

ENDANGERED SPECIES COMPLIANCE AND
TRANSPARENCY ACT OF 2006

SEPTEMBER 28, 2006.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. POMBO, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 4857]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 4857) to better inform consumers regarding costs associated with compliance for protecting endangered and threatened species under the Endangered Species Act of 1973, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 4857 is to better inform consumers regarding costs associated with compliance for protecting endangered and threatened species under the Endangered Species Act of 1973.

BACKGROUND AND NEED FOR LEGISLATION

In response to concerns that various species had become or were in danger of becoming extinct, Congress passed the Endangered Species Act (ESA) in 1973. Under the ESA, the Secretary of the Interior, through the U.S. Fish and Wildlife Service (FWS), has responsibility for plants, wildlife and inland fishes. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), is responsible for implementing the ESA with respect to mostly marine and anadromous species. Each agency follows a regulatory process to list a species as “endangered” or “threatened” based on the best available scientific and commercial data. More than 1800 species have been listed under the ESA, with 1300 being domestic species. If federal actions, including approval or funding actions, may affect a listed species, Section 7 of the ESA requires federal agencies to consult with the FWS or NOAA to “insure that any action authorized, funded or carried out by such

agency * * * is not likely to jeopardize the continued existence” of a species.

The ESA impacts the four Power Marketing Administrations (PMAs), their wholesale customers and, ultimately, the end-use retail customer through regulatory impacts on hydropower generation. The PMAs (Bonneville Power Administration, Western Area Power Administration, Southwestern Power Administration and the Southeastern Power Administration) market and deliver wholesale excess power generated at Bureau of Reclamation and U.S. Army Corps of Engineers (Corps) hydropower facilities. The Bureau is a major source of electricity for the western United States. The agency operates 58 hydroelectric powerplants averaging an annual total of 42 billion kilowatt-hours of electricity. The Corps is the Nation’s number one source of federal hydroelectricity, operating 75 powerplants for an annual total of 100 billion kilowatt-hours. Federal power generated by both agencies provides up to 5% of the Nation’s electricity supply. In certain regions of the country, such as the Pacific Northwest, the Intermountain West and the Upper Midwest, federal power generation and transmission services play a very significant regional role in their respective electricity markets.

Electricity marketed by the PMAs is sold on a wholesale basis to “preference” customers, which include non-profit municipals, rural electric cooperatives, public utility districts, irrigation districts and Native American tribes. These wholesale customers then ultimately serve over 55 million retail customers. Under numerous authorizing statutes, preference power is sold at “cost-of-service” based rates, which are designed to repay the federal capital investment in federal electricity generation and transmission facilities, annual operation and maintenance of such facilities and federal staffing. Cost-of-service based rates also include the costs of environmental mandates and replacement power services resulting from these mandates.

One major environmental cost stems from the ESA. Over the years, the ESA’s Section 7 requirements have ultimately altered and decreased some federal power generation due to modification of water releases from dams. Since the PMAs are typically under contract with their customers to provide a set amount of power, the PMAs have to purchase replacement power on the open market to make up for lost federal hydropower generation and to meet contractual needs. This replacement power generally costs much more than federal power and is often fossil-fuel based power. Additionally, the PMAs experience direct costs for habitat restoration and protection, structural modifications to facilities, fish hatcheries, and other on-the-ground work. Much of these costs are built into the rate base and have been factors in recent rate hikes.

In light of rising and uncertain ESA compliance costs, particularly in the Pacific Northwest, some PMA customers have called for greater transparency in the way such costs are reported. A May 2005 poll conducted for the Northwest RiverPartners found that “more than 70% either don’t know much they pay for salmon recovery or believe less than 5% of their monthly bills go to salmon recovery” in the Northwest. All four PMA Administrators testified before the Committee on Resources that their agencies do not itemize these costs on monthly wholesale customer bills. Wholesale customer utility representatives also testified before the Committee

that consumers are generally not aware of ESA compliance costs and that ESA cost information is not readily available. One utility which receives wholesale electricity from the Bonneville Power Administration testified that it lists environmental costs on monthly retail consumer bills. However, the utility faced considerable difficulty in acquiring the necessary data and was fortunate to have a retired Bonneville Power Administration official who could understand the information. The Committee understands that the vast majority of PMA customers do not have the financial or technical means to acquire and decipher ESA cost information and that legislation is necessary to provide more transparency on these costs.

