

106TH CONGRESS  
1ST SESSION

# S. 294

To direct the Secretary of the Army to develop and implement a comprehensive program for fish screens and passage devices.

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## IN THE SENATE OF THE UNITED STATES

JANUARY 22, 1999

Mr. WYDEN (for himself and Mr. SMITH of Oregon) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To direct the Secretary of the Army to develop and implement a comprehensive program for fish screens and passage devices.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. WATER DIVERSION PROTECTION AND FISH-**  
4       **ERIES ENHANCEMENT PROGRAM.**

5       (a) IN GENERAL.—In cooperation with the Secretary  
6       of the Interior and the Secretary of Commerce, the Sec-  
7       retary shall develop and implement a comprehensive pro-  
8       gram for fish screens, fish passage devices, and other  
9       measures agreed to by local interests and relevant Federal

1 agencies for water diversions by local governmental enti-  
2 ties in the States of Oregon, Washington, Montana, and  
3 Idaho that provide water supplies.

4 (b) GOALS.—The goals of the program under sub-  
5 section (a) shall be—

6 (1) to decrease the incidence of juvenile and  
7 adult fish entering water supply systems; and

8 (2) to decrease fish mortality associated with  
9 the withdrawal of water for irrigation and other pur-  
10 poses without impairing the continued withdrawal of  
11 water for that purpose.

12 (c) PARTICIPATION BY NON-FEDERAL ENTITIES.—  
13 Non-Federal participation in the program under sub-  
14 section (a) shall be voluntary. The Secretary shall take  
15 no action that would result in any non-Federal entity  
16 being held financially responsible for any action unless the  
17 entity applies to participate in the program.

18 (d) ACTIVITIES.—

19 (1) IN GENERAL.—The program under sub-  
20 section (a) shall consist of—

21 (A) inventory of screened and unscreened  
22 diversions and evaluation of the effectiveness of  
23 fish screens, fish passage devices, and other  
24 measures in existence on the date of enactment  
25 of this Act;

1 (B) identification and prioritization of crit-  
2 ical areas for improvement; and

3 (C) development and execution of an im-  
4 plementation and construction program.

5 (2) BASIS OF EVALUATION AND  
6 PRIORITIZATION.—Evaluation and prioritization  
7 shall be conducted on the basis of—

8 (A) the objectives of the Endangered Spe-  
9 cies Act of 1973 (16 U.S.C. 1531 et seq.) and  
10 related environmental concerns;

11 (B) the cost effectiveness;

12 (C) the size of diversion;

13 (D) the availability of other funding  
14 sources; and

15 (E) the opportunity for biological benefit  
16 to be achieved with improved conditions.

17 (3) PROCEDURE.—In the development of the  
18 program under subsection (a), the Secretary shall—

19 (A) consult with other Federal, State, and  
20 local agencies; and

21 (B) make maximum use of data and stud-  
22 ies in existence on the date of enactment of this  
23 Act.

24 (e) REQUIREMENTS.—A recommended fish screen,  
25 fish passage device, or other measure shall—

1           (1) meet the requirements of the United States  
2       Fish and Wildlife Service or the National Marine  
3       Fisheries Service, as applicable, and any State re-  
4       quirements; and

5           (2) be agreed to by all interested Federal and  
6       non-Federal entities.

7       (f) COST SHARING.—

8           (1) STUDIES.—The cost of studies conducted in  
9       connection with the program under subsection (a)  
10      shall be shared in accordance with section 105 of the  
11      Water Resources Development Act of 1986 (33  
12      U.S.C. 2215).

13          (2) IMPLEMENTATION.—

14           (A) IN GENERAL.—The non-Federal inter-  
15      ests shall pay 35 percent of the implementation  
16      cost for any measures recommended under the  
17      program under subsection (a).

18           (B) IN-KIND CONTRIBUTIONS.—The non-  
19      Federal interests shall provide all land, ease-  
20      ments, rights-of-way, dredged material disposal  
21      areas, and relocations necessary for projects  
22      carried out under the program under subsection  
23      (a). The value of such land, easements, rights  
24      of way, dredged material disposal areas, and re-

1           locations shall be credited toward the payment  
2           required under subparagraph (A).

3           (3) OMR&R.—The non-Federal interests shall  
4           be responsible for all costs associated with operating,  
5           maintaining, repairing, rehabilitating, and replacing  
6           all projects carried out under the program under  
7           subsection (a).

8           (g) AGREEMENTS.—

9           (1) PAYMENT OF COSTS.—Construction of a  
10          project under this section shall be initiated only  
11          after the non-Federal interest has entered into a  
12          binding agreement with the Secretary to pay the  
13          non-Federal share of the costs of construction re-  
14          quired by this section and to pay 100 percent of any  
15          operation, maintenance, repair, rehabilitation, or re-  
16          placement cost with respect to the project in accord-  
17          ance with guidelines established by the Secretary.

18          (2) ACCESS.—

19                (A) IN GENERAL.—The owner of land on  
20          which a project under this section is con-  
21          structed shall grant appropriate Federal per-  
22          sonnel reasonable access to the project for the  
23          installation, maintenance, repair, rehabilitation,  
24          or replacement of fish screens and passage de-  
25          vices.

1 (B) EFFECT OF GRANT.—A grant of ac-  
2 cess to land under subparagraph (A) shall not  
3 provide a basis for Federal use or regulation of  
4 the surrounding private land.

5 (h) REPORTING REQUIREMENTS.—

6 (1) IN GENERAL.—The non-Federal interests  
7 with respect to a project under this section shall pro-  
8 vide reports on such matters and in such form as  
9 the Secretary may require.

10 (2) ITEMS TO BE ADDRESSED.—Items to be ad-  
11 dressed shall include costs and actions taken to ful-  
12 fill annual requirements for operating, maintaining,  
13 replacing, repairing, and rehabilitating projects.

14 (i) AUTHORIZATION OF APPROPRIATIONS.—There is  
15 authorized to be appropriated to carry out this section  
16 \$25,000,000 for each fiscal year.

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