

**[DISCUSSION DRAFT]**114<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION**H. R.** \_\_\_\_\_

To direct the Secretary of Commerce, with the Oakdale Irrigation District and the South San Joaquin Irrigation District, California, to develop and conduct a pilot program to remove nonnative predator fishes from the Stanislaus River, California, and for other purposes.

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**IN THE HOUSE OF REPRESENTATIVES**

Mr. DENHAM introduced the following bill; which was referred to the Committee on \_\_\_\_\_

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**A BILL**

To direct the Secretary of Commerce, with the Oakdale Irrigation District and the South San Joaquin Irrigation District, California, to develop and conduct a pilot program to remove nonnative predator fishes from the Stanislaus River, California, and for other purposes.

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

1 **SECTION 1. PILOT PROGRAM TO PROTECT NATIVE ANAD-**  
2 **ROMOUS FISH IN THE STANISLAUS RIVER,**  
3 **CALIFORNIA.**

4 (a) ESTABLISHMENT OF NONNATIVE PREDATOR  
5 FISH REMOVAL PILOT PROGRAM.—The Secretary of  
6 Commerce and the districts, in consultation with the  
7 United States Fish and Wildlife Service, shall jointly de-  
8 velop and conduct a nonnative predator fish removal pilot  
9 program to remove nonnative striped bass, smallmouth  
10 bass, largemouth bass, black bass, and other nonnative  
11 predator fishes from the Stanislaus River, California. The  
12 pilot program shall—

13 (1) be scientifically based;

14 (2) include methods to quantify the number and  
15 size of predator fishes removed each year, the im-  
16 pact of such removal on the overall abundance of  
17 predator fishes, and the impact of such removal on  
18 the populations of juvenile anadromous fish found in  
19 the Stanislaus River by, among other things, evalu-  
20 ating the number of juvenile anadromous fish that  
21 migrate past the rotary screw trap located at  
22 Caswell;

23 (3) among other methods, use wire fyke trap-  
24 ping, portable resistance board weirs, and boat  
25 electrofishing;

1           (4) be developed, including the application for  
2           all necessary scientific research and species enhance-  
3           ment permits under section 10(a)(1) of the Endan-  
4           gered Species Act of 1973 (16 U.S.C. 1539(a)(1))  
5           for the performance of the pilot program, not later  
6           than 6 months after the date of the enactment of  
7           this Act;

8           (5) be implemented as quickly as possible fol-  
9           lowing the issuance of all necessary scientific re-  
10          search and species enhancement permits needed to  
11          begin the pilot program; and

12          (6) be implemented for a period of 7 consecu-  
13          tive calendar years.

14          (b) **MANAGEMENT.**—The management of the pilot  
15          program shall be the joint responsibility of the Secretary  
16          and the districts. Such parties shall work collaboratively  
17          to ensure the performance of the pilot program, and shall  
18          discuss and agree upon, among other things, changes in  
19          the structure, management, personnel, techniques, strat-  
20          egy, data collection, reporting, and conduct of the pilot  
21          program.

22          (c) **CONDUCT.**—

23                  (1) **IN GENERAL.**—By agreement between the  
24          Secretary and the districts, the pilot program may  
25          be conducted by their own personnel, qualified pri-

1 vate contractors hired by the districts, personnel of,  
2 on loan to, or otherwise assigned to the National  
3 Marine Fisheries Service, or a combination thereof.

4 (2) PARTICIPATION BY THE NATIONAL MARINE  
5 FISHERIES SERVICE.—If the districts elect to con-  
6 duct the program using their own personnel or quali-  
7 fied private contractors hired by them in accordance  
8 with paragraph (1), the Secretary may assign an  
9 employee of, on loan to, or otherwise assigned to the  
10 National Marine Fisheries Service, to be present for  
11 all activities performed in the field. Such presence  
12 shall ensure compliance with the agreed-upon ele-  
13 ments specified in subsection (b). The districts shall  
14 pay the cost of such participation in accordance with  
15 subsection (d).

16 (3) TIMING OF ELECTION.—The districts shall  
17 notify the Secretary of their election on or before  
18 October 15 of each calendar year of the pilot pro-  
19 gram. Such an election shall apply to the work per-  
20 formed in the subsequent calendar year.

21 (d) FUNDING.—

22 (1) IN GENERAL.—The districts shall be re-  
23 sponsible for 100 percent of the cost of the pilot pro-  
24 gram.

1           (2) CONTRIBUTED FUNDS.—The Secretary may  
2           accept and use contributions of funds from the dis-  
3           tricts to carry out activities under the pilot program.

4           (3) ESTIMATION OF COST.—On or before De-  
5           cember 1 of each year of the pilot program, the Sec-  
6           retary shall submit to the districts an estimate of  
7           the cost to be incurred by the National Marine Fish-  
8           eries Service for the pilot program in the following  
9           calendar year, if any, including the cost of any data  
10          collection and posting under subsection (e). If an  
11          amount equal to the estimate is not provided  
12          through contributions pursuant to paragraph (2) be-  
13          fore December 31 of that year—

14                 (A) the Secretary shall have no obligation  
15                 to conduct the pilot program activities other-  
16                 wise scheduled for such following calendar year  
17                 until such amount is contributed by the dis-  
18                 tricts; and

19                 (B) the districts may not conduct any as-  
20                 pect of the pilot program until such amount is  
21                 contributed by the districts.

