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SENATE

{ REPORT  
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### PUGET SOUND RECOVERY ACT OF 2010

SEPTEMBER 16, 2010.—Ordered to be printed

Mrs. BOXER, from the Committee on Environment and Public Works, submitted the following

### R E P O R T

[To accompany S. 2739]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 2739) to provide for implementation of the Puget Sound comprehensive conservation and management plan, having considered the same, reports favorably thereon with an amendment and an amendment to the title and recommends that the bill, as amended, do pass.

#### GENERAL STATEMENT AND BACKGROUND

Puget Sound, a fjord-like estuary in north-west Washington State, is one of the most productive and biologically diverse ecosystems on earth serving as home to more than 200 species of fish; 25 kinds of marine mammals; 100 species of sea birds; and clams, oysters and shrimp. The Sound is a cornerstone of the Pacific Northwest's identity. The surrounding region is home to nearly 4 million people, and the Sound itself generates \$20 billion in economic activities annually.

The Puget Sound and its ecosystem, fisheries, and habitats are threatened by many different factors, including pollution, habitat loss and degradation, and introduced species. Species including the Puget Sound Chinook salmon, Hood Canal summer chum salmon, and Coastal and Puget Sound bull trout are listed as threatened under the Endangered Species Act. Up to 70 percent of all its original estuaries and wetlands have disappeared and about 8,700 acres at the bottom of the Sound are contaminated with toxic sediment.

The Federal Government has a role to play in the protection and restoration of this important estuary for reasons that include the Federal Government's ownership of 40 percent of the land in the Puget Sound basin; the estuary's existence as part of an international marine ecosystem; and the Federal Government's responsibility for the protection and recovery of many of the Sound's most iconic species like the orca whales, chinook salmon, and bull trout. In recognition of the Federal Government's responsibility, Puget Sound was given priority status in the 1987 amendments to the Clean Water Act and became one of the original programs in the National Estuary Program.

The first Puget Sound comprehensive conservation and management plan was approved in 1991. In 2007, Washington State created a new State agency, the Puget Sound Partnership, to reinvigorate restoration efforts. The Puget Sound Partnership released an Action Agenda in December 2008 which describes a set of actions and priorities to restore and protect Puget Sound by 2020. The Action Agenda was approved by the Environmental Protection Agency in summer 2009 as the Puget Sound comprehensive conservation and management plan under section 320 of the Clean Water Act.

The Puget Sound Recovery Act of 2010 amends the Clean Water Act to authorize increased Federal funding to support the protection and restoration of the Puget Sound. The bill authorizes the Administrator of the Environmental Protection Agency to provide funding for projects prioritized by the Puget Sound Partnership, and approved by the EPA, that will meet the goals and objectives described in the Action Agenda. The bill requires the President to submit, as part of the annual budget for the Federal Government, a crosscut budget describing the activities of each Federal agency regarding Puget Sound protection and restoration.

#### OBJECTIVES OF THE LEGISLATION

The objectives of this legislation are to provide Federal support for Puget Sound protection and restoration as well as enhance coordination between Federal partners and local stakeholders in implementing the Puget Sound comprehensive conservation and management plan.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section notes that this act may be cited as the "Puget Sound Recovery Act of 2010."

##### *Section 2. Puget Sound*

This section amends 33 U.S.C. Sec. 1251 (Congressional declaration of goals and policy) to provide for Federal funding to protect and restore the Puget Sound.

(a) Definitions. Defines terms included in this act.

(b) Delegation of Authority; Staffing. Requires the Administrator to delegate to the Regional Administrator for Region 10 of the Environmental Protection Agency such authority and staffing as are necessary to carry out this section.

(c) Duties. Delineates the duties of the Administrator, acting through the Regional Administrator, necessary to carry out this

section, including: (A) Carry out the duties assigned to the Administrator under section 320 as a member of the management conference; (B) assist in the development and evaluation of the annual priority list; (C) provide funding for activities, projects, programs and studies identified in the annual priority list; (D) promote innovative methodologies and technologies; (E) coordinate the major functions of the Federal Government relating to implementation of the comprehensive plan; (F) coordinate scientific research; (G) assist the Puget Sound Partnership in tracking progress toward meeting the goals and objectives of the comprehensive plan; and (H) coordinate restoration activities with Canadian authorities.

Authorizes the Administrator, acting through the Regional Administrator, to enter into interagency agreements, facilitate intergovernmental personnel appointments, provide funding, and use other available methods to carry out the duties of this Administrator under this section.

