

HOUSE BILL REPORT

SSB 6350

As Passed House:
March 4, 2010

Title: An act relating to marine waters planning and management, including marine spatial planning.

Brief Description: Concerning marine waters management that includes marine spatial planning.

Sponsors: Senate Committee on Natural Resources, Ocean & Recreation (originally sponsored by Senators Ranker, Hargrove, Jacobsen, Rockefeller, Swecker, Marr, Fraser, Murray and Kline).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 2/18/10, 2/19/10 [DP];
Ways & Means: 2/27/10 [DPA].

Floor Activity:

Passed House: 3/4/10, 64-34.

**Brief Summary of Substitute Bill
(As Amended by House)**

- Creates a Marine Interagency Team to assess and recommend a framework for conducting marine spatial planning.
- Requires the Marine Interagency Team to coordinate the development of a comprehensive Marine Management Plan.
- Requires the Department of Commerce to develop guidance for the siting and operation of renewable energy facilities in the state's coastal and estuarine marine waters.
- Creates the Marine Resources Stewardship Trust Account to be used for the purposes of marine management planning, marine spatial planning, research, monitoring, implementation of the Marine Management Plan, and for the restoration or enhancement of marine habitat or resources.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

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.

Majority Report: Do pass. Signed by 7 members: Representatives Blake, Chair; Ormsby, Vice Chair; Smith, Assistant Ranking Minority Member; Lias, McCoy, Nelson and Rolfes.

Minority Report: Do not pass. Signed by 5 members: Representatives Chandler, Ranking Minority Member; Kretz, Pearson, Van De Wege and Warnick.

Staff: Jaclyn Ford (786-7339).

HOUSE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended. Signed by 16 members: Representatives Linville, Chair; Ericks, Vice Chair; Sullivan, Vice Chair; Bailey, Assistant Ranking Minority Member; Cody, Conway, Darneille, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Pettigrew, Priest and Seaquist.

Minority Report: Do not pass. Signed by 6 members: Representatives Alexander, Ranking Minority Member; Dammeier, Assistant Ranking Minority Member; Chandler, Hinkle, Ross and Schmick.

Staff: Owen Rowe (786-7391).

Background:

Marine-related Authorities and Jurisdictions.

Washington has many statutory schemes related to marine issues, including the Shoreline Management Act, the Aquatic Lands Act, the Fish and Wildlife Code, and the Ocean Resource Management Act. Additionally, along with federal, tribal, and local governments, many state agencies have responsibilities and authorities relating to marine waters, including the Department of Ecology, the Puget Sound Partnership, the Department of Natural Resources, the Department of Fish and Wildlife, and the Department of Commerce.

Coastal Zone Management Act.

The Coastal Zone Management Program (CZMP) is a federal program administered by the National Oceanic and Atmospheric Administration (NOAA), which encourages and assists states to develop and implement CZMPs. States prepare CZMPs that describe their coastal resources and how they are managed. In general, federal or federally permitted activities that affect any land use, water use, or natural resource of a state's coastal zone must comply with the enforceable policies contained in the CZMP.

Marine Spatial Planning.

A 2009 document from NOAA describes marine spatial planning as a process through which compatible human uses are objectively and transparently allocated to appropriate ocean areas to sustain critical ecological, economic, and cultural services for future generations. Often, according to NOAA, the purpose is to reduce impacts in ecologically sensitive areas or to minimize disputes among incompatible activities sharing marine locations.

Summary of Amended Bill:

Marine Spatial Planning.

In conducting marine spatial planning, and in augmenting existing marine management plans with marine spatial planning components, the state must, among other things:

- continue to recognize the rights of Native American tribes regarding marine natural resources;
- base all planning on best available science and establish a performance management system to monitor implementation of any new marine spatial plan;
- coordinate with all stakeholders;
- establish, or further promote, an ecosystem-based management approach;
- ensure that all marine spatial plans are linked to measurable environmental outcomes;
- establish an ocean stewardship policy that takes into account the existing natural, social, cultural, historic, and economic uses;
- promote recovery of listed species under state and federal endangered species acts plans pursuant to those plans; and
- fulfill the state's public trust and tribal treaty trust responsibilities in managing the state's ocean waters in a sustainable manner for current and future generations.

Puget Sound Action Agenda.

The Director of the Puget Sound Partnership (PSP) under the direction of the Leadership Council must integrate marine spatial information and planning provisions into the Puget Sound Action Agenda (Action Agenda). The information should be used to address gaps or improve the effectiveness of the spatial planning component of the Action Agenda, such as renewable energy projects.

