

# SENATE BILL REPORT

## HJM 4001

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As Reported By Senate Committee On:  
Natural Resources & Parks, April 4, 1997

**Brief Description:** Petitioning and directing the commissioner of public lands to not sign an implementation agreement for a habitat conservation plan.

**Sponsors:** Representatives Buck, Cairnes, Sheldon, L. Thomas, Carlson, Talcott, Doumit, Johnson, Mitchell, Hankins, Lisk, McMorris, Clements, Kessler, Schoesler, Grant, Dunn, Alexander, Mastin, Hatfield, D. Sommers, DeBolt, Mulliken, Honeyford, Thompson and Mielke.

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 3/28/97 4/4/97 [DPA, DNP].

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** Do pass as amended.

Signed by Senators Rossi, Vice Chair; Hargrove, Morton, Roach, Snyder, Stevens and Swecker.

**Minority Report:** Do not pass.

Signed by Senators Oke, Chair; Jacobsen, Prentice and Spanel.

**Staff:** Vic Moon (786-7469)

**Background:** 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).

Proposed Habitat Conservation Plan for State Forest Lands. Currently, DNR 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 and covers 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.

**Summary of Amended Bill:** The Legislature directs the Commissioner of Public Lands 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.

**Amended Bill Compared to Original Bill:** Language prohibiting the signing of the agreement is removed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Testimony For:** Further negotiations between the department and the trusts are needed and a new agreement based on greater consensus should be developed.

**Testimony Against:** There is still time to work on the implementing agreement to satisfy any trust concerns.

**Testified:** Phillip Kitchel, Clallam County Commissioner (pro); Glen Aldrich, Lewis County Commissioner (pro); Dave Swettzer, WA Hardwood Commission (pro); Bob Dick, NW Forestry Assn. (pro); Kaleen Cottingham, DNR (con); Jim Hedglin, Pulp and Paper Resource Council (pro).