

# SENATE BILL REPORT

## SHB 1022

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As Reported By Senate Committee On:  
Natural Resources & Parks, April 4, 1997

**Title:** An act relating to the department of natural resources.

**Brief Description:** Prohibiting the department of natural resources from entering into certain agreements with the federal government without prior legislative and gubernatorial approval.

**Sponsors:** House Committee on Natural Resources (originally sponsored by Representatives Buck, Johnson, Mitchell, McMorris, Talcott, Hickel, Chandler, Mastin, Lambert, Sheldon, Schoesler, Hatfield, Kessler, Mulliken, Honeyford, Thompson, Koster, DeBolt, D. Sommers, Carrell, L. Thomas, Dunn, Mielke, Clements, O'Brien and Doumit).

**Brief History:**

**Committee Activity:** Natural Resources & Parks: 3/28/97, 4/4/97 [DPA, DNP].

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### SENATE COMMITTEE ON NATURAL RESOURCES & PARKS

**Majority Report:** Do pass as amended.

Signed by Senators Rossi, Vice Chair; Hargrove, Morton, Roach, Snyder, Stevens and Swecker.

**Minority Report:** Do not pass.

Signed by Senators Oke, Chair; Jacobsen, Prentice and Spanel.

**Staff:** Vic Moon (786-7469)

**Background:** Endangered Species Act. 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. The act defines the term "take" to mean "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." By regulation, the U.S. Fish and Wildlife Service has defined the term "harm" to include "significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering."

The northern spotted owl was listed as a threatened species under the ESA in 1990. The marbled murrelet was listed as a threatened species in 1992. A number of salmon species are currently under review for possible listing under the act. Faced with these listings and 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.

Habitat Conservation Plans. 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 a species is listed in the future. A number of private and public forest land managers in the Pacific Northwest have developed, or are in the process of developing, HCPs.

Proposed Habitat Conservation Plan for State Forest Lands. Currently, DNR is pursuing the adoption of a habitat conservation plan and the related agreements and permits. The land base in the proposed plan is approximately 1.6 million acres of state-owned forest lands and covers the state-owned forest lands that fall within the range of the northern spotted owl. The plan addresses conservation measures for nine listed species and a number of other unlisted species, including salmonid species under review for possible listing. The HCP includes special provisions for northern spotted owl and marbled murrelet habitats, for riparian habitat, and for certain special habitats such as cliffs and springs. The plan seeks to provide habitat for the listed and unlisted species through the above habitat conservation efforts and also provides species-specific measures when such measures are deemed necessary. Separate plans are included for the Olympic Experimental State Forest. The department would receive its incidental take permits at the time the various agreements are signed. DNR must incorporate the commitments of the HCP into timber sales sold on or after January 1, 1999; the agency may choose to incorporate HCP commitments into earlier sales. An implementation agreement for the HCP addresses issues such as termination of the agreement by the department, what happens if the ESA is amended or repealed, land transfers and exchanges, and a process for making major and minor amendments to the permits and the HCP. The term of the proposed agreement is 70 years, with the option to renew up to three times for up to 10 years each time.

**Summary of Amended Bill:** The department must immediately exercise the provision in the signed habitat conservation plan implementation agreement or other similar agreement terminating that agreement and plan and notify the Legislature.

**Amended Bill Compared to Substitute Bill:** The bill does not have language prohibiting the signing of the HCP since it has already been signed.

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The state and the trusts need to go back to the table and work out differences.

**Testimony Against:** It is a good agreement, all trusts benefit, and differences can be worked out during the implementation planning over the next two years.

**Testified:** PRO: Phillip Kitchel, Clallam County; Glenn Aldrich, Lewis County; Dave Swettzer, WA Hardwoods Commission; Harriette Buchmann, N. Oly. Peninsula Timber; Bob Dick, NW Forestry Association; Jim Hedglin, PPRC; CON: Kaleen Cottingham, DNR.