

## Calendar No. 649

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-297

### FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT OF 2008

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APRIL 10, 2008.—Ordered to be printed

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Mr. BINGAMAN, from the Committee on Energy and Natural  
Resources, submitted the following

### R E P O R T

[To accompany S. 1522]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1522) to amend the Bonneville Power Administration portions of the Fisheries Restoration and Irrigation Mitigation Act of 2000 to authorize appropriations for fiscal years 2008 through 2014, and for other purposes, having considered the same, reports favorably thereon with amendments and an amendment to the title and recommends that the bill, as amended, do pass.

The amendment is as follows:

1. On page 1, line 5, strike “2007” and insert “2008”.
2. On page 3, line 16, strike “2008 through 2014” and insert “2009 through 2015”.
3. Amend the title so as to read: “A bill to amend the Bonneville Power Administration portions of the Fisheries Restoration and Irrigation Mitigation Act of 2000 to authorize appropriations for fiscal years 2009 through 2015, and for other purposes.”.

#### PURPOSE OF THE MEASURE

The purpose of S. 1522 is to amend the Bonneville Power Administration portions of the Fisheries Restoration and Irrigation Mitigation Act of 2000 and to authorize appropriations for fiscal years 2009 through 2015, and for other purposes.

#### BACKGROUND AND NEED

The federal government’s large-scale water projects in the Columbia River Basin provide navigation assistance, flood control, irrigation, hydroelectric power, and various recreational opportuni-

ties in the Pacific Northwest. As juvenile and adult salmon traverse the river systems in the Pacific drainage area of Idaho, Oregon, Washington, and western Montana, the diversion of water for irrigation purposes can adversely affect their migration.

In 2000, Congress enacted the Fisheries Restoration and Irrigation Mitigation Act (FRIMA) to decrease both the fish mortality resulting from irrigation water withdrawals and the incidence of fish entering the water supply systems (P.L. 106–502). The Act established a program within the Department of the Interior to plan, design, and construct fish screens and fish passage devices, and to conduct inventories to provide information for planning and decision-making purposes.

Implemented by the U.S. Fish and Wildlife Service (FWS), FRIMA is a voluntary, cooperative partnership among the federal government and local, state, and tribal governments. Projects must be associated with an irrigation system, or other water diversion; benefit fish species native to the project area; and have a local, state, tribal, or federal government sponsor or co-applicant. No state may receive more than 25% of project funding and grant recipients must contribute at least 35% in non-federal matching funds. The program authorization expired in FY 2005.

#### LEGISLATIVE HISTORY

S. 1522 was introduced on May 24, 2007 by Senator Wyden for himself and Senators Smith, Craig, Murray, Cantwell, Baucus, Crapo, and Tester, and referred to the Committee on Energy and Natural Resources. The Water and Power Subcommittee held a hearing on S. 1522 on July 26, 2007. (S. Hrg. 110–152.) At its business meeting on January 30, 2008, the Committee on Energy and Natural Resources ordered S. 1522 favorably reported as amended.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by voice vote of a quorum present, recommends that the Senate pass S. 1522, if amended as described herein.

#### COMMITTEE AMENDMENT

During the consideration of S. 1522, the Committee adopted a technical amendment to improve the bill. The amendment updates several dates referenced within the text of S. 1522.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* provides the short title of the Act.

*Section 2* amends FRIMA with respect to the cost of projects treated as priorities under the program.

*Section 3* amends FRIMA to allow the Secretary to accept amounts provided by the Bonneville Power Administration, and to count those amounts toward the non-Federal share of the costs of a project.

*Section 4* amends FRIMA with respect to its existing requirements to report to Congress regarding implementation of the program.

*Section 5* amends FRIMA by extending the time period in which appropriations are authorized for the program, and by defining and allocating administrative expenses for the program.

#### COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office:

*S. 1522—Fisheries Restoration and Irrigation Mitigation Act of 2007*

Summary: S. 1522 would reauthorize funding for projects carried out under the Fisheries Restoration and Irrigation Mitigation Act of 2000 (FRIMA). Such projects, which are administered by the U.S. Fish and Wildlife Service (USFWS), help restore fisheries affected by water projects in the northwest United States. The bill also would allow the USFWS to accept and spend amounts provided by the Bonneville Power Administration (BPA) to mitigate damage to fisheries caused by water diversions.

