

CLASSIFIED

File No. Dossier 25-5-7-2-SALMON-I
Volume II From - De 8/01/01 To - À 8/09/30
8733 8/09/15

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TITLE — TITRE:

BONDRIES-WATER-HIGH SEAS-
~~FISHERIES~~-INTERNATIONAL
PACIFIC SALMON FISHERIES-
COMMISSION_(CDA_-USA)

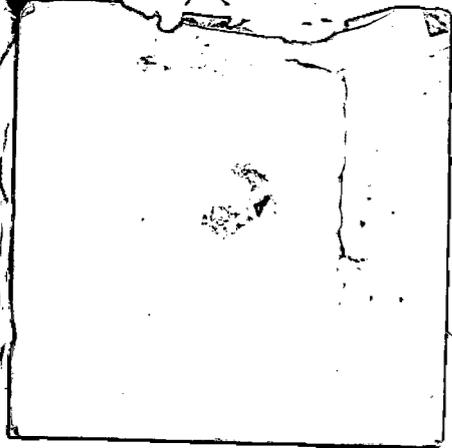
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DEPARTMENT OF EXTERNAL AFFAIRS

MINISTÈRE DES AFFAIRES ÉTRANGÈRES



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Government of Canada

Gouvernement du Canada

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82-03-15

DATED FROM À COMPTER DU	81-07-01	TO JUSQU'AU	82-07-30
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AFFIX TO TOP OF FILE - À METTRE SUR LE DOSSIER

DO NOT ADD ANY MORE PAPERS - NE PAS AJOUTER DE DOCUMENTS

FOR SUBSEQUENT CORRESPONDENCE SEE - POUR CORRESPONDANCE ULTÉRIEURE VOIR

FILE NO. - DOSSIER N°

25-5-7-2 - SALMON - 1

VOLUME

12

M. Hunter/Int'al Direct/5-2186

Typist: E. Lalonde

Government of Canada / Gouvernement du Canada

Fisheries and Oceans / Pêches et Océans

Handwritten initials: H.S. (GR) to note

Handwritten signature

Your file / Votre référence

Our file / Notre référence

Ottawa, Ontario
K1A 0E6

September 14, 1981

Mr. W. Saletic,
Chairman,
International Pacific Salmon
Fisheries Commission,
P.O. Box 30,
New Westminster, B.C.
V3L 4X9

ACC 156784	DATE
FILE 25-5-7-2-SALMON-1	DOSSIER

Dear Mr. Saletic:

Under the 1930 Fraser River Salmon Convention, Canada and the United States agreed that the catch of Fraser River sockeye and pink salmon from Convention Waters should be equally divided between Canada and the United States fishermen in accordance with the regulations proposed by the International Pacific Salmon Fisheries Commission (IPSFC) for approval by both countries. As concerns the United States, the 1930 Convention did not preempt the tribal fishing rights of U.S. Treaty Indians with regard to Fraser River runs passing through "usual and accustomed" places. U.S. judicial decisions in 1979 affirmed that the United States Government is obliged to manage salmon runs which pass through "usual and accustomed" places of certain U.S. Treaty Indian tribes so that those tribes are afforded the opportunity to harvest up to 50% of the U.S. share.

The United States Government has previously agreed and continues to agree that the Commission's regulations shall be implemented to the fullest extent possible, consistent with the international legal responsibilities of the U.S. Government and in order to achieve the objectives of the Convention. However, in order to meet its obligations to certain Treaty Indian tribes the United States has

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- 2 -

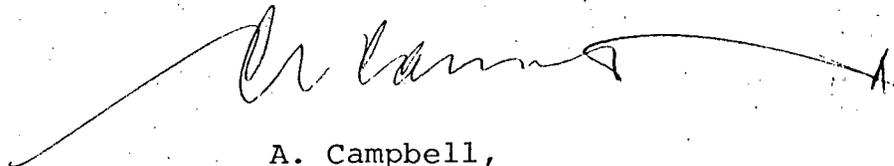
taken regulatory actions which are not identical to nor strictly consistent with the Commission's regulations. The Government of Canada has formally protested the regulatory action taken by the United States, and continues to believe that the exclusion of a group of fishermen from the purview of IPSFC regulations is illegal. The United States Government does not share this opinion.

The Commission will agree that a practical solution must be found to this difficulty and, to this end, both Parties to the Convention recommend and request that:

- (1) The Commission and its staff, during their management deliberations, be aware of the rights of U.S. Treaty Indian fishermen operating in Convention waters; and
- (2) To the extent practicable, the Commission staff provide technical advice to the appropriate U.S. Commissioner regarding the features of the U.S. domestic management regime (including in-season adjustments) which could satisfy U.S. Government obligations to its Treaty Indian fishermen, while not jeopardizing the achievement of the objectives of the Fraser River Convention.

The appropriate U.S. Commissioner will inform the Commission and its staff of the domestic management regime and will keep them informed as subsequent decisions are made during the season. The above recommendations are intended to ensure that court-mandated domestic actions of the United States, in implementing treaties between the United States and its Indian tribes, do not impair the achievement of the objectives of the Convention.

Yours sincerely,



A. Campbell,
Director-General,
International Directorate.

bcc: C.W. Shinnors
J.R. MacLeod
G. Jones
H. Strauss (FLO) ✓



Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO / À

DISTRIBUTION

FROM / DE

Associate Director
International Fisheries
Relations Branch
International Directorate

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
DATE September 10, 1981

SUBJECT / OBJET

Pacific Salmon Negotiations

ACC
25-5-7-2-Salmon - 1
DOSSIER

This is to advise that the October 14-19 sessions will be held at the Seattle-Tacoma Airport Hilton Hotel, and not in Warm Springs, Oregon as previously intended.

for / M. Hunter
E. Serrience

Distribution:

- D. Kowal
- M. Goldberg
- J. Swan
- H. Strauss (FLO) ✓
- R. Willson (GNG)

AS (R) G...
[Handwritten signature]

C O N F I D E N T I A L

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TO BREEC

INFO WSHDC LDN PARIS BONN ITCOTT/ROC/OGR/EUR FINOTT/IER

BH FANDOOTT/CAMPBELL/SIMCOCK DE OTZ

DISTR GEB FLO

REF YOURTEL YCTD1257 23APR

---REFERENCE PRICES

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FIDE	25-5-5	CDA-EEC	DOSSIER
25-5-7-2	Salmon		

IN RECENT INFORMAL CONSULTATIONS WITH TED KRONMILLER,
 HEAD OF FISHERIES AFFAIRS IN STATE DEPT, ON RANGE OF CDA-USA
 FISHERIES MATTERS, KRONMILLER NOTED SEP28 AS QUOTE CRUNCH
 DATE UNQUOTE FOR A COMMISSION/COUNCIL DECISION ON IMPLEMENTATION
 OF REF PRICE SYSTEM ON SALMON.

2. USA WEST COAST SALMON INDUSTRY FEARS 45-50 PCT CUT BACK IN
 EXPORTS TO EEC AND WE UNDERSTAND USA DEL TO EEC HAS BEEN FIGHTING
 THIS ISSUE VERY HARD.

3. IN BRUSSELS CONSULTATIONS WITH VISSER WE WERE GIVEN TO UNDERSTAND
 THAT QUESTION OF REF PRICE ON LOBSTER AND SALMON IMPORTS WOULD
 BE PART OF LAST PHASE OF DISCUSSION ON REVISED MARKET ORDER AND
 NOT ON AGENDA BEFORE YEAR-END. GRATEFUL ANY LIGHT YOU CAN SHED
 ON DISCREPANCIES USA/CDA INFO AND ON AGENDA FORTHCOMING COMMISSION/
 COUNCIL MEETINGS WHICH COULD DISCUSS THIS ISSUE.

CCC/034 1020022 EC01961

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Pacific Salmon file

JH

TO
À Mr. Strauss

FROM
De R.B. Fadden

REFERENCE
Référence Telcon Fadden/Jones of August 19, 1981

SUBJECT
Sujet Pacific Salmon negotiations -
Involvement of Indian Bands

SECURITY
Sécurité RESTRICTED

DATE September 9, 1981

NUMBER
Numéro FLO-2165

FILE	150884	DOSSIER
OTTAWA		
FILE	25-5-7-2-SALMON	
MISSION		

ENCLOSURES
Annexes

DISTRIBUTION

The U.S. State Department submitted a draft joint letter to the then chairman of the Commission established under the Fraser River Convention (Annex 1st). The Canadian counter-draft which we prepared was referred to FANDO/Pacific Region officials for comment who objected to the part of the letter dealing with the acceptance of Indian observers at Commission meetings.

2. According to Pacific Region, the lack of an organization in Canada representing the various bands could lead to a situation where every band involved in the fishery could legitimately ask for observer status. It is considered likely that our agreeing to the U.S. request to seat one U.S. Indian observer would result in numerous Canadian bands formulating similar requests. Pacific Region is of the view that such a situation must be avoided and consequently considers that Canada should not agree to the U.S. request. At the time the Canadian counter-draft was passed to the U.S. side (State/Dawson), we were not aware of the aforementioned difficulty. In early July, we advised Dawson (through WSHDC/Harlick) that the question of an Indian observer presented us with some difficulties. Dawson indicated that she would circulate our counter-draft without that section. A copy of our re-draft is attached as annex II.

3. Dawson called me on August 26 to indicate that the U.S. side had accepted our re-draft (without the Indian observer section) but indicated that they remained anxious to provide for an Indian observer. I told Dawson that this was a policy question of some importance to us and that we would require some time to renew the U.S. request. The U.S.A. will undoubtedly be pursuing this point.

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RESTRICTED

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4. On another matter, I attach (Annex 3) a copy of an opinion by the Deputy Minister of Justice (which I recently received from FANDO) concerning possible conflicts between regulations under the Fisheries Act and certain Indian Band Council by-laws. As you will note, this opinion may impact on the Pacific Salmon negotiations.


R.B. Fadden

FACSIMILE TRANSMISSION

CLASSIFICATION: UNCLASSIFIED

DATE: 10 February 1981

wa 7/10

FAX OCT. NO:

(for Concentre Use only)

FM: WASHDC

TO: EXTOTT/FLO/FADDEN

(POST/NAME OF ADDRESSEE AND DI

INFO:

(POST/NAME OF ADDRESSEE)

NUMBER OF PAGES: 3

SUBJECT: LETTER TO MR. SCHMITTEN

AUTHORIZING OFFICER: J. HARLICK

SIGNATURE: *[Signature]*

ADDITIONAL COMMENTS OR INSTRUCTIONS:

- Proposed Joint letter from Canada & USA to IPSFC.
- Given to J.E. Harlick by Chris Dawson/State/OES
- Grateful you consult with FANDOTT/Hunter (who know it is coming) on a reply.

[Handwritten mark]

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1007
Chapter 6

LWA DRAFT

Dear Mr. Schmitten:

Under the 1930 Fraser River Salmon Convention, Canada and the United States agreed that the catch of Fraser River salmon from Convention waters should be equally divided between Canadian and United States fishermen in accord with regulations proposed by the International Pacific Salmon Fisheries Commission (IPSF) for approval by both countries. The 1930 Convention did not preempt ^{address} (the U.S. Treaty Indians) ^{the question of} tribal fishing rights with regard to Fraser River runs passing through "usual and accustomed" places. U.S. judicial decisions in 1979 affirmed that the United States Government is obliged to manage salmon runs which pass through "usual and accustomed" places of certain U.S. Treaty Indian tribes so that those tribes are afforded the opportunity to harvest up to a 50% share.

The U.S. Government obligations to meet the treaty rights of U.S. Indians to Fraser River fish may require the United States to take actions which are not strictly consistent with the Commission regulations. The United States Government has previously agreed and continues to agree that the Commission's regulations shall be implemented to the extent consistent with the legal responsibilities of the U.S. Government, and that any deviation from those regulations shall not impair the achievement

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- 2 -

of the objectives of the Convention. This was the case in 1980 when U.S. regulations permitted U.S. Treaty Indians to fish in Convention waters during periods that were otherwise closed to U.S. fishing by Commission regulations.

To provide the necessary fishing opportunities to U.S. treaty fishermen in a manner that is least disruptive to the Commission's management regime, both Parties to the Convention recommend that:

- (1) the Commission and its staff, during their management deliberations, be aware of the U.S. obligation to its Treaty Indian fishermen, and
- (2) to the extent practicable, the Commission staff provide technical advice to the appropriate U.S. Commission^s regarding the features of the domestic management regime (including in-season adjustments) which are necessary to satisfy U.S. Government obligations to its Treaty Indian fishermen.

