

SENATE BILL REPORT

SHB 1259

As of March 18, 1997

Title: An act relating to habitat conservation plans.

Brief Description: Concerning habitat conservation plans.

Sponsors: House Committee on Natural Resources (originally sponsored by Representatives Sump, Sheldon, McMorris, Doumit, Dyer, Butler, Buck, Regala, B. Thomas, Thompson, Chandler, Linville, Sullivan, O'Brien, Lantz and Johnson).

Brief History:

Committee Activity: Natural Resources & Parks: 3/28/97.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Staff: Vic Moon (786-7469)

Background: 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. Faced with the listings of the northern spotted owl and the marbled murrelet and with 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.

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 the

species is listed in the future. A number of private and public forest land managers in the Pacific Northwest have either developed, or are in the process of developing HCPs.

State Forest Practices Rules on Habitat for Threatened or Endangered Species. The Legislature has established four classes of forest practices. One category is Class IV - Special.– A person applying to conduct a forest practice in the Class IV - Special category must complete an environmental checklist in compliance with the State Environmental Policy Act (SEPA) and may have to complete the more detailed SEPA environmental review. Specific forest practices conducted on lands designated as critical wildlife habitat (a state designation) or critical habitat (a federal designation) for a threatened or endangered species are classified as Class IV - Special. Rules adopted by the Forest Practices Board identify the specific forest practices and the habitats involved.

The forest practices rules also provide an exemption from this Class IV - Special designation for forest practices conducted in compliance with an approved habitat conservation plan or in compliance with other landowner management plans. An application may still be classified as Class IV - Special for reasons unrelated to an area's classification as critical wildlife habitat or critical habitat.

1996 Legislation. In 1996, the Legislature provided a statutory exemption from certain state forest practices rules for forest practices that are consistent with an approved HCP. If a proposed application is in compliance with the approved HCP, then the forest practice is exempt from the rules and policies adopted by the Forest Practices Board primarily for the protection of one or more species if those species are covered in the HCP.

The exemption provided in the 1996 legislation applies only to habitat conservation plans approved by the federal agencies prior to March 25, 1996. Only one timber company in Washington has an HCP approved by that date.

Summary of Bill: Forest practices that are in compliance with an approved habitat conservation plan are exempt from the state forest practices rules and policies adopted primarily for the protection of threatened and endangered species. These forest practices are deemed not to have the potential for a substantial impact on the environment for fish and wildlife species covered by the plan, but the forest practices may be found to have the potential for a substantial impact on the environment due to other factors.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.