Cooperation and Integration of Marine Spatial Planning.

The Governor and the Commissioner of Public Lands, working with appropriate marine management and planning agencies, should work cooperatively with the applicable west coast states, Canadian provinces, and with federal agencies, to explore the benefits of developing joint marine spatial plans or planning frameworks in the shared waters of the Salish Sea, the Columbia River estuary, and in the exclusive economic zone waters.

On an ongoing basis, the Director of the Department of Ecology (DOE) must work with other state agencies with marine management responsibilities, tribal governments, marine resources committees, local and federal agencies, and marine waters stakeholders to compile marine spatial information and to incorporate this information into ongoing plans.

The Marine Interagency Team.

The Office of the Governor must chair a Marine Interagency Team (Team) that is composed of representatives of each of the agencies in the Governor's natural resources cabinet with management responsibilities for marine waters, including the independent agencies. A representative from a federal agency with lead responsibility for marine spatial planning must be invited to serve as a liaison to the Team to help ensure consistency with federal actions and policy. The Team must conduct the assessment, assist state agencies with the review and coordination of their planning, and conduct the marine management planning.

The Team must assess and recommend a framework for conducting marine spatial planning and integrating the planning into existing management plans. The results of this assessment must be provided to the appropriate legislative committees by December 15, 2010.

The Team may not commence any activities until federal, private, or other non-state funding is secured.

The Comprehensive Marine Management Plan.

The Team must coordinate the development of a comprehensive Marine Management Plan (Plan) for the state's marine waters. The Plan must include marine spatial planning, as well as recommendations to the appropriate federal agencies regarding the exclusive economic zone waters. The Plan may be developed in geographic segments, and may incorporate or be developed as an element of existing marine plans, such as the Action Agenda. The chair of the Team may designate a state agency with marine management responsibilities to take the lead in developing and recommending to the Team particular segments or elements of the Plan.

The Plan must rely upon existing data and resources, but also identify data gaps and, as possible, procure missing data necessary for planning. The Team must complete the Plan within 24 months of the initiation of planning.

Concurrently or prior to the assessment and planning activities, all state agencies with marine waters planning and management responsibilities are authorized to include marine spatial data and marine spatial planning elements into their existing plans and ongoing planning.

Public and Tribal Participation.

In developing the Plan, the Team must implement a strong public participation strategy. Public review and comment must be sought and incorporated with regard to planning the scope of work as well as in regard to significant drafts of the Plan and Plan elements.

The Team must engage tribes and marine resources committees in its activities throughout the planning process. In particular, prior to finalizing the plan, the Team must provide each tribe and marine resources committee with a draft of the Plan and invite them to review and comment on the Plan.

Fisheries Management.

If the Director of the Department of Fish and Wildlife (WDFW) determines that a fisheries management element is appropriate for inclusion in the Plan, this element may include the incorporation of existing management plans and procedures and standards for consideration in adopting and revising fisheries management plans in cooperation with the appropriate federal agencies and tribal governments.

Any provision of the Plan that has an impact on fishing must minimize the negative impacts on fishing. The Team must accord substantial weight to recommendations from the Director of the WDFW for plan revisions to minimize the negative impacts.

Marine Management Plan Revisions.

The Team may periodically review and adopt revisions to the Plan to incorporate new information and to recognize and incorporate provisions in other marine management plans. The Team must afford the public an opportunity to review and comment upon significant proposed revisions to the Plan.

Inconsistencies.

The Director of the DOE, in coordination with the Team, must periodically review existing management plans maintained by state agencies and local governments that cover the same marine waters as the Plan. If there is any substantial inconsistency with the Plan, the Director of the DOE must make recommendations to the agency or to the local government for revisions to eliminate the inconsistency.

No later than four years following adoption of the Plan, the DOE, in coordination with the Team, must report to the Legislature describing provisions of existing management plans that are substantially inconsistent with the Plan, and make recommendations for eliminating the inconsistency.

Adoption of the Marine Management Plan.

The Director of the DOE must submit the completed Plan to the appropriate federal agency for its review and approval for incorporation into the state's federally approved Coastal Zone Management Program.

Upon the adoption of the Plan, each state agency and local government must make decisions in a manner that ensures consistency with applicable legal authorities and conformance with the applicable provisions of the Plan to the greatest extent possible.

Renewable Energy Facilities.

