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# BILL ANALYSIS

## House Bill 1022 and House Joint Memorial 4001

### Federal Agreements\Habitat Conservation Plan

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**Brief Description:** **House Bill 1022** - Department of Natural Resources agreements with federal government.

**House Joint Memorial 4001** - Concerning habitat conservation plans.

**Committee:** Natural Resources

**Sponsor(s):** House Bill 1022 - Representatives Buck, Johnson and Mitchell  
House Joint Memorial 4001 - Representatives Buck, Cairnes, Sheldon

### **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 Interior has extended this prohibition on take to threatened species of fish or wildlife. The act 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 has defined 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. Faced with these listings and the potential for additional listings in the future, forest land managers have struggled to determine what harvesting and other forest management activities are permissible without violating the take– prohibition of the ESA.

## Habitat Conservation Plans

The ESA itself offers land managers a conservation planning option as a way to be in compliance with the act. A provision in the ESA allows the Secretary of the Interior (Secretary of Commerce, for salmon species) to allow 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. In order to allow for this taking of a listed species, the secretary issues 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 negotiates 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. It is the applicant, rather than one of the Federal agencies, who initiates 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 can be developed for a single species or a number of species, including unlisted species. Including conservation planning for as-yet-unlisted species can insulate a land manager from disruptions in operations if a 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.

## Proposed Habitat Conservation Plan for State Forest Lands

Currently the Department of Natural Resources is pursuing the adoption of a habitat conservation plan and the related agreements and permits. The land base in the proposed plan is approximately 1.6 million acres of state-owned forest lands, covering the 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 would receive its incidental take permits at the time the various agreements are signed. The DNR 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. An 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 proposed agreement is 70 years, with the option to renew up to three times for up to ten years each time.

## **Summary:**

### **House Bill 1022**

The Department of Natural Resources may not enter into a habitat conservation plan and the related incidental take permits or enter into other agreements or commitments intended to induce the issuance of a permit from the Federal government unless the department obtains express approval of the agreement or commitment from the Legislature and the Governor. This prohibition applies to agreements or commitments affecting more than 10,000 acres of public and/or state forest land for five or more years. The express approval from the Legislature and the Governor must be in the form of duly enacted legislation. Prior to seeking this approval, the department must provide to the Legislature and the Governor copies of all proposed plans, agreements, and commitments, as well as an analysis demonstrating that the proposal is in the best interests of the trust beneficiaries.

### **House Joint Memorial 4001**

The Legislature directs the Commissioner of Public Lands not to sign the implementation agreement for the proposed habitat conservation plan. If the commissioner has already signed the agreement, the Legislature directs the commissioner to terminate the implementation agreement and the plan and to notify the Legislature immediately that she has done so. The Legislature prohibits the commissioner from entering into an implementation agreement for any habitat conservation plan or related agreement under the Endangered Species Act unless the Legislature has approved the terms of any such proposal, either by bill or by joint memorial.

Prepared by Linda Byers (786-7129)  
House Natural Resources Committee  
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