



Pacific Fishery Management Council

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Dorothy M. Lowman, Chair | Charles A. Tracy, Acting Executive Director

May 11, 2016

The Honorable Patty Murray
United States Senate
154 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Murray:

Thank you for your request for Pacific Fishery Management Council comment on legislation related to the current drought situation in California, and its potential impacts on fisheries and fishing communities. The Council discussed this issue at its April meeting and provides the following analysis of S. 2533, the California Long-Term Provisions for Water Supply and Short-Term Provisions for Emergency Drought Relief Act.

In general, we are in agreement with the Pacific Coast Federation of Fishermen's Association's (PCFFA) analysis of the bill and with the Golden Gate Salmon Association analysis referred to in the PCFFA letter on February 23, 2016.

General

We appreciate Senator Feinstein's efforts to solve both long- and short-term problems associated with California's drought. S. 2533 contains provisions that could be beneficial to salmon, such as investing in habitat improvements for listed species in the Sacramento River (§201) and provisions for water recycling and efficiency. However, these limited provisions, which depend on the will of Congress, are outweighed by others that we believe would cause irreparable harm to California salmon and the commercial, recreational, and tribal fishing communities that depend on them.

California salmon stocks that are listed under the Endangered Species Act (ESA), and those not listed, are potentially vulnerable to the harmful impacts of the long California drought. This 190-page bill does not address its potential negative impacts to Sacramento fall-run Chinook salmon, which form the basis of salmon fisheries in California, Oregon, and, to a lesser extent, Washington. When healthy, Sacramento fall Chinook salmon runs support a \$1.4 billion fishery and 23,000 jobs. Although this run is not listed under the ESA, it benefits from protections for endangered winter-run Chinook. In addition, the fall Chinook run is currently at very low levels. The 2015 salmon season produced poor landings and only 112,400 salmon returned to the Sacramento River to spawn, which is below the target level of 121,000. The bill provides support for industrial irrigation but does not provide support for—or mention—the recreational, commercial, or tribal salmon fishing industry. The bill does not mandate or even authorize stronger water management protections for salmon in response to the devastating drought impacts seen in the past several years.

Given the three- to four-year life cycle of salmon, there is concern among the salmon fishing industry and fishing communities that returns will drop precipitously over the next few years even if drought conditions improve. In 2008 and 2009, the California salmon fishery experienced closures that were disastrous to fishing communities. The closure of the California commercial crab fishery due to the presence of domoic acid has intensified the current fishing crisis, since so many commercial fishermen must rely both on crab and salmon to make a living. Therefore, the next three years are seen as crucial to West Coast fishing communities.

Maximizing Water Supply

S. 2533 aims to maximize the water supply and exports from the San Francisco Bay-Delta Estuary in order to increase water available for agriculture, but does not consider impacts to fishing communities or the ecosystem. Essentially, “maximizing supply” means reducing the water available to salmon. It would lock in, barring a finding by the Secretaries of Interior and Commerce, a 1:1 export-to-inflow ratio on the lower San Joaquin River for water transfers, which is less protective of salmon than current requirements, which require a more protective export-to-inflow ratio in most water-year types (302(b)(6)). It would mandate that the Delta cross-channel gates be kept open “to the maximum extent practicable,” which would increase the loss of juvenile salmon to the Delta pumps (302(b)(1)(A)). The bill would allow higher levels of pumping during peak winter storm runoff, which is critical to moving juvenile salmon through the Delta to areas where they can survive (303(c)), and would mandate averaging requirements for the export-inflow ratio that could harm salmon (302(b)(12)). The bill also guarantees water deliveries for junior Sacramento Valley water users (§404) and requires Federal agencies to not only consider, but use recommendations for water operations developed by water districts (301(b)(2)(C) and 305(1)).

The Central Valley Project Improvement Act (CVPIA) sets out “co-equal goals” that equally balance the doubling of Central Valley salmon runs with a healthy water supply. The California state legislature has incorporated similar “co-equal goals” for managing the Delta in state law. However, by requiring the “maximizing” of water supplies for Central Valley Project water users, S. 2533 is inconsistent with both of these statutes.

NMFS Biological Opinion

The Council is concerned that S. 2533 would allow water managers to exceed certain restrictions in the National Marine Fisheries Service’s (NMFS) 2009 Salmon Biological Opinion (BiOp). For instance, the BiOp sets limit regarding flow in the Delta-Estuary during operation of the Delta export pumps so as to prevent entrainment of juvenile salmon and other species. S. 2533 permits managers to allow pumping in excess of the restrictions prescribed in the BiOp. This circumvention of the BiOp is particularly dangerous to salmon at a time when juvenile survival has been disastrously low after two years of poor temperature and flow conditions in the rivers.

S. 2533 authorizes weaker protections for salmon and other endangered species by allowing water export pumping levels that would violate the existing BiOps, which have been upheld by the courts and independent scientific peer review (Section 303).

Weakening of Environmental Laws

S. 2533 reduces environmental review periods for water transfers, including for impacts to salmon [302(b)(9)(B)(i)]; creates new restrictions on environmental review for undefined

“emergency” water projects [§304]; limits environmental review for predation projects, including the review of potential harm to salmon [§204(c)]; and allows, in a pilot process, for California and other states to assume the lead for National Environmental Policy Act review [§139]. As noted above, the bill also undermines the “co-equal goals” set out by the CVPIA. The Council believes that thorough environmental review is critical to protect against poor decisions made under political pressure during the drought.

Other Concerns

The Council is concerned that the bill includes a predator removal program that is not supported by science and that scientists believe could result in unintended environmental harm (Section 203). Some provisions (e.g., §139) are also exempt from the sunset provision (Section 702). Finally, the Council believes this legislation would lead to increased litigation, leading to declines in salmon populations while important decisions are tied up in the courts.

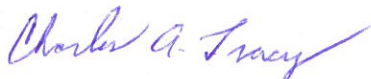
Huffman’s Bill

We agree with the Pacific Coast Federation of Fishermen’s Associations that H.R. 2983 strikes a balance between short-term relief to communities affected by the drought, long-term planning to avoid similar impacts in the future, and protections for businesses impacted by water scarcity. H.R. 2983 reflects the principle that because no particular sector of the economy caused the drought, no particular sector should disproportionately bear its consequences.

Conclusion

Thank you again for requesting Council comments on this bill and other drought legislation. We recognized that this bill is unlikely to become law as written, but could be combined with HR 2898, the Drought Recovery and Resilience Act of 2015, which could have additional negative impacts on salmon stocks and the communities that depend on them (the Council commented on HR 2898 on September 28, 2015¹). The Council appreciates the opportunity to comment on these important bills. Should you have any additional questions, please feel free to contact us.

Sincerely,



Mr. Charles A. Tracy
Acting Executive Director

JDG: kma

Cc: Council Members
Habitat Committee
Salmon Advisory Subpanel
Mr. Mike Burner
Ms. Jennifer Gilden

¹ <http://www.pcouncil.org/wp-content/uploads/2014/12/Huffman-Thompson-Drought-Letter.pdf>