(d) Annual Priority List. In order to facilitate stakeholder control over restoration priorities and adherence to the goals and objectives of the comprehensive plan, this provision requires the Puget Sound Partnership annually to compile a priority list of projects for the Administrator to fund according to the terms outlined in subsection (e). That list should include specific projects, programs, and studies that will meet the goals and objectives of the approved comprehensive plan. Subsection (d) details the procedures the Partnership must follow in compiling the list and EPA must follow in approving it. If in any year the Partnership fails to compile a priority list, the Administrator is authorized to compile the priority list in accordance with the guidelines provided.

(e) Implementation of Comprehensive Plan. Authorizes the Administrator, acting through the Regional Administrator, to (A) provide a comprehensive grant to the Puget Sound Partnership for use in fulfilling its obligations under this section and section 320; (B) reserve funds to carry out the responsibilities of the Administrator under this section; (C) implement cooperative agreements or provide grants to Puget Sound tribes; and (D) otherwise provide funding to implement activities, projects, programs, or studies identified in the annual priority list.

Subsection (e) details the conditions for funding eligibility. Those conditions include a requirement that the Puget Sound Partnership must define and adopt the measurable outcomes, near-term benchmarks, and long-term targets that are necessary to meet the goals and objectives of the comprehensive plan before receiving any funding under subsection (e) of this act.

Subsection (e) ensures funding made available to carry out this section is distributed in a timely fashion by requiring it be obligated within 180 days. Although this timeline is short by conventional standards, the committee feels it is both appropriate and feasible considering that the priority activities, projects, programs and studies requiring funding will have already been identified by the Puget Sound Partnership. Thus, the administrative workload for EPA should be much less than if EPA were working alone.

(f) Annual Budget Plan. Requires the President to submit as part of his annual budget both an annual crosscut budget describing amounts obligated and budgeted for Puget Sound protection and restoration as well as a description and assessment of the Federal

role and contribution toward implementation of the comprehensive plan.

(g) Report. Requires that the Administrator and Executive Director of the Puget Sound Partnership jointly submit to Congress a report that summarizes progress made toward implementing the comprehensive plan and toward achieving its goals and objectives.

(h) Authorization of Appropriations. Authorizes \$90,000,000 for each of fiscal years 2011 through 2015. Renders the Puget Sound Partnership ineligible to receive funding under section 320, the National Estuary Program, for any fiscal year in which it receives a comprehensive grant under subsection (e).

#### LEGISLATIVE HISTORY

Senator Maria Cantwell (WA) introduced the Puget Sound Recovery Act of 2009 on November 5, 2009. The bill was co-sponsored by Senator Patty Murray (WA). The bill was received, read twice and referred to the Committee on Environment and Public Works.

On June 30, 2010, the Full Committee met to consider a number of bills including S. 2739. During this meeting, the Committee considered S. 2739 and adopted an amendment in the nature of a substitute offered by Senator Benjamin L. Cardin. In addition to technical changes, the substitute amendment made several modifications to the underlying bill with the intent of achieving the following objectives:

- Make clear that the Puget Sound restoration effort remains part of the section 320 program and subject to the requirements of that program and remove any elements of the bill that created duplicative structures or authorities;
- Align the funding program created under this act with the goals and objectives of the Puget Sound comprehensive conservation and management plan created and approved under section 320; and
- Increase the Administrator's control over and accountability for federal funding made available under this act while maintaining stakeholders' authority to determine restoration and protection priorities.

Since a management structure exists in accordance with section 320 requirements, the substitute eliminates the advisory council established in the bill as introduced. The substitute also eliminates provisions establishing a Puget Sound Program Office and instead leaves the Regional Administrator in charge of implementing the Agency's duties under the act. It is, however, the Committee's intent that the Regional Administrator facilitates coordination between the EPA, other Federal partners, and the Puget Sound Partnership. The Regional Administrator should consider several methods for enhancing such coordination including regular meetings; collocation of staff with, or in close proximity to, the Puget Sound Partnership; joint trainings, and use of the same performance management system.

Instead of authorizing the Puget Sound Partnership and the Administrator to implement parallel grant programs, the substitute amendment requires the Puget Sound Partnership receive a block grant of \$5 million or 7.5% of funds made available under this section and directs the Administrator to implement a grant program

and otherwise provide funding to achieve the goals and objectives of the comprehensive plan.

A letter dated June 29, 2010 from Senators Maria Cantwell and Patty Murray to Senator Cardin expressing support for the substitute amendment was entered into the record. S. 2739 was ordered to be reported with an amendment in the nature of a substitute favorably by voice vote.

