

change that. Generally, in my view, they ought to be taken in that order.

So, Mr. President, I guess I have shared my view that we have some really important things to do. We have a very short time to do it. I hope we can get the obstacles out of the way and deal with our differences. We have them, but let's resolve those questions that are our responsibility to resolve.

Mr. President, I yield the floor.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Who seeks recognition?

Is there further morning business? If not, morning business is closed.

INTERNET TAX FREEDOM ACT—MOTION TO PROCEED

The PRESIDING OFFICER. The clerk will report the unfinished business.

The legislative clerk read as follows:

Motion to proceed to the consideration of S. 442, a bill to establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exaction that would interfere with the free flow of commerce via the Internet, and for other purposes.

The PRESIDING OFFICER. The Senator from Washington.

ADDITIONAL COSPONSORS—S. 2182

Mr. GORTON. First, Mr. President, I ask unanimous consent that the following Senators be added as cosponsors of S. 2182, the Private Use Competition Reform Act of 1998: Senators KYL, LEAHY, GRASSLEY, SMITH of Oregon, WYDEN, and HOLLINGS.

The PRESIDING OFFICER. Without objection, it is so ordered.

INDIAN TRIBES AND THE ENDANGERED SPECIES ACT

Mr. GORTON. Mr. President, my constituents in the Pacific Northwest and the Members of this body know that I am not a fan of the current version of the Endangered Species Act, a law that has proven to be a failure not only for endangered species but also many rural communities and private property owners as well. In fact, I have spent much of my time as a U.S. Senator looking for ways to improve that law. The Endangered Species Act has inflicted grave harm on natural resource industries based in the Northwest with little to show in return, especially if we attempt to measure the law's success in bringing salmon back to Northwest rivers and streams.

In fact, the Puget Sound region faces the possibility of more ESA listings over the next year. Local leaders in the Pacific Northwest looked to the Wash-

ington State congressional delegation during this year's appropriations process for funds to implement the salmon recovery plan personalized to respond to our unique needs in the Puget Sound region. I believe that we will be successful. The local scientists and leaders know that a creative plan that is supported by the communities surrounding the Puget Sound area will be the best chance we have to achieve success and avoid the heavy hand of the Endangered Species Act, a law implemented by D.C. bureaucrats with plans and standards that may not fit with the challenges and competing interests that must be balanced in the Northwest.

As my constituents put all of their energies behind this last-ditch effort to avoid the crushing impact of yet another listing in the Pacific Northwest, another group has been using every tool at its disposal to avoid the implications of the Endangered Species Act on its activities.

Puget Sound and Columbia River Indian tribes in Washington and Oregon are proclaiming themselves exempt from the constraints already imposed on their commercial fishing for salmon and steelhead by the Endangered Species Act. As a result of Clinton administration Executive and Secretarial orders, Pacific Northwest tribes believe they should be able to decide for themselves whether or not to restrain their commercial gillnetting activities, while at the same time nontribal commercial and sport fishers face the full impact of the Endangered Species Act in the form of extensive fishing closures.

On June 5, 1997, the Secretaries of Commerce and Interior issued a joint Secretarial order declaring that Indian lands and activities are not subject to the same controls as Federal public lands and privately-owned lands when it comes to enforcement of the ESA.

This Secretarial order, signed by Commerce Secretary William Daley and Interior Secretary Bruce Babbitt, was the result of more than a year and a half of negotiations among Clinton administration, Federal Government agencies, and Indian tribes from across America. President Clinton's similar Executive order was signed on May 14, 1998.

Mr. President, I am frustrated and dismayed. While I have identified many flaws in the D.C.-driven implementation of the Endangered Species Act, I also strongly believe this law will have no chance of success if the administration is allowed to decide certain segments of the population and certain interest groups are not bound by it. The Members of this body have heard me criticize the enormous amount of money spent without result by the Federal Government in an attempt to save species of Pacific Northwest salmon and steelhead. In fact, it is estimated that each endangered or threatened fish preserved in the Northwest may have cost tens of thousands of dol-

lars, if we consider the amount of money spent on recovery efforts as compared with our level of success. We must get a better bang for our buck, and I don't see how we can improve the return from our investment unless everyone in the Northwest complies with the restrictions imposed by the Act.

