

Calendar No. 642

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-348

THE PACIFIC SALMON STRONGHOLD
CONSERVATION ACT

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 817



NOVEMBER 17, 2010.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

99-010

WASHINGTON : 2010

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED ELEVENTH CONGRESS

SECOND SESSION

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THE PACIFIC SALMON STRONGHOLD CONSERVATION ACT

NOVEMBER 17, 2010.—Ordered to be printed

Mr. ROCKEFELLER, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 817]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 817) to establish a Salmon Stronghold Partnership program to conserve wild Pacific salmon and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of S. 817, the Pacific Salmon Stronghold Conservation Act, is to establish a comprehensive, strategic, science-based approach to wild salmon stronghold conservation. It would create a structural framework and expand Federal support for the protection and restoration of the healthiest remaining wild Pacific salmon stocks in North America.

BACKGROUND AND NEEDS

Wild Pacific salmon are central to the economy, environment, and culture of western North America. However, human activities such as damming rivers for hydropower, fishing, agriculture, and urban growth are increasingly threatening wild Pacific salmon habitats and populations. Additionally, salmon populations are extremely sensitive to local environmental conditions. In 2007, the National Academy of Sciences reported that climate change will likely have a large negative impact on fresh water salmon habitats, as well as cause a “spatial shift in salmon abundance,” with higher-

elevation watersheds becoming less suitable habitat due to the transitions from snowy to rainy environments.¹

To combat these myriad threats, a number of Federal, State, and local salmon recovery programs have been established, most of which are focused on the important task of recovering threatened or endangered stocks. At the Federal level, the Endangered Species Act (ESA) and the Pacific Coastal Salmon Recovery Fund (PCSRF) play an important role in Pacific salmon conservation and recovery efforts. The National Oceanic and Atmospheric Administration's (NOAA's) National Marine Fisheries Service (NMFS) is charged with implementing the ESA requirements for marine species, including anadromous Pacific salmonids (i.e., chum salmon, pink salmon, sockeye salmon, chinook salmon, coho salmon, and steelhead trout). Based on a petition from an individual, organization, or State agency (or alternatively on its own initiative), NMFS conducts a review to determine whether a marine species is threatened or endangered, and thus merits listing under the ESA. NMFS has identified 50 evolutionarily significant units (ESUs) in the region of California and the Pacific Northwest as of 2005, of which 26 are listed as threatened or endangered. Once a species is listed under the ESA, NMFS must designate critical habitat and formulate a recovery plan for the species. When a listed species is determined to no longer be threatened or endangered, based on the best scientific and commercial data available, it is eligible to be delisted.

NMFS is also responsible for administering the PCSRF, which was established by Congress in 2000 after the governors of Washington, Oregon, California, and Alaska collectively requested a mechanism to address the additions of West Coast salmon and steelhead trout to the ESA list of threatened species. Aiming to protect, restore, and conserve these populations and their habitats, the PCSRF provides funding for thousands of recovery projects conducted by Pacific Northwest States and tribes. Since its inception, the PCSRF has enabled the removal of thousands of barriers to passage and the reopening of thousands of miles of habitat for Pacific salmon.

While the ESA and PCSRF are critically important in protecting Pacific salmon species, they are largely focused on recovery efforts rather than preservation. Additionally, the Federal, State and local agencies, non-profits and private entities that focus on Pacific salmon and steelhead conservation make for a complex web of interrelated, and in some cases overlapping or conflicting, jurisdictions. For example, NMFS has responsibility for anadromous Pacific salmonids, while the U.S Fish and Wildlife Service (USFWS) has jurisdiction over non-anadromous (or resident) forms of sockeye salmon and steelhead. This type of divisional authority can result in a lack of a centralized strategy which can greatly hinder conservation efforts.

Fisheries scientists and natural resource managers are generally in agreement that comprehensive, strategic conservation of the healthiest aquatic habitats, or "strongholds," for a given fish species, is an efficient and highly cost-effective method for the conservation of fish populations and the preservation of the important

¹ Battin, James; Wiley, Matthew W.; Ruckelshaus, Mary H.; Palmer, Richard N.; Korb, Elizabeth; Bartz, Krista K.; and Imaki, Hiroo (2007) Projected impacts of climate change on salmon habitat restoration. PNAS vol. 104 no. 16 6720-6725.

role they play in ecosystems and our economy. This is based on the fundamental concept that targeted conservation of a distributed network of a depleted species, capturing key centers of productivity, abundance, and diversity, provides the foundation for a range-wide strategy to ensure the viability of that species into the future.