The appropriate U.S. Commissioner will inform the Commission and its staff concerning the domestic management regime and will

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- 3 -

keep them informed as subsequent decisions are made during the season. The above recommendations are intended to ensure that court-mandated domestic actions of the United States, in implementing treaties between the United States and its Indian tribes, do not impair the achievement of the objectives of the Convention regarding optimum escapements and an even division of the catch in Convention waters between Canadian and U.S. fishermen.

DRAFT

Annex 2

Dear Mr. Schmitten,

Under the 1930 Fraser River Salmon Convention, Canada and the United States agreed that the catch of Fraser River sockeye and pink salmon from Convention waters should be equally divided between Canada and United States fishermen in accordance with the regulations proposed by the International Pacific Salmon Fisheries Commission (IPSFC) for approval by both countries. U.S. judicial decisions in 1970 affirmed that the United States Government is obliged to provide to certain U.S. Treaty Indian tribes an amount of salmon equal to a 50% share of the U.S. allocation of Fraser River sockeye and pink salmon, an obligation which is, of course, not set out in the International Convention.

The United States Government has previously agreed and continues to agree that the Commission's regulations shall be implemented to the fullest extent possible, consistent with the international legal responsibilities of the U.S. Government and in order to achieve the objectives of the Convention. However, in order to meet its obligations to certain treaty Indian tribes the United States has taken regulatory actions which are not identical to nor consistent with the Commission's regulations. The Government of Canada has formally protested the regulatory action taken by the United States, and continues to believe that the exclusion of a group of fishermen from the purview of IPSFC regulations is illegal. The United States Government does not share this opinion.

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The Commission will agree that a practical solution must be found to this dispute and, to this end, both Parties to the Convention recommend and request that:

- (1) the Commission and its staff, during their management deliberations, be aware of the rights of U.S. Treaty Indians fishermen operating in Convention waters; and
- (2) to the extent practicable, the Commission staff provide technical advice to the appropriate U.S. Commissioner regarding the features of the separate U.S. domestic management regime (including in-season adjustments) which could satisfy U.S. Government obligations to its Treaty Indian fishermen, while not jeopardizing the achievement of the objectives of the Fraser River Convention.
- (3) The Commission accepts the attendance of an observer representing Treaty Indian fishing regulatory authorities at Commission meetings, at times when salmon management issues are being discussed.

The appropriate U.S. Commissioner will inform the Commission and its staff of the domestic management regime and will keep them informed as subsequent decisions are made during the season. The above recommendations are made intended to ensure that

- 3 -

court-mandated domestic actions of the United States, in implementing treaties between the United States and its Indian tribes, do not impair the achievement of the objectives of the Convention.

It is understood by the Parties that the appropriate domestic regulatory authorities in the USA which are concerned with implementation of Treaty Indian fishing rights accept their obligation to work closely with IPSFC in developing their domestic regulatory program, and the Parties request that IPSFC report as appropriate on the level and effectiveness of the cooperation afforded by these U.S. authorities.



Deputy Minister of Justice and
Deputy Attorney General of Canada

Sous-ministre de la Justice et
sous-procureur général du Canada

Document disclosed under the Access to Information Act

Document divulgué en vertu de la Loi sur l'accès à l'information

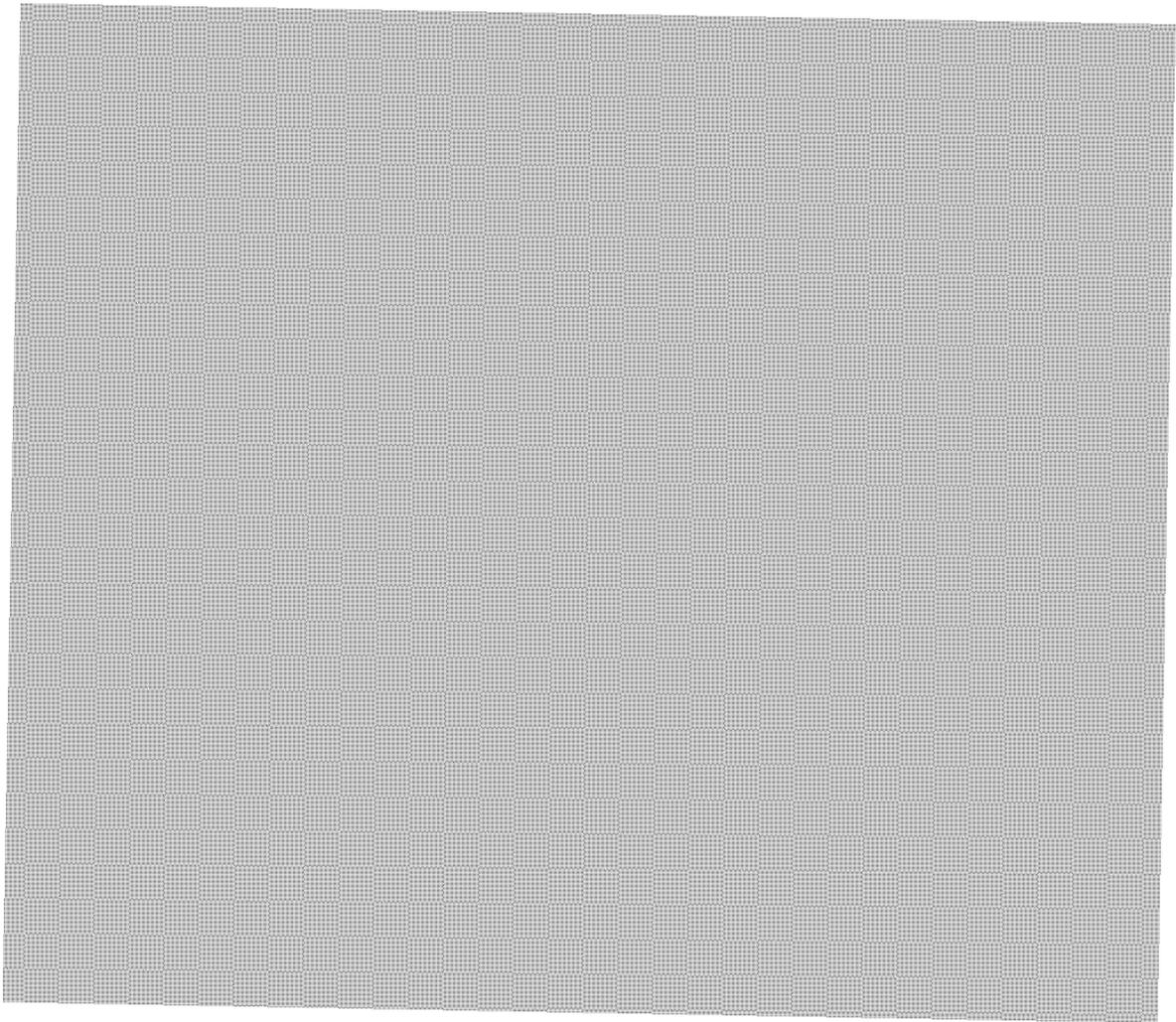
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Ottawa, Canada
K1A 0H8

August 17th, 1978

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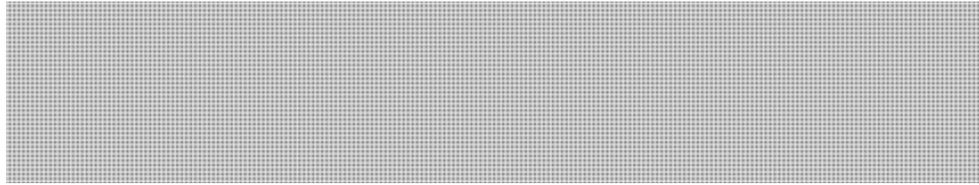
Mr. Donald D. Tansley
Associate Deputy Minister
Fisheries and Environment Canada
240 Sparks Street
8th Floor
Ottawa, Ontario
K1A 0E6



...2

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2.



Yours sincerely,

Roger Tassé
Deputy Minister of Justice.

Government of Canada / Gouvernement du Canada

Fisheries and Oceans / Pêches et Océans

Fisheries - Pacific Region
1090 West Pender Street
Vancouver, B.C.
V6E 2P1

Pêches - Région du Pacifique
1090 rue West Pender
Vancouver (C.-B.)
V6E 2P1

~~SECRET~~

cc: Swan
Kowal
Goldberg
Schauss
Willson
GNG
file 8.1.11.11

August 28th, 1981

Judith Swan,
International Fisheries Relation Branch
International Directorate
240 Sparks Street,
8th Floor West,
Ottawa, Ontario,
K1A 0E6

273162
25-5-7-2-SALMON-1

Dear Judy Swan:

The Canada/United States salmon negotiations will resume on October 16th at Warm Springs Resort in Oregon. It is anticipated there will be two sessions, the first in October and a second to be held in Canada early in 1982. The purpose of the first meeting will be two-fold. First a review of the effectiveness of the interim arrangements for the salmon fisheries which both sides adopted in 1981 and to make concrete plans for cooperation in implementing further interim arrangements for the 1982 season. The second purpose will be to continue negotiation of the long term agreement. It is anticipated that the October session, while attempting to make further progress on issues that have received full discussion at earlier meetings (e.g. formulation of the initial interception limitation scheme and specific arrangements for northern British Columbia - southeast Alaska during the initial phases of the agreement) will concentrate on issues which have not been aired in detail at recent sessions. These issues would include provisions of the agreement regarding long term cooperation in enhancement and fisheries adjustments to achieve an equitable balance in interceptions and long-term sharing arrangements for transboundary stocks.

The October meeting should provide the background necessary for negotiation of all outstanding issues at a full scale follow up session which would be held in Canada probably in January, 1982.

The purpose of the present memorandum is to request representatives of your organization to attend the October meeting in Oregon. It is anticipated that a Canadian delegation meeting will be held at the Warm Springs Resort beginning at 6 P.M. on October 15th, with the formal bilateral discussions being held from the morning of October 16th through to about October 19.

As is customary the Department of Fisheries will pay the expenses for one advisor from each organization. An additional advisor may attend at their own expense. Would you please advise Jane Seymour, at 1090 W. Pender St. telephone 666-1588 of the name of your representative so accomodation arrangements may be made.

Page Two
October Meeting in Oregon
August 27, 1981

Warm Springs is located approximately eighty-five miles from Portland, Oregon. Western Airlines have daily flights between Vancouver and Portland. (Schedule attached). You will then have to arrange ground transportation from Portland to Warm Springs.

I realize this location is somewhat inconvenient however, in light of the stop of negotiations and the result of recent court decisions in the U.S. we feel it is necessary.

If you have any questions please do not hesitate to contact me.

G. Jones
G. Jones

MESSAGE

Straw
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PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. N° D'ORIG.	DATE
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 B.H. FANDOOTT/HUNTER DE OTT
 REGAM FANDO VNCVR/JONES

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 25-5-7-2-SALMON-1

DISTR. GNG

REF COURTEL UAGR 5741 OF 05AUG81

SUB/SUB ---PACIFIC SALMON-INDIAN LITIGATION

ATTACHED IS A COPY OF A DOCUMENT DATED AUG06/81, THE SUBJECT OF WHICH IS 1981 SALMON FISHERY MANAGEMENT PLAN, LITIGATION UPDATE. THE DOCUMENT WAS PREPARED BY THE ACTING NORTHWEST REGIONAL COUNSEL, U.S. DEPARTMENT OF COMMERCE, NOAA. ALSO ATTACHED TO THE DOCUMENT ARE TRANSCRIPTS OF JUDGE CRAIG'S DECISIONS IN THE TWO CASES WHICH LOCAL INDIAN TRIBES HAVE BROUGHT AGAINST THE SECRETARY OF COMMERCE. YOU WILL NOTE THAT THE NOAA COUNSEL WAS TO BRIEF THE PFMC DURING ITS AUG07 AND 08 MEETING. THE BRIEFING TOOK PLACE IN CAMERA AND UNFORTUNATELY WE WERE EXCLUDED.

2. YOU SHOULD NOTE THAT IN CASE NUMBER C80-342T, THE JUDGE HAS INCLUDED THE ALASKAN FISHERIES. TO OUR KNOWLEDGE THIS IS THE FIRST MENTION OF ALASKAN FISHERIES IN THE VARIOUS INDIAN/NON-INDIAN FISHERY DISPUTES. YOU SHOULD ALSO NOTE THAT IN CASE NUMBER C81-742, THE JUDGE HAS GIVEN A DEFINITION OF THE TERM QUOTE CONSERVATION UNQUOTE. IN OUR VIEW THIS DEFINITION MAY BEAR ON THE PACIFIC SALMON TREATY SINCE FROM THE AMERICAN PERSPECTIVE IT WILL BE RELEVANT TO THE MANAGEMENT OF THE SALMON RESOURCE.

