than one of the federal agencies, initiates the development of an HCP. The applicant chooses the land base to be included in the plan as well as the species to be included. An HCP may be developed for a single species or a number of species, including unlisted species. Including conservation planning for an as-yet-unlisted species may insulate a land manager from disruptions in operations if the species is listed in the future. A number of private and public forest land managers in the Pacific Northwest have developed or are in the process of developing HCPs.

Habitat Conservation Plan for State Forest Lands. On January 30, 1997, the commissioner of public lands and the two federal agencies signed an implementation agreement for a habitat conservation plan for certain state lands. The land base in the plan is approximately 1.6 million acres of state-owned forest lands that fall within the range of the northern spotted owl. The plan addresses conservation measures for nine listed species and a number of other unlisted species, including salmonid species under review for possible listing. The HCP includes special provisions for northern spotted owl and marbled murrelet habitats, for riparian habitat, and for certain special habitats such as cliffs and springs. The plan seeks to provide habitat for the listed and unlisted species through the above habitat conservation efforts and also provides species-specific measures when such measures are deemed necessary. Separate plans are included for the Olympic Experimental State Forest. The Department of Natural Resources received its incidental take permits at the time the agreement was signed. The department must incorporate the commitments of the HCP into timber sales sold on or after January 1, 1999; the agency may choose to incorporate HCP commitments into earlier sales. The implementation agreement for the HCP addresses issues such as termination of the agreement by the department, what happens if the ESA is amended or repealed, land transfers and exchanges, and a process for making major and minor amendments to the permits and the HCP. The term of the agreement is 70 years, with the option to renew up to three times for up to 10 years each time.

Summary: The Legislature must review the habitat conservation plan for state forest lands. The Legislature must determine whether the HCP and its accompanying implementation agreement are in compliance with the state's fiduciary responsibilities and are in the best interests of the trust beneficiaries. If the Legislature determines

that the HCP and implementation agreement are in the best interests of the trust beneficiaries, the Legislature must so state either through legislation, joint memorial, or resolution. If the Legislature has not made such a statement by March 15, 1998, the Department of Natural Resources must act immediately to terminate the implementation agreement and the HCP. The department must then notify the Legislature that it has taken this required action.

Votes on Final Passage:

House	66	30
Senate	34	14 (Senate amended)
House	60	29 (House concurred)