Some efforts at this form of preventive management have already begun at the State and local levels. A prime example is the North American Salmon Stronghold Partnership (Stronghold Partnership). Chartered in December 2007, the Stronghold Partnership was formed for the purpose of identifying and protecting a network of the healthiest remaining wild Pacific salmon ecosystems in North America, in order to ensure the long-term survival of salmon, steelhead trout, and the many species that depend on them and the watersheds they inhabit. It is a voluntary partnership that serves to coordinate public and private resources and the activities of local communities, State and Federal agencies, tribes, nonprofit organizations, and private interests who seek to work collaboratively on salmon conservation and restoration activities across Alaska, California, Idaho, Oregon, and Washington.

SUMMARY OF PROVISIONS

S. 817 would establish the Stronghold Partnership as a cooperative, incentive-based, public-private partnership to identify and conserve salmon strongholds. The Partnership's board would include representatives of State governments of Alaska, California, Idaho, Oregon, and Washington, as well as representatives from specified entities. The bill would establish a salmon stronghold watershed grants and technical assistance program to support protection and restoration activities. It would also require the Assistant Administrator of NMFS to carry out specific information and assessment functions associated with salmon strongholds and authorize the sharing of status and trends data, innovative conservation strategies, conservation planning methodologies, and other information with North Pacific countries and appropriate international entities to promote Pacific salmon conservation.

LEGISLATIVE HISTORY

Senator Cantwell introduced S. 817 on April 2, 2009. Senators Begich, Boxer, Feinstein, Merkley, Murkowski, Murray, and Wyden are cosponsors of the legislation. On April 15, 2010, the Subcommittee on Oceans, Atmosphere, Fisheries, and the Coast Guard held a hearing entitled, "S. 817, the Pacific Salmon Stronghold Conservation Act," that addressed the legislation. Witnesses at the hearing discussed the stronghold approach to species conservation and management as an efficient and highly cost-effective method for the conservation of healthy stocks and the preservation of critical ecosystems and the economies that rely on them. Companion legislation in the House of Representatives, H.R. 2055, was introduced by Representative Mike Thompson (D-CA) on April 22, 2009, and was referred to the House Committee on Natural Resources, Subcommittee on Insular Affairs, Oceans, and Wildlife on April 27, 2009. The Subcommittee held a hearing on the bill on June 16, 2009.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

S. 817—Pacific Salmon Stronghold Conservation Act of 2009

Summary: S. 817 would authorize the National Oceanic and Atmospheric Administration (NOAA) to carry out certain activities related to the conservation of certain salmon habitats. Assuming appropriation of the authorized amounts, CBO estimates that implementing the legislation would cost \$91 million over the 2011–2015 period.

Enacting the legislation could increase offsetting receipts (from private donations) and associated direct spending; therefore, pay-as-you-go procedures would apply. However, CBO estimates that the net effects would be negligible for each year. Enacting the bill would not affect revenues.

S. 817 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the Federal Government: The estimated budgetary impact of S. 817 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level	30	30	30	0	0	91
Estimated Outlays	20	26	29	11	5	91

Note: Amounts may not add to totals because of rounding.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted by the end of fiscal year 2010 and that the authorized amounts will be appropriated for each fiscal year beginning in 2011. Estimated outlays are based on historical spending patterns for similar NOAA activities.

