

DATE

The Honorable Jared Huffman
United States House of Representatives
1630 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Huffman and Mr. Thompson:

Thank you for your request for Pacific Fishery Management Council analysis and comment on HR 23, the Gaining Responsibility on Water Act of 2017.

The Pacific Council and its Legislative Committee met November 14, 2017 in Costa Mesa, California and reviewed the bill. The Council would like to express the following general observations.

First, as you know, the bill is somewhat similar to bills HR 5781 and HR 2898, introduced in the 113th and 114th Congresses, respectively. Therefore, our comments echo previous comments on earlier bills.

HR 23 would benefit agricultural water users at the cost of significant damage to California salmon populations. It would override Endangered Species Act (ESA) protections for salmon, steelhead, and other species in the Bay-Delta in order to allow increased pumping from the Delta. These ESA protections also protect non-listed salmon species, which are a primary source of healthy sport, commercial, and tribal fisheries from Central California to Northern Oregon.

The bill includes measures that override California water law, reduce or eliminate review of water storage projects, blur the distinctions between hatchery and wild stocks, and threaten tribal fisheries in the Trinity and Klamath rivers. The Pacific Council is extremely concerned that this bill would decimate both salmon stocks and the West Coast sport and commercial fisheries that depend on them.

The bill is complex, so we focus here on nine provisions that are particularly concerning regarding Council-managed anadromous fish.

1. The bill reduces water for salmon.

Several provisions in the bill would result in reductions in water for salmon. Given past drought conditions in California and the probability of similar conditions in the future, these reductions in water for salmon could drive some stocks closer to extinction, with severe impacts on fishing communities not only in California but along the entire West Coast.

For example, Section 105 eliminates the existing mandate for the Secretary of the Interior to provide water suitable “to protect all life stages of anadromous fish” and repeals the dedication of water for salmon (and other fish and wildlife) by ordering environmental water to be diverted to water users “to the fullest extent possible” (Section 105(1)(B)). The same section reduces water dedicated to the environment and salmon during water shortages (Section 105(1)(C)). Water contract renewals in the Central Valley Water Project would be extended from 20 to 40 years, restricting the ability of the Dept. of Interior to respond to changing conditions (Section 103). In addition, provisions in the Central Valley Project Improvement Act (CVPIA) to prevent environmental impacts from water transfers would be repealed, while all water transfers would undergo expedited review (Section 104(D)).

We are particularly concerned about Section 107(C)(9), which states that if, by September 30 2018, the Secretary does not increase the annual delivery capability of the Central Valley Project by 800,000 acre-feet, then all non-mandatory actions under section 3406(b)(2) of the CVPIA will be suspended¹. Such an increase on an annual basis appears to be impossible.

The bill also eliminates the current prohibition against writing new Central Valley Project water contracts (Sec. 107(a)) and prevents mitigation for environmental impacts caused by changes in water operations during dry periods (Section 111).

2. The bill overturns both Federal and California state laws regarding salmon protection.

The bill would overturn certain ESA protections, as well as decades of state law aimed at protecting salmon.

Section 108 overrides ESA protections for salmon, steelhead, and other species in the Bay-Delta in order to allow increased pumping from the Delta in excess of scientifically justified levels.

The bill would prohibit Federal departments and the State of California from restricting water rights in order to protect salmon. The California State Water Resources Control Board would not be allowed to use state law to regulate the State Water Project to protect state resources, including salmon, in the Bay-Delta (Sec. 108). In addition, California

¹ This section of the CVPIA reads: “(2) Upon enactment of this title dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including but not limited to additional obligations under the federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.”

would also be prevented from using the Public Trust to protect state waters (Section 108(b)).

3. The bill weakens the San Joaquin River Salmon Restoration Agreement.

Section 109 amends the San Joaquin River Restoration Act, adding new requirements for release of flows and acquisition of property to comply with the Settlement. Section 113 would effectively halt the restoration of the San Joaquin River and its native salmon runs as required by state law, Federal law, and a binding court settlement. This would result in dewatering 60 miles of the San Joaquin River, California's second longest river—also in violation of state law. In addition, restoration of salmon below Friant Dam would be specifically disallowed: “No salmonids shall be placed into or allowed to migrate to the Restoration Area” (Section 113(a)(7)(B)). In turn, state agencies would not be allowed to use the California Fish and Game Code to require flows to restore the San Joaquin River below Friant Dam (Section 113(a)(5)). The release of restoration flows below Sack Dam on the San Joaquin River would also be disallowed (Section 113(a)(7)(B)).