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DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
NO F.D. MARTENS			NO

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3. THESE DECISIONS ARE VERY RECENT AND THEIR FULL EFFECT HAS NOT YET BEEN ASSESSED. THEY WERE A MAJOR TOPIC OF DISCUSSION AMONG INDIVIDUALS ATTENDING THE PPMC MEETING AUG 07 AND 08. ALTHOUGH THEY WERE NOT FORMALLY DISCUSSED AT THAT COUNCIL MEETING, THE IMPACT OF THE DECISIONS RELATIVE TO CERTAIN MANAGEMENT DECISIONS REQUIRED TO BE MADE FOR THE 1981 SALMON FISHERY DID RECEIVE LIMITED DISCUSSION. WE EXPECT THAT THE IMPACT OF THE DECISIONS WILL HAVE GREATER RELEVANCE TO THE MANAGEMENT ACTION TO BE TAKEN AT THE PPMC MEETING AUG 21 AND 22. AS MORE INFORMATION COMES INTO OUR POSSESSION WE SHALL PASS IT ALONG ACCORDINGLY.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, GCNW
7600 Sand Point Way N.E., Bin C15700
Seattle, Washington 98115

DATE: 6 August 1981

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8/11

TO: Members of the Pacific Fishery Management Council, Scientific and Statistical Committee, Salmon Advisory Subpanel, and Other Interested Persons

FROM: Douglas M. Ancona, GCNW
Acting Northwest Regional Counsel

SUBJ: 1981 Salmon Fishery Management Plan Litigation Update

Since the Council meeting in Boise, a number of events have taken place in the litigation involving this year's salmon fishery management plan amendment (FMP).

1. HOH, QUINWALT, AND QUILEUTE TRIBES v. BALDRIDGE

You will recall that as of the Boise meeting, the Hoh Indian Tribe, Quinault Indian Nation, and Quileute Indian Tribe had brought an action against the Secretary of Commerce challenging this year's FMP. Since that time, the State of Washington (State) and the Washington State Charterboat Association (WSCA) have sought to intervene in the case. The State also asked that the court consolidate the case with the ongoing proceedings in United States v. Washington. The United States supported the State of Washington's motion to intervene but opposed its motion to consolidate the cases. The tribes opposed WSCA's and the State's intervention and attempts at consolidation. On July 25, Judge Walter E. Craig denied the State's motions for intervention and consolidation, and also denied WSCA's motion to intervene. On Friday, July 31, WSCA and the State filed with the Court of Appeals an emergency motion for a stay of the district court proceedings to allow time for reconsideration of their motion to intervene. The motion was denied.

At the hearing held on August 3 in Seattle, the State was successful in a renewed motion to intervene. Thus, the State, the United States, and the Washington coastal tribes were the only participants. The plaintiffs were allowed, over the objections of the United States, to present testimony on the issue of the 1981 salmon regulations' impact on the coastal tribes' fisheries.

After denying both plaintiff's and defendant's motions for summary judgment the Judge stated that he thought the suit stemmed from a "lack of communication" between Indians and non-Indians.

Judge Craig found that, for management of the coastal coho fishery, the "aggregate" principle should not apply; that is, the tribes are entitled to their 50 percent treaty share on a river-by-river, run-by-run basis. He, therefore,



10TH ANNIVERSARY 1970-1980
National Oceanic and Atmospheric Administration
A young agency with a historic
tradition of service to the Nation

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remanded the matter to the Secretary of Commerce and ordered the parties to the action (the tribes, the State of Washington, and the United States) and the Court's technical advisor to convene a conference for the purpose of deciding whether to further limit this year's ocean harvest or reduce the spawning escapement goals (or a combination of the two), in order to achieve a "reasonable run" up the Hoh and the other rivers involved in the litigation. A report to the Court from the conference is due Friday, August 7.

Judge Craig further ordered "the parties to this litigation and the representatives of all the tribes involved" to meet and come up with a "long-term" (i.e., five to ten year) plan for the ocean salmon fishery, which plan is to be submitted to the Court on or before February 1, 1982. The plan is to include escapement goals for each run on each river for each tribe, and should provide for an annual percentage of enhancement over the previous year's figure. The Judge added that, no matter how "salutary" the State's efforts to set escapement goals, it is impractical to attempt to enhance a run too fast. The plan would be subject to adjustment on a yearly basis.

Observing that the Salmon Plan Development Team was operating in a "vacuum" without technical input from the tribes, the Judge urged consideration of tribal participation in SPDT proceedings:

I am making a suggestion which is not in the form of an order but might well in the future reach that point. What I am suggesting is that the salmon plan development team invite the tribal input with respect to their technical advice. Now, I don't mean by that, that each Tribe should have somebody present at those meetings. I think the Tribes can agree on representation possibly through one person. Maybe it will take more than one but I certainly wouldn't suggest over three because when you get too many you can't do anything.

I'm making that suggestion and you can do with it what you want to do but if there isn't some progress in that respect you can expect me to be back again.

The United States' motion for a stay of the Court's order was denied.

2. CONFEDERATED TRIBES v. BALDRIDGE

In a separate lawsuit, the Confederated Tribes and Bands of the Yakima Indian Nation have sued the Secretary of Commerce, alleging that the Pacific Council's 1981 Salmon FMP failed to protect their treaty rights. The Tribes also indirectly challenged the Secretary's approval of the North Pacific Council's High Seas Salmon Fishery Management Plan for 1981. The Warm Springs Tribe also joined the action as an intervenor. The Confederated Tribes requested that the Secretary of Commerce be directed to impose a quota which would protect both their treaty fishing rights and their rights under the 1977 agreement approved by Judge Belloni, while providing for a substantial ocean harvest. Alternatively, they asked that the Secretary be ordered to immediately limit the Alaskan harvest in a meaningful manner, supplying greater numbers of fish for

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both Washington marine and treaty fisheries, or that he be directed to combine the two options. As in the Hoh River case, the State of Washington successfully moved to intervene. Both the plaintiff tribes and the Secretary moved for summary judgment, and a hearing on these motions was held on Tuesday, August 4.

At the conclusion of oral argument, Judge Craig decided not to close either the Alaskan or Washington offshore salmon fisheries. However, as in the Hoh River litigation, the parties and the Court's technical advisor were directed to meet to come up with a "reasonably satisfactory solution" to the dispute, and report back to the Court within 90 days.

In so ruling, the Judge was of the opinion that the Indians had been "done in," in large part because past estimates regarding fish runs and escapement goals were "woefully inadequate." The Court repeatedly noted the poor data base on which the federal and state fishery agencies based their decisions. He recognized that while the Secretary has tried to reduce the ocean harvest by a variety of methods, and it was apparent that catch reductions have been achieved, the efforts have not been enough, as more fish are not getting into the river. He stressed that in fishing rights cases, the treaty rights of the Indians and conservation of the resource have first priority, while other factors, including the economic consequences of a regulatory measure, are secondary.

Repeating his decision not to close the ocean fishery the Judge, nevertheless, suggested that the Secretary of Commerce take an immediate look at the ocean salmon fishery, particularly the fishery offshore Alaska, with the suggestion that he might want to curb it further. While he noted that severe economic impacts could result from settlement of the dispute in favor of the Indians' treaty rights, the Judge was of the opinion that "everyone will have to suffer, just as the Yakimas have." He also expressed hope that the Columbia River Plan would continue to operate, but that it should be modified by the parties for the future based on their experience with its historical effectiveness.

I have attached transcripts of the Judge's decisions in both cases and will brief you further this weekend at the Portland Council meeting.

cc (w/att.):

- J.P. Walsh, DA
- J.W. Brennan, GC
- W.H. Stevenson, F
- W.G. Gordon, F/CM
- J.S. Johnson, GCF
- P. Travers, GCAR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIAN NATION,
ET AL,

Plaintiffs,

vs

MALCOLM BALDRIGE,

Defendant.

NO. C80-342T

COURT'S DECISION
(Hearing on Motions)

Before The Honorable WALTER E. CRAIG
Tuesday, August 4, 1951
U.S. District Courthouse
Seattle, Washington

APPEARANCES:

For the Plaintiffs:

TIM WEAVER
316 North Third Street
Yakima, Washington 98907

For the Defendant:

DONALD A. CARR
Land & Natural Resources Division
U.S. Department of Justice
Washington, D. C. 20530

JAMES JOHNSON
Assistant Attorney General
Department of Game
600 No. Capitol Way
Olympia, Washington 98504

8/11

1 THE COURT: Well, I guess the Court is going to try to
2 do another Solomon^{ess} type ruling here, and I don't mean
3 ~~just~~ ^{the} Solomon.

4 I am going to deny the motion for summary judgment
5 and it may be that we will have to ultimately have a trial,
6 but in the interim I am again going to call on the parties
7 to this litigation with the help of the Court's technical
8 adviser and see if you can come up with a recommendation
9 to the Court on a reasonably satisfactory solution.

10 It is apparent to the Court that, to borrow a phrase
11 from Mr. Justice Douglas, that at least to some degree
12 the Indians have been "done in." Maybe that appearance
13 is because the guesses with respect to run size and catch
14 and escapement were woefully inadequate as history unfolds,
15 and maybe you all ought to take a look at that side of it
16 to see if you can't get some more realistic figures
17 because where the Secretary has endeavored to control the
18 ocean and fishery to some degree by reducing the seasons
19 and limiting catches, and to some extent rather substantial
20 reductions, it is apparent to the Court that in view of the
21 hard facts that even though those reductions have been made
22 by the Secretary, if it doesn't result in any more fish
23 going up the river it doesn't do much good.

24 So, you want to get to the third step and talk about
25 the economy. Maybe everybody is going to have to suffer

8/11

1 for awhile the same way the Yakima's have suffered over
2 the past few years under the terms of the agreement.
3 That would be non-Indian as well as the Indian commercial
4 fishermen, the sports fishermen and everybody else.

5 I don't think at this juncture it would be helpful
6 or sound to close the ocean fisheries because I don't think
7 right now that would do very much good either. It would
8 make an awful lot of people unhappy, and I'm not afraid of
9 doing that, but I think as a practical matter it wouldn't
10 do too much good. But I would be hopeful that the parties
11 could agree that the Columbia River plan would continue.
12 We have had almost five years of it. You certainly by this
13 time have arrived at some conclusions with respect to its
14 good features and some conclusions with respect to its
15 faulty features, and maybe you can keep the good ones and
16 amend the bad ones until you arrive at a little closer
17 plan that will work over the long haul and in the meantime
18 continue to gather the data which, as I say, is not going
19 to have any immediate effect but down the road it may well,
20 so that there will be a better understanding of the
21 management of the entire industry.

22 I hesitate to set a time limit but I am going to anyway
23 and ask you gentlemen to confer and report back to the Court
24 in 90 days on this issue.

25 Does anybody have any questions?

MAXINE T. ROBINSON
Court Reporter
710 Howe Bldg.
Seattle, Washington 98104
MAIn 7.4744
000933

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1 MR. WEAVER: Yes, your Honor, I do. You are leaving
2 the fishery open, then, to take whatever fish remain out
3 there, is that correct?

4 THE COURT: I am allowing the Secretary to continue
5 with his efforts in the ocean fishery and I am suggesting
6 to the Secretary that he take another immediate look at it
7 with respect to the results, with the suggestion that he
8 might want to curb it further. I am also suggesting to
9 the Secretary that he take a real hard look at the
10 Alaska fishery because, as I understand it, and I'm not a
11 fish biologist either, my understanding is that bright
12 stock goes up there and comes back from there and it stays
13 there for a considerable amount of time and that's when
14 they take it. And, therefore, I am suggesting to the
15 Secretary that he take a hard look at that so he may want
16 to, in the effort which I think is paramount, allow enough
17 fish to get back down and up the Columbia to satisfy to
18 some degree the rights of the Indians under their Treaty
19 to take fish.

20 Now, that may take some comparatively strong measures
21 on the Alaska fisheries. One of the difficulties I think
22 we all have is that we are inclined to compare numbers,
23 and this is all right for an exercise, but, for example,
24 when you say, Well, there is expected to be 300,000 fish --
25 and that's a pretty good number -- and that's the goal to
26 be reached, or a guess on what is coming, and you wind up
27 with 200,000 fish, it doesn't do much good to say, Well,

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1 we have reduced our estimates to 250,000 fish next year,
2 because you are still 50,000 off in your own historical
3 analysis.

4 I think so far the Court has been acquainted in these
5 matters, and it doesn't make any difference which case it
6 is, as I said yesterday I have never seen -- except one
7 year, I believe -- where any of the estimates were any
8 good at all. The prospective fish run was overstated in
9 every instance and the escapement goals were never met.

10 Now, maybe one follows the other. If your escapement
11 goal is based on your anticipated run and your run is that
12 far off you are not possibly going to make the escapement
13 goal. So the escapement goal is too high.