#### HEARINGS

On February 24, 2010, the Full Senate Committee on Environment and Public Works and the Subcommittee on Water and Wildlife held a joint hearing on legislative approaches to protecting Great Water Bodies (i.e., Lake Tahoe, Puget Sound, Long Island Sound, Columbia River Basin, and the Great Lakes). The hearing included a discussion of S. 2739, the Puget Sound Recovery Act. Senator Cantwell testified in support of the bill.

#### ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 2739 on June 30, 2010. The bill was ordered to be reported favorably with an amendment in the nature of a substitute by voice vote.

#### REGULATORY IMPACT STATEMENT

In compliance with section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 3119 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), the committee noted that the Congressional Budget Office (CBO) has found, "S. 2739 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."

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

JULY 13, 2010.

Hon. BARBARA BOXER,  
*Chairman, Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MADAM CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2739, the Puget Sound Recovery Act of 2010.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

*S. 2739—Puget Sound Recovery Act of 2010*

Summary: S. 2739 would authorize the appropriation of \$90 million annually over the 2011–2015 period for the Environmental Protection Agency (EPA) to support activities related to implementing the comprehensive conservation and management plan for the Puget Sound, including providing grants to the Puget Sound tribes, state agencies, local governments, or nonprofit organizations.

Assuming appropriation of the authorized funds, CBO estimates that implementing S. 2739 would cost \$388 million over the 2011–2015 period and \$62 million after 2015.

Pay-as-you-go procedures would not apply to this legislation because it would not affect direct spending or revenues.

S. 2739 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. 2739 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—					
	2011	2012	2013	2014	2015	2011–2015
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Authorization Level .....	90	90	90	90	90	450
Estimated Outlays .....	41	77	90	90	90	388

Basis of estimate: For this estimate, CBO assumes that S. 2739 will be enacted near the beginning of fiscal year 2011 and that authorized amounts will be appropriated in each year. Estimated outlays are based on historical spending patterns for similar programs.

Pay-as-you-go considerations: None.

Intergovernmental and private-sector impact: S. 2739 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. State and tribal governments would benefit from grants authorized by the bill.

Estimate prepared by: Federal Costs: Susanne S. Mehlman; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill as 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:

\* \* \* \* \*

**FEDERAL WATER POLLUTION CONTROL ACT**

\* \* \* \* \*

**TITLE I—RESEARCH AND RELATED PROGRAMS**

**DECLARATION OF GOALS AND POLICY**

**SEC. 101. (a)** \* \* \*

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**SEC. 122. WET WEATHER WATERSHED PILOT PROJECTS.**

(a) **IN GENERAL.**—\* \* \*

\* \* \* \* \*

**SEC. 123. PUGET SOUND.**

(a) **DEFINITIONS.**—*In this section:*

(1) **ANNUAL PRIORITY LIST.**—*The term ‘annual priority list’ means the annual priority list compiled under subsection (d).*

(2) **COMPREHENSIVE PLAN.**—*The term ‘comprehensive plan’ means—*

(A) *the Puget Sound Action Agenda, a comprehensive conservation and management plan approved under section 320; and*

(B) *any amendments to that plan.*

(3) **EXECUTIVE DIRECTOR.**—*The term ‘Executive Director’ means the Executive Director of the Puget Sound Partnership.*

(4) **PUGET SOUND FEDERAL CAUCUS.**—*The term ‘Puget Sound Federal Caucus’ means the caucus composed of—*

(A) *the 13 Federal agencies that signed a memorandum of understanding on November 17, 2008, to establish a collaborative effort among Federal agencies to better integrate, organize, and align Federal efforts in the Puget Sound ecosystem with the comprehensive plan; and*

(B) *such other Federal agencies as the Administrator determines to be appropriate.*

(5) **PUGET SOUND PARTNERSHIP.**—*The term ‘Puget Sound Partnership’ means the agency of the State of Washington, together with associated councils, boards, panels, and caucuses, that is—*

(A) *formed under authority of State law for the purpose of protecting and restoring Puget Sound; and*

(B) *designated as the management conference under section 320.*

(6) **PUGET SOUND TRIBE.**—*The term ‘Puget Sound tribe’ means any of the federally recognized Indian tribes within the Puget Sound Basin.*

(7) **REGIONAL ADMINISTRATOR.**—*The term ‘Regional Administrator’ means the Regional Administrator for Region 10 of the Environmental Protection Agency.*

(b) **DELEGATION OF AUTHORITY; STAFFING.**—*The Administrator shall delegate to the Regional Administrator such authority, and provide such additional staff, as are necessary to carry out this section.*

