

Calendar No. 306

112TH CONGRESS }
2d Session }

SENATE

{ REPORT
112-140 }

PACIFIC SALMON STRONGHOLD
CONSERVATION ACT OF 2011

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

S. 1401



JANUARY 30, 2012.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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PACIFIC SALMON STRONGHOLD CONSERVATION ACT OF 2011

JANUARY 30, 2012.—Ordered to be printed

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

R E P O R T

[To accompany S. 1401]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 1401) to conserve wild Pacific salmon, and for other purposes, having considered the same, reports favorably thereon with an amendment (in the nature of a substitute) and recommends that the bill (as amended) do pass.

PURPOSE OF THE BILL

The purpose of S. 1401, the Pacific Salmon Stronghold Conservation Act of 2011, is to establish a comprehensive, strategic, science-based approach to wild salmon conservation. It would create a structural framework to support efforts to protect and restore 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, fishing, agriculture, and urban growth are increasingly threatening wild Pacific salmon habitats and populations. Additionally, salmon populations are extremely sensitive to local environmental conditions, which will likely be impacted by climate change. In 2007, a research article in the Proceedings of the National Academy of Sciences of the United States, a highly respected scientific periodical published by the National Academy of Sciences, concluded that climate change will likely have a large negative impact on fresh water salmon habitat, 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 over 50 evolutionarily significant units (ESUs) of salmon and steelhead trout in the region of California and the Pacific Northwest, of which 28 are listed as threatened or endangered. Once a species or ESU 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 (as the case may be), 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 of already depleted populations rather than supporting healthy salmon populations. 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

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. *Proceedings of the National Academy of Sciences* vol. 104 no. 16 6720–6725.

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 role they play in ecosystems and our economy.² 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 which seek to work collaboratively on salmon conservation and restoration activities across Alaska, California, Idaho, Oregon, and Washington.

SUMMARY OF PROVISIONS

S. 1401 would establish the Salmon Stronghold Partnership as a cooperative, incentive-based, public-private partnership to identify and conserve salmon strongholds. The Partnership’s board would include representatives of Alaska, California, Idaho, Oregon, and Washington States, as well as representatives from specified entities. The Act would authorize 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 would authorize the sharing of status and trends data, innovative conservation strategies, conservation planning methodologies, and other information with other North Pacific countries, including Canada, Japan, Russia, and South Korea as well as appropriate international entities, to promote Pacific salmon conservation.

LEGISLATIVE HISTORY

S. 1401 was introduced by Senator Cantwell on July 21, 2011, and referred to the Committee on Commerce, Science, and Transportation. Senators Begich, Boxer, Feinstein, Merkley, Murkowski, Murray, and Wyden are original cosponsors of the legislation. On

² See S. 817, *The Pacific Salmon Stronghold Conservation Act: Hearing before the Subcomm. on Oceans, Atmosphere, Fisheries, and Coast Guard of the S. Comm. on Commerce, Science, & Transportation*, 111th Cong. at 11 (2010) (statement of Mr. Guido Rahr, President and Chief Executive, Wild Salmon Ctr.) (stating “There is broad agreement among scientific colleagues in and outside of government that the identification and protection of a portfolio of salmon strongholds represents a critical plank in any broader salmon conservation and management strategy.”); and see *id.* at 20 (statement of Sara LaBorde, Special Assistant to the Dir., Wash. Dept of Fish & Wildlife) (stating that “many . . . are enthusiastic about increasing our attention on the Nation’s healthiest wild salmon populations. We all know that prevention will save money, avoiding costly restoration.”).

November 2, 2011, the Committee met in open Executive Session and, by voice vote, ordered S. 1401 reported with an amendment in the nature of a substitute.

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. 1401—Pacific Salmon Stronghold Conservation Act of 2011

Summary: S. 1401 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 necessary amounts, CBO estimates that implementing the legislation would cost \$118 million over the 2012–2016 period.

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

S. 1401 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA).

Estimated cost to the Federal Government: The estimated budgetary impact of S. 1401 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—					
	2012	2013	2014	2015	2016	2012–2016
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	30	31	32	32	33	158
Estimated Outlays	6	22	27	31	32	118

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted early in 2012 and that the necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar NOAA activities.

S. 1401 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 NOAA to provide grants to support the activities of the partnership. The bill also would authorize NOAA to collect and disseminate information related to salmon habitats. Based on information provided by NOAA about the cost of performing similar activities, CBO estimates that implementing the legislation would cost \$118 million over the 2012–2016 period, assuming appropriation of the necessary amounts.

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 and revenues. Enacting S. 1401 could increase offsetting receipts and associated direct spend-

ing; therefore, pay-as-you-go procedures apply. However, CBO estimates that the net effects would be negligible for each year. Enacting the bill would not affect revenues.

Intergovernmental and private-sector impact: S. 1401 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. 1401 would establish a comprehensive, strategic, science-based approach to wild salmon stronghold conservation. It would create a structural framework to support efforts to protect and restore the healthiest remaining wild Pacific salmon stocks in North America. It does not authorize any new regulations, and therefore would not subject any individuals or businesses to new regulations.

ECONOMIC IMPACT

The provisions of this bill are not expected to have any negative impact on individuals, consumers, or businesses.