14 As I've said before, this Court is concerned with the
15 fundamental law of the land that is the Indian fishing rights
16 under the Treaties of Governor Stevens; and secondly, the
17 conservation of the salmon fishery, whatever may be the
18 species.

19 Whatever happens economically is down the ladder as
20 far as the Court is concerned and I have the firm belief,
21 at least at this stage, that if the parties work together
22 to adequately conserve the fish, fulfil the terms of the
23 Stevens Treaty, the economics will take care of themselves
24 because under an adequate conservation program you are
25 going to increase the number of fish instead of decrease

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them.

As far as the Chinook is concerned, which was a meritorious effort and I think should continue, the number of fish has been dropping every year, the number of take has been dropping, the number of escapement has been dropping. It could go the way of the ^{Monterey} ~~Monterey~~ Sardine if you are not going to put a check on that trend somewhere along the line.

So I am asking you again to see what you can do and the parties can make recommendations to the Secretary, and I hope the Secretary will take them in good faith and analyze them and if it is appropriate adopt them.

And you report back to me in 90 days.

(Court in recess)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

HOH INDIAN TRIBE, et al,)	
)	
Plaintiffs,)	
)	
vs.)	No. C81-742
)	
MALCOLM BALDRIDGE,)	
)	
Defendant.)	

COURT'S DECISION
(Motion For Intervention)

Hearing on Cross Motions for Summary Judgment

Monday, August 3, 1981

Heard Before the Honorable WALTER E. CRAIG
United States District Court House
Seattle, Washington

APPEARANCES:

For the Plaintiffs:	CARL V. ULLMAN SUSAN KAY EVALSOR
For the Defendant:	GEORGE DYSART DONALD CARR JAMES JOHNSON

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THE COURT: To keep the record straight both motions for summary judgment will be denied.

Mr. Dysart, I think, has heard this record once before but it appears to me that this litigation, as well as others the Court has been unfortunate enough to be involved in, stems to a great part from lack of communication. To this Court's knowledge in all of these cases where there has been effort to forecast the size of any given run of any given species the forecast has been short of expectations in every instance that this Court is familiar with. In the final analysis and the practical operation of the fishing industry the escapement goals have fallen short of anticipation. I think the attitude of the State of Washington and according to their conclusions with respect to perpetuation of the respective species, whatever that means, is salutary. I think also the Secretary of Commerce on the record that is before the Court presently since the Secretary has been in charge of the ocean fisheries has from year to year reduced the catch in the ocean fisheries in order to more equitably distribute the fish in the ocean. I don't know how you do that. I don't know how the Secretary expects to do it but somewhere along the line hopefully we'll reach a reasonably compatible solution.

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I don't know really what the terms conservation and perpetuation mean. They are not particularly subject to a legal definition, but as I analyze the problem perpetuation alone effects to say that next year we are going to have the same number of fish as we did this year, and the year after and the year after. That would be in my book perpetuation.

Conservation, on the other hand, to me is really what all of these cases are about. To me conservation means the protection of each individual species to the extent that the operation of the respective fisheries will be in such a manner as to increase over the long term the number of fish in every one of the streams in this case and from whatever the point south is to the end of the map in Canadian waters, which necessarily would include in escapement goals the percentage for enhancement of the total number of fish of any given species in any given stream.

As has been suggested, ideally we ultimately, maybe in a hundred years, will get back to where we were in 1855 but I rather doubt that will transpire because greed has a way of diminishing everything, and too many people want too much fish. So ultimately we will have no fish. Where are we then? In that

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1 event the Court's problem is solved. You people
2 wouldn't come running in all the time. That is a
3 pretty disastrous result and I hope it can be avoided.

4 With respect to the Pacific Fishery Management
5 Council's input it seems to the Court that the salmon
6 plan development team is operating in something of
7 a vacuum without adequate consideration of the input
8 from the technical advisors to the Tribes.

9 I am making a suggestion which is not in the
10 form of an order but might well in the future reach
11 that point. What I am suggesting is that the salmon
12 plan development team invite the tribal input with
13 respect to their technical advice. Now, I don't mean
14 by that, that each Tribe should have somebody present
15 at those meetings. I think the Tribes can agree on
16 representation possibly through one person. Maybe
17 it will take more than one but I certainly wouldn't
18 suggest over three because when you get too many you
19 can't do anything.

20 I'm making that suggestion and you can do with it
21 what you want to do but if there isn't some progress
22 in that respect you can expect me to be back again.

23 What we have underlying all of this litigation
24 are the Stevens Treaties and whether we like them
25 or not they are there and they are the law of the land

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1 and they have been recognized by the Supreme Court
2 of the United States and the Congress. And whether
3 we like it or not those treaties have been interpreted
4 to mean that the signatory Indian Tribes are entitled
5 to a river by river, run by run, basis to fifty percent
6 of the catch.

7 Now as I recall it, on the first go around it
8 so happened that Judge ^{Belloni} Beihoney attempted to avoid
9 that specific enumeration of percentages by saying
10 "a just share." And I think he was probably right
11 because the fish are never consulted in these matters
12 and consequently no one knows what the fish are about
13 to do so the result is in one year there may be
14 fewer fish than there are in the next year, and a
15 just share in one year may not be the same as a just
16 share in the next year. But we aren't living under
17 that philosophy. We are living under a flat out ~~the~~ ^{fifty}
18 percent take.

19 Now, on 1981 Coho run which we are now consider-
20 ing I don't know whether the forecast of the Secretary
21 or the forecast of the State of Washington or the
22 forecast of the Indians are going to be right or not.
23 My guess is that they won't be on any one of them.
24 And my guess is that they all fall short. I do not
25 believe in the management of the ocean fisheries that

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1 the aggregate principle should apply in this case.
2 And what I am going to do is to remand the matter
3 to the Secretary of Commerce and I am going to order
4 that a conference be convened -- tonight if you want
5 to -- but with inordinate dispatch and that conference
6 shall include the State of Washington and the Indian
7 Tribes represented. And whether it will be necessary
8 to further limit the ocean catch or to reduce the
9 escapement goals to achieve a reasonable run up the
10 Hoh River, and the other rivers involved, will depend
11 on the good wisdom of those attending the conference.
12 It's the Court's personal opinion that no matter how
13 salutary the State of Washington was in attempting
14 to provide escapement goals that it's impractical to
15 attempt to do it too fast.

16 In addition to that order the Court is also
17 ordering the parties to this litigation and the
18 representatives of all the Tribes involved to confer
19 and come up with a reasonable plan that you all think
20 you can live with on a long term basis, and I would
21 hope that it would be on an initial term of ten years
22 but I don't think that is going to work. I think
23 maybe it would be more practical to go on a five year
24 basis. It should be long enough so that you can look
25 at the hard numbers when you get through each year

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1 to tell where you are going. I think there again
2 that the plan that I have in mind would contemplate
3 escapement goals for each run on each river for each
4 Tribe, which would provide a percentage each year of
5 enhancement over the previous year. You can see that
6 if you are successful in providing a ten percent
7 enhancement a year in ten years you would double
8 the quantity of fish. Of course, that is truly
9 theoretical because it doesn't take into account the
10 ordinary mortality rate regardless of people who pull
11 them out of the water. But in any event that's the
12 philosophy and, as I said, I think such a plan should
13 be flexible enough so that it might be subject to
14 adjustment on a year by year basis.

15 I'm going to suggest a deadline for submission
16 of that plan to the Court on or before February 1 of
17 1982.

18 I want to have on the first conference that I
19 referred to on this specific issue an answer by
20 Friday. That is the 7th of August. And as you can
21 see, what I have in mind is a long term role of
22 producing the optimum number of fish in every stream
23 on the west coast of Washington. I can already hear
24 the hues and cries, but let's try it and see what
25 we come up with.

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1 Is there anybody that doesn't understand what I
2 have said?

3 MR. CARR: Just one point, your Honor. You
4 spoke of a remand to the Secretary of Commerce to
5 consider what steps should be taken for this season.
6 Do I correctly understand you on that?

7 THE COURT: That's right. You've got it. I want
8 him to reconsider the ocean catch figure that he used.
9 As I see it, in order to supply the Hoh River with
10 an adequate number of Coho for the Indians to fish
11 in it, one of two things has to happen. You either
12 reduce the ocean catch to let them go in or you
13 reduce the escapement goal, or some of both.

14 MR. CARR: Indeed that is true, your Honor, and
15 I am merely asking for a little elaboration as to
16 your thoughts on the scope of the remand that you are
17 ordering as to whether you were specifically consider-
18 ing alternative choices or combinations of alterna-
19 tives by the Secretary of Commerce. Should he be
20 looking at the harvest level? Should he be looking
21 at spawning escapement levels?

22 THE COURT: All he can do really is to look at
23 the ocean harvest and the escapement goals. His.
24 The reason I am ordering the rest of the parties
25 to that conference and reconsideration is so that you

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1 will have some flexibility in reaching the goal that
2 the Court has indicated so that maybe you will come
3 up with a reduction in ocean harvest and a reduction
4 in the escapement goals as established by the Washington
5 Department of Fisheries which was adopted by the
6 Secretary.

7 MR. CARR: That was sufficient to explain to
8 me, I believe, what I need to tell my client, yes,
9 your Honor. I think at this time it is appropriate
10 and obligatory on me to ask your Honor to stay the
11 order he has just entered.

12 THE COURT: Pardon?

13 MR. CARR: I think it is obligatory on me at this
14 time to ask your Honor to stay that order that you
15 will have just entered because, first, the balance of
16 the irreparability of the harm and the considerations
17 of the public interest and the likelihood of success
18 on appeal argue for the entry of such a stay. At least
19 to permit the consideration by the United States of
20 the possible courses of an emergency appeal. I guess
21 what I am saying, your Honor, is don't enter an order
22 that gives us only until August 7 or we will have to--

23 THE COURT: Well, when is the run going to start?

24 MR. ULLMAN: They have, your Honor, caught about
25 three hundred thousand fish out there already.

21

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1 THE COURT: Let's see what you can do by Friday.
2 If you need help you can holler.

3 MR. CARR: I take it that your Honor is denying
4 my motion for a stay?

5 THE COURT: That's right.

6 MS. HVALSOE: If your Honor might answer one
7 question for clarification. Are you asking that the
8 parties come up with a proposed order to the Court
9 by the 7th or a plan by the Secretary?

10 THE COURT: I have made my order. If you want
11 a copy of it you can get it from the reporter.

12 MS. HVALSOE: You are just asking that we report
13 back to the court then?

14 THE COURT: That's right.

15 MS. HVALSOE: Thank you.

16 THE COURT: Now I would suggest not only at your
17 conference that you have the Indian representatives
18 from the state and feds but also the Court's technical
19 advisor, Mr. Olney who, I am sure, can give you some
20 input as to the attitude of the Court. And whatever
21 you come up with don't try to lock it in granite because
22 it won't work. We have to have flexibility not only
23 in this one but in the one I am asking for as of
24 February 1. And while it may be a difficult task
25 for you to do it, whatever you do is going to be

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much better than what I would do because you have the
input. What I might do nobody will like.

(Court recessed)

Garnett Jones

*As per my
Salmon
Swan
Strawberry
Wilson
file*

*1419
143/156
N. Hunter*

August 25th, 1981

Memo to file

Re: The Trip to Whitehorse, Yukon Territories
August 11th to 13th

*157812
25-5-7-2-Salmon*

The trip was undertaken with three main objectives in mind;

- 1) Update the Yukon Territorial Government as to where we stand in International Negotiations with the United States, what the future discussions and timetable may be, and solicit their support as Advisors on the Yukon River and any other issues that may affect them.
- 2) Meet with Alaska Department of Fish and Game Personnel and exchange all available technical data on the Yukon River i.e. stock size, timing, distribution, exploitation levels, user group dependence on resource, research activities etc.
- 3) Meet with the Council of Yukon Indians as in 1) above.

The meeting with Y.T.G. was not as fruitful as I had hoped, as the only person in attendance was the Commissioner, Mr. Doug Bell. This resulted in discussions taking place that were of a very general nature and did not allow us to get into the specifics of the negotiations or the problems facing us on the Yukon River. The Commissioner did indicate that he was prepared to support the discussions in any fashion that I thought advisable and to that end I suggested that initially staff members that could act as advisors would be of assistance.

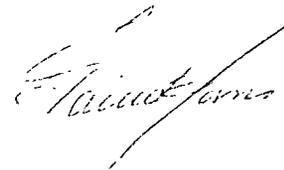
The A.D.F. and G/DFO exchange was a very productive session. There was a very frank and open exchange on both sides, which is certainly a good sign. The discussions indicated some possible avenues for exploration in the up-coming Yukon talks. For example, it would appear that Canada versus U.S. stock separation takes place several hundred miles below the border and it is possible for the U.S. to decrease exploitation of Chinooks and increase their exploitation of summer Chums (U.S. fish). The 1980 Annual Report of the A.D.F. and G. summarizes most of what we discussed (copies are available in Vancouver and Whitehorse). Mr. S. Pennoyer of A.D.F. and G. indicated that they would be meeting with various constituents the last two weeks of September in order to discuss the Yukon River situation.