Assuming appropriation of the authorized amounts, CBO estimates that implementing S. 1522 would cost \$115 million over the 2008–2013 period and \$60 million after 2013 (including \$25 million authorized to be appropriated for 2014). Enacting S. 1522 also could increase offsetting receipts (collected from BPA customers) and spending of those receipts (for fisheries restoration), but CBO estimates that any such increases would be minimal and offset each other over time.

S. 1522 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. 1522 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—					
	2008	2009	2010	2011	2012	2013
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	25	25	25	25	25	25
Estimated Outlays .....	5	15	20	25	25	25

Basis of estimate: For this estimate, CBO assumes that S. 1522 will be enacted by the end of fiscal year 2008 and that the entire amounts authorized for fiscal years 2008 through 2013 will be appropriated. Estimated outlays are based on historic spending patterns for USFWS programs.

S. 1522 would authorize the appropriation of \$25 million for each of fiscal years 2008 through 2014. The previous authorization, also of \$25 million annually, expired at the end of fiscal year 2005. Although no amounts were appropriated for FRIMA activities for 2008, in past years appropriations have ranged from \$1 million to \$4 million.

The bill also would allow the USFWS to use any amounts provided by BPA without further appropriation for FRIMA projects and to treat those amounts as the nonfederal contribution toward the cost of such projects. Because any amount provided by BPA to-

ward a FRIMA project would have to be recouped through higher electricity rates charged to its customers, any additional direct spending resulting from this provision would be offset by new offsetting receipts and would therefore have no net impact on the federal budget. Moreover, based on information provided by the USFWS and BPA, CBO estimates that additional offsetting receipts and direct spending would be minimal.

Intergovernmental and private-sector impact: S. 1522 contains no intergovernmental or private-sector mandates as defined in UMRA and would extend an existing program that benefits participating state and local governments. Any costs to those governments would result from complying with conditions of aid.

Estimate prepared by: Federal Costs: Deborah Reis and Kathleen Gramp; Impact on State, Local, and Tribal Governments: Neil Hood; Impact on the Private Sector: Amy Petz.

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

#### REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1522. The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1522, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 1522, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined by rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The testimony provided by the United States Fish and Wildlife Service at the Subcommittee hearing on July 26, 2007 on S. 1522 follows:

#### STATEMENT OF THE FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Chairman Johnson and Members of the Subcommittee, thank you for inviting the U.S. Fish and Wildlife Service (Service) to provide a written statement on S. 1522, to reauthorize the Fisheries Restoration and Irrigation Mitigation Act of 2000 (FRIMA) for fiscal years 2008 through 2014. The Administration supports the principles of FRIMA as one of the tools to conserve and restore native anadromous and resident fish populations in the Pacific Northwest.

On November 13, 2000, Congress enacted Public Law 106-502, the Fisheries Restoration and Irrigation Mitiga-

tion Act (FRIMA). This Act created a voluntary fish passage partnership program administered by the Department of the Interior. The geographic scope of the FRIMA program is the Pacific drainage area of Idaho, Oregon, Washington, and western Montana.

For decades, state, tribal, and federal fishery agencies in the Pacific Northwest have identified the screening of irrigation and other water diversions, and the resultant improvements to fish passage as an effective and important means to protect, recover, and restore native anadromous and resident fish populations. Irrigation districts in the Pacific Northwest also recognize that poorly designed or unscreened water diversions result in fish mortality. Nearly 80 percent of water diversions in the Pacific Northwest are unscreened, and many have passage obstructions that pose a major risk to juvenile and adult threatened and endangered fish, including salmon, steelhead, bull trout, cutthroat trout, and Klamath basin suckers.