S. 817 would require the Secretary of Commerce to establish a partnership between public and private entities to identify and protect certain salmon habitats. The bill would authorize the appropriation of \$30 million annually over the 2010–2013 period for NOAA to provide grants to support the activities of the partnership. The bill also would authorize the appropriation of \$300,000 a year over that period for NOAA to collect and disseminate information related to salmon habitats. Assuming appropriation of the authorized amounts, CBO estimates that implementing the legislation would cost \$91 million over the 2011–2015 period.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. S. 817 could increase offsetting receipts (from private donations) and associated direct spending; therefore, pay-as-you-go procedures would apply. However, CBO estimates that any increase in offsetting receipts

would be less than \$500,000 a year and would be offset by similar increases in direct spending. The net budgetary changes that are subject to pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 817, THE PACIFIC SALMON STRONGHOLD CONSERVATION ACT OF 2009, AS ORDERED REPORTED BY THE SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION ON JUNE 9, 2010

	By fiscal year, in millions of dollars—												2010–2015	2010–2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020			
	NET INCREASE OR DECREASE (–) IN THE DEFICIT													
Statutory Pay-As-You-Go Impact	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Intergovernmental and private-sector impact: S. 817 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no cost on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Jeff LaFave; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

S. 817 would establish a comprehensive, strategic, science-based approach to wild salmon stronghold conservation. It would create a structural framework and expand Federal support for the protection and restoration of the healthiest remaining wild Pacific salmon stocks in North America. It does not authorize any new regulations, and therefore will not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The bill would authorize annual authorizations of \$30 million for each of fiscal years 2009 through 2013. From these authorizations, NFWF would be required to make available sufficient funds to the Board to carry out its duties. This includes \$300,000 that would be authorized for the Assistant Administrator of NMFS to provide technical assistance and information and assessment functions under section 5 of the Act. Funds appropriated by this legislation would remain available until expended. These funding levels are not expected to have an inflationary impact on the Nation’s economy.

PRIVACY

The reported bill would not have any adverse impact on the personal privacy of individuals.

PAPERWORK

S. 817 would not increase paperwork requirements for the private sector.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no items contained in the bill, as reported, meet the definition of congressionally directed spending items under the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section would provide that this Act may be cited as the Pacific Salmon Stronghold Conservation Act of 2009.

Section 2. Findings; purpose

This section would state the findings of Congress on which this Act is based, and would state that the purposes of this Act are to: (1) expand Federal support and resources for the protection and restoration of the healthiest remaining salmon strongholds in North America to sustain core centers of salmon abundance, productivity, and diversity in order to ensure the long-term viability of salmon populations in the States of Alaska, California, Idaho, Oregon, and Washington; (2) maintain and enhance economic benefits related to fishing or associated with healthy salmon stronghold habitats, including flood protection, recreation, water quantity and quality, carbon sequestration, climate change mitigation and adaptation, and other ecosystem services; and (3) complement and add to existing Federal, State, and local salmon recovery efforts by using sound science to identify and sustain core centers of salmon abundance, productivity, and diversity in the healthiest remaining salmon ecosystems throughout their range.

Section 3. Definitions

This section would define: “Administrator” as the Assistant Administrator for NMFS of NOAA; “Board” as the Salmon Stronghold Partnership Board; “charter” as the charter of the Salmon Stronghold Partnership Board; “Director” as the Director of USFWS; “ecosystem services” as the ecological benefits generated from a healthy, functioning ecosystem, including clean water, pollutant filtration, regulation of river flow, prevention of soil erosion, regulation of climate, and fish production; “program” as the salmon stronghold watershed grants and technical assistance program; “salmon” as any of the wild anadromous *Oncorhynchus* species that occur in the Western United States, including chum salmon, pink salmon, sockeye salmon, chinook salmon, coho salmon, and steelhead trout; “salmon stronghold” as all or part of a watershed that meets biological criteria for abundance, productivity, diversity (life history and run timing), habitat quality, or other biological attributes important to sustaining viable populations of salmon throughout their range, as defined by the Board; “Salmon Stronghold Partnership” as the Salmon Stronghold Partnership estab-

lished under section 4; and “Secretary” as the Secretary of Commerce.

Section 4. Salmon stronghold partnership

Subsection (a) of this section would direct the Secretary to establish a cooperative, incentive-based, public-private Salmon Stronghold Partnership between stakeholders for the purpose of identifying and conserving salmon strongholds. Subsection (b) would provide that the Partnership be managed by a Board established by the Secretary, which would consist of one representative from each of the following: NMFS; USFWS; the U.S. Forest Service; the Environmental Protection Agency (EPA); the Bonneville Power Administration; the Bureau of Land Management; the Northwest Power and Conservation Council; the office of the Governor or an appropriate natural resource agency from each of the States of Alaska, California, Idaho, Oregon, and Washington; not less than three and not more than five representatives from Indian tribes or tribal commissions; three non-governmental organizations with salmon conservation expertise selected by the Board; an association of counties selected by the Board; and any entity with significant resources regionally dedicated to the protection of salmon ecosystems selected by the Board.

