

SENATE BILL REPORT

SSB 6307

As Passed Senate, February 18, 2008

Title: An act relating to Puget Sound marine managed areas.

Brief Description: Regarding marine managed areas.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Rockefeller, Kilmer, Jacobsen and Kohl-Welles).

Brief History:

Committee Activity: Water, Energy & Telecommunications: 1/22/08, 1/30/08 [DPS-WM, DNP].

Ways & Means: 2/11/08, 2/12/08 [DPS(WET), DNP, w/oRec].

Passed Senate: 2/18/08, 32-12.

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6307 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Rockefeller, Chair; Murray, Vice Chair; Fraser, Hatfield, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Morton.

Staff: Sam Thompson (786-7413)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Substitute Senate Bill No. 6307 as recommended by Committee on Water, Energy & Telecommunications be substituted therefor, and the substitute bill do pass.

Signed by Senators Prentice, Chair; Fraser, Vice Chair, Capital Budget Chair; Pridemore, Vice Chair, Operating Budget; Hatfield, Hobbs, Keiser, Kohl-Welles, Rasmussen, Regala, Rockefeller and Tom.

Minority Report: Do not pass.

Signed by Senator Honeyford.

Minority Report: That it be referred without recommendation.

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.

Signed by Senators Zarelli, Ranking Minority Member; Brandland, Carrell, Parlette, Roach and Schoesler.

Staff: Elise Greef (786-7708)

Background: Marine managed areas (MMA) are aquatic areas created to provide enhanced protection for natural and cultural resources. They are managed by federal, state, local and tribal authorities. Several MMA have been established in Puget Sound.

The Puget Sound Partnership (PSP) was created in 2007 to oversee restoration of the environmental health of Puget Sound by 2020. It is managed by a seven-member Leadership Council that is served by a professional staff led by an executive director. A 27-member Ecosystem Coordination Board and a nine-member Science Panel advise the Leadership Council on policy and science matters. The PSP must develop an initial "Action Agenda" (cleanup plan) by September 2008.

The Department of Natural Resources (DNR) manages a state aquatic reserves program protecting sites on state-owned aquatic lands. The program is authorized but not specifically delineated in statute. The state Fish and Wildlife Commission and the Department of Fish and Wildlife (DFW) regulate hunting and harvesting of fish, shellfish and wildlife. The state Biodiversity Council, created by executive order in 2004, is charged with developing and promoting more effective ways of conserving the state's biodiversity.

Summary of Substitute Bill: The PSP must prepare a Puget Sound MMA plan to coordinate and strengthen state and local government MMA programs. "Marine managed areas" are federal-, state-, or locally-designated marine or estuarine areas created to protect, conserve, or otherwise manage marine life and resources. The PSP must include the MMA plan in its Action Agenda.

Creation of MMA Plan. The chair of the PSP's Leadership Council (Leadership Council) must designate a work group to prepare the MMA plan, including Science Panel members, one of whom must chair the work group. The group will include representatives of several state agencies and local governments with regulatory jurisdiction or managing MMA, and the state Biodiversity Council or its successor entity. The Leadership Council chair must also invite representatives of tribal governments, federal agencies, cities, counties and nongovernmental organizations that have designated or have significant interests in managing Puget Sound MMA. The chair may invite representatives from other states, provinces and tribal governments with interests in Pacific Northwest MMA to participate as observers.

The MMA plan must include:

- guidelines for incorporating best available science;
- guidelines for managing areas on an ecosystem basis;
- funding recommendations;
- strategies addressing impacts from population growth, development, and storm water discharges;
- adaptive management and methods for synthesizing monitoring results;
- objectives for coordinating existing MMA, and designating additional MMA, based primarily on existing plans and objectives prepared by state agencies and local governments; and

- consideration of activities and uses in or next to MMA that are allowed under existing DNR leases of state-owned aquatic lands.

The MMA plan must be completed by the end of July 1, 2010, submitted to the Leadership Council for review and approval, and incorporated into the Action Agenda. The Leadership Council may periodically amend the MMA plan, with the work group's assistance. Opportunity for public review and comment is mandated.

Aquatic Reserve System. An "aquatic reserve system" (system) is statutorily established. The system includes areas in state-owned aquatic lands designated by DNR prior to the effective date and areas added later by the Commissioner of Public Lands (CPL).

