

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