
SENATE BILL 5390

State of Washington

68th Legislature

2023 Regular Session

By Senators Shewmake, Warnick, Rolfes, and Stanford

1 AN ACT Relating to establishing a programmatic safe harbor
2 agreement on forestlands; and adding a new section to chapter 76.09
3 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 76.09
6 RCW to read as follows:

7 (1) The legislature finds that the federal government has
8 established programs under the endangered species act, 16 U.S.C. Sec.
9 1539(a)(1)(A), that seek to provide regulatory incentives for private
10 and other nonfederal property owners to recruit, enhance, or maintain
11 habitats for species that are or may become listed as threatened or
12 endangered. These activities are designed to enhance the propagation
13 or survival of the affected species and provide assurance to
14 participating landowners that their future land management activities
15 would not be subject to the endangered species act's restrictions as
16 long as they adhere to the terms of the programmatic safe harbor
17 agreement. The legislature aims to encourage these programs in the
18 forested environment, as they accomplish multiple desirable goals for
19 multiple parties.

20 (2) The legislature recognizes the value of voluntary, incentive-
21 based programs to nonfederal forestland owners to support the

1 northern spotted owl, and finds that this section will facilitate
2 participation in these programs if they can be made more accessible
3 and streamlined. The federal agencies administering the endangered
4 species act have developed programs under 16 U.S.C. Sec.
5 1539(a)(1)(A) whereby administrative authorities over species
6 enhancement activities are transferred to state agencies under a
7 programmatic permit, under which the department would enroll
8 participants, issue certificates of inclusion, and facilitate program
9 implementation and compliance. Therefore, the legislature intends for
10 these incentive-based programs to be available to nonfederal
11 landowners consistent with the board's process.

12 (3) The department may enter into and administer a programmatic
13 safe harbor agreement for the northern spotted owl for any forestland
14 owner. Participation in this agreement by forestland owners is
15 strictly voluntary and at the sole discretion of the landowner. The
16 department shall consult with and rely upon technical assistance from
17 the department of fish and wildlife regarding habitat assessments of
18 candidate parcels and implementation of the programmatic safe harbor
19 agreement. The department and the department of fish and wildlife
20 shall enter into and maintain an interagency agreement to ensure
21 implementation of the state's obligations under the safe harbor
22 agreement and to ensure the department of fish and wildlife's
23 technical expertise is available to support the safe harbor
24 agreement.

25 (4) In administering the programmatic safe harbor agreement for
26 the northern spotted owl described in subsection (3) of this section,
27 the department has all authority necessary to successfully administer
28 the federal permit, monitor compliance with the terms of certificates
29 of inclusion, suspend or terminate landowner participation from the
30 program, and provide all other landowner technical assistance as is
31 needed to facilitate program implementation. For the purposes of
32 administering the safe harbor agreement, the department must be able
33 to access candidate parcels to ensure program eligibility or
34 compliance.

35 (5) The board may adopt or amend its rules, if necessary, to
36 implement the programmatic safe harbor agreement for the northern
37 spotted owl described in this section.

38 (6) Decisions of the department to issue certificates of
39 inclusion or to suspend or terminate a landowner's participation in

1 the program may be reviewed in the same manner as forest practices
2 applications under RCW 76.09.205.

3 (7) The provisions of this section are subject to the
4 availability of amounts appropriated for this specific purpose.

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