The discussions with C.Y.I. accomplished very little, other than to advise them we would be entering negotiations that they would no doubt have an extreme interest in, and that an advisor from their organization would be an important part of the negotiations.

It was very evident that the representatives from the C.Y.I. did not have an appreciation of the significance of the negotiations nor their impact on the Yukon River and its resource. Considerable time will have to be expended by the divisional staff in trying to "bring them up to speed". It is important that this be accomplished before we enter serious negotiations with Alaska, so we don't waste our time in re-inventing the wheel.

By copy of this memo to F. Fraser I would advise these discussions take place a.s.a.p.

I indicated to both the C.Y.I. and W.T.G. that their attendance will be required at any and all negotiations that affect the Yukon River and that we would expect these discussions to get under way in November.



c.c. C.W. Shimmers

M. Shepherd

M. Hunter ✓

J. Swan

D. Wilson

B. Graham

F. Fraser

R. Harrison

G. Zealand

TRANSMITTAL AND RECEIPT NOTE - NOTE D'ENVOI ET DE RÉCEPTION

TO
A

EXTOTT/FLO

NO.

DATE 24 AUG 81

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE
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COPY OF PRESS RELEASE DATED 13 AUGUST 1981, NO. 279

"JOINT PRESS RELEASE BY THE UNITED STATES DEPARTMENT OF STATE AND THE DEPARTMENT OF EXTERNAL AFFAIRS OF CANADA"

C.C. F. [unclear] / Hentur done Aug 31 MK

we file

HK

To / A *FLO*
 From / D: *DICO A-4*
 16827 1981
 Attn:

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ACC	REF
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BY HAND	PAR PORT. UR
ATTN:	

J. Boecky
 J. HARLICK, CDN EMB, WSHDC.

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

RETURN TO / RETOURNER À

DATE _____ SIGNATURE _____

FOR SIGNATURE AND RETURN TO ORIGINATOR - SIGNER ET RETOURNER AU BUREAU D'ORIGINE

810821

25-5-7-2-SALMON-1

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The Department of State refers to the Embassy of Canada's note No. 421 of August 21, 1980, regarding the arrest of the US fishing vessel SCORPION in Dixon Entrance.

The United States Government shares the understanding that both Governments reaffirm their intent to abide by the understandings agreed upon concerning new salmon net fisheries and the procedures to be followed to prevent incidents in the boundary region in Dixon entrance.

Department of State,

Washington, August 21, 1981

ERP

FLO

PRESS DEPARTMENT OF STATE

August 13, 1981
No. 278



JOINT PRESS RELEASE BY THE UNITED STATES DEPARTMENT OF STATE AND THE DEPARTMENT OF EXTERNAL AFFAIRS OF CANADA

United States and Canadian federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Dayton L. Alverson for the United States, and Dr. Michael P. Sheppard for Canada recommended in a Progress Report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In both the United States and Canada federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

After reviewing the recommendations of the Special Negotiators and noting the support they have received in both countries, the Governments of the United States and Canada wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

OES/OFA: Christine L. Dawson
632-2009

For further information contact:

Page 2

PR# 278

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiators and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into formal arrangements.

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.

BRIEF FOR USSEA
AUGUST 20/81

CLASSIFICATION: CONFIDENTIAL

ORIGINATOR: D.W. Smith

DIVISION: Legal Operations Division
(FLO)

TELEPHONE:

DATE	2-6692	
ACC	151872	REP
FILE	25-5-7-2-SALMON	DOSSIER
BY HAND		PAR PORTEUR

CANADA/USA PACIFIC SALMON NEGOTIATIONS

The Canadian and U.S. negotiators, Messrs Shepard and Alverson met in Vancouver on August 6 to review the present situation and to set out an agenda and timetable for further work, as follows.

From August 11 to 13 there were "technical" sessions with the governments of the Yukon and Alaska, and the Council of Yukon Indians, basically to review the status of information on Yukon River stocks.

The next full negotiating session is set for October 13-16 in Warm Springs, Oregon, preceded by a government session in Seattle on October 8 and 9. The session will review the conduct of 1981 fisheries in terms of compliance with the interim arrangements; seek to agree on the regime foreseen for 1982 to meet the terms of those arrangements; review elements of a long-term agreement, including technical dispute settlement mechanism, the interception limitation scheme etc.; review and where necessary rewrite the principles contained in the Lynwood Report; explore the "equity" question.

The question of incidents involving salmon fishing vessels in Dixon Entrance has been raised with Mr. Shepard by officials of Fisheries and Oceans and further discussions will be held to explore the extent to which the salmon interception negotiation could be used to avoid further incidents in Dixon Entrance.

10WS

ACTION
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FM GVLOS YTGR8011 12AUG81

TO EXTOTT FLO DELIVER BY 120900Z

FROM CLARK

DISTR GNG

REF YOURTEL FLO2057 11AUG

---CDA-USA PACIFIC SALMON

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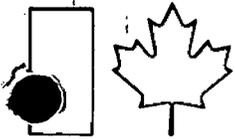
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TWO COMMENTS:(1)WOULD PREFER THAT ANY ~~REF TO ENTIRE CONCEPT OF~~
QUOTE FLAG STATE ENFORCEMENT UNQUOTE INCLUDED OR SUBSUME AS AN
INTEGRAL ELEMENT QUOTE EXISTING PATTERNS UNQUOTE IE FLAG STATE
ENFORCEMENT REGIME IS SHORTHAND FOR SINGLE RPT SINGLEPRINCIPLE
COMPOSED OF TWO PILLARS OR ELEMENTS HAVING EQUAL WEIGHT.

(2)ADDITIONAL PENULTIMATE SENTENCE COULD USEFULLY BE ADDED
INDICATING THAT CDN AUTHORITIES WOULD CONTACT USA FEDERAL
AUTHORITIES IMMEDIATELY ANY USA VESSEL IS GIVEN WARNING QUOTE TO
DESIST FROM FISHING IN THE AREA UNQUOTE.

CCC/200 120902Z YTGR8011



DEPARTMENT OF EXTERNAL AFFAIRS MINISTÈRE DES AFFAIRES EXTÉRIEURES

COMMUNIQUÉ

No: 72
No.:

DIFFUSION:
RELEASE:

FOR IMMEDIATE RELEASE
AUGUST 12, 1981

CANADA-U.S.A. INTERIM ARRANGEMENTS ON PACIFIC SALMON

25-5-7-2-SALMON-1

Canadian and U.S. federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues.

The Special Negotiators, Dr. Michael P. Sheppard for Canada, and Dr. Dayton P. Alverson for the United States, recommended in a progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for co-operative management and enhancement of the Pacific salmon resource. At the same time they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In both Canada and the United States federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

After reviewing the recommendations of the Special Negotiators and noting the support they have received in both countries, the governments of Canada and the United States wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long-term agreement for co-operative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

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In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long-term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into formal arrangements.

The governments acknowledge that proposed research projects are important to the success of long-term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.

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DEPARTMENT OF EXTERNAL AFFAIRS
MINISTÈRE DES AFFAIRES EXTÉRIEURES

COMMUNIQUÉ

No: 72
No.:

DIFFUSION: POUR DIFFUSION IMMÉDIATE
RELEASE: LE 12 AOÛT 1981

ARRANGEMENTS INTÉRIMAIRES CANADA/ÉTATS-UNIS
SUR LE SAUMON DU PACIFIQUE

Les représentants des gouvernements fédéraux du Canada et des États-Unis se sont réunis le 19 juin à Washington, D.C., pour étudier les recommandations faites par leurs négociateurs spéciaux concernant des questions bilatérales liées au saumon du Pacifique.

Les négociateurs spéciaux, Messieurs Michael P. Sheppard (Canada) et Dayton P. Alverson (États-Unis) ont recommandé, dans leur rapport d'étape du 11 juin, que les deux pays poursuivent leurs efforts pour en venir à un accord global visant la gestion coopérative et la mise en valeur des ressources en saumon du Pacifique. Ils ont en outre recommandé que les deux pays appliquent certains arrangements intérimaires pour le reste de l'année 1981 et pour 1982 afin d'améliorer la conservation des stocks de saumon du Pacifique d'une façon qui avantagera les deux parties.

Les participants à la réunion du 19 juin ont noté que les recommandations semblent recevoir un large appui dans les deux pays. En effet, les organismes de gestion des pêches des deux pays se sont dits généralement d'accord avec l'approche recommandée par les négociateurs spéciaux. Ils ont également mentionné qu'ils s'efforceront de voir à ce que soient appliquées les dispositions des arrangements intérimaires pour 1981 et qu'ils oeuvreront activement pour finaliser les régimes de gestion pour 1982 de sorte qu'ils soient conformes aux recommandations.

Ayant revu les recommandations des négociateurs spéciaux et notant l'appui qu'elles ont reçu dans les deux pays, les gouvernements du Canada et des États-Unis souhaitent réaffirmer leur appui aux efforts des négociateurs spéciaux pour en arriver à un accord global.

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Les gouvernements conviennent avec les négociateurs spéciaux qu'un accord à long terme de gestion coopérative et de mise en valeur des ressources en saumon du Pacifique s'impose d'urgence pour assurer une conservation adéquate et une utilisation optimale des stocks, et que les groupes de pêcheurs des deux pays souhaitent vivement en venir à un accord.

En outre, les gouvernements sont d'avis que les arrangements intérimaires pour 1981 et 1982 recommandés par les négociateurs spéciaux s'inspireront des progrès réalisés dans les négociations et aideront concrètement les deux parties à en venir à un accord à long terme. Les gouvernements entendent oeuvrer en 1981 et 1982 pour assurer que toutes les pêches pertinentes sont menées conformément aux recommandations des négociateurs spéciaux. Les gouvernements étudient également l'utilité d'intégrer ces recommandations à des arrangements officiels.

Les gouvernements reconnaissent que les projets de recherche proposés sont importants pour assurer le succès des arrangements à long terme, et notent que les négociateurs spéciaux ont recommandé que certains projets soient menés en 1982. Les deux gouvernements étudient actuellement les projets recommandés pour l'an prochain.

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ACTION SUITE A DONNER MESSAGE

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PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. NO D'ORIG.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
SEATL	UAGR	5757	12AUG81	35-11-4	UNCLASSIFIED

FM/DE TO/A EXTOTTE PLO 004/12 P 1722 *File*

INFO B.H. FANDOTT/HUNTER DE OTT
 REGAM WSHDC DE SEA
 REGAM FANDU VNCVR/JONES

DATE	
ACC	152378
FILE	25-5-7-2-SALMON-1
BY HAND	

DISTR.

RE: OURTEL UAGRS252 OF 30MARS81

SUB/SUB: ---PACIFIC FISHERIES MANAGEMENT COUNCIL MEETING-AUG07-08/81

PFMC MET IN PORTLAND TO CONSIDER DRAFT HERRING MANAGEMENT PLAN, PINK SHRIMP MANAGEMENT, SALMON PLAN PERFORMANCE EVALUATION, AND IN-SEASON SALMON MANAGEMENT.

2. CONCERNING HERRING MANAGEMENT, COUNCIL HAD BEFORE IT FIRST DRAFT OF THE FMP FOR REVIEW. THE MAIN ISSUE FACING THE COUNCIL CONCERNED THE FUTURE DISPOSITION OF THIS DRAFT FMP AND THEIR APPROACH TO HERRING MANAGEMENT, ALTHOUGH THERE IS MODERATELY INCREASING PRESSURE FOR A SMALL OFF-SHORE HERRING FISHERY, THE CONSENSUS OF THE COUNCIL WAS THAT AN FMP IS NOT REQUIRED AT THIS TIME. THE OFF-SHORE CATCH LEVELS, WHILE INCREASING SINCE 1972, REMAIN RELATIVELY SMALL AND CAN BE MANAGED WITHOUT AN FMP. IT WAS ALSO CONSIDERED THAT AN FMP WOULD IMPOSE AN ADDITIONAL REGULATORY BURDEN ON FISHERMEN AND FISHERY MANAGEMENT AGENCIES WHICH COULD NOT BE SUPPORTED IN LIGHT OF THE SMALL FISHERY AND THE ADMINISTRATION'S POLICY TO REDUCE REGULATORY BURDENS WHERE EVER POSSIBLE. HOWEVER, IT WAS AGREED THAT THE FIRST DRAFT OF THE FMP SHOWED PROMISE THAT IT WOULD BE A VERY USEFUL DOCUMENT AND CONSEQUENTLY THE PLAN DEVELOPMENT TEAM

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DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
P. D. MARTENS/cr			<i>[Signature]</i>

2011-04-12-37102

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WAS INSTRUCTED TO BRING THE DRAFT FMP TO ITS FINAL STATE PRIOR TO THE COUNCIL MEETING IN NOVEMBER. THE INTENT IS THAT THE STATES WOULD CONTINUE TO MANAGE THE HERRING FISHERY IN A CO-ORDINATED AND CONSISTENT MANNER AND THAT THEY WOULD DRAW ON THE DATA AND RECOMMENDATIONS CONTAINED IN THE DRAFT FMP DOCUMENT. FOR YOUR INFORMATION PRESSURE FOR AN OFF-SHORE HERRING FISHERY IS COMING FROM THE CRAB FLEET WHOSE INTENT IT WOULD BE TO CATCH HERRING FOR BAIT OFF NORTHERN WASHINGTON PRIOR TO PROCEEDING TO ALASKA. AS YOU ARE AWARE, AND AS THE DRAFT FMP MENTIONS, THE HERRING OFF NORTHERN WASHINGTON ARE 90 PERCENT CANADIAN STOCKS AND THE DEVELOPMENT OF A BAIT FISHERY SHOULD BE CLOSELY MONITORED.

