

**H.R. 4723, the “Salmon Focused Investments in Sustainable Habitats Act of 2019” or
“FISH Act of 2019”**

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Sponsor: Congressman Huffman (D-California)

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Referred to the House Natural Resources Committee and in addition, to the House Agriculture Committee and the House Foreign Affairs Committee for a period to be subsequently determined by the Speaker in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

Section 1. Short Title.

Section 2. Findings.

Section 3. Definitions. The bill would create the following definitions:

- “salmon conservation area” – the bill would define “salmon conservation area” to mean a watershed, portion of a watershed, multiple watersheds or other defined spatial units that: are identified by the Administrator of NOAA and the Director of the Fish and Wildlife Service, in cooperation with other relevant Federal agencies, under section 4(b); meet the 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 identified by the Administrator and the Director in coordination with other relevant Federal agencies with jurisdiction over such “salmon conservation areas”.
- “salmon stronghold” – the bill would define “salmon stronghold” to mean a “salmon conservation area” that has relatively high anadromous salmonid abundance productivity, diversity (genetic and life history), habitat quality, or other biological attributes important to sustaining viable populations of salmon throughout their range. The bill clarifies that the term “stronghold” can be applied to a watershed, multiple watersheds, or other defined spatial units where populations are strong and diverse, and habitats have a high intrinsic potential to support a particular species or suite of species.
- “relevant Federal agency” – the bill would define “relevant Federal agency” as the Forest Service, the Bureau of Land Management, the National Park Service, the National Oceanic and Atmospheric Administration (NOAA), and the Fish and Wildlife Service.

Section 4. Identification of Salmon Conservation Areas. The bill would require the Administrator of NOAA and the Director of the Fish and Wildlife Service to jointly issue guidance on the process and biological criteria required to identify “salmon conservation areas”. The bill would require that the guidance be issued within 60 days of the date of the enactment of this legislation.

The bill would require the Administrator and the Director, in cooperation with relevant Federal agencies, to publish a list of salmon conservation areas within 180 days of the enactment of this legislation.

The bill would allow other entities (defined in the bill to include a State in which a salmon conservation area is located, an Indian Tribe that has land rights fishing rights or cultural ties to the area in which a salmon conservation area is located, non-governmental organizations, non-Federal scientists, or members of the public) to nominate a “salmon conservation area” to the Administrator or the Director for identification.

The bill would require the Administrator and the Director to jointly determine whether a nominated watershed is a “salmon conservation area”. Such a determination must be made within 180 days of receiving the nomination.

The bill would require the Administrator and the Director, in cooperation with other relevant Federal agencies, to revise the list of “salmon conservation areas” if areas are nominated and reviewed by an entity listed above.

The bill would require the Administrator and the Director, in cooperation with other relevant Federal agencies, in identifying a “salmon conservation area” to consult with a State in which a salmon conservation area is located, an Indian Tribe that has land rights fishing rights or cultural ties to the area in which a salmon conservation area is located.

The bill would allow the Administrator and the Director, in cooperation with other relevant Federal agencies, in identifying a “salmon conservation area” to consult with non-governmental organizations, non-Federal scientists, or members of the public.

The bill would require the Administrator and the Director, in cooperation with the Secretary of Agriculture, to use watershed evaluations conducted under the Watershed Condition Framework under section 304 of the Healthy Forests Restoration Act of 2003 and analyses associated with the identification of Conservation Watersheds to support the identification of “salmon conservation areas”.

The bill would require the Administrator and the Director to use the analyses conducted by the Administrator used to identify, map, and designate essential fish habitat under the Magnuson-Stevens Fishery Conservation and Management Act to support the identification of “salmon conservation areas”.

Section 5. Effect of Identification.

The bill would require the Secretary of Agriculture to give priority to forest road decommissioning and fish passage projects within a designated “salmon conservation area”.

The bill would, notwithstanding any other provision of law, deem that any Federal action carried out with respect to a “salmon conservation area” under this Act has the least adverse impact on the “salmon conservation area” under the National Environmental Policy Act (NEPA).

The bill would require that if any “salmon conservation area” is determined by a Federal agency to be negatively impacted by transboundary pollution or other international actions originating in Canada, the head of the Federal agency must notify the Secretary of State.

The bill would require that within 30 days of such a notification, the Secretary of State to consult with representatives from Canada to resolve the issue. If the issue is not resolved within 6 months, the bill would require the Secretary of State to request a joint referral (with Canada) to the International Joint Commission to research and provide recommendations to resolve the issue. If a joint referral is not submitted, the Secretary of State is required to refer the issue to the International Joint Commission.

Section 6. Watershed Management and Restoration Program.

The bill would amend the Healthy Forests Restoration Act of 2003 to authorize appropriations of \$40 million for Fiscal Year 2020 and \$40 million for each of the four fiscal years thereafter.

The bill would require the Secretary of Agriculture to use a portion of the appropriated funds to carry out the conservation watersheds program of the Department of Agriculture.

The bill would allow the Secretary of Agriculture to use the appropriated funds under this subsection to identify additional priority watersheds in each National Forest if such watershed, or a portion of the watershed, is determined by the Secretary to be a “salmon conservation area”.

Section 7. Grant Program.

