

# SENATE BILL REPORT

## SB 5390

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As of January 26, 2023

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

**Brief Description:** Establishing a programmatic safe harbor agreement on forestlands.

**Sponsors:** Senators Shewmake, Warnick, Rolfes, Stanford, Nguyen and Wilson, C..

**Brief History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/26/23.

**Brief Summary of 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

**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.

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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.*

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:** 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.

**Appropriation:** None.

**Fiscal Note:** Requested on January 21, 2023.

**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:** PRO: The safe harbor agreement will provide incentives for forest landowners to participate in a voluntary opt-in opportunity to grow older stands of trees without risk of liability from the Endangered Species Act if those trees become northern spotted owl habitat. This will provide conservation benefits for the northern spotted owl and will have no impact on the state's habitat conservation plan. Stakeholders have already been working under a budget proviso to work on implementation issues. Safe Harbor agreements are a tool that have been used for 30 years to protect habitat for other species. The Department of Fish and Wildlife has used safe harbor agreements to enroll landowners under a voluntary agreement with no surprises.

**Persons Testifying:** PRO: Alex Smith, Washington Department of Natural Resources; Paula Swedeen, Conservation Northwest; Eric Gardner, WDFW.

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