When withdrawing lands from leasing to manage a reserve, DNR will be guided by specified procedures and criteria. Lands with one or more of the following characteristics may be included in the system:

- high priority for conservation, natural systems, wildlife, and low-impact public use values;
- flora, fauna, geological, recreational, archaeological, cultural, scenic, or similar features of critical importance, with natural character retained or reestablished;
- significant examples of native ecological communities;
- significant sites or features threatened with conversion to incompatible uses; and
- identified by the Puget Sound Science Panel as critical to achieving recovery of Puget Sound by 2020.

The CPL must adopt procedures for submitting reserve nominations and public participation in reviewing proposals. If, consistent with best available scientific information, a reserve no longer meets goals and objectives for which it was designated, and adaptive management has not successfully met goals and objectives, the CPL may modify reserve boundaries or remove an area from reserve status.

In designating and managing Puget Sound reserves, the CPL will be guided by the MMA plan. Within two years of adoption of the MMA plan, DNR must complete a review of management plans and pending reserve nominations for consistency with the MMA plan. The CPL must give substantial weight to any PSP recommendations.

Where the CPL determines that managing the taking of fish, shellfish, or wildlife within or next to a reserve would enhance reserve objectives, the CPL must request the state Fish and Wildlife Commission to adopt pertinent rules.

The system must be coordinated with other MMA and regulatory programs. DNR must cooperate with other state agencies and local governments to manage lands consistently with management by other state agencies. DNR must also make recommendations to local governments in updating shoreline master programs and sponsoring local marine park reserves or voluntary stewardship areas to seek consistent planning and management in areas next to designated reserves.

State agencies implementing programs affecting a designated reserve must give special consideration to increasing protection and reducing and preventing pollution of these areas, consistent with reserve objectives.

Fish and Wildlife Commission. The state Fish and Wildlife Commission may adopt rules governing the taking of fish, shellfish, or wildlife within or next to a reserve or other MMA. The Commission must file notice of proposed rules within 60 days of receiving the request.

Report to Legislature. The PSP must provide the MMA plan to the Legislature by December 1, 2010, with recommended legislation to enhance Puget Sound MMA programs.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony on Original Bill (Water, Energy & Telecommunications): PRO: This legislation provides necessary coordination of MMA and linking of MMA to the PSP's Action Agenda. It provides guidance, not regulatory mandates. Criteria for establishment of aquatic reserves by DNR should be set forth in statute. Funding should be provided for the MMA plan work group. The Fish and Wildlife Commission should be given more time to adopt rules concerning DNR aquatic reserves. Representatives of the Parks and Recreation Commission and nongovernmental organizations should be included in the MMA plan work group; the MMA plan should consider recovery of Puget Sound by 2020; and more citizen input in the Aquatic Lands Enhancement Account (ALEA) Grant Program should be authorized.

CON: The definition of "marine managed areas" is too broad, and should be restricted. "Best available science" should be defined.

OTHER: This legislation may limit upland development. A clear limitation on regulatory authority is needed to prevent "creeping" regulation. These proposals should be considered by the PSP under its existing authority. Uses permitted under existing DNR aquatic reserve leases should be recognized.

Persons Testifying (Water, Energy & Telecommunications): PRO: Senator Rockefeller, prime sponsor; Morris Barker, DFW; Fran McNair, Department of Natural Resources; Cullen Stephenson, Puget Sound Partnership; Naki Stevens, People for Puget Sound; Bill Robinson, The Nature Conservancy.

CON: Andrew Cook, Building Industry Association of Washington.

OTHER: Steve Gano, Glacier Northwest; Grant Nelson, Association of Washington Business; Greg Hanon, Western States Petroleum Association.

Staff Summary of Public Testimony on Substitute Bill (Ways & Means): PRO: This bill is a necessary and useful complement to the Puget Sound Partnership legislation passed last session. It draws together the efforts of the Department of Natural Resources, State Parks, and the Department of Fish and Wildlife as well as federal-, state- and locally-designated areas that now operate without much consistency. The Partnership is the appropriate vehicle to pull these groups together and extend their vision to recovery in Puget Sound. This bill makes sense as follow-up to the Puget Sound Partnership's action agenda, which is now being developed diligently. The Partnership was concerned earlier with deadlines but those have

been extended. The Puget Sound Environmental Caucus made this bill one of its top five priorities this year because it's important to bring into alignment the programs that work on marine habitat protection and the Puget Sound Partnership in the goal to recover Puget Sound's health by 2020.

Persons Testifying (Ways & Means): PRO: Senator Rockefeller, prime sponsor; David Dicks, Puget Sound Partnership; Naki Stevens, People for Puget Sound.