

## Calendar No. 659

110TH CONGRESS }  
2d Session }

SENATE

{ REPORT  
110-307

### COPPER SALMON WILDERNESS ACT

APRIL 10, 2008.—Ordered to be printed

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

### R E P O R T

[To accompany S. 2034]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2034) to amend the Oregon Wilderness Act of 1984 to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as wild or scenic rivers, and for other purposes, 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.

The amendment is as follows:

1. Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the “Copper Salmon Wilderness Act”.

#### SEC. 2. DESIGNATION OF THE COPPER SALMON WILDERNESS.

(a) DESIGNATION.—Section 3 of the Oregon Wilderness Act of 1984 (16 U.S.C. 1132 note; Public Law 98-328) is amended—

(1) in the matter preceding paragraph (1), by striking “eight hundred fifty-nine thousand six hundred acres” and inserting “873,300 acres”;

(2) in paragraph (29), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(30) certain land in the Siskiyou National Forest, comprising approximately 13,700 acres, as generally depicted on the map entitled ‘Proposed Copper Salmon Wilderness Area’ and dated December 7, 2007, to be known as the ‘Copper Salmon Wilderness’.”.

#### (b) MAPS AND LEGAL DESCRIPTION.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of Agriculture (referred to in this Act as the “Secretary”) shall file a map and a legal description of the Copper Salmon Wilderness with—

- (A) the Committee on Energy and Natural Resources of the Senate; and
- (B) the Committee on Natural Resources of the House of Representatives.

(2) **FORCE OF LAW.**—The map and legal description filed under paragraph (1) shall have the same force and effect as if included in this Act, except that the Secretary may correct typographical errors in the map and legal description.

(3) **BOUNDARY.**—If the boundary of the Copper Salmon Wilderness shares a border with a road, the Secretary may only establish an offset that is not more than 150 feet from the centerline of the road.

(4) **PUBLIC AVAILABILITY.**—Each map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

#### **SEC. 3. WILD AND SCENIC RIVER DESIGNATIONS, ELK RIVER, OREGON.**

Section 3(a)(76) of the Wild and Scenic Rivers Act (16 U.S.C. 1274(a)(76)) is amended—

(1) in the matter preceding subparagraph (A), by striking “19-mile segment” and inserting “29-mile segment”;

(2) in subparagraph (A), by striking “; and” and inserting a period; and

(3) by striking subparagraph (B) and inserting the following:

“(B)(i) The approximately 0.6-mile segment of the North Fork Elk from its source in sec. 21, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.

“(ii) The approximately 5.5-mile segment of the North Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the South Fork Elk, as a wild river.

“(C)(i) The approximately 0.9-mile segment of the South Fork Elk from its source in the southeast quarter of sec. 32, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.

“(ii) The approximately 4.2-mile segment of the South Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the North Fork Elk, as a wild river.”.

#### **SEC. 4. PROTECTION OF TRIBAL RIGHTS.**

(a) **IN GENERAL.**—Nothing in this Act shall be construed as diminishing any right of any Indian tribe.

(b) **MEMORANDUM OF UNDERSTANDING.**—The Secretary shall seek to enter into a memorandum of understanding with the Coquille Indian Tribe regarding access to the Copper Salmon Wilderness to conduct historical and cultural activities.

2. Amend the title so as to read: “To amend the Oregon Wilderness Act of 1984 to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as additions to the Elk Wild and Scenic River, and for other purposes.”.

#### **PURPOSE**

The purpose of S. 2034 is to amend the Oregon Wilderness Act of 1984 to designate the Copper Salmon Wilderness and to amend the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River in the State of Oregon as wild or scenic rivers.

#### **BACKGROUND AND NEED**

East of the existing Grassy Knob Wilderness Area, The Copper Salmon area encompasses Copper, Barklow, and Salmon Mountains in the Rogue River-Siskiyou National Forest in southwest Oregon. It contains one of the nation’s largest remaining stands of low-elevation old-growth forest, including tall Douglas firs and relatively rare native Port Orford cedars. The area also contains the headwaters of the North Fork of the Elk River.

During the last decade, a dedicated group of people have been working hard to protect Copper Salmon. The Port Orford Chamber of Commerce, the Mayor of Port Orford, the Curry County Commis-

sioners, and a majority of the guides and lodges support wilderness designation.

