

# SENATE BILL REPORT

## SB 5411

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As Reported by Senate Committee On:  
Agriculture, Water, Natural Resources & Parks, February 11, 2021

**Title:** An act relating to establishing a programmatic safe harbor agreement on forestlands for northern spotted owls.

**Brief Description:** Establishing a programmatic safe harbor agreement on forestlands for northern spotted owls.

**Sponsors:** Senator Stanford; by request of Department of Natural Resources.

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 2/09/21, 2/11/21 [DPS, DNP, w/oRec].

**Brief Summary of First Substitute Bill**

- Authorizes the Department of Natural Resources to adopt rules to administer the federal voluntary safe harbor agreement program for the northern spotted owl for forestland owners.

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### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

**Majority Report:** That Substitute Senate Bill No. 5411 be substituted therefor, and the substitute bill do pass.

Signed by Senators Salomon, Vice Chair; Warnick, Ranking Member; Rolfes and Stanford.

**Minority Report:** Do not pass.

Signed by Senator Van De Wege, Chair.

**Minority Report:** That it be referred without recommendation.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Honeyford and Short.

**Staff:** Jeff Olsen (786-7428)

**Background:** The northern spotted owl was listed as an endangered species in Washington State by the Washington Fish and Wildlife Commission in 1988, and was listed as a threatened species under the Endangered Species Act (ESA) in 1990.

Under a safe harbor agreement (SHA), participating landowners voluntarily undertake management activities on their properties to enhance, restore, or maintain habitat benefiting species listed under the ESA. A SHA encourages private and other non-federal property owners to implement conservation efforts for listed species, by assuring property owners they will not be subject to increased land use restriction as a result of efforts to attract or increase the numbers or distribution of a listed species on their property.

In 2009, Port Blakely signed a 60-year SHA with the U.S. Fish and Wildlife Service to protect spotted owl and marbled murrelet habitat on 45,000 acres in Lewis County, Washington.

**Summary of Bill (First Substitute):** The Department of Natural Resources (DNR) may administer a programmatic SHA for the northern spotted owl for any forestland owner. Participation in this agreement by forestland owners is strictly voluntary. DNR must consult with the Washington Department of Fish and Wildlife (WDFW) for technical assistance regarding habitat assessments of candidate parcels and implementation of the SHA. DNR and WDFW must enter into and maintain an interagency agreement to ensure implementation of the state's obligations under the SHA and to ensure WDFW is available to support the SHA.

In administering the programmatic SHA for the northern spotted owl, DNR is granted authority to administer the federal permit, monitor compliance with the terms of certificates of inclusion, suspend or terminate landowner participation from the program, and provide all other landowner technical assistance as needed to facilitate program implementation.

DNR must be able to access candidate parcels to ensure program eligibility or compliance under the SHA.

The Forest Practices Board may adopt or amend rules to implement the SHA. Decisions of DNR to issue certificates of inclusion or to suspend or terminate a landowner's participation in the program may be reviewed in the same manner as forest practices applications.

**EFFECT OF CHANGES MADE BY AGRICULTURE, WATER, NATURAL RESOURCES & PARKS COMMITTEE (First Substitute):**

- Clarifies legislative findings language that a landowner participating in the Safe Harbor Agreement would not be subject to Endangered Species Act restrictions as long as they adhere to the terms of the programmatic safe harbor agreement.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Original Bill:** *The committee recommended a different version of the bill than what was heard.* PRO: The bill will allow DNR to enter into an agreement with the U.S. Fish and Wildlife Service to provide incentives for forestland owners to grow older trees to create habitat that benefits northern spotted owls. The program will allow landowners to create habitat in exchange for regulatory assurance if spotted owls inhabit their land during the agreement. The program is voluntary and is part of an approach to create incentives, rather than use increased regulatory measures. This approach represents a more collaborative approach to creating more habitat. The bill needs an amendment to clarify the program is not a disincentive and match the expectations of landowners.

**Persons Testifying:** PRO: Senator Derek Stanford, Prime Sponsor; Hannah Anderson, Washington Department of Fish and Wildlife; Kara Whittaker, Washington Forest Law Center; Heather Hansen, Washington Farm Forestry Association; Jason Callahan, Washington Forest Protection Association; Paula Swedeen, Conservation Northwest; Stephen Bernath, Department of Natural Resources.

**Persons Signed In To Testify But Not Testifying:** No one.