H.R. 4857 requires the PMAs to estimate and report the direct and indirect ESA costs to each wholesale firm power customer on a monthly billing basis. Under the bill, the PMAs provide the information to their wholesale customers, who can then decide how or whether to list this information to their retail consumers. Since all PMA operating costs are recovered through wholesale electricity rates, the bill does not seek to add costly operating mandates on the PMAs. As currently drafted, H.R. 4857 would not result in the hiring of new staff or the purchase of new computer software.

The legislation focuses on ESA costs, which are some of the most volatile and uncertain costs faced by many electricity ratepayers today. The PMAs testified that the agencies could implement the ESA cost requirements under the bill at “negligible cost.” However, the addition of other monthly costs, such as measuring irrigation diversion costs on hydropower production and certain debt costs, would result in significant staff and technical costs that would ultimately be passed on to the consumer. For example, PMA staff have indicated that it would require very complex analyses and staff time to measure monthly irrigation diversion impacts when many of the diversions end up flowing back into the basin of origin, depending on the type of water year. It would also be very difficult for PMA staff to measure “benefits” associated with ESA compliance, rather than costs. In the Pacific Northwest, for example, there are many disputed studies on the benefits of endangered salmon restoration. These benefits are very subjective in nature as opposed to the hard numbers associated with costs such as replacement power, foregone generation and staffing.

Ultimately, the point of the legislation is to list the ESA costs so a consumer will have better access to information. This transparency will allow the electricity consumer to make a more informed decision on ESA costs.

COMMITTEE ACTION

H.R. 4857 was introduced on March 2, 2006, by Congresswoman Cathy McMorris (R-WA). The bill was referred to the Committee on Resources. On March 16, 2006, the Committee held a hearing on the bill. On July 19, 2006, the Committee met to consider the bill. No amendments were offered and the bill was ordered favorably reported to the House of Representatives by a 17–10 vote, as follows:

COMMITTEE ON RESOURCES

U.S. House of Representatives

109th CongressDate: July 19, 2006

Convened: _____

Adjourned: _____

Meeting on: Markup of HR 4857 - Motion favorably reporting HR 4857 to the House of
Representative by a Roll Call Vote of 17 Yeas and 10 Nays.

☐ Attendance ☒ Recorded Vote Vote Number 45 Total: Yeas 17 Nays 10

	YEA	NAY	PRESENT		YEA	NAY	PRESENT
Mr. Pombo, CA, Chairman	✓			Mrs. Napolitano, CA		✓	
Mr. Rahall, WV		✓		Mr. Walden, OR	✓		
Mr. Young, AK				Mr. Tom Udall, NM		✓	
Mr. Miller, CA				Mr. Tancred, CO	✓		
Mr. Saxton, NJ				Mr. Mark Udall, CO		✓	
Mr. Markey, MA		✓		Mr. Hayworth, AZ	✓		
Mr. Gallegly, CA				Mr. Grijalva, AZ			
Mr. Kildee, MI		✓		Mr. Flake, AZ	✓		
Mr. Duncan, TN	✓			Mr. Cardoza, CA	✓		
Mr. DeFazio, OR				Mr. Renzi, AZ			
Mr. Gilchrest, MD				Ms. Bordallo, Guam		✓	
Mr. Faleomavaega, AS		✓		Mr. Pearce, NM	✓		
Mr. Calvert, CA	✓			Ms. Herseth, SD	✓		
Mr. Abercrombie, HI		✓		Mr. Brown, SC	✓		
Mrs. Cubin, WY, vice chair				Mr. Costa, CA	✓		
Mr. Ortiz, TX				Mrs. Drake, VA			
Mr. Radanovich, CA				Mr. Melancon, LA			
Mr. Pallone, NJ				Mr. Fortuño, PR	✓		
Mr. Jones, NC	✓			Mr. Boren, OK			
Mrs. Christensen, VI		✓		Miss McMorris, WA	✓		
Mr. Cannon, UT				Mr. Jindal, LA			
Mr. Kind, WI				Mr. Gohmert, TX			
Mr. Peterson, PA	✓			Mrs. Musgrave, CO	✓		
Mr. Inslee, WA				Vacancy			
Mr. Gibbons, NV							
				Total	17	10	

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section cites the bill as the “Endangered Species Compliance and Transparency Act of 2006.”