Copper Salmon is renowned among fishermen, and is a popular destination for anglers seeking to catch a trophy chinook salmon or winter steelhead. Few watersheds in Oregon can match the Elk River drainage. Copper Salmon also supports healthy populations of blacktail deer, elk, black bear, and mountain lion.

Eighty percent of the watershed in this region is still intact. The Elk River has healthy wild runs of winter steelhead and chinook. It also has some coho salmon and sea-run cutthroat trout, as well as resident cutthroats and rainbow trout. Oregon State University researchers believe it is one of the healthiest anadromous fish streams in the lower 48 due to intact habitat.

S. 2034 would designate the 13,700 acre Copper Salmon area as wilderness. It would also designate 9.3 miles of wild and scenic rivers.

#### LEGISLATIVE HISTORY

S. 2034 was introduced by Senator Wyden on September 10, 2007 and Senator Smith was added as a cosponsor on September 20, 2007. Rep. DeFazio introduced a companion measure in the House of Representatives (H.R. 3513) on September 10, 2007. The Subcommittee on Public Lands and Forests held a hearing on S. 2034 on September 20, 2007 (S. Hrg. 110–216). The Committee on Energy and Natural Resources ordered it favorably reported on January 30, 2008.

#### COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on January 30, 2008, by a voice vote of a quorum present, recommends that the Senate pass S. 2034, if amended as described herein.

#### COMMITTEE AMENDMENT

During its consideration of S. 2034, the Committee adopted an amendment in the nature of a substitute. The amendment makes several technical changes and changes the map date so that the bill references an updated map. In addition, the amendment requires that, if the boundary of the Copper Salmon Wilderness shares a border with a road, the Secretary may only establish an offset that is not more than 150 feet from the centerline of the road. Finally, the amendment includes a new provision regarding tribal rights.

#### SECTION-BY-SECTION ANALYSIS

*Section 1* contains the short title for the bill.

*Section 2(a)* amends section 3 of the Oregon Wilderness Act of 1984 by adding certain land in the Siskiyou National Forest, comprising approximately 13,700 acres, as depicted on the identified map, to be known as the “Copper Salmon Wilderness.”

The Committee is aware that some National Forest lands designated as Wilderness by S. 2034 contain culverts. The Committee understands that some of the culverts are in disrepair. In fact, in 2002 the General Accounting Office reported that the Forest Serv-

ice's culvert maintenance backlog totals \$331 million in Washington and Oregon (GAO-02-596T). The GAO report concludes that the Forest Service has not made sufficient funds available for culvert maintenance.

The Committee anticipates that the Forest Service will eventually remove most, if not all, of the culverts after this area is designated as wilderness. However, the Committee is aware that such removal may not occur in a timely manner given the current state of the Forest Service's maintenance backlog. In the interim, the Forest Service may find that continued maintenance is necessary with respect to a particular culvert or culverts in order to avoid damage to fisheries and soil resources.

Section 4(c) of the Wilderness Act prohibits among other things, the use of motor vehicles, motorized equipment, or other forms of mechanized transport, "except as necessary to meet minimum requirements for the Administration of the area for the purpose of this Act \* \* \*". The Committee believes that the Forest Service's ability to properly maintain affected culverts can be accomplished consistent with the authority of the Wilderness Act. The Committee recognizes that the Forest Service may determine that the use of motorized or mechanized equipment is necessary to accomplish maintenance activities. In fact, the Committee notes that the Federal land management agencies' wilderness management guidelines explicitly state that the term "minimum tool" is not synonymous with "primitive tool" and in some cases an agency may determine that minimum tool includes motor vehicles, or other motorized or mechanized equipment.

Paragraph (b)(1) requires the Secretary of Agriculture to file a map and a legal description of the Copper Salmon Wilderness with the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives.

Paragraph (2) provides that the map and legal description shall have the same force and effect as if included in this Act, except that the Secretary may correct typographical errors in the map and legal description.

Paragraph (3) states that, if the boundary of the Copper Salmon Wilderness shares a border with a road, the Secretary may only establish an offset that is not more than 150 feet from the centerline of the road.

Paragraph (4) requires that each map and legal description filed under paragraph (1) shall be on file and available for public inspection in the appropriate offices of the Forest Service.