In response to the unilateral actions taken by the administration over the last 2 years, which I consider beyond the scope of Executive and bureaucratic authority, I included a provision in this and last year's Interior appropriations bills expressing the contrary intent of Congress. The Endangered Species Act, as written, should apply equally to all Americans.

Before the negotiations that resulted in the Secretarial and Executive orders I mentioned, the Federal Government's position was that "ESA applies to Indian Country, period." By the time negotiations were completed, however, the Clinton administration had capitulated to tribal demands that the tribes decide for themselves, on a case-by-case basis, whether or not to respond to the conservation principles of the ESA.

How can the Endangered Species Act work unless tribal fisheries share equitably in the conservation burden?

The Clinton administration is pursuing a policy of preferential treatment. Under this policy, the conservation burden falls mainly upon non-Indians. According to the orders released by the administration, restrictions on Indian harvest of endangered and threatened species, both on and off-reservation, can be considered only if "the conservation purpose of the restriction cannot be achieved by reasonable regulation of non-Indian activities" and "voluntary tribal measures aren't adequate" to achieve ESA goals.

It certainly wasn't Congress' intent when the Endangered Species Act was passed into law that any group of Americans would be exempted from its provisions or that one group should have to bear conservation burdens greater than another group. And Members of this body know that non-Indians certainly can't stave off the impact of the Endangered Species Act by pursuing "voluntary" recovery plans after a species has been declared threatened or endangered.

The efforts of the administration to exempt tribes from the Endangered Species Act don't stop at Secretarial and Executive orders. The National Marine Fisheries Service recently issued a draft rule modifying existing tribal exemptions under the ESA. Not only will tribes be able to continue "ceremonial and subsistence" take of threatened or endangered species in tribal fisheries, the tribes also will be able to engage in "commercial" take of threatened species, such as chinook salmon and steelhead trout.

Allowing a tribal commercial exemption from the ESA would dramatically reduce the likelihood of recovery for threatened or endangered salmon and

steelhead species. Non-tribal commercial and sport fisheries for chinook and coho salmon have been significantly curtailed in Puget Sound and on the Columbia River, and it is likely that chinook harvesting could be shut down entirely by next year. Yet the tribes and administration proclaim the tribes have a treaty right to continue to fish as they always have, regardless of the conservation needs of the fish.

This is very unfair and contrary to Supreme Court decisions. The tribes should bear an equal share of the conservation burden, just as they enjoy a 50-percent share of the harvest when fish numbers are plentiful and healthy.

Harvest restrictions necessary under the terms of the ESA must be applied in an equitable manner that is fair and consistent for all user groups, tribal and nontribal, if we are to meet conservation goals and see recovery of endangered salmon and steelhead in our lifetimes.

Just a few weeks ago, the tribes, with the support of the administration, attempted to take their circumvention of the Endangered Species Act one step further. Fortunately, U.S. District Judge, Malcom Marsh, in Portland, OR, denied the request of the Federal Government and five Pacific Northwest tribes to reopen the tribes' commercial harvest season for fall chinook salmon. This opening for the tribes, requested by the Clinton administration, would have taken place while all types of nontribal fisheries were closed.

The States of Washington, Oregon, and Idaho opposed the tribal fishery, noting that the Federal Government had issued no biological opinion on what effect the tribal fishery might have on "threatened" Snake River and Columbia steelhead. Judge Marsh agreed with the States' contention that National Marine Fisheries Service had failed to issue a biological opinion showing tribal gillnet fishing wouldn't harm steelhead stocks protected under the ESA.

Judge Marsh made the following statement in his ruling: "While I am highly sensitive to the importance of the tribes' treaty fishing rights, I am also mindful of the fact that no one will be fishing if the resource is depleted to the point of extinction."

Instead of being concerned primarily with the long-term preservation of the listed steelhead, the Judge stated, "The Federal Government appears to be more concerned with what the tribes are willing to accept as reductions to their fall commercial harvest than they are with the needs of the listed species."

Judge Marsh concluded, in his ruling against the tribes and Federal Government: "Federal agencies may not circumvent the unambiguous statutory mandate of the ESA simply to avoid more difficult issues or to appease one interested party at the expense of the others. Regardless of the result, the process must comply with the law and I fine the proposal submitted to me [by

the Clinton administration and the tribes] . . . fails in that respect."