4. The bill blocks implementation of existing Biological Opinions.

The bill blocks implementation of current Biological Opinions in the Central Valley, as well as previous Biological Opinions that were found by Federal courts to violate the ESA. All Bay-Delta protections would roll back to 1994 levels (Section 108(a)).

5. The bill prohibits agencies from differentiating between wild and hatchery salmon.

Section 109 would require the Secretary to include hatchery-spawned species when making any determination under the ESA that relates anadromous fish in the Sacramento and San Joaquin Rivers and their tributaries. (“The Secretaries of the Interior and Commerce shall not distinguish between natural spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973... that relates to any anadromous fish species present in the Sacramento and San Joaquin Rivers or their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.”)

Equating hatchery-reared fish with wild fish will result in decreased genetic diversity within stocks. Genetic diversity is the key to species adapting to and surviving variations in environmental conditions. When stocks have low diversity, their chances of surviving an environmental challenge is greatly reduced, as was seen in the 2007-2009 collapse of the Sacramento fall Chinook salmon stock.

6. The bill blocks water releases to protect Klamath salmon.

Section 402 prohibits emergency releases of Trinity River water, allowed under recent Court rulings, to prevent disease outbreaks on the Klamath River in California. These supplemental flows, which lower water temperatures, flush disease-causing organisms from the Klamath system, and reduce the effects and chances of infection, are vitally important to Klamath salmon and the fisheries that depend on them.

The Council has commented several times on the importance of these flows to Klamath salmon. This year, due to low Klamath numbers, the Council canceled the ocean salmon fishing season along a 200-mile stretch of coast along northern California and southern Oregon, leading the governors of Oregon and Washington to request a Federal disaster declaration.

7. The bill fast-tracks and weakens environmental review of new water projects.

The bill contains several provisions aimed at fast-tracking new water projects or reducing environmental analysis of such projects. A Congressional summary notes it would allow regulatory streamlining for new dams by declaring that a Notice of Determination or a Notice of Exemption prepared pursuant to the California Environmental Quality Act will satisfy the requirements of the National Environmental Protection Act (Section 110(a)). This would waive the public's right and ability to provide comment on new dams and projects, even those that are Federally funded—a pillar of the NEPA process.

Title V, the Water Supply Permitting Act, would allow the Bureau of Reclamation alone to determine which biological and other studies would be used to evaluate and permit new dams. This could lead the Bureau to exclude information about the potential impacts of Bureau projects (Sec. 504 (a)(4)). Title VI would further streamline the Bureau process, requiring feasibility studies to be completed within three years and with a maximum cost of \$3 million unless fully justified by the Interior Secretary. If timelines are not met by the Secretary, financial penalties against "each applicable agency office" would be incurred.

Finally, Section 107(e) authorizes the raising of Shasta Dam and other dam projects. Federal biologists have already determined that raising Shasta Dam would be harmful to salmon; it would also violate state law.

8. The bill cuts critical funding for habitat restoration.

The bill would cut funding for habitat restoration by repealing the mandate that 67% of the of the CVPIA Restoration Fund be spent on habitat restoration activities (Section 106(a)(2)). In addition, user contributions to the CVPIA Restoration Fund would be reduced (Sections 106(c) and (d)).

9. The bill ignores impacts to fishermen and fishing communities.

Although the bill makes it clear that California water users are to be protected at the expense of salmon, it notably fails to mention fishermen or the fishing communities that depend on salmon. Indeed, Section 112 requires Federal agencies to treat state and Federal water users as applicants in ESA consultations, but does not do the same for fishing or environmental interests, which violates California's co-equal goals for Delta management.

Summary

The water situation in California is exceptionally complicated. In addition to the damage this bill would do by reducing the water available for salmon, we believe it would serve as a magnet for litigation that would further complicate and slow the progress that needs to be made to protect California salmon and the communities that depend on them. Millions, if not billions, of dollars have already been spent on habitat restoration and water fixes for California salmon. This bill would unravel this important work and lead to another disaster declaration for California and Oregon fisheries.

Many fishing businesses rely on a portfolio approach, targeting different fisheries in order to maintain their economic stability. If salmon fishing is eliminated, many businesses will not be able to survive on their remaining fishing opportunities. These include commercial fishing enterprises, charter boats, gear and angling supply stores, and the hotels and restaurants that serve the fishing industry. Seafood processors and markets would also be disrupted.

The fishing communities of the West Coast deserve better treatment. Commercial and recreation fishing employment, and the long culture of fishing in West Coast salmon communities, cannot be replaced simply through a Federal disaster relief check. Were this bill to pass, we fear a disaster will be repeated in the near future.

Please feel free to contact us with any questions, etc.

Sincerely