Subsection (c) of this section would require that the Board meet at least three times a year with timely notice to guarantee adequate input from a broader set of stakeholders and fisheries experts. Subsection (c) would also establish a meeting schedule for the Board and establish notification requirements. Subsection (d) would require the Board to consult with fisheries experts as appropriate. Subsections (e) and (f) would require the Board to nominate and select a chairperson from among the members of the Board, establish a standing science committee, and establish additional committees if necessary. Subsection (g) would require the Board to develop a written charter to reflect the purposes, intent, and governance framework of the Partnership.

Section 5. Information and assessment

This section would require the Assistant Administrator of NMFS to carry out specific information and assessment functions associated with salmon strongholds, including: triennial stronghold assessments, geographic information system and mapping support; projections of climate change impacts on all habitats and life history stages of salmon; development and application of models and other tools to identify salmon conservation actions projected to have the greatest positive impacts on salmon abundance, productivity, or diversity within salmon strongholds; and measurement of the effectiveness of Partnership activities.

Section 6. Salmon Stronghold Watershed Grants and Technical Assistant Program

Subsections (a) and (b) of this section would require the Assistant Administrator of NMFS to establish a salmon stronghold watershed grants and technical assistance program, the purpose of which would be to support protection and restoration activities. This support would include funding the administration of the Salmon Stronghold Partnership in carrying out its charter and encour-

aging cooperation among the entities represented on the Board, local authorities, and private entities to establish a network of salmon strongholds and assist locally in specific actions that support the Salmon Stronghold Partnership. The program may also support entities represented on the Board in their efforts to develop and fund salmon stronghold initiatives. The program would also support maintaining a forum to share best practices and approaches, employ consistent and comparable metrics, forecast and address climate impacts, and monitor, evaluate, and report regional status and trends of salmon ecosystems in coordination with related regional and State efforts. Additional support from the program may extend to carrying out activities and existing conservation programs in, and across, salmon strongholds on a regional scale to achieve the goals of the Salmon Stronghold Partnership; accelerating the implementation of recovery plans in salmon strongholds that have salmon populations listed as threatened or endangered under the ESA; developing and disseminating information pertaining to the Salmon Stronghold Partnership; and conducting education outreach to the public, in coordination with other programs, to encourage increased stewardship of salmon strongholds.

Subsections (c) and (d) of this section details the selection process for projects that would be eligible to receive assistance under the program. States with an efficient, cost-effective, and competitive grant program for salmon conservation and a viable plan to provide accountability under the program would be provided program funds by the National Fish and Wildlife Foundation (NFWF) for the selection and administration of intrastate projects. If, however, NFWF and the Board determine the State lacks such a competitive grant program, then NFWF and the Board would select and administer projects to be carried out within the State. Interstate programs and initiatives would receive funding and administration from NFWF and the Board if NFWF and the Board determine such projects adhere to the Board's criteria and: (1) contribute to the conservation of salmon; (2) meet the criteria for eligibility in the charter; (3) address a factor limiting or threatening to limit abundance, productivity, diversity, habitat quality, or other biological attributes important to sustaining viable salmon populations within a salmon stronghold or is a programmatic action that supports the Salmon Stronghold Partnership; (4) address limiting factors to healthy ecosystem processes or sustainable fisheries management; (5) have the potential for conservation benefits and broadly applicable results; and (6) meet cost-sharing and expense limitation requirements.

Subsections (e) and (f) of this section establish cost-sharing requirements such that the Federal share of the cost for a project on non-Federal land may not exceed 50 percent of the total cost, while the share may be up to 100 percent for projects on Federal land. Non-Federal shares of cost cannot be derived from Federal grant programs, but may include in-kind contributions. Any amounts provided by the Bonneville Power Administration directly or through a grant to another entity used to carry out a project that receives assistance under the program shall be credited toward the non-Federal share of the cost of the project. Of the amount made available to a State or the NFWF under the program for each fiscal

year, that State and the NFWF would not be allowed to expend more than 5 percent of the amount for administrative and reporting expenses.

