

HOUSE BILL REPORT

SHB 1259

As Passed House

March 11, 1997

Title: An act relating to habitat conservation plans.

Brief Description: Concerning habitat conservation plans.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Sump, Sheldon, McMorris, Doumit, Dyer, Butler, Buck, Regala, B. Thomas, Thompson, Chandler, Linville, Sullivan, O'Brien, Lantz and Johnson).

Brief History:

Committee Activity:

Natural Resources: 1/31/97, 2/19/97 [DPS].

Floor Activity:

Passed House: 3/11/97, 73-23.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Buck, Chairman; Sump, Vice Chairman; Thompson, Vice Chairman; Butler, Assistant Ranking Minority Member; Alexander; Chandler; Hatfield; Pennington; and Sheldon.

Minority Report: Without recommendation. Signed by 1 member: Representative Regala, Ranking Minority Member.

Staff: Linda Byers (786-7129).

Background: The federal Endangered Species Act (ESA) makes it unlawful for a person subject to the jurisdiction of the United States to "take" any endangered species of fish or wildlife. By federal regulation, the Secretary of the Interior has extended this prohibition on "take" to threatened species of fish or wildlife. Faced with the listings of the northern spotted owl and the marbled murrelet and with the potential for additional listings in the future, forest land managers have struggled to determine what harvesting and other forest management activities are permissible without violating the take- prohibition of the ESA.

The ESA itself offers land managers a conservation planning option as a way to be in compliance with the act. A provision in the ESA allows the Secretary of the Interior

(Secretary of Commerce, for salmon species) to allow a person to violate the take-prohibition of the act if the taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity. In order to allow for this taking of a listed species, the secretary issues an incidental take permit. The secretary may not issue a permit unless the person seeking the permit provides the secretary with a conservation plan that specifies: 1) the impact that will result from the taking of the species; 2) the steps the applicant will take to minimize and mitigate these impacts, and the funding that will be available to implement those steps; 3) the alternatives the applicant considered and the reasons why those alternatives were not selected; and 4) any other measures that the secretary requires. The plan supplied to the secretary by the applicant is called a habitat conservation plan (HCP).

An applicant for an incidental take permit negotiates an agreement with the U.S. Fish and Wildlife Service and with the National Marine Fisheries Service if salmon species are involved in the proposed plan. It is the applicant, rather than one of the federal agencies, who initiates development of an HCP. The applicant chooses the land base to be included in the plan as well as the species to be included. An HCP can be developed for a single species or a number of species, including unlisted species. Including conservation planning for as-yet-unlisted species can insulate a land manager from disruptions in operations if the species is listed in the future. A number of private and public forest land managers in the Pacific Northwest have either developed, or are in the process of developing HCPs.

State Forest Practices Rules on Habitat for Threatened or Endangered Species. The Legislature has established four classes of forest practices. One category is Class IV - Special.- A person applying to conduct a forest practice in the Class IV - Special category must complete an environmental checklist in compliance with the State Environmental Policy Act (SEPA) and may have to complete the more detailed SEPA environmental review. Specific forest practices conducted on lands designated as critical wildlife habitat (a state designation) or critical habitat (a federal designation) for a threatened or endangered species are classified as Class IV - Special. Rules adopted by the Forest Practices Board identify the specific forest practices and the habitats involved.

The forest practices rules also provide an exemption from this Class IV - Special designation for forest practices conducted in compliance with an approved habitat conservation plan or in compliance with other landowner management plans. An application may still be classified as Class IV - Special for reasons unrelated to an area's classification as critical wildlife habitat or critical habitat.

1996 Legislation. In 1996, the Legislature provided a statutory exemption from certain state forest practices rules for forest practices that are consistent with an approved HCP. If a proposed application is in compliance with the approved HCP, then the forest practice is exempt from the rules and policies adopted by the Forest

Practices Board primarily for the protection of one or more species if those species are covered in the HCP.

The exemption provided in the 1996 legislation applies only to habitat conservation plans approved by the federal agencies prior to March 25, 1996. Only one timber company in Washington has an HCP approved by that date.

Summary of Bill: Forest practices that are in compliance with an approved habitat conservation plan are exempt from the state forest practices rules and policies adopted primarily for the protection of threatened and endangered species. These forest practices are deemed not to have the potential for a substantial impact on the environment for fish and wildlife species covered by the plan, but the forest practices may be found to have the potential for a substantial impact on the environment due to other factors.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: HCPs are one type of management plan exemplifying an effort to better protect and manage entire ecosystems. Having an HCP approved is not easy, and applicants must go through the National Environmental Policy Act review. Uncertainty remains about SEPA review at the state level, duplicating the review done at the federal level. HCPs provide benefits to wildlife and the environment and should be supported. Companies deserve the certainty and statutory protection this bill provides. Companies are asking for equity with this bill. A number of companies are doing landscape planning on a broader basis than ever before. They need incentives to enter into this kind of behavior. Good behavior should be rewarded.

Testimony Against: The tribes are working with the industry on some related initiatives and working toward consensus. Tribes endorse and respect the principles of the ESA, but it falls short of their needs. The HCP process is an agreement between the company and the federal government. Tribes and others have a chance to comment, but it is discretionary to have the input included. An HCP is a baseline, but it is necessary to work above and beyond that. Smaller landowners can't afford to do HCPs, so this creates two classes of landowners. TFW negotiations could be precluded by this legislation. The bill contains significant risks. Landowners should be rewarded for doing good things, and TFW is trying to find an equitable state reward through the landscape planning process.

Testified: Lorin Hicks, Plum Creek Timber Company; John Warjone, Port Blakely Tree Farms; and Bill Wilkerson, Washington Forest Protection Association (all in favor); Joseph Pavel, Northwest Indian Fisheries Commission, Art Stearns, Department of Natural Resources; Rollie Geppert, Department of Fish and Wildlife; and Ron Shultz, National Audubon Society (all opposed).