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HOUSE OF REPRESENTATIVES
REPORT
113–702

FISH HATCHERY PROTECTION ACT

DECEMBER 22, 2014.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5026]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5026) to prohibit closing or repurposing any propagation fish hatchery or aquatic species propagation program of the Department of the Interior unless such action is expressly authorized by an Act of Congress, and for other purposes, 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. 5026 is to prohibit closing or repurposing any propagation fish hatchery or aquatic species propagation program of the Department of the Interior unless such action is expressly authorized by an Act of Congress.

BACKGROUND AND NEED FOR LEGISLATION

The National Fish Hatchery System was established by the Congress in 1871 to address the growing concern about declining fish populations. The fundamental goals of the federal fish fisheries were to propagate native and non-native species of fish, to work in partnership with the states to restore depleted fish stocks, and to replace lost recreational fishing opportunities by mitigating the impacts of federal water projects.

49–006

Statutory authority for the Federal Fish Hatchery Program is contained in a number of statutes including the Fish and Wildlife Act of 1956, Sikes Act of 1960, Anadromous Fish Conservation Act of 1965, Endangered Species Act of 1973, Fish and Wildlife Improvement Act of 1978, Fish and Wildlife Conservation Act of 1980, Connecticut River Basin Atlantic Salmon Act of 1983, Interjurisdictional Fisheries Act of 1986, Great Lakes Fish and Wildlife Restoration Act of 1990, and various Appropriation acts.

In 1940, there were 136 National Fish Hatcheries. There are currently 68 federal hatcheries located in 34 states and in every region except Alaska. There are approximately 360 Fish and Wildlife Service (FWS) employees working within the hatchery system. At the end of fiscal year 2013, the hatchery system had 4,602 assets that were worth $2.3 billion. Sixteen National Fish Hatcheries were first constructed more than 100 years ago and the average age is more than 70 years. The System has a deferred maintenance backlog of $167.3 million.

According to FWS, the National Fish Hatchery System annually produces and distributes over 140 million fish and 120 million fish eggs for recovery, restoration, mitigation and tribal treaty requirements. The value of these products is over $5 billion. In 2013, nearly 80 million eggs were transferred to federal, state and tribal hatcheries and approximately 128 million fish were released into the wild. Of those fish released, 13.3 million were classified as members of threatened or endangered species.

In 2011, recreational anglers took 69 million trips, caught 345 million fish, supported 364,000 jobs. In total, the recreational fishing industry contributed over $70 billion to our economy. FWS has indicated that the National Fish Hatchery System returns $28 to the national economy for every dollar spent and $3.6 billion to our economy overall. In Mohave County, Arizona, the Willow Creek National Fish Hatchery, whose propagation program was terminated because of a broken pipe in November 2013, supported about 1,700 jobs and had an annual economic input of almost $75 million.

FWS produces these fish and eggs through a series of 291 propagation programs. However, the focus of these programs has dramatically changed over the years. With each passing year, FWS places greater emphasis and money on the recovery and restoration of Federally-listed endangered or threatened species. For instance, of the 291 programs, 171 or nearly 60 percent are dedicated to recovery and restoration. These programs received $18.2 million. There are 56 propagation programs for tribes whose fish is covered by treaties, legislation, court orders or consent decrees. These programs received $5.9 million. Finally, there are 47 propagation programs that raise native and non-native fish. These programs cost $3 million or about 10 percent of the overall funds.

In November 2013, FWS issued a report entitled Strategic Hatchery and Workplace Planning that indicated that "the ESA [Endangered Species Act] compels the Service to give priority to preventing the extinction or extirpation of protecting [sic] fish and wildlife species by regulating actions that would further diminish populations and by working to recover those populations to viability". As a result, the highest priorities of the National Fish Hatchery System will be the recovery and restoration of Federally-listed species and then tribal interests. The lowest priorities will be the

propagation of native and then non-native fish, which are commonly referred to as the mitigation hatcheries.

FWS has publicly stated that no Federal Fish Hatcheries will be closed before September 30, 2014, and the Consolidated Appropriations Act (Public Law 113–6) stipulated that "none of the funds may be used to terminate operations or to close any facility" within the System. This law also provided that the Army Corps of Engineers may transfer to FWS up to $4.7 million for fisheries lost due to federal water projects.