3. SALMON PLAN PERFORMANCE EVALUATION - THE COUNCIL IS REQUIRED TO EVALUATE ITS PERFORMANCE IN MANAGING THE SALMON FISHERY. THE RECENT COURT DECISIONS HOWEVER RAISED QUESTIONS AS TO HOW THIS EVALUATION WAS TO BE DONE. COUNCIL FINALLY AGREED THAT THE COUNCIL STAFF SHOULD PROCEED WITH THE EVALUATION OF THE COUNCIL'S PAST MANAGEMENT ACTIONS RELATIVE TO THE MANAGEMENT OBJECTIVES IN EXISTENCE AT THE TIME OF THE ACTION BUT IN COLLATING THE DATA THE STAFF SHOULD KEEP THE DATA DISTINCT FOR THE SMALLEST AREA POSSIBLE. COUNCIL FORESEES THE NEED IN LIGHT OF THE RECENT DECISIONS BY JUDGE CRAIG TO HAVE MANAGEMENT DATA AVAILABLE FOR THE SMALLEST GEOGRAPHIC AREA POSSIBLE SO THAT IT MIGHT BE IN A USEABLE FORM FOR THE MANAGEMENT OF THE FISHERY CONSISTENT WITH RECENT COURT DECISIONS. THIS INFORMATION SHOULD BE AVAILABLE WITHIN THE NEXT TWO MONTHS AND MIGHT BE RELEVANT TO THE PACIFIC SALMON NEGOTIATIONS.

4. IN-SEASON SALMON MANAGEMENT - COUNCIL REVIEWED THE CURRENT STATUS OF THE 1981 SALMON FISHERY BUT AGREED TO DEFER ADJUSTMENT DECISIONS UNTIL ITS AUGUST 21-22 MEETING. A COPY OF THE MOST RECENT STATUS REPORT IS ATTACHED.

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SEA 004/12

The Status of the Ocean Salmon Fisheries off
California, Oregon, and Washington through late July, 1981
with Management Recommendations South of Cape Falcon

Report to the
Pacific Fishery Management Council

Salmon Management Plan Development Team
August 6, 1981

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INTRODUCTION

The 1981 ocean salmon fisheries data through late July are presented in this report and compared with 1980 and 1979 (Table 1). Fishing seasons for 1979, 1980, and 1981 are summarized in Figures 1, 2 and 3.

For the coastwide troll fishery, a total effort figure is not possible since California reports effort by numbers of deliveries while Oregon and Washington report effort by days fished. Troll effort in California was down compared to 1980 and 1979. Troll effort for Oregon and Washington combined was 27% higher than 1980 but 29% below 1979. The coastwide chinook catch was down 24% from 1980 and 1979. The coastwide coho catch was 25% above 1980 but only 50% of the 1979 catch. The coastwide pink catch was 7% less than in 1979. Economic data were not available for Washington, but for Oregon and California combined, the ex vessel value of all troll landings (chinook and coho) was 3% greater than 1980 and 46% lower than 1979.

For the coastwide recreational fishery, 1981 effort was down 24% from 1980 and 20% from 1979. The coastwide chinook catch was comparable to 1980 but 24% below 1979. The coastwide coho catch was down significantly from previous years, representing only 42% and 81% of the catch in 1980 and 1979, respectively. No estimate of the recreational catch of pinks was made in California. The 1981 combined Oregon and Washington recreational catch of pinks was only 59% of the catch in 1979.

Catch and effort statistics for each of the various management units are further detailed in the "California," "Oregon," and "Washington" sections. The Salmon Team's evaluation of the information concerning quotas and harvest guidelines is presented in the "Assessment of Harvest Guidelines and Quotas" section. An assessment of the current economic status of the ocean salmon fisheries is also provided.

Table 1. Summary of preliminary ocean salmon fishery data by state through late July, 1981 off the coast of California, Oregon and Washington compared to 1980 and 1979.

Area	Effort ^{a/}			Catch (numbers)							
	1981	1980	1979	Cinco			Coho			Pink	
				1981	1980	1979	1981	1980	1979	1981	1979
<u>Troll</u>											
California ^{b/}	29,094	34,346	32,736	359,786	428,253	498,093	42,053	32,827	148,128	3,285	237
Oregon ^{c/}	21,992	16,044	31,610	53,821	92,474	84,901	271,144	180,343	534,410	10,455	9,070
Washington ^{c/}	14,128	12,432	19,211	88,344	95,106	87,179	214,419	209,340	362,297	54,218	64,103
Totals	N.A.	N.A.	N.A.	511,951	675,833	670,173	527,616	422,510	1,044,835	67,958	73,410
<u>Recreational</u>											
California ^{b/}	74,381	102,475	116,648	50,474	66,047	86,348	5,677	18,825	12,607	-	-
Oregon ^{c/}	167,952	217,031	179,482	11,516	10,827	10,596	89,574	263,245	114,577	636	468
Washington ^{c/}	117,134	154,167	154,631	44,797	32,677	44,090	127,549	247,535	146,741	1,757	3,674
Totals	359,467	473,673	450,731	106,787	109,551	141,034	222,800	529,605	274,125	2,453	4,142

a/ Oregon and Washington troll effort is expressed in boat days fished while California troll data represents deliveries. These data are not additive (N.A.).

b/ Through July 23, 1981 and July 31 for 1979 and 1980.

c/ Through July 26 in 1981, and comparable week ending dates in 1979 and 1980.

d/ Not available.

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CALIFORNIA

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The status of the 1981 California troll fishery and ocean recreational fishery is reported through July 31 (statistical week 12).

Troll Fishery

Troll effort (numbers of deliveries) in 1981 is down 15% from 1980 and 11% from 1979 (Table 2). Total deliveries this year were 29,100 compared to 34,300 and 32,700 in 1980 and 1979. North coast effort (15,400 deliveries) was down slightly from the previous two years. Since the latter part of July, the majority of the north coast trip boats have converted to albacore fishing.

Chinook landings were 370,000 fish in 1981 compared to 488,000 in 1980 and 498,000 in 1979. This represents a 24% decline from 1980 and a 26% decline from 1979. The most dramatic decline in chinook landings is in the north coast (no. of Pt. Arena) where 1981 landings of 176,000 chinook are down 28% from 1980 and 42% from 1979 landings, respectively. South coast landings (south of Point Arena) of 194,000 chinook are down 21% from 1980 landings and equal to 1979 landings.

Statewide coho landings of 42,000 fish were up 28% from 1980 landings of 33,000 fish but amount to only 28% of 1979 landings of 148,000 coho. All three years are among the poorest coho landings in over a decade.

Recreational Fishery

The statewide ocean recreational effort through July was 74,400 angler days. This represents a 28% decrease from 1980 effort of 102,500 angler days and a 36% decrease from 1979 effort of 116,600 angler days (Table 2). Two main factors, inclement weather along the north coast, and the large reduction in the charter boat fleet out of San Francisco in the south coast, are responsible for the decrease. In the San Francisco area, fishing was excellent during July with charter boat anglers averaging better than 1.5 fish per angler day for the month.

Statewide recreational chinook landings were 50,500 fish through July. This represents a 23% reduction from 1980 landings of 66,000 chinook and a 41% reduction from 1979 landings of 86,300 chinook. The San Francisco Bay area produced the best fishing with charter boat anglers landing around 5,000 chinook per week.

Coho recreational landings to date were only 5,700 fish; among the lowest landings on record for this period. Coho landings through July in 1980 and 1979 were 18,800 and 12,800, respectively.

Table 2. Summary of preliminary California ocean salmon fishery data by area through July 31 in 1981, 1980 and 1979.

Area	Effort*			Catch (numbers)					
				Chinook			Coho		
	1981	1980	1979	1981	1980	1979	1981	1980	1979
<u>Trawl</u>									
Crescent City	4,692	3,380	5,355	38,752	24,402	54,402	14,480	9,236	67,482
Eureka	4,560	4,402	5,160	51,184	113,999	148,019	23,772	10,323	48,390
Fort Bragg	5,173	8,581	7,368	76,269	104,430	101,275		10,028	22,174
San Francisco	7,476	9,544	8,688	140,447	185,145	149,412	857	2,993	8,375
Monterey	6,193	8,439	6,165	53,134	60,277	44,985	10	247	1,707
Totals	29,094	34,346	32,736	369,785	488,253	498,093	42,053	32,827	148,128
<u>Recreational</u>									
Crescent City	9,006	12,888	7,509	1,767	1,928	1,816	1,496	5,930	3,456
Eureka	10,909	19,508	13,951	2,725	3,404	2,676	3,518	11,514	7,326
Fort Bragg	3,175	5,074	6,229	1,123	1,050	4,460	340	1,112	897
San Francisco	46,824	59,001	79,069	42,292	56,614	71,578	323	268	1,118
Monterey	4,467	6,004	9,350	2,567	3,051	5,818	0	1	10
Totals	74,381	102,475	116,648	50,474	66,047	86,348	5,677	18,825	12,807

* Trawl effort in number of deliveries. Recreational effort in angler days.

N.A. = Not available.

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OREGON

This section summarizes the 1981 Oregon ocean salmon fisheries through July 26. The 1981 troll fishing season was open for chinook salmon off the coast of Oregon for the entire month of May but was closed during June. The all-species troll season opened July 1 south of Cape Falcon and July 15 north of Cape Falcon. The recreational season opened on May 15 south of Cape Falcon and May 23 north of Cape Falcon. An assessment is also provided of the coho resource in the Oregon Production Index area for in-season management considerations south of Cape Falcon.

Troll Fishery

Estimates of 1981 effort for the Oregon troll fishery are compared to effort estimates for 1979 and 1980. Cumulative effort for the 1981 commercial troll fishery totaled 22,000 boat-days (Table 3). The 1981 commercial effort is 38% above the 16,000 boat days of effort recorded in 1980, but is 30% below the 31,600 boat-days of effort in 1979. Eighty-two percent of the troll effort to date was recorded in the Tillamook, Newport and Coos Bay areas (Table 3). During the first four weeks of the 1981 all-species season south of Cape Falcon effort was comparable to 1980 but was well below 1979 (Table 4).

Commercial troll catches of chinook salmon in 1981 are below both 1979 and 1980. The cumulative catch of chinook salmon totaled 53,800 fish in 1981 compared to 92,500 in 1980 and 84,900 fish in 1979 (Table 3). Largest catches of chinook salmon were reported in the Newport area and the northern management areas reported larger catches than in either 1979 or 1980. Small numbers of pink salmon have been off Oregon during 1981 with cumulative catches of 10,400 through July 26.

The commercial troll fishery for coho salmon (all-species) off Oregon opened

Table 3. Summary of preliminary Oregon ocean salmon fishery data by catch area through July 26, 1981 and comparable dates in earlier years.