The Department of Commerce must develop guidance applicable to all state agencies for achieving a unified state position upon matters involving the siting and operation of renewable energy facilities in the state's coastal and estuarine marine waters. The guidance must include procedures for coordinating the views and responsibilities of any state agency with jurisdiction or expertise over the matter under consideration, which may include federal policy proposals, activities, permits, licenses, or the extension of funding for activities in or affecting the state's marine waters. In developing the guidance, the Director of the Department of Commerce must consult with agencies with primary responsibilities for permitting and management of marine waters and bedlands. The Director of the Department of Commerce must also consult and incorporate relevant information from the regional activities related to renewable energy siting in marine waters, including those under the West Coast Governors' Agreement on Ocean Health.

The Director of the Department of Commerce may not commence development of the guidance until federal, private, or other non-state funding is secured. The Director of the Department of Commerce must adopt the guidance within one year of securing those funds.

The Marine Resources Stewardship Trust Account.

The Marine Resources Stewardship Trust Account (Account) is created in the State Treasury. All receipts from income derived from the investment of amounts credited to the Account, any grants, gifts, or donations to the state for the purposes of marine management planning, marine spatial planning, data compilation, research, or monitoring, and any appropriations made to the Account must be deposited in the Account. Moneys in the Account may be spent only after appropriation. The Account retains its interest earnings.

Expenditures from the Account may only be used for the purposes of marine management planning, marine spatial planning, research, monitoring, implementation of the Plan, and for the restoration or enhancement of marine habitat or resources.

Existing Uses.

No authority is created that would in any way affect any project, use, or activity in the state's marine waters existing prior to or during the development and review of the Plan. No authority is created that would supersede the current authority of any state agency or local government. In the event of a conflict between the Plan and local ordinances or regulations, local ordinances and regulations must control.

Definitions.

Definitions for "aquatic lands," "exclusive economic zone waters," "marine counties," "marine ecosystem," "marine interagency team," "marine management plan," "marine resources committees," "marine spatial planning," and "marine waters" are added.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Agriculture & Natural Resources):

(In support) The President of the United States has indicated that marine spatial planning is an important planning process. There is no state fiscal impact. We need to be proactive in this planning. This will bring people together and be a collaborative process. It is critical to have this type of collaboration. As population increases, Washington is experiencing more and more user impacts. Planning is the best way to address user conflicts. This keeps industry at the table. We need to do as much as possible to manage outside of three miles. This bill will ensure certainty for the industry and environmental sustainability. None of the existing agencies has authority for the entire area. We should have more local control versus having the federal government in control.

(Opposed) There are portions of the bill that are inconsistent. Provisions relating to local authority need to be amended.

Staff Summary of Public Testimony (Ways & Means):

(In support) The purpose of this bill is to better coordinate federal, local, and state agencies actions related to marine resource planning. There is a wide range of support for this bill and in creating the policy. There is no fiscal impact on the state, funding would come from federal or private sources. The point of this bill is to begin this work at the state level rather than begin this work as a top down approach from the federal government. Three years ago the state invested in a potential use of a wave buoy array to generate power in Grays Harbor. During the last hour, the site was recognized as some of the best juvenile Dungeness crab habitat in the state, and the project was pulled. This bill would help to develop a

template where existing marine uses are for their protection, and may allow for new uses of renewable energy. This type of policy is being developed at the federal level currently, it is a good idea for the state to get out in front. President Obama's budget proposal includes \$20 million for this type of planning effort to be distributed to the states.

(With concerns) There are internal inconsistencies in this bill that could lead to litigation. There is potential for conflict between the state plan and local rules. Language should be added to the bill that local laws shall prevail over any state plan that results from this legislation.

(Opposed) None.

Persons Testifying (Agriculture & Natural Resources): (In support) Senator Ranker, prime sponsor; Bill Robinson, The Nature Conservancy; Ed Owens, Coalition of Coastal Fisheries; Bill Dewey, Taylor Shellfish Company; Mo McBroom, Washington Environmental Council; Dave Peeler, People for Puget Sound; Jim Jesernic, Pacific Coast Shellfish Growers; and Ray Tost, Washington Dungeness Crab Fishery Association.

(Opposed) Brad Tower, Arrow Marine Launch.

Persons Testifying (Ways & Means): (In support) Senator Ranker, prime sponsor; and Bruce Wishart, People for Puget Sound.

(With concerns) Brad Tower, Arrow Launch Service.

Persons Signed In To Testify But Not Testifying (Agriculture & Natural Resources): None.

Persons Signed In To Testify But Not Testifying (Ways & Means): None.