



December 12, 2001

The Honorable Ernest F. Hollings
Chairman, Committee on Commerce
Science and Transportation
United States Senate
Washington, DC 20510

Dear Mr. Chairman:


Thank you for the opportunity to comment on H.R. 1157, the "Pacific Salmon Recovery Act," as passed by the U.S. House of Representatives. Among other things, H.R. 1157 authorizes the Secretary of Commerce to provide financial assistance to the States of Alaska, Washington, Oregon, California, and Idaho for salmon habitat restoration projects in coastal waters and upland drainage. The Department of Commerce supports providing funding to the States and tribes for Pacific salmon recovery efforts and appreciates Congressional efforts to address salmon recovery needs.

This bill is similar to the current authorization for Pacific salmon recovery money to the States and tribes, and also contains elements of the current authorization for the Pacific Salmon Treaty.

We have enclosed a list of detailed comments, grouped by sections. We appreciate your strong interest in these issues, and look forward to working with you to implement salmon conservation and recovery efforts.

The Office of Management and Budget has advised that there is no objection to the submission of this letter from the viewpoint of the Administration's program.

Sincerely,


Theodore W. Kassinger

Enclosure

cc: The Honorable John McCain
The Honorable John Kerry
The Honorable Olympia Snowe

Department Of Commerce
Comments on H.R. 1157

1. Section 2: The FY 2000 and FY 2001 requests for the Pacific Coastal Salmon Recovery Fund reflected a 90-to-10 percent allocation between the States and tribes. This bill would change the allocation to 85-to-15 percent.

We recommend continuation of the 90-to-10 percent allocation between States and tribes. However, within those categories, we recommend that the funds be distributed in proportion to the needs for recovery of salmonids. Within the State and tribal allocation categories, the National Marine Fisheries Service recommends that the funds be distributed in proportion to the needs for recovery of salmonids. The State apportionment would be based on factors such as numbers of Endangered Species Act (ESA) listed populations in Washington, Oregon, California, Idaho, and Alaska; and areas affected by listed species and populations that are given special protection in Alaska. The same would be true for the tribal funding. The Secretary of Commerce should be charged with determining a basis for distributing the funds based on a needs assessment conducted in consultation with the States and tribes.

2. Section 3: This year's critical drought in the Pacific Northwest highlights the need for these funds to be available for States to set up water banks and other mechanisms to provide instream flows for fish. Section 3(c)(1)(E) should be revised to read: "other activities related to salmon conservation and salmon habitat restoration, including the purchase or lease of water or water rights from willing sellers."

Section 3(b)(2)(C)(iii)(II) should be revised to include tribal resolutions. All tribes in Alaska do not have ordinances or regulations. Thus, they may not qualify under the section. We recommend amending this provision to insert the word "resolutions," before the word "ordinances."

Section 3(g)(1) should be revised to allow the Secretary of Commerce to retain not more than 1% for administrative expenses and not more than an additional 2% for required monitoring, evaluation, and reporting requirements of Section 6. These additional funds would allow the National Marine Fisheries Service to scientifically monitor and verify the biological effectiveness of funded restoration activities.

3. Section 5: We support exempting the transfer of funds from section 7 ESA consultation, but the bill should specifically note that projects that affect ESA listed species remain subject to ESA consultation.
4. Section 7: This section defines "salmon" as including bull trout and Lahontan cutthroat trout in Oregon, and bull trout in Washington and Idaho. The Department believes that any statutory definition of salmon should not include these or any other non-anadromous (sea-run) species. Therefore, we recommend that these species be removed from the definition of salmon in the bill.

5. Section 8: We defer to the Department of State, which we understand will provide comments in a separate letter.
6. Section 9: The Pacific Coastal Salmon Recovery Fund was authorized for appropriations at \$80M for the States and \$10M for the tribes through FY 2003 (Public Law 106-553). This bill changes the authorization to \$200M for States and tribes. We request that the authorization be changed to reflect the amounts in the President's budget request for FY 2002. This request includes \$90 million for the Pacific Coastal Salmon Recovery Fund and \$20 million for the Pacific Salmon Treaty. However, we do support expansion of the authorization to include Idaho. For FY 2003 and beyond, we request that the authorization include such sums as are necessary to carry out the Act.
7. Section 10: We recommend that this section be deleted as we view this authorization as unnecessary. The Commerce, Justice, State and the Judiciary appropriations bill regularly contains a buy-American provision, which is sufficient. For instance, the FY 2001 appropriation incorporates language of the House bill which states "Section 607. (a) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.- It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made."
8. Section 11: We have no objection to this "Sense of Congress" amendment regarding the July, 2000 goals, objectives, and recommendations of the Governors of Idaho, Montana, Oregon, and Washington, as long as it continues to contain language requiring consistency with the requirements of the Endangered Species Act, the Clean Water Act, the Pacific Northwest Electric Power Planning and Conservation Act, tribal treaty rights, and applicable Executive Orders. The Administration is already committed to working closely with the four governors and their State governments in conserving and recovering Pacific salmon.
9. Section 12: We object to this amendment. The 1999 Pacific Salmon Treaty Agreement contains a habitat provision whereby the parties agreed "To use their best efforts, consistent with applicable law, to: (a) protect and restore habitat so as to promote safe passage of adult and juvenile salmon and achieve high levels of natural production; (b) maintain and, as needed, improve safe passage of salmon to and from their streams; and (c) maintain adequate water quality and quantity." The parties also agreed to exchange information regarding "non-fishing factors" that affect salmon and limit their production. Therefore, it would be preferable to request information from Canada on its management of British Columbia forest practices using existing mechanisms within the current Treaty.