Area	Effort ^{b/}			Catch (numbers)							
	1981	1980	1979	Cinnook			Coho			Pink	
				1981	1980	1979	1981	1980	1979	1981	1979
<u>Troll</u>											
Columbia River	1,525	905	1,436	7,325	4,787	2,590	21,861	12,736	33,820	374	539
Tillamook	5,292	1,679	3,647	8,529	2,167	1,452	106,480	28,570	52,689	3,115	1,211
Newport	5,811	4,735	9,324	15,674	23,855	16,065	51,184	64,320	141,488	1,858	2,046
Coos Bay	6,835	6,602	11,754	9,580	42,447	23,370	72,727	60,251	214,743	1,963	3,182
Brookings	2,150	1,948	5,089	11,333	17,183	38,896	10,138	11,718	91,134	2,408	1,992
Washington	264	128	314	811	1,276	2,134	8,712	2,717	92	716	0
California	75	47	46	569	759	394	42	31	444	11	3
Totals	21,932	16,044	31,610	53,821	92,474	84,901	271,144	180,343	534,410	10,455	6,070
<u>Recreational^{a/}</u>											
Columbia River	16,860	20,597	16,541	2,717	2,469	3,503	24,689	36,862	17,040	24	55
Tillamook	15,100	20,775	14,020	359	280	401	5,896	12,138	3,011	33	15
Newport	40,842	60,474	45,184	844	1,206	835	19,157	55,079	18,620	357	128
Coos Bay	51,076	76,018	64,606	2,589	4,339	3,771	35,813	130,154	60,661	128	130
Brookings	43,074	39,167	39,131	5,007	2,533	2,086	4,009	29,012	15,245	144	140
Totals	167,952	217,031	179,482	11,516	10,827	10,596	89,574	263,245	114,577	686	468

a/ Columbia River area includes Astoria; Tillamook area includes Garibaldi and Pacific City; Newport area includes Depoe Bay and Newport; Coos Bay area includes Florence, Winchester Bay and Coos Bay; Brookings area includes Gold Beach and Brookings.

b/ Troll effort in boat-gays. Recreational effort in angler trips.

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July 1 south of Cape Falcon and July 15 north of Cape Falcon. Coho troll catches during the first four weeks of the season were relatively light. Catches of coho salmon for the period July 1-26 totaled 271,100 fish compared to cumulative totals of 180,300 and 534,400 in 1980 and 1979, respectively. Peak catches were reported in the Tillamook area with a more northerly distribution of catches apparent in 1981 when compared to either 1980 or 1979.

Table 4. Comparison of cumulative troll effort for Oregon south of Cape Falcon during the first four weeks of the all-species season in 1981, 1980 and 1979.

week of all-species season	Effort (boat days)		
	1981	1980	1979
1	3,057	4,692	8,763
2	6,176	3,947	6,714
3	4,690	4,336	5,930
4	3,098	4,212	6,886
Total	17,021	17,187	28,293

Recreational Fishery

Cumulative effort for the 1981 recreational fishery from May 15 to July 26 totaled 168,000 angler trips (Table 3). The 1981 recreational effort was 23% below the 217,000 trips recorded in 1980 and 6% below the 1979 total of 179,500 angler trips. The Brookings, Coos Bay and Newport areas accounted for 80% of the total effort observed to date. The 1981 effort was below 1980 in all port areas except Brookings.

The cumulative 1981 recreational catch of chinook salmon from May 15 to July 26 totaled 11,500 fish (Table 3). This catch is above the 1980 harvest of 10,800 fish, and also above the 1979 catch of 10,600. Best catches of chinook

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have occurred in the Brookings area with 43% of the total catch attributed to this area:

The 1981 recreational catch of coho salmon through July 26 was 89,600 fish. The 1981 catch was 66% below the 1980 catch of 263,200 and 22% below the 1979 catch of 114,600 (Table 3). The Columbia River and Coos Bay areas have accounted for 77% of the recreational coho catch to date. Catch rates have averaged 0.53 fish/angler with the best catch rate reported in the Columbia River area (1.5 fish/angler).

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WASHINGTON

Status of 1981 Washington ocean salmon fisheries is reported through July 26. Comparable data are also provided for 1979 and 1980 (Table 5).

Troll Fishery

In outer coastal waters a non-Indian troll fishery occurred from May 1 through May 31 for all species except coho, whereas the treaty Indian troll season opened on May 1 for all species. In addition, Makah Indian trollers operated in the Strait of Juan de Fuca throughout the winter. Following a six-week closure, the non-Indian troll fishery reopened July 15. Total effort of 13,607 boat-days is slightly greater than the 12,299 observed in 1980 but considerably less than 19,022 for 1979.

Approximately 70% of the May effort and chinook catch occurred off Grays Harbor and the Columbia River mouth. During July, troll effort was more evenly distributed with about 57% occurring in the 2 southern districts. Of the total troll coho catch north of Cape Falcon of 229,500, 15,100 (7%) is due to treaty Indian troll fishermen. This catch is less than half the Indian troll coho catch of 31,320 during 1980 during this time period.

A total of 80,850 chinook have been harvested north of Cape Falcon to date. Indian troll chinook catches account for approximately 20,606 fish.

Washington troll harvest of pink salmon is currently 54,218, approximately 85% of the 1979 catch of 64,103 during this time period.

Recreational Fishery

The recreational fishery off the Washington coast opened on May 23, which represented an approximate two-week delay compared to 1979 and 1980. A daily bag limit of only two chinook or coho coastwide has been in effect all season with a bonus of one pink salmon north of the Queets River. The bag limit in 1980 was three salmon during this period whereas it was three salmon only two of which could be chinook or coho (coastwide) in 1979. The recreational coho size limit is 20 inches compared to 16 inches during the previous two years. In addition, no La Push fishery has developed due to local problems at that port.

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Recreational effort has totaled 117,134 angler trips in 1981 compared to 154,167 in 1980 and 154,601 in 1979. Reduced effort has been characteristic for all areas throughout the season to date, even accounting for the reduced season length.

Cumulative chinook catch for 1981 is 44,797, comparable to the 1979 catch of 44,090 and exceeding the 1980 chinook catch of 32,677.

The 1981 recreational coho catch is 127,549, approximately half the 1980 level of 247,535 and less than the 146,741 caught in 1979. The two most recent weekly catches have been 16,100 and 20,800 coho compared to 12,770 and 36,701 in 1980 and to 26,527 and 24,718 in 1979.

Finally, the 1981 recreational pink salmon catch is 1,767, less than half the pink harvest of 3,674 during 1979 for this time period.

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ECONOMIC STATUS OF THE OCEAN SALMON FISHERIES

In monitoring the economic status of the Pacific salmon fisheries, quantitative in-season economic data are limited. However, the comparative ex-vessel price and value data in Table 6 provide a general picture of the economic status of the troll fisheries as of late July, 1981.

Washington troll ex-vessel value data were not available at the time of this report. For chinook in the Oregon troll fishery, Table 6 indicates that total ex-vessel value was 34% lower than in 1980 and 43% lower than in 1979, despite average prices that were 18% higher than in 1980 and approximately the same as in 1979. The ex-vessel value of the 1981 Oregon troll coho fishery was 78% greater than for the same period in 1980 and 71% lower than in 1979, with prices 28% higher than in 1980 and 30% lower than in 1979. Oregon troll chinook catches seem to be low because of poor weather conditions off the south coast of Oregon and good coho fishing further north. Although prices are generally higher than 1980's low prices, price increases appear to have been constrained by unstable markets in Japan and the weak position of the U.S. dollar relative to the Japanese yen.

In California, chinook ex-vessel value was 8% lower than in 1980 and 37% less than in 1979, despite chinook prices that were 19% higher than in 1980 and only 3% lower than in 1979. For coho, the California troll fishery ex-vessel value was 75% more than in 1980 and 79% less than in 1979. Coho prices were 46% higher than in 1980 and 13% lower than in 1979.

In the recreational fisheries, the best available indicator of economic status is angler effort. Angler effort trends to date are presented in Tables 1, 2, 5 and 8. In general, recreational effort is down by an average of about 24-30% coastwide compared to 1980 and 1979.

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Table 6. Comparative ex-vessel prices and values in the salmon troll fisheries as of July, 1981.

	Oregon ^{1/}	California ^{2/-}	Total
<u>Chinook</u>			
<u>Value</u>			
1981	\$1,402,000	\$ 9,333,200	\$10,735,200
1980	2,124,706	10,188,134	12,312,800
1979	2,443,501	12,789,765	15,233,200
<u>Price/lb.</u>			
July 20-26, 1981 ^{3/}	\$2.64	\$2.53	-
1981 average	2.56	2.45	-
1980 average	2.23	2.19	-
1979 average	2.63	2.52	-
<u>Coho</u>			
<u>Value</u>			
1981	\$2,194,000	\$439,200	\$2,633,200
1980	1,221,244	251,526	1,472,700
1979 ^{2/}	7,539,053	2,048,863	9,588,000
<u>Price/lb.</u>			
July 20-26, 1981 ^{3/}	\$1.60	\$1.97	-
1981 average	1.63	1.90	-
1980 average	1.25	1.30	-
1979 average	2.27	2.19	-

- 1/ For Oregon, 1981 average prices are through July 26, while 1980 and 1979 price figures are for week 30 (July 21-27 in 1980 and July 23-29 in 1979) only, not for the average for the season through week 30.
- 2/ Through July 31 in all years.
- 3/ July 24-31 for California.

16/22

ASSESSMENT OF HARVEST GUIDELINES AND QUOTAS

California Chinook

Troll Fishery

The total fishery north of Point Arena through July 31, 1981, has landed 176,000 chinook which amounts to 59% of the 300,000 fish quota (table 7). This represents a 28% decline from 1980 landings of 243,000 chinook and a 42% decline from 1979 landings of 304,000 chinook. Based on Ocean Salmon Projects' computer projection model, the north coast chinook quota will not be reached in the next two-week period. It is unlikely, based on comparative landings for other years that the quota will be reached by the season's scheduled closure.

The troll fishery south of Point Arena, through July 31, 1981, has landed 194,000 chinook, which amounts to 73% of the 265,000 fish quota. This represents a 21% decline from 1980 landings of 245,000 chinook and is equal to 1979 landings. The projection model indicates the south coast quota will not be reached within the next two weeks. It should be emphasized that this model assumes that current catch trends will continue throughout the projection period, therefore the projection is only good for a short term. Based on previous years landings, it is possible that the south coast chinook quota will be reached by the season's scheduled closure.

Recreational Fishery

The north coast recreational chinook landings of 5,100 fish amounts to only 37% of the 15,000 fish quota. Landings are down 12% from 1980 landings of 6,400 chinook and down 38% from 1979 landings through July of 9,000 chinook. Based on the season to date, it is highly unlikely that the north coast recreational quota will be reached by the scheduled season closure.

South coast recreational chinook landings through July are 44,900 chinook which amounts to only 39% of the 115,000 chinook quota. Landings are 25% less than 1980 landings through July of 59,700 chinook and 42% less than 1979 landings of 77,400 chinook. Although the catch per angler has been excellent for the month of July, it is unlikely that the recreational quota will be reached by the season's scheduled closure.

Table 7. Summary of 1981 salmon catches through late July by species, fishery and management area in relation to established harvest guidelines with comparative catches for 1979 and 1980.

Species	Fishery	Management Area	1981 Harvest Guideline	Catch to date		
				1981	1980	1979
<u>Soho</u> ^{a/}	Troll	No. of Cape Falcon ^{b/}	372,000	229,500	222,000	391,800
	Troll	So. of Cape Falcon ^{c/}	548,000	298,300	200,500	653,000
	Recreational	No. of Cape Falcon ^{b/}	248,000	151,200	226,400	163,800
	Recreational	So. of Cape Falcon ^{c/}	224,000	70,500	245,300	110,300
<u>Chinook</u> ^{d/}	Troll	No. of Pt. Arena	300,000	176,200	242,800	303,700
	Troll	So. of Pt. Arena	265,000	193,500	245,400	194,400
	Recreational	No. of Pt. Arena	15,000	5,500	6,400	9,000
	Recreational	So. of Pt. Arena	115,000	44,900	59,700	77,400

a/ Includes landings through July 26.

b/ Includes Washington catches landed in Oregon

c/ Includes Oregon and California catches landed in Washington and California catches landed in Oregon.

d/ Includes landings through July 31.

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COHO ASSESSMENT

Catch to Date

Estimates of catch were made for the in season review north and south of Cape Falcon as well as for the entire Oregon Production Index area (OPI). The OPI includes the area south of Leadbetter Point (WA) and overlaps with the area north of Cape Falcon. Since the OPI is an established ODFW management entity data are presented for that area.

South of Cape Falcon - For the area south of Cape Falcon an estimated 368,900 coho have been harvested by the ocean fisheries through July 26 (Table 8). This catch represents 48% of the harvest guideline of 772,000 established for that area. This total includes catches of 321,100 for Oregon and 47,800 for California. Of the total catch, the troll fishery has harvested 298,300 (81%) compared with 70,600 (19%) for the recreational fishery.

North of Cape Falcon An estimated 381,800 coho have been harvested by the ocean fisheries north of Cape Falcon through July 26 (Table 8). This catch represents 62% of the 620,000 harvest guideline set for that area. This total includes catches of 147,400 in the Columbia River area and 234,400 for the Washington coast. Of the total catch, the troll fishery has harvested 229,600 (60%) compared with 152,200 (40%) for the recreational fishery.