*Section 3* amends section 3(a)(76) of the Wild and Scenic Rivers Act to designate segments of the North and South Forks of the Elk River as additions to the existing Elk Wild and Scenic River.

*Section 4* states that nothing in this Act shall be construed as diminishing any right of any Indian tribe and requires the Secretary to seek to enter into a memorandum of understanding with the Coquille Indian Tribe regarding access to the Copper Salmon Wilderness to conduct historical and cultural activities.

#### COST AND BUDGETARY CONSIDERATIONS

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

*S. 2034—Copper Salmon Wilderness Act*

S. 2034 would designate 13,700 acres of land in the Siskiyou National Forest in Oregon as the Copper Salmon Wilderness. The bill also would designate certain segments of the north and south forks of the Elk River in Oregon as wild or scenic rivers.

Assuming the availability of appropriated funds, CBO estimates that discretionary costs would increase by less than \$1 million to implement the bill. The funds would be used to survey and mark the wilderness area as well as remove existing culverts and roads.

In addition, because a small portion of the affected area has had an environmental assessment completed, timber harvesting could occur in this area during the next 10 years under current law. Because the bill would designate the land as wilderness, some of that timber harvesting would not occur, leading to a loss of offsetting receipts. According to the Forest Service, any such activities would likely be done through the use of stewardship contracts, a program that allows the Forest Service to use proceeds from such sales, without appropriation, for various purposes. Thus, while the bill would lead to a small loss of offsetting receipts (less than \$500,000 over the 2009–2018 period), those losses would be offset by a corresponding reduction in direct spending. On balance, CBO estimates that enacting this legislation would have no net impact on direct spending and would not affect revenues.

S. 2034 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Tyler Kruzich. The estimate was 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. 2034. 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. 2034, as ordered reported.

#### CONGRESSIONALLY DIRECTED SPENDING

S. 2034, as reported, does not contain any congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in Rule XLIV of the Standing Rules of the Senate.

#### EXECUTIVE COMMUNICATIONS

The views of the Administration were included in testimony received by the Committee at a hearing on S. 2034 on September 20, 2007.

STATEMENT OF JOEL HOLTROP, DEPUTY CHIEF, NATIONAL  
FOREST SYSTEM, FOREST SERVICE, DEPARTMENT OF AGRICULTURE

\* \* \* \* \*

S. 2034, COPPER SALMON WILDERNESS ACT

Mr. Chairman and members of the committee, I appreciate the opportunity to appear before you to provide the Department's views on the bills which are on the agenda today.

\* \* \* \* \*

S. 2034, COPPER SALMON WILDERNESS ACT

This bill would designate approximately 13,700 acres of the Rogue River-Siskiyou National Forest as wilderness and designate segments of the North and South Forks of the Elk River as additions to the existing Elk Wild and Scenic River.

The Department supports this bill, but requests some important adjustments to the wilderness boundary. These adjustments would provide for better separation of motorized use from the wilderness, allow for road maintenance activities within road clearing limits (such as ditch cleaning and culvert and bridge maintenance), as well as to accommodate treatments of plantations that would improve forest health and habitat diversity while increasing firefighter safety.

The wilderness proposal comprises 13,700 acres of rugged forested land surrounding Copper Mountain, Barklow Mountain, and Salmon Mountain adjacent to the Grassy Knob Wilderness. It contains vast stands of Douglas fir and relatively rare native Port Orford cedar trees. About ten percent of the proposed wilderness area is designated in the Siskiyou National Forest Plan as a "Supplemental Resource Area", considered highly productive habitat for wildlife and fish, critical for the maintenance of watershed condition, and with special recreation values. Lands within the proposed wilderness are primarily allocated as Late Successional Reserves (LSR) under the Northwest Forest Plan. LSRs are designed to serve as habitat for old growth-related species. This LSR allocation includes 2,267 acres of previously managed overstocked Douglas fir plantations.

Using perimeter forest roads as the boundary designation would likely lead to unintended incursions of motorized vehicles and mechanized equipment into the wilderness. In addition most of the plantations adjacent to forest roads that comprise a portion of the wilderness boundary (about 1,000 acres) were included in the Coastal Healthy Forest Environmental Analysis signed in 2007. Treatment of these stands would improve habitat conditions for fish and wildlife, reduce effects from insects and disease, and provide defensible space for firefighters in the event of a wildfire, consistent with their allocation as Late Success-

sional Reserve (LSRs). Wilderness designation would preclude this treatment.

