



UNITED STATES DEPARTMENT OF COMMERCE
The Assistant Secretary for Legislative
and Intergovernmental Affairs
Washington, D.C. 20230

June 12, 2001

The Honorable James V. Hansen
Chairman, Committee on Resources
U.S. House of Representatives
Washington, D.C. 20515-6201

Dear Mr. Chairman:

Thank you for the opportunity to comment on H.R. 1157, the "Pacific Salmon Recovery Act", as reported by the Resources Committee. 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 on the bill as reported, grouped by sections. We are in the process of reviewing the Manager's Amendment to H.R. 1157. In view of the foreign policy and budgetary implications of certain provisions contained in H.R. 1157, the Department of State has furnished a separate letter that outlines its concerns. 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 standpoint of the Administration's program.

Sincerely,

Brenda L. Becker

Enclosure

cc: The Honorable Nick Rahall, II
The Honorable Wayne Gilchrest
The Honorable Robert Underwood
The Honorable Mike Thompson

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 percent/10 percent allocation between the States and tribes. This bill would change the allocation to 85 percent/15 percent. We believe there is an issue with the sharing formula among the States and tribes.

We recommend continuation of the 90 percent/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. This State apportionment would be based on factors such as numbers of Endangered Species Act (ESA) listed populations within a State and area affected by listed species. 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(a)(2)(c)(i) should be revised to read: "provide direct and demonstrable benefit to salmon and their habitat, including the purchase of water or water rights to preserve needed flows."

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) 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 6: We recommend that reporting be annual for all entities, States and tribes, for consistent monitoring of funds.
5. Section 7(3)(B): This section excludes Alaska's Federally Recognized Tribes and only includes Alaska Native villages or regional or village corporations. While it is true that many are the same, Alaska does have Federally recognized tribes and tribes also recognized by the State of Alaska. Many tribal entities are the groups most concerned and directly involved in subsistence resources, and with salmon and salmon habitat in particular. Therefore, we recommend that Alaska's "Federally Recognized Tribes" be

included in the definition of "Qualified Tribal Government." This can be accomplished by revising the definition to read as follows:

"Sec. 7(3) QUALIFIED TRIBAL GOVERNMENT- The term 'qualified tribal government' means --

(A) a federally recognized tribal government of an Indian tribe in Alaska, Washington, Oregon, California, or Idaho that the Secretary of Commerce, in consultation with the Secretary of the Interior, determines--

(i) is involved in salmon management and recovery activities under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and

(ii) has the management and organizational capability to maximize the benefits of assistance provided under this Act; and

(B) an Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.) or a federally recognized tribe in Alaska that the Secretary of Commerce, in consultation with the Secretary of the Interior, determines--

(i) is involved in salmon conservation and management; and

(ii) has the management and organizational capability to maximize the benefits of assistance provided under this Act."

Section 7(4): 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.

6. Section 8(a): The Department of State has provided comments in a separate letter.

Section 8(b): This section provides for compensation for the Northern and Southern Fund Committee members who are not Federal employees. The Federal Government does not compensate the Committee members. Rather, they are compensated as part of the Funds' administrative expenses, drawing from the Funds' earnings. In addition, the compensation rates proposed in this section are different from current rates. Therefore, we recommend deletion of language regarding compensation of Northern and Southern Fund Committee members. The Department of State agrees and has provided further comments in a separate letter.

Section 8(c): Capitalization of the Northern and Southern bilateral funds for the 1999 Pacific Salmon Treaty Agreement is already authorized in the full amount of \$75M and \$65M, respectively, as a result of last year's Commerce, Justice, and State Appropriations

Act (Public Law No. 106-553). There is no need for new Pacific Salmon Treaty authorization language in this bill. Also, this bill includes FY2004. If funding is appropriated per the agreed to Pacific Salmon Treaty schedule envisioned in the existing authorization, then authorization for this purpose is not needed in FY2004 and should be removed. The Department of State agrees and has provided further comments in a separate letter.

7. Section 9: This section is within the purview of the Department of State, which has provided comments in a separate letter.
8. Section 10: The Pacific Coastal Salmon Recovery Fund was authorized for appropriations at \$80M for the States and \$10M for the tribes through FY2003 (Public Law No. 106-553). This bill changes the authorization to \$200M for States and tribes. We request that the authorization be changed to reflect the amounts included in the President's budget request. However, we do support expansion of the authorization to include Idaho.