The FRIMA program is carried out by the Service on behalf of the Secretary of the Interior, and the program focuses on screening water diversions and improving fish passage. FRIMA projects can result in nearly 100 percent survival of fish at what were often impassable and deadly water control structures. The program promotes both sustainable agriculture and sustainable fisheries and has strong support from both the public and the states—it is an example of the cooperative approach needed to restore depleted, native fish stocks.

The States of Idaho, Montana, Oregon, and Washington, along with tribal and local governments have worked closely with the Service to assure projects are carefully evaluated and prioritized before being funded. Local and state governments have shown a strong commitment to the program, investing their own staff time and dollars to ensure projects are well designed and properly implemented. The FRIMA Steering Committee, made up of state, tribal, and federal representatives, ensures a collaborative approach to program implementation. FRIMA projects have involved the active participation and support of over 200 partners who make up the wide array of conservation districts, counties, cities and towns, irrigation districts, tribes, resource conservation and development councils, and environmental organizations that support this program. One indication of the strong support for this program is the amount of local cost share for FRIMA projects. Although the legislation only requires a non-federal cost share of 35 percent, the local cost share for the FRIMA program has averaged 55 percent.

From fiscal years 2002 through 2006, 121 FRIMA projects have been funded, 59 of which have been completed. In addition, there are many more acceptable projects with partners that are willing to provide their cost share amount. Through 2004 (the most recent year for which summary accomplishment reports are available), FRIMA projects protected 656 miles of stream, fixed 15

fish barriers, installed 68 fish screens, conducted nine inventories, completed five pre-design analyses, and developed one database.

The Administration supports the principles of FRIMA and recognizes that, in some instances, BPA funds are treated as non-federal cost share amounts. However, more study and evaluation is needed to determine whether Bonneville funds should be counted toward the non-federal component of FRIMA.

In conclusion, FRIMA projects contribute to our efforts to restore and conserve anadromous and resident fish populations in the Pacific Northwest. The FRIMA program is cost-effective and operates in a collaborative, partnership-driven manner with private landowners, non-governmental organizations, community leaders, and local, state, and tribal governments. The Administration supports the principles of FRIMA and looks forward to working with the Committee to address concerns with the legislation.

#### CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1522 as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

### **FISHERIES RESTORATION AND IRRIGATION MITIGATION ACT OF 2000**

Public Law 106–502 (114 Stat. 2294)

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the “Fisheries Restoration and Irrigation Mitigation Act of 2000”.

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#### **SEC. 3. ESTABLISHMENT OF THE PROGRAM.**

(a) **ESTABLISHMENT.**—There is established the Fisheries Restoration and Irrigation Mitigation Program within the Department of the Interior.

(b) **GOALS.**—The goals of the Program are—

- (1) to decrease fish mortality associated with the withdrawal of water for irrigation and other purposes without impairing the continued withdrawal of water for those purposes; and
- (2) to decrease the incidence of juvenile and adult fish entering water supply systems.

(c) **IMPACTS ON FISHERIES.**—

- (1) **IN GENERAL.**—Under the Program, the Secretary, in consultation with the heads of other appropriate agencies, shall develop and implement projects to mitigate impacts to fisheries resulting from the construction and operation of water diversions by local governmental entities (including soil and water conservation districts) in the Pacific Ocean drainage area.

(2) TYPES OF PROJECTS.—Projects eligible under the Program may include—

(A) the development, improvement, or installation of—

- (i) fish screens;
- (ii) fish passage devices; and
- (iii) other related features agreed to by non-Federal interests, relevant Federal and tribal agencies, and affected States; and

(B) inventories by the States on the need and priority for projects described in clauses (i) through (iii).

(3) PRIORITY.—The Secretary shall give priority to any project that has a total cost of less than [\$5,000,000] \$2,500,000.

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#### SEC. 7. COST SHARING.

(a) NON-FEDERAL SHARE.—The non-Federal share of the cost of development and implementation of any project under the Program on land or at a facility that is not owned by the United States shall be 35 percent.

(b) NON-FEDERAL CONTRIBUTIONS.—The non-Federal participants in any project under the Program on land or at a facility that is not owned by the United States shall provide all land, easements, rights-of-way, dredged material disposal areas, and relocations necessary for the project.