PRIVACY

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

PAPERWORK

S. 1401 is not expected to create any additional paperwork requirements.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that no provisions 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 2011.

Section 2. Purposes

This section 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 by focusing resources on cooperative, incentive-based efforts and increasing available resources for public and private organizations working cooperatively to conserve regional core centers of salmon abundance and diversity; (2) maintain billions of dollars in economic activity and tens of thousands of jobs from salmon related activities that rely on healthy salmon populations and salmon stronghold habitats; (3) 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 (4) 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: (1) “Administrator” as the Assistant Administrator for NMFS of NOAA; (2) “Board” as the Salmon Stronghold Partnership Board; (3) “charter” as the charter of the Salmon Stronghold Partnership Board; (4) “Director” as the Director of USFWS; (5) “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; (6) “program” as the salmon stronghold watershed grants and technical assistance program; (7) “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; (8) “salmon stronghold” as status conferred to a defined geographical unit which meets biological criteria for abundance, productivity, diversity (genetic and life history), habitat quality, or other biological attributes important to sustaining viable populations of salmon throughout their range, as defined by the Board; (9) “Salmon Stronghold Partnership” as the Salmon Stronghold Partnership established under section 4; and (10) “Secretary” as the Secretary of Commerce.

Section 4. Salmon Stronghold Partnership

This section would direct the Secretary to establish a cooperative, incentive-based, public-private Salmon Stronghold Partnership (Partnership) between stakeholders for the purpose of identifying and conserving salmon strongholds. This section instructs the Secretary to establish a Board of the Salmon Stronghold Partnership, which would consist of one representative from each of the following: (1) NMFS; (2) USFWS; (3) the U.S. Forest Service; (4) the Environmental Protection Agency (EPA); (5) the Bonneville Power Administration; (6) the Bureau of Land Management; (7) the Northwest Power and Conservation Council; (8) the office of the Governor or an appropriate natural resource agency from each of the States of Alaska, California, Idaho, Oregon, and Washington; (9) three non-governmental organizations with salmon conservation expertise selected by the Board; and (10) an association of counties

selected by the Board. Additionally, the Board would include 3-5 representatives from Indian tribes or tribal commissions located within the range of a salmon species.

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. It would require the Board to nominate and select a Chairperson from among the members of the Board and establish a standing science committee. In addition, this section would require for 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: (1) triennial stronghold assessments; (2) geographic information system and mapping support; (3) projections of climate change impacts on habitats and life history stages of salmon; (4) 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 (5) measurement of the effectiveness of Partnership activities.

Section 6. Salmon Stronghold Watershed Grants and Technical Assistant Program

This section would require the Assistant Administrator of NMFS to establish a salmon stronghold watershed grants and technical assistance program to support protection and restoration activities. Activities that would be supported by the program include: (1) funding the administration of the Partnership in carrying out its charter; (2) encouraging 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 Partnership; (3) supporting entities represented on the Board in their efforts to develop and fund salmon stronghold initiatives; (4) 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; (5) carrying out activities and existing conservation programs in, and across, salmon strongholds on a regional scale to achieve the goals of the Partnership; (6) accelerating the implementation of recovery plans in salmon strongholds that have salmon populations listed as threatened or endangered under the ESA; and (7) developing and disseminating information pertaining to the Partnership.

This section details the selection process for projects that would be eligible to receive assistance under the program. A State 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, in consultation with the Board, would select and administer projects to be carried out within the State. An interstate project or programmatic initiative would receive funding from and be administered by NFWF, in consultation with the Board. All projects would be selected in accordance with criteria developed by the Board, which would require that a project which receives assistance under the program: (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 be a programmatic action that supports the 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. The Federal share of the cost for a project on non-Federal land would not be allowed to exceed 50 percent of the total cost, while the Federal share of up to 100 percent would be allowed for projects on Federal land. Non-Federal shares of cost would not be allowed to be derived from Federal grant programs, but would be allowed to 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 would be required to be credited toward the non-Federal share of the cost of the project. Of the amount made available to a State, NFWF, and NOAA under the program for each fiscal year, that State, NFWF, and NOAA would not be allowed to expend more than five percent of the amount for administrative and reporting expenses necessary to carry out this section. Each person that receives assistance from a State or NFWF would be required to 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 provided funding for programs and 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 relevant information 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. This section recommends that the Assistant Administrator of NMFS and the Board encourage North Pacific countries to establish their own respective salmon strongholds.

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 U.S. Government in the event the entity fails to manage the property in accordance with the Act.

Section 10. Administrative provisions

This section would allow the Secretary, in concert with the Board, to: (1) enter into and to use cooperative agreements, contracts and grants and to make funds available for salmon stronghold protection, restoration, or enhancement activities; (2) 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 (3) make funds available to any Federal agency or department to award financial assistance for any salmon stronghold project consistent with the Act.

This section would allow the Secretary 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, 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 the Act does not aim to: (1) 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; (2) affect existing water rights under Federal or State law; (3) affect any Federal or State law in existence on the date of enactment of this Act regarding water quality or water quantity; (4) 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; (5) authorize the Secretary or the Secretary of the Interior to control or regulate hunting or fishing under State law; (6) 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 (7) diminish or affect the ability of the Secretary 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 three years. The report would include recommendations, if any, for legislation relating to the Partnership.

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.

