

HOUSE BILL REPORT

SHB 2444

As Passed Legislature

Title: An act relating to habitat conservation plans.

Brief Description: Amending the forest practice act of 1974 regarding federally approved habitat conservation plans.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Brumsickle, Chappell, Buck, Cairnes, Sheldon, Honeyford, McMorris, Morris, Kessler, Delvin, Basich, Fuhrman, Regala, Schoesler, Mastin, Elliot, Johnson, D. Sommers, Boldt, Thompson and McMahan).

Brief History:

Committee Activity:

Natural Resources: 1/23/96, 1/26/96 [DPS].

Floor Activity:

Passed House: 2/6/96, 97-0.

Senate Amended.

House Concurred.

Passed Legislature.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives Fuhrman, Chairman; Buck, Vice Chairman; Pennington, Vice Chairman; Regala, Assistant Ranking Minority Member; Elliot; Hatfield; Jacobsen; Keiser; Sheldon; Stevens; L. Thomas and Thompson.

Staff: Linda Byers (786-7129).

Background: A habitat conservation plan (HCP) is a long-range planning effort authorized under the Federal Endangered Species Act (ESA). Development of an HCP offers an applicant an avenue around the ESA's general prohibition on the "taking" of species listed under the act as endangered or threatened. The idea behind this alternative avenue is that it may be acceptable under the ESA to allow activities that harm an individual member of a listed species as long as a comprehensive long-range management strategy for the property conserves the species as a whole. A landowner initiates development of an HCP, chooses the species to include, and

negotiates for approval of the plan with the U.S. Fish and Wildlife Service or, in the case of anadromous fish, the National Marine Fisheries Service.

A provision in the state's forest practices rules provides a special break from certain state requirements for lands covered by an approved HCP. Current law directs the state Forest Practices Board to establish by rule which forest practices should be included in each of four classes. Class IV has a subset called "Class IV - Special." These are forest practices that have potential for a substantial impact on the environment. Applications for Class IV - Special forest practices require completion of an environmental checklist under the State Environmental Policy Act and may require completion of the more detailed environmental impact statement. One element that can trigger the designation of a forest practice as a Class IV - Special is a forest practice proposed on lands designated as critical wildlife habitat (a state designation) or critical habitat (a federal designation) for a threatened or endangered species. However, the current forest practices rules provide that forest practices on lands covered by an approved HCP are not critical wildlife habitats or critical habitats for that species, as long as the species is included in the HCP.

The Forest Practices Board has a draft rule package out for public comment which expands the current HCP rule to include other ESA-related agreements. The board anticipates adopting final rules in May.

Both the current and the proposed HCP-related forest practices rules apply to lands covered by any approved HCP.

Summary of Bill: A new section is added to the forest practices statutes specifically addressing forest practices that are consistent with an approved habitat conservation plan. Such practices are exempt from state forest practices rules and policies adopted primarily for the protection of one or more species covered by the HCP, provided that the proposed forest practices are in compliance with the approved plan.

This new provision applies only to HCPs approved prior to the effective date of this legislation. Currently, one landowner in the state (Murray Pacific Corporation) has an approved HCP. This new provision is not intended to limit the rule-making authority of the Forest Practices Board.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: A primary motivation for doing an HCP is certainty for the landowner and the land. This bill provides a company with an approved HCP the

same certainty at the state level. This prevents additional, unnecessary regulation. This represents a significant step forward in natural resource management. We support the concepts of landscape-level planning and landowner certainty. We will support this legislation if it is amended to address the concerns of the Timber-Fish-Wildlife cooperators.

Testimony Against: We would prefer that the date for approval of an HCP be moved back to an earlier date. The one approved HCP is a known commodity, but others are not. The legislation as written may override current rules about HCPs. This is a step along the cooperative path, but there is still a long way to go. The language in the bill doesn't parallel the existing rule language.

Testified: Bob Turner, Department of Fish and Wildlife; Art Stearns, Department of Natural Resources; Tim Boyd, Washington Forest Protection Association (in favor with concerns); Jerry Harper and Toby Murray, Murray Pacific Corporation (in favor); Peggy Bruton, League of Women Voters (supports TDFW position); Scott Merriman; Washington Environmental Council (concerns with bill language).