Yet, the tribes contend that, despite Judge Marsh's ruling, they can keep fishing. All that State governments can do is ask the public not to buy the fish the tribes catch, since technically they would be fishing under the "ceremonial and subsistence" exemptions to ESA.

As a practical matter, however, in this technological age of flash freezing and vacuum-packaging, it is impossible for the States meaningfully to enforce this prohibition on the commercial sale of endangered wild fish netted by the tribes in their "ceremonial and subsistence" fisheries.

The National Marine Fisheries Service and the Clinton administration have embarked upon a policy doomed to produce more strife and fewer fish for future generations of Indians and non-Indians alike.

The solution to this problem is to pass legislation I introduced in July: the Tribal Environmental Accountability Act (S. 2301). This bill prohibits a tribe from claiming sovereign immunity as a defense if a tribe is a defendant in a case brought to enforce a Federal environmental law, such as the ESA. This much-needed legislation would allow tribes to be sued to mandate compliance with Federal environmental laws to the same extent that State governments or private entities can be sued. If the administration is unwilling equally to enforce the mandates contained in the Endangered Species Act across all user groups, then other interest groups must have the opportunity to pursue enforcement of this law, no matter how flawed it may be, in the courts of the United States.

Mr. President, I suggest the absence of a quorum.

the PRESIDING OFFICER (Mr. ENZI). the clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. THOMAS). Without objection, it is so ordered.

PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, there are just a few remaining days in this Congress, and the Republican leadership continues to block action on a Patients' Bill of Rights. It is clear what is going on here. It is clear to every Member of the Senate. It should be clear to the American people. The American people want Congress to pass strong, effective legislation to end the abuses by HMOs, managed care plans, and health insurance companies.

The Patients' Bill of Rights, sponsored by Senator DASCHLE and Senate Democrats, provides the needed and long overdue anecdote to these festering and growing abuses. Our goal is to protect patients and see that insur-

ance plans provide the quality care they promise but too often fail to deliver, and to make sure that the plans, having given assurances to those who sign up for the plans, include the protections they say are going to be there. They aren't in too many of the cases today. And we want to remedy that.

Our bill was introduced last March. Earlier legislation was introduced more than a year and a half ago, but the Senate has taken no action because the Republican leadership has been using every trick in the procedural playbook to prevent a meaningful debate.

The Republican leadership is abusing the rules of the Senate so that health insurance companies can continue to abuse patients. The Republican leadership wants to gag the Senate so that HMOs can continue to gag doctors who tell patients about needed treatments that are expensive for HMO balance sheets. The Republican leadership wants to deny a fair debate on the Patients' Bill of Rights so that HMOs can continue to deny needed patient care. The Republican leadership wants to avoid accountability in the U.S. Senate so that managed care plans can avoid accountability when their unfair decisions kill or injure patients.

This record of abuse should be unacceptable to the Senate, and it is certainly unacceptable to the American people. Almost 200 groups of patients, doctors, nurses and families have announced their support for our bill and are begging the Republican leadership to listen to their voices.

Mr. President, here on the Senate floor we have listed some of the various groups that support the Patients' Bill of Rights, which, as I have pointed out, was introduced last March. We introduced similar legislation a year and a half ago. We were denied effectively any hearings; denied any consideration by the committee; denied any consideration here on the floor of the U.S. Senate.

On this chart is the list of some of the organizations that support this legislation that we are trying to debate, even in the final days of the session, in which we have been denied the opportunity to debate. You can see them and read them. They have been put into the RECORD constantly: the American Medical Association, the American Cancer Society, the National Alliance for the Mentally Ill, the National Partnership for Women and Families, the National Association of Children's Hospitals, the AFL-CIO, the American Nurses Association, the American Heart Association, the National Breast Cancer Coalition, the Children's Defense Fund, the American Academy of Pediatrics, the National Council of Senior Citizens.

There it is—the doctors, the nurses, representatives of the working families, the associations representing the children, the associations representing women—the National Lung Association, the Paralyzed Victims of America, the American Psychological Association, the Consumers Union. The list