On March 5, 2014, the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs conducted an oversight hearing on the Strategic Report. At the hearing, the FWS Assistant Director for Fish and Aquatic Conservation testified that "it is important to note, however, that a report is not a decision document. It offers management options and recommendations to put the system on a more sound and sustainable financial footing. The Service is using the report to engage partners and stakeholders, including Congress, State Fish and Wildlife Agencies, tribes and others in a discussion on its major findings and recommendations."

Despite these assurances, FWS had already discontinued a number of propagation programs without any input or communication with Congress, states or local communities. This failure to communicate prompted responses from both the Association of Fish and Wildlife Agencies and the Sport Fishing and Boating Partnership Council. In the first letter, the President of the Association representing all 50 states noted that "the report laid out a new desired direction without any direct input from any state partners who all have a vested interest in the management and production of fish from the National Fish Hatchery System." The second letter by the Sport Fishing and Boating Partnership Council stated that "the fact that no stakeholders, including the state agencies that depend on the National Fish Hatchery System, were consulted highlights the significant and problematic lack of transparency in the current direction of the fisheries program."

This legislation would prohibit the Secretary of the Interior from permanently closing, reprogramming, repurposing, decommissioning, significantly altering, or moving to caretaker status any fish and other aquatic species propagation hatchery or propagation program unless such action is expressly authorized by an Act of Congress. The law would be effective beginning on November 1, 2013, and would expire ten years after the date of the enactment of the Act.

COMMITTEE ACTION

H.R. 5026 was introduced on July 8, 2014, by Congressman Paul A. Gosar (R–AZ). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs. On July 23, 2014, the Subcommittee held a hearing on the bill. On July 30, 2014, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Fisheries, Wildlife, Oceans and Insular Affairs was discharged by unanimous consent. No amendments were offered, and the bill was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 25 to 17, as follows:

Committee on Natural Resources
U.S. House of Representatives
113th Congress

Date: July 30, 2014 Recorded Vote #: 2
Meeting on / Amendment on: **H.R. 5026 - TO REPORT**. Adopted and favorably reported to the House of Representatives by a roll call vote of 25 yeas and 17 nays.

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Hastings, WA, Chairman	X			**Mr. Duncan of SC**	X		
Mr. DeFazio, OR, Ranking		X		*Mr. Cardenas, CA*		X	
Mr. Young, AK	X			**Mr. Tipton, CO**	X		
Mr. Faleomavaega, AS				*Mr. Huffman, CA*		X	
Mr. Gohmert, TX	X			**Mr. Gosar, AZ**	X		
Mr. Pallone, NJ				*Mr. Ruiz, CA*		X	
Mr. Bishop, UT	X			**Mr. Labrador, ID**	X		
Mrs. Napolitano, CA		X		*Ms. Shea-Porter, NH*		X	
Mr. Lamborn, CO	X			**Mr. Southerland, FL**	X		
Mr. Holt, NJ		X		*Mr. Lowenthal, CA*		X	
Mr. Wittman, VA	X			**Mr. Flores, TX**	X		
Mr. Grijalva, AZ		X		*Mr. Garcia, FL*		X	
Mr. Broun, GA		X		**Mr. Runyan, NJ**	X		
Ms. Bordallo, GU		X		*Mr. Cartwright, PA*		X	
Mr. Fleming, LA	X			**Mr. Mullin, OK**	X		
Mr. Costa, CA		X		*Ms. Clark, MA*		X	
Mr. McClintock, CA	X			**Mr. Daines, MT**	X		
Mr. Sablan, CNMI				**Mr. Cramer, ND**	X		
Mr. Thompson, PA	X			**Mr. LaMalfa, CA**	X		
Ms. Tsongas, MA		X		**Mr. Smith, MO**	X		
Mrs. Lummis, WY	X			**Mr. McAllister, LA**	X		
Mr. Pierluisi, PR		X		**Mr. Byrne, AL**	X		
Mr. Benishek, MI	X			*Vacancy*			
Ms. Hanabusa, HI							
				TOTALS	25	17	

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 Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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. 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. 5026—Fish Hatchery Protection Act

Summary: H.R. 5026 would prohibit the Secretary of the Interior from permanently modifying or significantly altering the way certain programs within the National Fish Hatchery System would be carried out relative to how they were being carried out as of November 1, 2013. Under H.R. 5026, for a 10-year period following enactment of the bill, any changes to those programs would require express authorization from the Congress. In CBO's view, that directive would effectively authorize sufficient appropriations to continue operating the National Fish Hatchery System in the same way it was operated near the start of fiscal year 2014.