Section 2. Endangered Species Act compliance estimation and reporting

This section requires the Administrators of the Bonneville Power Administration, the Western Area Power Administration, the Southwestern Power Administration and the Southeastern Power Administration to estimate and report on firm power customers’ monthly power bills compliance costs associated with the Endangered Species Act of 1973 and related activities. Since the Committee understands that it could be cost-prohibitive for each PMA to assess ESA compliance costs on a real-time basis, this section allows each agency to simply estimate and report these costs. The Committee strongly encourages the PMAs to work closely with firm power customers in how costs are estimated and reported.

The Committee understands that the Bonneville Power Administration has many ESA-related activities in the agency’s implementation of the Pacific Northwest Power Planning and Conservation Act. These ESA and Pacific Northwest Power Planning and Conservation Act costs are currently incorporated into the Bonneville Power Administration’s total “Fish and Wildlife” costs. As a result, the Committee understands the need for the agency to include these total “Fish and Wildlife” costs that will be reported under this legislation.

This section defines “direct costs” to include federal agency obligations related to study-related costs, capital, operation, maintenance and replacement costs and staffing costs. The section also defines “indirect costs” to include foregone generation and replacement power costs, including the net costs of any transmission. In hearings before the Committee, the PMAs testified that foregone generation is a cost that is passed on to the wholesale customer, and ultimately, the retail electricity consumer. The Committee agrees with this assessment and expects the power marketing administrations to estimate and report foregone generation costs as a cost of compliance.

This section requires the Bureau of Reclamation and any other affected federal agencies to assist the Administrators with cost identifications for purposes of this Act.

Section 3. Endangered Species Act compliance report

This section requires each Administrator, in coordination with the Bureau of Reclamation and other relevant federal agencies, to submit an annual report to the House Committee on Resources and to the Senate Committee on Environment and Public Works. This report, to be submitted no later than January 30 of each year, will estimate direct and indirect costs associated with ESA compliance on a project-by-project basis for the Western Area Power Administration and on a system-wide basis for the other PMAs.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8, section 3 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, credit authority, or an increase or decrease in revenues or tax expenditures. According to the Congressional Budget Office, enactment of this bill would have a "negligible" net effect on direct spending and spending subject to appropriation.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 4857—Endangered Species Compliance and Transparency Act of 2006

H.R. 4857 would require the Department of Energy's four federal power marketing administrations (PMAs) to report how much they spend to comply with the Endangered Species Act. Those agencies—the Bonneville Power Administration, and the Southeastern, Southwestern, and Western PMAs—market the electricity generated at federally owned dams. Under this bill, the agencies would be required to give their wholesale customers a monthly estimate of the customer's share of the PMA's direct and indirect costs to comply with the Endangered Species Act. The agencies also would have to submit annual reports to Congressional committees on this issue.

CBO estimates that enacting H.R. 4857 would have a negligible net effect on direct spending and on spending subject to appropriation. Based on information from the PMAs, CBO estimates that the department would spend less than \$500,000 a year to develop the information and systems needed for the new reports. Expenses in-

curred by the Bonneville Power Administration would increase direct spending, but such costs would be offset in the future by higher receipts from the sale of electricity. Likewise, any increase in the amount appropriated to the other PMAs to implement the bill would be offset by a corresponding increase in offsetting receipts from their sales of electricity.

H.R. 4857 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

COMPLIANCE WITH HOUSE RESOLUTION 1000

This bill and report contain no provisions which require disclosure under this authority.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes to existing law.

