

# SENATE BILL REPORT

## SB 5404

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

**Title:** An act relating to addressing the impacts of pinnipeds on populations of threatened southern resident orca prey.

**Brief Description:** Addressing the impacts of pinnipeds on populations of threatened southern resident orca prey.

**Sponsors:** Senators Rivers, Warnick, Short and Van De Wege.

**Brief History:**

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

**Brief Summary of First Substitute Bill**

- Directs the Department of Fish and Wildlife to coordinate an independent science panel to evaluate the effect of pinniped predation on Chinook salmon in Puget Sound and along the Washington coast.
- Creates a management panel to assess appropriate management actions to include in a potential federal take permit under the Marine Mammal Protection Act.

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

**Majority Report:** That Substitute Senate Bill No. 5404 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Van De Wege, Chair; Salomon, Vice Chair; Warnick, Ranking Member; Stanford.

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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.*

**Minority Report:** Do not pass.  
Signed by Senator Rolfes.

**Minority Report:** That it be referred without recommendation.  
Signed by Senators Honeyford and Short.

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

**Background:** The Marine Mammal Protection Act (MMPA) prohibits, with certain exceptions, the taking of marine mammals in United States waters, including sea lions and seals (pinnipeds). Under the MMPA, there are several pathways by which a state may receive approval from National Oceanic and Atmospheric Administration (NOAA) Fisheries Division for the take of protected marine mammals.

Under section 104 of the MMPA, take permits may be granted to states or other entities for incidental takes, scientific research, and for first-time import or capture of wild marine animals for public display.

Under section 109 of the MMPA, NOAA Fisheries may transfer management of a marine mammal to a state. To receive authority, a state must implement a program for conservation and management of a marine mammal consistent with the goals and policies of the MMPA, requires humane taking of any marine mammals, only permits the taking of marine mammals when a species is at its optimum sustainable population, and meets other specified criteria.

Under section 120 of the MMPA, a state may apply to NOAA Fisheries for the lethal taking of individually identifiable pinnipeds having a negative impact on salmonid fishery stocks, which are listed under the federal Endangered Species Act (ESA), are approaching federal ESA threatened or endangered status, or that migrate through the Ballard Locks in Seattle. An application must include a description of the problem interaction, expected benefits of the taking, and the means by which the state will identify individual pinnipeds for removal. NOAA Fisheries may not approve removal of pinnipeds from species or stock listed as threatened or endangered under the ESA, depleted, or identified as a strategic stock.

If NOAA Fisheries determines there is sufficient evidence for a section 120 application to move forward, it must establish a Pinniped-Fishery Interaction Task Force (task force). The task force must analyze and recommend whether to approve or deny the application, suggest nonlethal alternatives if applicable and a recommended course of action, and, if the application is approved, evaluate the effectiveness of the permitted lethal taking or alternative actions taken.

Since 2008, Washington, Oregon, and California have received federal approval to remove California sea lions in the vicinity of the Bonneville Dam on the Columbia River. In December 2018, the United States Congress amended section 120 of the MMPA to create a

separate process to authorize the legal take of sea lions in the Columbia River and its tributaries. This new take authority under the MMPA may address any sea lion, rather than just California sea lions. In addition, the new authority expands the area in which sea lion take is permitted.

**Summary of Bill (First Substitute):** The Department of Fish and Wildlife (DFW) must contract with the Washington State Academy of Sciences to convene an independent science panel to review and evaluate the effect of pinniped predation on Chinook salmon in Puget Sound and Washington's outer coast. The panel must also consider the direct and indirect impacts of pinniped predation on the broader ecosystem. DFW must convene a management panel of state, tribal, and federal agencies to communicate with the independent science panel and assess management actions to include in a potential federal take permit application under the MMPA. The assessment must consider all options available under the MMPA along with how the act may be improved to address the unique challenges in the Salish Sea and along the Washington coast. DFW must seek input from recreational and commercial fishers, ecotourism companies, and conservation organizations, and submit a report regarding pinniped predation impacts and the recommendations under the MMPA by December 31, 2021.

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

- Expands the scope of the evaluation to include broader impacts in the marine ecosystem and expands the geographic area of study to include the Salish Sea.
- Adds eco-tourism companies to the list of stakeholders providing input regarding potential management options and moves up the report back to the Legislature from December 2022 to December 2021.

**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: Pinniped predation is a serious concern on our endangered salmon runs. We need to evaluate what federal tools are available to manage the population to take care of our declining chinook populations. There are some improvements we can make to the bill to include our tribal partners. These recommendations align with the recommendations from the Southern Resident Orca Task Force. The bill contains practical next steps to consult with stakeholders and develop management options.

OTHER: We need to also study the impacts of removing pinnipeds on other marine mammals in the ecosystem, including Biggs, minke, and humpback whales. The study area should be broader and include the Strait of Juan de Fuca and the San Juan Islands. The eco-tourism industry should be added to the list of affected stakeholders.

**Persons Testifying:** PRO: Senator Ann Rivers, Prime Sponsor; Nate Pamplin, Washington Department of Fish and Wildlife.

OTHER: Monika Wieland Shields, Orca Behavior Institute; Jeff Friedman, Maya's Legacy Whale Watching; Erin Gless, Island Adventures Whale Watching.

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