The bill would require the National Fish and Wildlife Foundation (NFWF) to carry out a “Salmon Conservation Area Grant Program”. In making grants, NFWF is required to give priority to an “eligible entity” that demonstrates that the entity: will carry out a project on a “salmon stronghold”; has considered the durability of the project and how the project contributes to long-term conservation of salmon; has coordinated with other stakeholders to carry out the project; and has considered how the project will work with other salmon restoration projects.

An “eligible entity” is defined in the bill to mean an Indian Tribe, non-governmental organization, State or local agency, or institution of higher education that has approval to carry out a project with respect to a “salmon conservation area” from the relevant Federal agency that has jurisdiction over the “salmon conservation area”.

The bill would require each eligible entity (other than an Indian Tribe) that receives a grant to provide in cash or through in-kind contributions from non-Federal sources, matching funds in an amount not less than 25 percent of the cost of the activities.

The bill would limited the duration of a grant issued under this section to five years.

The bill would require an eligible entity, in order to be eligible to receive a grant, to submit an application to NFWF containing such information as NFWF might require.

The bill describes the purposes for which a grant may be used as:

- (1) to protect or maintain “salmon conservation area” features and projects that are focused on conservation and restoration within “salmon conservation areas”; and
- (2) to carry out at least one of the following:
 - (A) to address factors threatening to limit abundance, productivity, diversity, habitat quality or other biological attributes important to sustaining viable salmon populations;
 - (B) to restore or maintain ecological functions and processes related to salmon productivity and diversity at watershed or subwatershed scales;
 - (C) to improve the resilience of salmon populations in response to acute events such as fires, landslides, and earthquakes;
 - (D) to improve the resilience of salmon populations to climate change and prepare populations for other future changes;
 - (E) to provide co-benefits to fish and wildlife, in particular where salmon can be used as indicator species for habitat quality;
 - (F) to implement focused, prioritized protection and restoration in watersheds; or
 - (G) to improve conservation area resilience both downstream and upstream.

The bill would require grant recipients to use the grant funds to carry out activities consistent with the purposes listed above which may also include land acquisition, conservation easements, and land exchanges (however, no project that will result in the acquisition or interest of land by a relevant Federal agency may receive funds unless the project is consistent with the purposes of the bill and no Federal funds may be made available to acquire real property or interest in real property without the written consent of each owner of the property or interest in the property).

The bill would prohibit the transfer of land, or interest in land, acquired in whole or in part by any relevant Federal agency or eligible entity with funds made available under this section to carry out a “salmon conservation area” project to a State, other public agency or other entity unless the Administrator, NFWF, and the relevant Federal agency with jurisdiction over such land determine that the State, agency, or other entity is committed to manage the property that is being transferred in accordance with this section and the purposes of this section. The bill would also require that the deed or other instrument of transfer for any transferred property contain provisions for the reversion of the title to the property to the U.S. if the State, agency, or entity fails to manage the property as a “salmon conservation area” in accordance with the purposes of this section.

The bill would require that any real property interest conveyed under this section be subject to the same terms and conditions as will ensure, to the maximum extent practicable, that the interest will be administered in accordance with the purposes of this section.

The bill would require grant recipients to use the grant funds to carry out activities consistent with the purposes listed above which may also include: the purchase of mining rights; the improvement of fish passages and removal of fish passage barriers and dams; restoration and rehabilitation of habitat; outreach and local engagement; the purchase of water rights related to leasing consumption and use; groundwater recharge projects; water efficiency projects; regional planning or development of a focused, prioritized protection and restoration action plan for the watershed; or monitoring and research including monitoring of the status of salmon populations in watershed within “salmon conservation areas” before and after dam removal.

The bill would prohibit the use of any funds made available under this section to carry out litigation.

The bill would require that within 5 years on which the first grant is issued, NFWF shall submit a report to Congress (Senate Commerce, Science, and Transportation Committee and the House Natural Resources Committee) that includes:

- an evaluation on the results of each project and a recommendation on strategies and approaches to focusing on salmon conservation actions projected to have the greatest positive impacts on abundance, productivity, or diversity in “salmon conservation areas;
- conclusions and recommendations on appropriate metrics to measure and evaluate the efficacy of salmon conservation efforts including key indicators for habitat and aquatic health and recommendations on quantifying such benefits;
- status and trends for wild salmon abundance, diversity, and productivity in each “salmon conservation area”; and
- social and economic effects resulting from “salmon conservation area” conservation and an assessment of threats imposed by changing ocean conditions on marine survival.

The bill would authorize \$30 million for Fiscal Year 2020 and \$30 million for each of the fiscal years thereafter.

Section 8. Limitations.

The bill would clarify that no action to implement the provisions of the bill may be construed to create a reserved water right, express or implied, in the U.S. or affect the management or priority of water rights under State law.

The bill would clarify that no action to implement the provisions of the bill may be construed to affect existing water rights under State or Federal law.

The bill would clarify that no action to implement the provisions of the bill may be construed to affect any Federal or State law in existence on the date of enactment of this legislation regarding water quality or water quantity.

The bill would clarify that no action to implement the provisions of the bill may be construed to abrogate, abridge, affect, modify, supersede, or otherwise alter any right of a federally-recognized Indian Tribe under any applicable treaty or Federal or tribal law or regulation.

The bill would clarify that no action to implement the provisions of the bill may be construed to diminish or affect the ability of a head of a relevant Federal agency to join the adjudication of rights to the use of water pursuant to certain sections of the Department of Justice Appropriations Act of 1953.