Subsection (g) of this section would require that each person receiving assistance from a State or NFWF provide periodic reports to the State or NFWF, as appropriate, to evaluate the progress and success of the project. At least every three years, NFWF and each State providing funding for the program would be required to submit a report of activities to the Assistant Administrator of NMFS to evaluate the implementation of the program.

Section 7. Interagency cooperation

This section would require that the heads of each Federal agency or department with stewardship over land within a salmon stronghold work with the Assistant Administrator of NMFS and the Director of USFWS to coordinate and streamline Partnership and other interagency salmon conservation efforts.

Section 8. International cooperation

This section would authorize the Assistant Administrator of NMFS and the Board to share conservation data, strategies, methodologies, and other information relevant to north Pacific countries, including Canada, Japan, Russia, and South Korea, in addition to appropriate international entities for the promotion of salmon and salmon habitat conservation. It also would provide a Sense of Congress that the Assistant Administrator of NMFS and the Board should provide information to north Pacific countries to support the development of a network of salmon strongholds across the nations of the north Pacific.

Section 9. Acquisition and transfer of real property interests

This section would restrict the acquisition of land and the funding of projects to those whose aims and goals are aligned with the program. Property acquisition under the Program would require the written consent of the owners or interests of the property. This section would also prohibit property transfers from the program to another entity unless: (1) the entity is committed to manage the property in accordance with the spirit of the Act; or, (2) the transfer provides for the reversion of the property to the United States government in the event the entity fails to manage the property in accordance with the Act.

Section 10. Administrative provisions

Subsection (a) of this section would allow the Secretary of Commerce, in concert with the Board, to: enter into and to use cooperative agreements, contracts and grants and to make funds available for salmon stronghold protection, restoration, or enhancement activities; apply for, accept, and use grants from any person to carry out the purposes of this Act, unless prohibited by any other provision of law; and make funds available to any Federal agency or department to award financial assistance for any salmon stronghold project consistent with the Act.

Subsection (b) of this section would allow the Secretary of Commerce to enter into an agreement with a 501(c)(3) organization and to accept donations of funds or services to carry out activities under

this Act. Donations would be considered gifts or bequests to the United States and would be allowed to be used by the Secretary of Commerce, or in the case of donated property, by the Secretary of the Interior, or be provided to other Federal agencies or departments through interagency agreements.

Section 11. Limitations

This section states that nothing in this Act may be construed to: create a reserved water right, expressly or implicitly, in the United States for any purpose, or affect the management or priority of water rights under State law; affect existing water rights under Federal or State law; affect any Federal or State law in existence on the date of enactment of this Act regarding water quality or water quantity; affect the authority, jurisdiction, or responsibility of any agency or department of the United States or of a State to manage, control, or regulate fish and resident wildlife under a Federal or State law or regulation; authorize the Secretary of Commerce or the Secretary of the Interior to control or regulate hunting or fishing under State law; abrogate, abridge, affect, modify, supersede, or otherwise alter any right of a federally recognized Indian tribe under any applicable Federal or tribal law or regulation; or diminish or affect the ability of the Secretary of Commerce or the Secretary of the Interior to join the adjudication of rights to the use of water.

Section 12. Reports to Congress

This section would direct the Assistant Administrator of NFMS, in consultation with the Director of USFWS, to submit a report to Congress describing the activities conducted under the Act at least every 3 years. The report would include recommendations, if any, for legislation relating to the Salmon Stronghold Partnership.

Section 13. Authorization of appropriations

This section would authorize \$30 million for each of fiscal years 2009 through 2013. From this authorization, NFWF would be required to make available sufficient funds to the Board to carry out its duties. Of these funds, \$300,000 would be authorized for the Assistant Administrator of NMFS to provide technical assistance and information and assessment functions under section 5 of the Act. Funds appropriated under the authorization would remain available until expended.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee states that the bill as reported would make no change to existing law.