(c) CREDIT FOR CONTRIBUTIONS.—[The value]

(1) *IN GENERAL*.—*The value* of land, easements, rights-of-way, dredged material disposal areas, and relocations provided under subsection (b) for a project shall be credited toward the non-Federal share of the costs of the project.

(2) *BONNEVILLE POWER ADMINISTRATION*.—

(A) *IN GENERAL*.—The Secretary may, without further appropriation and without fiscal year limitation, accept any amounts provided to the Secretary by the Administrator of the Bonneville Power Administration.

(B) *NON-FEDERAL SHARE*.—Any amounts provided by the Bonneville Power Administration directly or through a grant to another entity for a project carried under the Program shall be credited toward the non-Federal share of the costs of the project.

(d) ADDITIONAL COSTS.—

(1) NON-FEDERAL RESPONSIBILITIES.—The non-Federal participants in any project carried out under the Program on land or at a facility that is not owned by the United States shall be responsible for all costs associated with operating, maintaining, repairing, rehabilitating, and replacing the project.

(2) FEDERAL RESPONSIBILITY.—The Federal Government shall be responsible for costs referred to in paragraph (1) for projects carried out on Federal land or at a Federal facility.

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#### SEC. 9. REPORT.

On the expiration of the third fiscal year for which *any* amounts are made available to carry out this Act, the Secretary shall, *after partnering with local governmental entities and the States in the*

*Pacific Ocean drainage area*, submit to Congress a report describing—

- (1) the projects that have been completed under this Act;
- (2) the projects that will be completed with amounts made available under this Act during the remaining fiscal years for which amounts are authorized to be appropriated under section 10; and
- (3) recommended changes to the Program as a result of projects that have been carried out under this Act.

**SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

(a) **IN GENERAL.**—There is authorized to be appropriated to carry out this Act \$25,000,000 for each of fiscal years [2001 through 2005] *2009 through 2015*.

(b) **LIMITATIONS.**—

(1) **SINGLE STATE.**—

(A) **IN GENERAL.**—Except as provided in subparagraph (B), not more than 25 percent of the total amount of funds made available under this section may be used for one or more projects in any single State.

(B) **WAIVER.**—On notification to Congress, the Secretary may waive the limitation under subparagraph (A) if a State is unable to use the entire amount of funding made available to the State under this Act.

[(2) **ADMINISTRATIVE EXPENSES.**—Not more than 6 percent of the funds authorized under this section for any fiscal year may be used for Federal administrative expenses of carrying out this Act.]

(2) **ADMINISTRATIVE EXPENSES.**—

(A) **DEFINITION OF ADMINISTRATIVE EXPENSE.**—*In this paragraph, the term ‘administrative expense’ means, except as provided in subparagraph (B)(iii)(II), any expenditure relating to—*

- (i) staffing and overhead, such as the rental of office space and the acquisition of office equipment; and*
- (ii) the review, processing, and provision of applications for funding under the Program.*

(B) **LIMITATION.**—

*(i) IN GENERAL.*—Not more than 6 percent of amounts made available to carry out this Act for each fiscal year may be used for Federal and State administrative expenses of carrying out this Act.

*(ii) FEDERAL AND STATE SHARES.*—To the maximum extent practicable, of the amounts made available for administrative expenses under clause (i)—

*(I) 50 percent shall be provided to the State agencies provided assistance under the Program; and*

*(II) an amount equal to the cost of 1 full-time equivalent Federal employee, as determined by the Secretary, shall be provided to the Federal agency carrying out the Program.*

*(iii) STATE EXPENSES.*—Amounts made available to States for administrative expenses under clause (i)—

*(I) shall be divided evenly among all States provided assistance under the Program; and*

*(II) may be used by a State to provide technical assistance relating to the program, including any staffing expenditures (including staff travel expenses) associated with—*

*(aa) arranging meetings to promote the Program to potential applicants;*

*(bb) assisting applicants with the preparation of applications for funding under the Program; and*

*(cc) visiting construction sites to provide technical assistance, if requested by the applicant.*