(c) **DUTIES.**—

(1) **IN GENERAL.**—*In carrying out this section, the Administrator, acting through the Regional Administrator, shall—*

(A) carry out the duties assigned to the Administrator under section 320 as a member of the management conference under that section;

(B) assist in the development and evaluation of the annual priority list;

(C) provide funding for activities, projects, programs, and studies identified in the annual priority list as necessary to meet the goals and objectives of the comprehensive plan;

(D) promote innovative methodologies and technologies that are cost-effective and able to meet the identified goals and objectives of the comprehensive plan and Environmental Protection Agency permitting processes;

(E) coordinate the major functions of the Federal Government relating to the implementation of the comprehensive plan, including activities, projects, programs, and studies for—

(i) water quality improvements;

(ii) wetland, riverine, and estuary restoration and protection;

(iii) nearshore restoration and protection;

(iv) adaptation to climate change;

(v) critical land protection or acquisitions; and

(vi) endangered species recovery;

(F) coordinate the scientific research projects authorized under this section with the activities of Federal agencies, State agencies, Indian tribes, institutions of higher education, and the Science Panel of the Puget Sound Partnership, including conducting or commissioning studies proposed by the Science Panel and included in the annual priority list;

(G) assist the Puget Sound Partnership in tracking progress toward meeting the identified goals and objectives of the comprehensive plan by—

(i) providing information to the performance management system used by the Puget Sound Partnership for the purpose of tracking progress; and

(ii) coordinating, managing, and reporting environmental data relating to Puget Sound in a manner consistent with methodologies used by the Puget Sound Partnership, including, to the maximum extent practicable, making such data and reports on such data available to the public, including on the Internet, in a timely manner; and

(H) coordinate activities, projects, programs, and studies for the protection of Puget Sound, the Strait of Georgia, and the Strait of Juan de Fuca with Canadian authorities.

(2) IMPLEMENTATION METHODS.—The Administrator, acting through the Regional Administrator, may enter into interagency agreements, make or facilitate intergovernmental personnel appointments, provide funding, provide grants, and use other available methods in carrying out the duties of the Administrator under this subsection.

(d) ANNUAL PRIORITY LIST.—

(1) IN GENERAL.—After providing for public comment and review, the Puget Sound Partnership shall annually compile a

priority list identifying the intended uses of the amounts made available for grants under subsection (e).

(2) INCLUSIONS.—*The annual priority list shall include—*

(A) *a prioritized list of specific activities, projects, programs, and studies that will meet the goals and objectives of the approved comprehensive plan;*

(B) *information on the activities, projects, programs, and studies to be supported, including a description of—*

(i) *the terms of financial assistance; and*

(ii) *the communities to be served; and*

(C) *the criteria and methods established by the Puget Sound Partnership for selection of activities, projects, programs, and studies.*

(3) APPROVAL.—

(A) IN GENERAL.—*Notwithstanding any other provision of this Act, the identification and determination of the priority of activities, projects, programs, and studies shall be—*

(i) *made by the Puget Sound Partnership, in consultation with the Puget Sound Federal Caucus; and*

(ii) *be subject to approval by the Administrator.*

(B) PRIORITY LIST.—*Approval by the Administrator of the annual priority list shall be based on a determination of whether the projects listed advance the goals and objectives of the approved comprehensive plan.*

(C) FAILURE OF ADMINISTRATOR TO RESPOND.—*If, by the date that is 90 days after the date of submission to the Administrator of an annual priority list by the Puget Sound Partnership, the Administrator fails to respond to the submission in writing, the annual priority list shall be considered to be approved.*

(4) FAILURE TO COMPILE LIST.—*If, for any year, the Puget Sound Partnership fails to compile an annual priority list in accordance with paragraph (1), the Administrator shall compile a priority list for that year that includes—*

(A) *activities and projects that advance the goals and objectives of the approved comprehensive plan; and*

(B) *any identified activities and projects from previously approved priority lists that have not yet been funded.*

(e) IMPLEMENTATION OF COMPREHENSIVE PLAN.—

(1) IN GENERAL.—*The Administrator, acting through the Regional Administrator, may provide grants for activities, projects, programs, and studies to implement the comprehensive plan.*

(2) FUNDING.—*In providing funding under this subsection, the Administrator shall use—*

(A) *the greater of \$5,000,000 or 7.5 percent of the funds made available under this section to provide a comprehensive grant to the Puget Sound Partnership for use in—*