22          (4) ACCOUNTING.—On or before September 1  
23          of each year, the Secretary shall provide to the dis-  
24          tricts an accounting of the costs incurred by the Sec-  
25          retary for the pilot program in the preceding cal-

1       endar year. If the amount contributed by the dis-  
2       tricts pursuant to paragraph (2) for that year was  
3       greater than the costs incurred by the Secretary, the  
4       Secretary shall—

5               (A) apply the excess contributions to costs  
6               of activities to be performed by the Secretary  
7               under the pilot program, if any, in the next cal-  
8               endar year; or

9               (B) if no such activities are to be per-  
10              formed, repay the excess contribution to the  
11              districts.

12       (e) REPORTING AND EVALUATION.—

13              (1) IN GENERAL.—On or before the 15th day  
14              of each month, the Secretary shall post on the Inter-  
15              net website of the National Marine Fisheries Service  
16              a tabular summary of the raw data collected under  
17              the pilot program in the preceding month.

18              (2) REPORT.—On or before June 30 of the year  
19              following the completion of the pilot program, the  
20              Secretary and the districts shall jointly submit for  
21              peer review a report that—

22                      (A) discusses the findings and conclusions  
23                      of the pilot program;

24                      (B) synthesizes the data collected under  
25                      paragraph (1); and

1 (C) makes recommendations for further  
2 study and action.

3 (f) PERMITS PROCESS.—

4 (1) REQUIREMENT.—Not later than 180 days  
5 after the filing by the Secretary and the districts of  
6 an application for scientific research and species en-  
7 hancement permits under section 10(a)(1) of the  
8 Endangered Species Act of 1973 (16 U.S.C.  
9 1539(a)(1)) for the pilot program, the Secretary of  
10 the Interior, the Secretary of Commerce, or both, as  
11 appropriate, shall issue to the National Marine Fish-  
12 eries Service and the districts all such permits that  
13 are necessary for the performance of the pilot pro-  
14 gram. Each such permit shall authorize activities  
15 under the permits to be carried out by the districts  
16 and by the National Marine Fisheries Service.

17 (2) DELEGATION OF AUTHORITY.—The dis-  
18 tricts and the Secretary may delegate the authority  
19 to conduct activities under such permits to any  
20 qualified private contractor retained in accordance  
21 with subsection (c).

22 (3) FAILURE TO ISSUE PERMITS.—The pilot  
23 program, including amendments thereto by the ap-  
24 propriate Federal agencies, shall constitute a con-  
25 servation plan that complies with section 10(a)(2) of

1 the Endangered Species Act of 1973 (16 U.S.C.  
2 1539(a)(2)) if the Secretaries have not carried out  
3 paragraph (1) within 270 days after the filling of an  
4 application in accordance with such paragraph.

5 (4) TREATMENT OF STRIPED BASS.—For pur-  
6 poses of the application of the Central Valley Project  
7 Improvement Act (title III of Public Law 102–575)  
8 with respect to the pilot program, striped bass shall  
9 not be treated as anadromous fish.

10 (g) NEPA.—

11 (1) LIMITATION ON APPLICATION.—If the Sec-  
12 retaries have not carried out subsection (f)(1) within  
13 365 days after the filing by the Secretary of Com-  
14 merce and the districts of an application referred to  
15 in that subsection, section 102(2)(C) of the National  
16 Environmental Policy Act of 1969 (42 U.S.C.  
17 4332(2)(C)) shall not apply with respect to this sec-  
18 tion and the issuance of any permit under this sec-  
19 tion, during the 7-year period beginning on the date  
20 of the submission of such application.

21 (2) EMERGENCY ENVIRONMENTAL REVIEWS.—  
22 The Secretary of the Interior and the Secretary of  
23 Commerce shall consult with the Council on Envi-  
24 ronmental Quality in accordance with section  
25 1506.11 of title 40, Code of Federal Regulations (in-

1 including successor regulations) to develop alternative  
2 arrangements to comply with the National Environ-  
3 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.),  
4 as necessary to expedite the benefits of the pilot pro-  
5 gram for the conservation of threatened species and  
6 endangered species.

7 (h) DEFINITIONS.—For the purposes of this section:

8 (1) DISTRICTS.—The term “districts” means  
9 the Oakdale Irrigation District and the South San  
10 Joaquin Irrigation District, California.

11 (2) PILOT PROGRAM.—The term “pilot pro-  
12 gram” means the nonnative predator fish removal  
13 pilot program established under this section.

14 (3) SECRETARY OF COMMERCE.—The term  
15 “Secretary of Commerce” means the Secretary of  
16 Commerce acting through the National Marine Fish-  
17 eries Service.

18 (i) STATE LAW PREEMPTED.—

19 (1) IN GENERAL.—Any restriction imposed  
20 under California law on the catch, take, or harvest  
21 of any nonnative or introduced aquatic or terrestrial  
22 species that preys upon anadromous fish and that  
23 occupies or is found in the Stanislaus River, or the  
24 permitting thereof, is hereby void and is preempted.

1           (2) STATE PERMITS NOT REQUIRED.—Neither  
2           the districts nor the Secretaries are required to ob-  
3           tain a Scientific Collection Permit or any other per-  
4           mit or authorization from the California Department  
5           of Fish and Wildlife or any other division or instru-  
6           mentality of the State of California pursuant to sec-  
7           tion 1002(a) of the California Fish and Game Code,  
8           section 5514(a) of the California Fish and Game  
9           Code, section 650 or title 14 of the California Code  
10          of Regulations, or any other provision of California  
11          law to implement any aspect of the pilot program.  
12          (j) SUNSET.—The authorities provided under this  
13          section shall expire 7 years after date of the issuance of  
14          the permits referred to in subsection (f)(1).