Based on information provided by the U.S. Fish and Wildlife Service (USFWS) and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $203 million over the 2015–2019 period. Enacting H.R. 5026 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 5026 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 H.R. 5026 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—					
	2015	2016	2017	2018	2019	2015–2018
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Estimated Authorization Level	42	43	44	45	46	220
Estimated Outlays	33	39	42	44	45	203

Basis of estimate: For this estimate, CBO assumes that H.R. 5026 will be enacted before the end of 2014 and that the necessary amounts will be appropriated for each fiscal year. Estimated outlays are based on historical spending patterns for similar USFWS activities.

H.R. 5026 would prohibit the Secretary of the Interior from permanently modifying or significantly altering any fish hatchery or breeding program within the National Fish Hatchery System unless the Congress explicitly authorizes such changes. That limitation would be in effect beginning on November 1, 2013, and ending 10 years after enactment of the bill. As of November 1, 2013, the USFWS had received about $41 million to operate fish hatcheries and carry out programs in 2014 that would be affected under the bill. CBO expects that the agency would require similar levels of appropriated funds (adjusted for inflation) to continue to operate the fish hatcheries and programs in the same way they were being operated as of November 1, 2013.

Pay-As-You-Go considerations: None.

Intergovernmental and private-sector impact: H.R. 5026 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. Those governments would benefit from the continued operation of federal fishery conservation activities.

Estimate prepared by: Federal cost: Jeff LaFave; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

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

2. Section 308(a) of 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. Based on information provided by the U.S. Fish and Wildlife Service (USFWS) and assuming appropriation of the necessary amounts, CBO estimates that implementing the bill would cost $203 million over the 2015–2019 period.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to prohibit closing or repurposing any propagation fish hatchery or aquatic species propagation program of the Department of the Interior unless such action is expressly authorized by an Act of Congress.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does establish or reauthorize a program of the federal government known to be duplicative of another federal program. While such program was not included in a report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, it was identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs, namely the Interjurisdictional Fisheries Act of 1986, Fish and Wildlife Management Assistance and Wildlife Restoration; and the Lower Snake River Compensation Plan. This further demonstrates that the National Fish Hatchery System is used to fulfill legal requirements of the Department of the Interior under several laws and programs.

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 in existing law.

DISSENTING VIEWS

H.R. 5026—THE FISH HATCHERY PROTECTION ACT

H.R. 5026 would prohibit the Secretary of the Interior from permanently closing, reprogramming, repurposing, decomissioning, significantly altering, or moving to caretaker status any program within the National Fish Hatchery System (NFHS) for 10 years from the date the bill is enacted, unless such action is expressly authorized by an Act of Congress. This bill is a direct response to the U.S. Fish and Wildlife Service's (Service) recent suspension of rainbow trout propagation activities at the Willow Beach National Fish Hatchery in Mohave County, Arizona. Last year the two intake pipes used to feed the trout hatchery were rendered inoperative due to deferred maintenance resulting from a significant maintenance backlog within the NFHS. Because of the backlog, the Service does not have the funds available to repair the pipes at Willow Beach or make repairs at scores of other hatcheries around the country.

Like many Service programs, the NFHS has experienced an erosion of base funds due to reductions in appropriations, inflation and other factors. At the same time, the program has also experienced significant increases in requisite operating costs, particularly those related to energy. The lack of funding has forced the Service to prioritize core functions in the hatchery system, which it did publicly in its Strategic Hatchery and Workforce Planning Report released last year. Committee Republicans have criticized the Service for placing a lower priority on NFHS propagation programs, which stock local waterways with non-native sport fish. However, the Service has a clear responsibility to focus first on restoring endangered aquatic species, maintaining populations of native fish, and meeting Tribal trust obligations.

By failing to address the overarching budgetary issues within the NFHS, this bill would simply hamstring the Service into continuing all existing propagation programs in outdated facilities for the next ten years without adequate funding. This will simply lead to more failures like the one in Arizona which inspired this legislation, and prevent the Service from making changes necessary to ensure the NFHS is operating as efficiently and effectively as possible. Further, the Congressional Budget Office (CBO) has estimated that this legislation will cost more than $200 million to implement. Much smaller CBO scores have been used as an excuse to prevent

Democratic legislation from advancing to a floor vote. For these reasons, we oppose H.R. 5026.

PETER DEFAZIO,
Ranking Member, Committee on Natural Resources.

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