

# HOUSE BILL REPORT

## ESHB 1009

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**As Passed House:**  
March 4, 2011

**Title:** An act relating to the authority of state agencies to enter into agreements with the federal government under the endangered species act.

**Brief Description:** Concerning the authority of certain state agencies to enter into agreements with the federal government under the endangered species act.

**Sponsors:** House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Chandler, Blake, Takko, Kretz, Taylor, Orcutt, McCune and Pearson).

**Brief History:**

**Committee Activity:**

Agriculture & Natural Resources: 1/12/11, 1/19/11, 2/16/11 [DPS].

**Floor Activity:**

Passed House: 3/4/11, 91-6.

**Brief Summary of Engrossed Substitute Bill**

- Requires four state agencies to inform legislative committees prior to undertaking an application to the federal government for a new or amended habitat conservation plan.

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### HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Blake, Chair; Stanford, Vice Chair; Chandler, Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dunshee, Hinkle, Kretz, Lytton, Orcutt, Pettigrew, Rolfes and Van De Wege.

**Staff:** Jason Callahan (786-7117).

**Background:**

A habitat conservation plan (HCP) is a tool available to regulated parties under the federal Endangered Species Act (ESA). A HCP is a voluntary, long-term planning agreement

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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. A 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, a HCP must provide elements which ensure any harm caused will be incidental and that the harm will not appreciably reduce the likelihood of the survival or recovery of the affected species.

In return for agreeing to the provisions of a 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 ESA. The incidental take permit makes the elements of the HCP binding. A violation of the incidental take permit may result in a violation of the ESA.

**Summary of Engrossed Substitute Bill:**

The Department of Natural Resources, the Washington Department of Fish and Wildlife, the Department of Ecology, and the Washington State Parks and Recreation Commission must, prior to undertaking an application to the federal government for a HCP or an amendment to an existing HCP, inform the appropriate committees of the Legislature of the proposed action. The proposing agency must provide information regarding their proposed timeline and budget and include an economic analysis comparing the decision to enter into a HCP with the decision to take no action. The agency must solicit recommendations from the legislative committees.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) Many counties have a very high percentage of land that is not in private ownership. When HCPs affect this land the changes can be significant and the consequences last for generations. These changes result in the defining of a community.

Habitat conservation plans are not a good tool for broad regulations or land management programs that affect diverse activities and land users. The HCPs work best when a discrete land holding or a singular land use is involved. A few of the HCPs under development by state agencies are of concern because of their far-reaching scope.

Checks and balances are important in all aspects of government, especially when science is involved. The science behind HCPs tend to be variable and additional review by all three branches of government is important. Increased legislative participation and support of state HCP applications would enhance the programs and lead to a better public understanding and level of acceptance. The Legislature is more accessible and available to the public than a

state agency, and a little more time and expense in a long and costly process is acceptable given what is at stake. As it is, there needs to be improvement in the process.

(With concerns) Habitat conservation plans are a valuable tool that allows agencies to further their mandates, decrease legal risks, create consistency for citizens, and access federal grant money. The HCP application planning process requires the utilization of adaptive management and extensive public outreach. The Legislature has created boards and commissions to run the various agencies and make prudent management decisions and those boards and commissions should be allowed to make these decisions.

By their nature, the HCP application process is both time and staff intensive. Requiring approval by the Legislature would create uncertainty as to possible outcomes even after a significant investment is made by the state agency, the federal partners, and non-governmental stakeholders and would increase costs significantly. There would be an increase in process with no benefit.

(Opposed) Habitat conservation plans are not always the most effective way to protect an endangered species. The HCP changes the enforcement standard from no loss of a species to permitting an incidental loss to a species. However, decision makers must be engaged from the start of any process for a long-term agreement to be successful and not merely a vote at the end of the process.

**Persons Testifying:** (In support) Representative Chandler, prime sponsor; Eric Johnson, Washington Public Ports Association; Norman MacLeod; and Jack Field, Washington Cattlemen's Association.

(With concerns) Jennifer Quan, Department of Fish and Wildlife; and Clay Sprague, Department of Natural Resources.

(Opposed) Miguel Perez-Gibson, Washington Environmental Council.

**Persons Signed In To Testify But Not Testifying:** None.