(i) *tracking the implementation of the comprehensive plan;*

(ii) *monitoring environmental outcomes;*

(iii) *updating the comprehensive plan;*

(iv) *developing the annual priority list; and*

(v) performing other administrative activities relating to the management and implementation of the comprehensive plan;

(B) not more than 5 percent of the funds made available under this section to carry out the responsibilities of the Administrator under this section;

(C) not less than the greater of \$3,000,000 or 5 percent of the funds made available under this section to implement cooperative agreements or provide grants to Puget Sound tribes to carry out specific activities, projects, programs, or studies identified in the annual priority list; and

(D) the remainder of the funds made available under this section to provide grants for use in implementing specific activities, projects, programs, or studies identified in the annual priority list to—

(i) State or regional agencies or entities;

(ii) local governments; or

(iii) other public or nonprofit agencies, institutions, or organizations.

(3) CONDITIONS FOR GRANT ELIGIBILITY.—

(A) IN GENERAL.—An entity shall be eligible for funding under paragraph (2)(C) only if funds will be used for projects and activities that are—

(i) identified in the annual priority list; and

(ii) advance the goals and objectives of the approved comprehensive plan.

(B) ELIGIBILITY OF STATE AGENCIES.—If the Administrator implements a competitive process to provide awards under this subsection, the State of Washington (including all agencies and departments of the State) shall be eligible to participate in the process.

(C) MEASURABLE OUTCOMES, BENCHMARKS, TARGETS.—The Administrator shall provide grants under paragraph (2) if, in the judgment of the Administrator, the Puget Sound Partnership has defined and adopted the measurable outcomes, near-term benchmarks, and long-term targets that are necessary to meet the goals and objectives of the comprehensive plan.

(4) DISTRIBUTION.—Not later than 180 days after the date on which funds are made available to carry out this section, the Administrator shall obligate all funds made available for grants under paragraph (2).

(5) FAILURE TO DISTRIBUTE.—If all funds made available for grants under paragraph (2) are not obligated by the date specified in paragraph (4), the Administrator shall promptly submit to the appropriate committees of the Senate and the House of Representatives a report that—

(A) describes the reasons for the failure to obligate the funds; and

(B) provides a date certain by which all funds will be distributed.

(6) FEDERAL SHARE.—The Federal share of the cost of a project, program, or study carried out under this subsection shall be—

(A) not more than 75 percent of the annual aggregate costs of the activities described in paragraph (2)(A); or

(B) not more than 50 percent of the cost of an activity project, program, or study funded under paragraph (2)(C).

(7) FORM OF NON-FEDERAL SHARE.—*The non-Federal share of the cost of any project, program, or study funded under this subsection shall be provided from non-Federal sources.*

(f) ANNUAL BUDGET PLAN.—*The President, as part of the annual budget of the Federal Government, shall submit information regarding each Federal agency involved in Puget Sound protection and restoration, including—*

(1) *an interagency crosscut budget that describes for each Federal agency—*

(A) *amounts obligated for the preceding fiscal year for protection and restoration activities, projects, programs, and studies relating to Puget Sound;*

(B) *the estimated budget for the current fiscal year for protection and restoration activities, projects, programs, and studies relating to Puget Sound; and*

(C) *the proposed budget for protection and restoration activities, projects, programs, and studies relating to Puget Sound; and*

(2) *a description and assessment of the Federal role in the implementation of the comprehensive plan and the specific role of each Federal agency involved in Puget Sound protection and restoration, including specific activities, projects, programs, and studies conducted or planned to achieve the identified goals and objectives of the comprehensive plan.*

(g) REPORT.—*Not later than 1 year after the date of enactment of this section and biennially thereafter, the Administrator and the Executive Director of the Puget Sound Partnership shall jointly submit to Congress a report that—*

(1) *summarizes the progress made in implementing the comprehensive plan and progress toward achieving the identified goals and objectives described in the comprehensive plan;*

(2) *summarizes any modifications to the comprehensive plan during the period covered by the report;*

(3) *incorporates specific recommendations concerning the implementation of the comprehensive plan;*

(4) *summarizes the roles and progress of each Federal agency that has jurisdiction in the Puget Sound watershed toward meeting the identified goals and objectives of the comprehensive plan; and*

(5) *includes any other information determined to be relevant by the Administrator or the Executive Director.*

(h) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—*There is authorized to be appropriated to the Administrator to carry out this section \$90,000,000 for each of fiscal years 2011 through 2015, to remain available until expended.*

(2) ELIGIBILITY.—*The Puget Sound Partnership shall not receive any funding pursuant to section 320 for any fiscal year in*

*which the Puget Sound Partnership receives funding under subsection (e)(2)(A).*

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