

SENATE BILL REPORT

ESB 5959

As Passed Senate, March 5, 2015

Title: An act relating to agreements with the federal government, such as those available under the endangered species act, affecting the state's management of its natural resources.

Brief Description: Concerning agreements with the federal government, such as those available under the endangered species act, affecting the state's management of its natural resources.

Sponsors: Senator Hatfield.

Brief History:

Committee Activity: Natural Resources & Parks: 2/18/15, 2/19/15 [DP, w/oRec].
Passed Senate: 3/05/15, 34-14.

SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

Majority Report: Do pass.

Signed by Senators Pearson, Chair; Dangel, Vice Chair; Hatfield, Ranking Minority Member; Chase, Hewitt and Warnick.

Minority Report: That it be referred without recommendation.

Signed by Senator McAuliffe.

Staff: Bonnie Kim (786-7316)

Background: A habitat conservation plan (HCP) is a tool available to regulated parties under the federal Endangered Species Act (ESA). An HCP is a voluntary, long-term planning agreement between the federal government and a state, locality, private landowner, or other non-federal party that sets conditions under which certain actions are permitted to occur even though the actions may result in harm to an endangered species. An HCP commonly describes the effects the proposed actions will have on an endangered species, how those impacts will be minimized or mitigated, and how the mitigation will be funded. In addition an HCP must provide provisions ensuring any harm caused will be incidental and will not appreciably reduce the likelihood of the survival or recovery of the affected species.

In return for agreeing to the provisions of an HCP, the non-federal party is eligible to receive an incidental take permit. This permit allows the non-federal party to proceed with the actions identified in the HCP with certainty that they will not be found in violation of the

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.

ESA. The incidental take permit makes the provisions of the HCP binding. A violation of the incidental take permit may result in a violation of the ESA.

Summary of Engrossed Bill: Before the Department of Natural Resources (DNR) adopts any aquatic lands HCP, it must:

- convene an advisory committee of stakeholders to assist in developing the plan and discuss advantages and disadvantages of the HCP;
- consult with federally recognized tribal governments;
- estimate plan implementation costs and request funding from the Governor and the Legislature;
- develop a list of priority science projects;
- prepare a draft rule;
- conduct a cost-benefit analysis;
- draft a small business impact statement;
- confirm the HCP provides ESA "take" liability protection;
- determine whether the HCP will increase costs for entities or activities already shielded from the "take" prohibition; and
- consult with the Legislature before entering a binding HCP.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This bill protects shipyard businesses and employees. We were not allowed to participate in the HCP negotiation process. The HCP puts overreaching restraints on what our shipyard can do in future repairs and modifications. The HCP has undefined and unreasonable terms. Fourteen-thousand individual dock owners have not been notified. DNR has spent years on the overwater structure HCP but then gave us mere months to review and comment on it. The HCP will last 50 years. The maritime industry supports an environmental framework that is predictable and supportive of the community. There was no effective stakeholder outreach. Ports have activities and land that are affected by the HCP. Washington agriculture relies on vibrant and thriving ports industry to sustain product exports. Of over 450 floating homes, about 30 percent are floating over DNR land.

CON: This will eliminate DNR's ability to implement conservation plans with respect to overwater structures and log storage. HCPs offer long-term consistency and environmental protections. Whether the process is by HCPs or consultations, the federal government still sets the standards. Ports are completely exempt from the HCP.

OTHER: DNR has been responsive to Ecology's concerns over water quality issues. We will work together to resolve issues. Shellfish growers must have a federal permit after a rigorous ESA review; HCPs give us protection from the incidental take provision.

Persons Testifying: PRO: Senator Hatfield, prime sponsor; Drew Erickson, Vice President, Recreational Boating Assn. of WA; Lynn Muench, The American Waterways Operators; Doug Dixon, Pacific Fishermen Shipyard; Neil Falkenburg, WestBay Marina; Chester Baldwin, NW Yacht Broker's Assn.; Joshua Berger, WA Maritime Federation, Coordinator; Tom Davis, WA Farm Bureau; Gerry O'Keefe, WA Public Ports Assn., Assistant Director for Environmental Affairs.

CON: Megan Duffy, DNR; Bruce Wishart, Sound Action, Sierra Club.

OTHER: Stephen Bernath, Dept. of Ecology; Jim Jesernig, Pacific Coast Shellfish Growers.