

HOUSE BILL REPORT

HB 1824

As Reported by House Committee On: Environment & Energy

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: Representatives Young, Kloba, MacEwen, Vick, Irwin, Chambers, Lovick, Tarleton, Doglio and Springer.

Brief History:

Committee Activity:

Environment & Energy: 2/14/19, 2/19/19 [DPS].

Brief Summary of Substitute Bill

- Directs the Washington Department of Fish and Wildlife (WDFW) to propose an action to file for a permit under the federal Marine Mammal Protection Act for the maximum lethal take of pinnipeds
- Authorizes the WDFW to adopt documents prepared to fulfill National Environmental Policy Act requirements for purposes of compliance with the State Environmental Policy Act.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke, DeBolt, Fey, Peterson and Shewmake.

Minority Report: Without recommendation. Signed by 2 members: Representatives Doglio and Mead.

Staff: Jacob Lipson (786-7196).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background:

Marine Mammal Management.

Since 1972 the federal Marine Mammal Protection Act (MMPA) has prohibited, with certain exceptions, the taking of marine mammals in United States waters and by United States citizens on the high seas, and the importation of marine mammals and marine mammal products into the United States. Marine mammals covered by the MMPA include seals, sea lions, and southern resident killer whales. Three federal agencies share responsibility for implementing the MMPA, including the National Oceanic and Atmospheric Administration (NOAA) Fisheries, which is responsible for the protection of whales, seals, and sea lions, among other marine mammals.

Under the MMPA, there are several pathways by which a state may receive approval from NOAA Fisheries 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 104, marine mammal take permits may also be issued for enhancing the survival or recovery of a species or stock, when the take is likely to contribute significantly to the survival or recovery of the species or stock and when it is consistent with an MMPA-adopted conservation plan or a recovery plan developed under the federal Endangered Species Act (ESA).

Under section 109 of the MMPA, NOAA Fisheries may transfer management of a marine mammal to a state. In order to receive authority, a state must implement a program for conservation and management of a marine mammal that is 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 sea lions and seals (pinnipeds) that are having a negative impact on salmonid fishery stocks which are listed under the federal 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. The NOAA Fisheries may not approve removal of pinnipeds from species or stock that are listed as threatened or endangered under the ESA, depleted, or identified as a strategic stock.

If NOAA Fisheries determines that 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 under this authority. This permit allows for a 1 percent potential biological removal level (PBR), which under the MMPA is the maximum number of animals that may

be removed from a marine mammal stock while still allowing the stock to reach optimum sustainable population, and does not include natural mortalities.

In December 2018 the United States Congress amended section 120 of the MMPA to create a separate process to authorize legal takings of individually identifiable sea lions in the Columbia River and its tributaries; however, the same timelines and application procedure apply as from the pre-2018 MMPA pinniped take process. This new take authority under the MMPA:

- may address any sea lion, rather than just California sea lions. The lethal taking of other pinnipeds, such as seals, is not changed;
- expands the area in which sea lion take is permitted to locations in the main stem of the Columbia River upstream of river mile 112 and downstream of McNary Dam, or in any tributary with spawning habitat of endangered salmon or steelhead;
- makes the Nez Perce, Umatilla, Warm Springs, and Yakama Indian tribes and the states of Washington, Oregon, and Idaho eligible to apply for take authorization; and
- establishes a maximum take is 10 percent of the PBR.

State Environmental Policy Act.

The State Environmental Policy Act (SEPA) establishes a review process for state and local governments to identify environmental impacts that may result from governmental decisions, such as the issuance of permits or the adoption of land use plans. The SEPA environmental review process involves a project proponent or the lead agency completing an environmental checklist to identify and evaluate probable environmental impacts. If an initial review of the checklist and supporting documents results in a determination that the government decision has a probable significant adverse environmental impact (threshold determination), the proposal must undergo a more comprehensive environmental analysis in the form of an Environmental Impact Statement (EIS).

Under SEPA, a government agency is designated as the lead agency, and in that role is assigned responsibility for complying with SEPA's procedural requirements, including making a threshold determination and preparing the EIS when one is required.

Under SEPA rules adopted by the Department of Ecology, a lead agency may adopt environmental analysis prepared under the National Environmental Policy Act when specified criteria are met and specified procedures are followed by the lead agency.

Summary of Substitute Bill:

The Washington Department of Fish and Wildlife (WDFW) must propose an action to file for a permit for the maximum lethal take of pinnipeds allowed under the federal Marine Mammal Protection Act (MMPA), taking into consideration other potentially relevant sources of take. This action must, as necessary, be under any of sections 101, 103, and 104, 109, and 120 of the MMPA, and the WDFW must pursue each available MMPA permit option necessary, relative to outcomes of previously attempted permit applications. The WDFW must prioritize permit applications that it deems most likely to quickly achieve the goal of enhancing and recovering endangered salmon species and southern resident orcas.

In parallel with pursuing take permit actions, the WDFW must solicit input from affected parties, including federally recognized Indian tribes with reservations in counties that border Puget Sound, the outer coast, and the Columbia River, commercial and recreational fishers, and conservation organizations. The WDFW must coordinate an independent science panel to review and evaluate pinniped predation in Puget Sound and the outer coast, and must convene a management panel of state, tribal, and federal agencies to communicate with the independent science panel regarding actions to include in federal permit applications.

For MMPA permit processes, the WDFW may adopt documents prepared under the National Environmental Policy Act for purposes of compliance with the State Environmental Policy Act.

Substitute Bill Compared to Original Bill:

As compared to the original House bill, the substitute bill:

- eliminates the exemption from the State Environmental Policy Act (SEPA) for Marine Mammal Protection Act (MMPA) permit applications by the Washington Department of Fish and Wildlife (WDFW), and instead allows the WDFW to use documents prepared under the National Environmental Policy Act for purposes of SEPA compliance;
- directs the WDFW to propose actions to file for lethal take permit applications under multiple take permit processes authorized under the MMPA, as necessary, and to pursue each permit option relative to the success of previously attempted permit applications;
- requires the WDFW's proposal for the maximum lethal take to consider other potentially relevant sources of take and to address all pinnipeds, not just sea lions; and
- directs the WDFW to coordinate an independent science panel to review and evaluate pinniped predation in Puget Sound and the outer coast, and to convene a management panel of state, tribal, and federal agencies to communicate with the independent science panel regarding actions to include in federal permit applications.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The Southern Resident Killer Whale Task Force (task force) recommended that the Washington Department of Fish and Wildlife (WDFW) address pinniped populations. Removing pinnipeds will have an immediate impact in assisting Chinook salmon, which is an

important killer whale food source. Efforts to improve habitat and water quality will not yield such immediate results.

(Opposed) None.

(Other) It is difficult to receive a take permit under the Marine Mammal Protection Act. Pinniped impacts on salmon are of concern. Recent amendments in the United States Congress will provide additional tools to address pinniped populations on the Columbia River. The task force recommended that the Columbia River take of sea lions be increased, and that the WDFW should continue to work on the data and science of pinniped predation to determine whether additional interventions are warranted. Harbor seals are as big of a concern to salmon in Puget Sound as sea lions are.

Persons Testifying: (In support) Representative Young, prime sponsor; and Peter Godlewski, Association of Washington Business.

(Other) Nate Pamplin, Washington Department of Fish and Wildlife.

Persons Signed In To Testify But Not Testifying: None.