The proposed wilderness includes about nine miles of designated roads. All but two of those road miles are currently closed to vehicular traffic; however, these roads are highly engineered up steep slopes, with significant cuts and fills, culverts, and other constructed features. If the area is designated as wilderness, the forest would consider converting some of these roads into hiking and equestrian trails to improve access, but most would require decommissioning to protect water quality and fisheries resource values. This would require heavy equipment to remove culverts and contour the land to reduce erosion, as well as significant investment.

The Department would like to work with the bill's sponsor and the committee to offset the wilderness boundary inward along perimeter roads to implement planned treatments within a reasonable distance of the road, provide for routine road maintenance, and to decrease the likelihood of incompatible motorized use in wilderness. We also request that the bill include the date of the map referencing the intended wilderness configuration.

The bill would designate segments of the North and South Forks of the Elk River as additions to the existing Elk Wild and Scenic River. The Rogue River-Siskiyou National Forest completed an extensive wild and scenic river inventory and, while both tributaries are free-flowing, neither was judged to have an outstandingly remarkable value. Nevertheless, in recognition of the value of managing the Elk River as a system that contributes to one of the most important and valuable runs of anadromous fish in coastal Oregon, the Department does not oppose the proposed additions in this bill.

Mr. Chairman and members of the committee, this concludes my testimony. I am happy to answer any questions you may have at this time.

#### 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. 2034 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):

## A. OREGON WILDERNESS ACT OF 1984

(Public Law 98–328; Approved June 26, 1984)

AN ACT To designate certain national forest system and other lands in the State of Oregon for inclusion in the National Wilderness Preservation System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled,* That this Act may be referred to as the “Oregon Wilderness Act of 1984”.

\* \* \* \* \*

SEC. 3. In furtherance of the purpose of the Wilderness Act the following lands in the State of Oregon comprising approximately [eight hundred fifty-nine thousand six hundred acres] 873,300 acres and as generally depicted on maps appropriately referenced, dated May 1984; are hereby designated as wilderness, and therefore, as components of the National Wilderness Preservation System—

\* \* \* \* \*

(29) certain lands in the Wallowa-Whitman National Forest, which comprise approximately twenty-two thousand seven hundred acres, are generally depicted on a map entitled “Hells Canyon Wilderness Additions—Proposed”, and which are hereby incorporated in, and which shall be deemed to be part of, the Hells Canyon Wilderness as designated in Public Law 94–199[.]; and

(30) certain land in the Siskiyou National Forest, comprising approximately 13,700 acres, as generally depicted on the map entitled ‘Proposed Copper Salmon Wilderness Area’ and dated December 7, 2007, to be known as the ‘Copper Salmon Wilderness’.

\* \* \* \* \*

## B. WILD AND SCENIC RIVERS ACT

(Public Law 90–542; Approved October 2, 1968)

AN ACT To provide a National Wild and Scenic Rivers System, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That (a) this Act may be cited as the “Wild and Scenic Rivers Act”.

\* \* \* \* \*

SEC. 3(a). The following rivers and the land adjacent thereto are hereby designated as components of the national wild and scenic rivers system:

(76) ELK, OREGON.—The [19-mile segment] 29-mile segment to be administered by the Secretary of Agriculture in the following classes:

\* \* \* \* \*

(A) The 17-mile segment from the confluence of the North and South Forks of the Elk to Anvil Creek as a recreational river[; and].

**[(B) the 2-mile segment of the North Fork Elk from the falls to its confluence with the South Fork as a wild river.]**

*(B)(i) The approximately 0.6-mile segment of the North Fork Elk from its source in sec. 21, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.*

*(ii) The approximately 5.5-mile segment of the North Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the South Fork Elk, as a wild river.*

*(C)(i) The approximately 0.9-mile segment of the South Fork Elk from its source in the southeast quarter of sec. 32, T. 33 S., R. 12 W., Willamette Meridian, downstream to 0.01 miles below Forest Service Road 3353, as a scenic river.*

*(ii) The approximately 4.2-mile segment of the South Fork Elk from 0.01 miles below Forest Service Road 3353 to its confluence with the North Fork Elk, as a wild river.*

\* \* \* \* \*

