



DEC 20 2001

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

Dear Mr. Chairman:

This letter provides you with the Department of Commerce's views on H.R. 2573, the "Salmon Planning Act." Enactment of the bill would provide for a National Academy of Sciences peer review of the 2000 Federal Columbia River Power System (FCRPS) Biological Opinion, a General Accounting Office (GAO) study of "partial" dam removal, and the conditional authorization of the partial removal of four Snake River dams. The Department of Commerce does not support the proposed legislation because it duplicates existing effort and takes the focus away from a basin-wide strategy to recover salmon in the Columbia River Basin. Enclosed please find comments on specific sections of the bill.

Independent scientific review for National Marine Fishery Services' (NMFS) salmon recovery efforts and the Northwest Power Planning Council's (NPPC) fish and wildlife program is already being implemented by two groups: the Independent Scientific Advisory Board (ISAB) and the Independent Scientific Review Panel (ISRP). Each group provides unique services to the program and both have a proven track record of candid assessments. We believe that they already have the authority to review the type of issues that are envisioned in this legislation.

The ISAB provides an on-call, independent scientific body for peer-review on issues affecting Columbia River Basin fish and wildlife. The ISRP provides advice and information regarding the scientific aspects of projects that the NPPC may recommend for funding by the Bonneville Power Administration (BPA).

As you may be aware, nine Federal agencies that comprise the Federal Caucus (the National Marine Fisheries Service, Bonneville Power Administration, Army Corps of Engineers, U.S. Bureau of Reclamation, U.S. Fish and Wildlife Service, Bureau of Indian Affairs, U.S. Forest Service, Environmental Protection Agency, and Bureau of Land Management) are already working with the affected States and tribes in a concerted, collaborative process that addresses a comprehensive long-term strategy for salmon recovery in the Columbia Basin. This collaborative process was emphasized through the 2000 Biological Opinion on the FCRPS and the All-H/Basin-wide Salmon Recovery Strategy (Basin-wide Strategy). This process has the ability to deal with most of the issues raised by H.R. 2573.

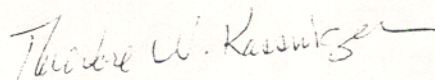
The Department of Commerce does not believe that the recovery effort at this time should focus on removal of the lower Snake River dams as that issue tends to subsume discussion and divert needed funding away from all the other salmon recovery actions that will be necessary to implement a successful Basin-wide Strategy. The 2000 FCRPS Biological Opinion places emphasis on those salmon and steelhead recovery actions in each "H" (Habitat, Hatcheries, Hydropower, and Harvest) that have the best chance of being implemented, provide solid and predictable biological benefits, and provide benefits to the broadest range of fish species.

NMFS will re-evaluate this strategy during each of the three-, five-, and eight-year status reports on whether activities in habitat restoration, hydrosystem improvements, harvest and salmon hatchery management are insuring continued survival and leading to salmon recovery. If progress is not sufficient, NMFS will identify corrective actions that avoid jeopardizing the listed species or adversely modifying their critical habitat.

The Department of Commerce appreciates the opportunity to comment on this legislation. We will continue to work towards recovering listed salmon in the Pacific Northwest in a collaborative fashion that minimizes the adverse effects on the local communities, region and Nation. We believe that the current strategy under the FCRPS biological opinion and the Basin-wide Strategy are the best way to achieve this goal.

The Office of Management and Budget has advised that there is no objection to the transmittal of these views from the standpoint of the Administration's program.

Sincerely,



Theodore W. Kassinger

Enclosure

cc: The Honorable Nick J. Rahall
Ranking Minority Member

Department of Commerce
Specific Comments on H.R. 2573

Section 2, Findings and Purposes

In subsection 2(a)(10), the legislation makes a finding that "a Federal court has found that the four lower Snake River dams violate water quality standards under the Federal Water Pollution Control Act," apparently referring to Judge Frye's decision in the National Wildlife Federation case. We do not agree with this interpretation of the court's decision. Rather, Judge Frye found that the United States Corps of Engineers had not adequately explained in its record of decision how the four dams could be operated in compliance with the Clean Water Act and remanded the decision back to the Corps for a better explanation. The Corps provided its explanation and the Department of Justice is in the process of litigating the sufficiency of that explanation.

Section 3. Peer Review of NMFS Biological Opinion

Typically, independent scientific review for the National Marine Fisheries Service's (NMFS) salmon recovery efforts and the Northwest Power Planning Council's (NPPC) fish and wildlife program is implemented by two groups: the Independent Scientific Advisory Board (ISAB) and the Independent Scientific Review Panel (ISRP). Each group provides unique services to the program and both have a proven track record of candid assessments. We believe that they already have the authority to review the type of issues that are envisioned in this legislation.

The ISAB provides an on-call, independent scientific body for peer-review of various reports, projects, and issues affecting Columbia River Basin fish and wildlife. The ISAB is currently completing a "Review of Salmon Recovery Strategies for the Columbia River Basin." The review is focused on the provisions of the Biological Opinion, the Basin-wide Strategy, the Four Northwest States Governors' Plan, and the NPPC's 2000 Fish and Wildlife Program, to determine if the four documents collectively outline salmon recovery strategies that are likely to succeed. The Reasonable and Prudent Alternative, action 13 in the Biological Opinion, calls upon the action agencies to issue annual reports for NMFS' and U.S. Fish and Wildlife Service's review on progress towards achieving performance standards. Action 13 also directs NMFS, working through the Regional Forum and the ISAB, to obtain independent scientific review of the five-year and eight-year evaluation reports. We believe that ISAB already has the authority to review performance and recovery standards and similar future issues as they develop.

The 1996 amendment to the Federal Power Act directed the NPPC to appoint an 11-member panel of independent scientists (the ISRP) and additional peer review groups to provide advice and information regarding the scientific aspects of projects that the NPPC may recommend for funding by the Bonneville Power Administration (BPA). That same law directed the ISRP to complete a retrospective review of program accomplishments. In 1998, the ISRP's oversight was expanded through the Federal appropriations process to include BPA's reimbursable program. The ISRP is also heavily involved in the NPPC's subbasin planning initiative for the entire

Columbia Basin. Through the exercise of its current review process, the ISRP will already be evaluating the effectiveness of many of the actions in the FCRPS implementation plans.

In addition, in subsection 3(f), the Environmental Protection Agency is required to determine whether dam removal is necessary to meet Clean Water Act requirements. We would point out that the Corps of Engineers, who is responsible for issuing Clean Water Act section 404 permits associated with this project, has already decided that removal was not necessary and that decision is the subject of current litigation.

Section 4. GAO Study of partial removal of Lower Snake River Dams

As part of the 1995 Biological Opinion on the Operations of the Federal Columbia River Power System, the Army Corps of Engineers was directed to study the relationship between the four Snake River dams and their effect on juvenile fish migrating towards the ocean. After a very detailed five-year National Environmental Policy Act process, the Corps released a draft Lower Snake River Juvenile Salmon Migration Feasibility Study in December 1999. The final report is expected to be released later this year. That report goes into detail on the same issues that would be considered in the Comptroller General's study.

Section 5. Authorization and Planning of Salmon Recovery

The Department of Commerce does not view this as an appropriate time to focus the debate on dam breaching. There is scientific debate and uncertainty about whether breaching dams is necessary to achieve recovery and whether breaching alone can lead to recovery. Only listed Snake River salmon and steelhead would potentially benefit from breaching, with minimal benefit to the other eight listed anadromous fish populations in the Columbia Basin. Dam breaching would also take many years to implement. Its high cost could also preclude the implementation of other salmon recovery actions needed throughout the basin.