OPI Area - An estimated 516,300 coho have been harvested by the ocean fisheries in OPI area as of July 26 (Table 8). This catch represents 57% of the preseason predicted catch of 909,000 for the OPI area. No harvest guidelines were established for the OPI area as a unit. This total includes catches of 147,400 for the Columbia River area, 321,100 for the Oregon coast and 47,800 for California. The troll fishery has harvested 359,000 (70%) compared with 157,300 (30%) for the recreational fishery.

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Table 8. Estimated harvest of coho salmon north and south of Cape Falcon and in the entire Oregon Production Index area through July 26, 1981.

Area	Fishery		Total
	Recreational	Troll	
<u>South of Cape Falcon</u>			
Oregon Coast	64,900	256,200 ^{a/}	321,100
California ^{b/}	5,700	(42,100)	47,800
Total	70,600	298,300	368,900
<u>North of Cape Falcon</u>			
Columbia River			
Oregon	24,700	21,900	46,600
Washington	62,000	38,800	100,800
Washington Coast	65,500	168,900 ^{a/}	234,400
Total	152,200	229,600	381,800
<u>South of Leadbetter Point (OPI)</u>			
Columbia River			
Oregon	24,700	21,900	46,600
Washington	62,000	38,800	100,800
Oregon Coast	64,900	256,200 ^{a/}	321,100
California ^{b/}	5,700	(42,100)	47,800
Total	157,300	359,000	516,300

^{a/} Includes (15,591) fish landed in Washington

^{b/} landings through July 31

^{a/} Includes 8,712 fish landed in Oregon and (1,796) fish from Juan de Fuca Strait.

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Catch Projections

Projections of coho catch made by ODF&W for the balance of the scheduled 1981 season south of Cape Falcon and for the entire Oregon Production Index area (Table 9).

South of Cape Falcon - It is projected that an additional 288,100 coho will be caught south of Cape Falcon from July 27 to the scheduled season's end. The total catch in 1981 should approach 657,000 coho which is 15% below the pre-season harvest guideline of 772,000 fish. The total troll catch for the season is projected to be 524,000 compared to a total of 133,000 for the recreational fishery. Without any season adjustments, the expected allocation of the coho resource will be 80% for the troll fishery and 20% for the recreational fishery.

OPI Area - It is projected that an additional 380,700 coho will be caught in the entire OPI area from July 27 to the scheduled season's end. The total OPI catch in 1981 should approach 897,000 which is very near the pre-season estimated catch of 909,000. The total troll catch for the season is estimated to be 614,000 compared to a total of 283,000 for the recreational fishery. The expected allocation of the coho resource without any season adjustments is 68% for the troll fishery and 32% for the recreational. It should be emphasized again that no harvest guidelines or allocation goals were established in the 1981 Salmon Plan for the OPI as a unit but are presented here only for information.

North of Cape Falcon - Catch projections have not been made for the total area north of Cape Falcon which is the subject of in-season review on August 22. Recent court action may also result in a modification of the established harvest guidelines adding to the uncertainty of the duration of the fisheries in this area.

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Table 9. Preliminary 1981 projections of coho salmon catches south of Cape Falcon and in the entire Oregon Production Index area through the scheduled season end.

Area/Fishery	Catch Through July 26	Projection from July 27 to scheduled season end	Total season projection
<u>South of Cape Falcon</u>			
Troll			
Oregon	216,200	213,800	470,000
California	(42,100) ^{a/}	11,900	54,000
Total	290,300	225,700	524,000
Recreational			
Oregon	64,900	60,100	125,000
California	5,700 ^{a/}	2,300	8,000
Total	70,600	62,400	133,000
<u>Columbia River</u>			
Troll	60,700	29,300 ^{b/}	90,000
Recreational	86,700	63,300 ^{b/}	150,000
Total	147,400	92,600	240,000
<u>South of Leadbetter Point (OPI)</u>			
Troll	359,000	255,000	614,000
Recreational	157,300	125,700	283,000
Total	516,300	380,700	897,000

^{a/} Landings through July 31

^{b/} Projections through August 23

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CONCLUSIONS

The Team feels that additional information on stock abundance and contribution, stock shifts and effort levels needs to be critically reviewed prior to any new adjustments to the coho harvest guidelines south of Cape Falcon. At this time, the Team projects that the fisheries will not reach either the recreational or troll preseason harvest guidelines prior to the scheduled season closure. The Oregon Department of Fish and Wildlife has presented data suggesting a lowering of the southern coho harvest guidelines for the following reasons:

- 1) higher than expected catches in the Columbia River area which may indicate potential stock shifts or an incorrect preseason division of OPI coho north and south of Cape Falcon; and
- 2) Lower than expected contribution of private hatchery origin coho south of Cape Falcon is apparent.

These two factors combined may pose serious risks to Oregon stocks of wild coho, with the present southern harvest guideline of 772,000 coho.

We recommend that the team be given the opportunity to critically review new data from both Oregon and Washington in the next two weeks and make a final recommendation to the Council concerning this matter on August 22.

EM/OF 4 DE SEA

MESSAGE

File m7

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ACTION

SUITE A DONNER

ORIG. NO. NO D'ORIG.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
5760	12AUG81	35-11-12	RESTRICTED
DEPART MINISTRE	UAGR	SEATL	PRECEDENCE

TO/A EXTOTT (FLO)

SEA 005/12

194

INFO WSHDC-REGAM DE SEATL

DATE	REF
ACC 152379	DOSSIER
FILE 25-5-7-2-SALMON-1	PAR PORTEUR
BY HAND	ATTN:

DISTR. CNG

REF FADDEN/MARTENS TELECON 09AUG81

SUB/SUB ---PACIFIC SALMON-GOVERNMENT TO GOVERNMENT MEETING

FOLLOWING, AS REQUESTED IS A SUMMARY OF A MEETING WHICH WAS HELD 06AUG IN VANCOUVER, B.C. BETWEEN DR. LEE ALVERSON AND DR. M. SHEPARD, WITH SUPPORTING U.S. AND CDN GOVERNMENT OFFICIALS TO REVIEW THE CURRENT STATUS OF THE PACIFIC SALMON NEGOTIATION AND THE INTERIM AGREEMENT, TO DETERMINE THE FUTURE COURSE OF THE NEGOTIATIONS AND TO ASCERTAIN AND PUT IN HAND WORK THAT NEEDS YET TO BE DONE IN ORDER FOR THE NEGOTIATIONS TO PROCEED.

2. IT WAS GENERALLY AGREED THAT THE INTERIM AGREEMENT WAS WORKING WELL AND WILL PROVE TO BE VERY USEFUL TO IDENTIFY SHORT-COMINGS AND TO INDICATE WHAT MAY OR MAY NOT BE POSSIBLE IN THE FUTURE.

3. TWO APPROACHES TO FURTHER NEGOTIATIONS WERE DISCUSSED; THE FIRST APPROACH WOULD BE TO HAVE A MAJOR SERIES OF DISCUSSIONS BETWEEN THE OFFICIALS OF BOTH SIDES PRIOR TO ENTERING FORMAL NEGOTIATIONS AT A DATE IN EARLY 1982. THE SECOND APPROACH WAS TO HAVE A MORE LIMITED NUMBER OF DISCUSSIONS BETWEEN OFFICIALS WHICH WOULD BE FOLLOWED BY A SESSION WITH FULL DELEGATIONS IN OCTOBER AND A FINAL SESSION IN JAN. 82. IN EITHER SITUATION, IT WAS THOUGHT ADVANTAGEOUS TO MEET AT THE LEVEL OF OFFICIALS PRIOR TO THE NEXT .../2

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
EG. F. D. MARTENS/kp			<i>[Signature]</i>

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NEGOTIATIONS IN ORDER TO EXPLORE ISSUES WHICH HAD NOT YET BEEN EXPLORED IN AN ATTEMPT TO AVOID SUPRISES TO ONE SIDE OR THE OTHER WHICH MIGHT IN THE END JEOPARDIZE THE AGREEMENT, TO DEVELOP MORE CERTAINTY CONCERNING THE EXTENT AND VALUE OF INTERCEPTIONS SINCE THIS WILL BE IMPORTANT TO KNOW PRIOR TO THE SIGNING OF THE AGREEMENT AND TO DEVELOP GREATER CERTAINTY REGARDING CERTAIN ISSUES SUCH AS TRANS-BOUNDARY STOCKS IN THE CASE OF CANADA AND POSSIBLY THE FRASER RIVER STOCKS IN THE CASE OF THE U.S. IT WAS GENERALLY AGREED THAT THE SECOND APPROACH WAS PREFERABLE IF THE MOMENTUM OF THE NEGOTIATIONS IS TO BE MAINTAINED. CONSEQUENTLY, IT WAS AGREED THAT A NEGOTTATING SESSION WITH FULL DELEGATIONS WOULD BE HELD OCTOBER 13-17 (PROBABLY IN WARM SPRINGS, OREGON) WITH A VIEW TO HAVING A FINAL ROUND OF NEGOTIATION IN JANUARY 1982. THERE WOULD BE FURTHER MEETINGS AT THE LEVEL OF OFFICIALS PRIOR TO THE OCTOBER NEGOTIATIONS WITH THE FINAL GOVERNMENT-TO-GOVERNMENT MEETINGS TENTATIVELY SCHEDULED FOR SEATTLE OCTOBER 7-10.

4. TWO BILATERAL WORKING GROUPS WERE ESTABLISHED. THE FIRST GROUP WAS TASKED WITH PREPARING A COMMON DATA BASE BY RESEARCHING AND COMPILING ALL RELEVANT CURRENT AND HISTORICAL DATA FROM ALL SOURCES WITHOUT PASSING JUDGEMENT ON THE VALIDITY OF SUCH DATA. THIS WORKING GROUP WAS TO REPORT TO THE NEGOTIATORS IN 5-6 WEEKS AT WHICH TIME A MEETING OF OFFICIALS WILL BE CONVENED TO REVIEW THE DATA BASE AND TO DETERMINE WHAT FURTHER INFORMATION AND ACTION IS REQUIRED. THIS WAS SEEN TO BE THE INITIAL STEP REQUIRED FOR THE CONSIDERATION OF EQUITY. THE SECOND WORKING GROUP WAS TASKED WITH DETERMINING THE RESEARCH WHICH IS REQUIRED ACCORDING TO THE TERMS OF THE INTERLM AGREEMENT; TO RECOMMEND RESEARCH PRIORITIES AND TO DEVELOP RESEARCH PROPOSALS. THIS WORK WAS TO BE DONE QUICKLY BECAUSE OF THE BUDGETARY CYCLE REQUIREMENTS OF BOTH GOVERNMENTS AND THE RESEARCH GROUP WAS ASKED TO HAVE THEIR FIRST REPORT TO THE NEGOTIATORS BY SEPTEMBER 15.

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5. THE QUESTION OF EQUITY, ITS DETERMINATION AND APPLICATION WAS SEEN TO BE ONE MAJOR ELEMENT IN FUTURE NEGOTIATIONS. IT WAS GENERALLY AGREED THAT SOME OUTSIDE ADVICE AND STUDY OF THIS ISSUE MIGHT BE BENEFICIAL TO THE NEGOTIATIONS BUT WITH THE CAVEAT THAT THE FINAL DECISION CONCERNING EQUITY RESTS WITH THE TWO GOVERNMENTS. A WORKSHOP APPROACH WAS CONSIDERED TO BE ONE MECHANISM BY WHICH THIS EXPERT ADVICE COULD BE OBTAINED WITHOUT PREJUDICE TO EITHER GOVERNMENT'S RESPONSIBILITIES OR FUTURE NEGOTIATING POSITION. IT WAS CONCEPTUALIZED THAT THE WORKSHOP WOULD INVOLVE A SELECT GROUP OF INVITED EXPERTS AND A LIMITED NUMBER OF OFFICIALS FROM BOTH COUNTRIES. THE WORKSHOP FORMAT MAY BE A SHORT DISSERTATION GIVEN BY EACH EXPERT FOLLOWED BY A ROUND TABLE DISCUSSION AND A QUESTION AND ANSWER PERIOD. THE MODALITIES HAVE YET TO BE FLESHED OUT. THE WORKSHOP WOULD PROBABLY BE HELD IN CDA (POSSIBLY UBC) UNDER THE TERMS OF ^{THE} CO-OPERATIVE AGREEMENT BETWEEN FANCO AND THE COLLEGE OF FISHERIES AT UBC. IT WAS ALSO GENERALLY AGREED THAT THE EQUITY PRINCIPLE SHOULD BE AS WELL DEFINED AS POSSIBLE IN THE AGREEMENT AND THE FUTURE COMMISSION'S RESPONSIBILITY IN THIS AREA SHOULD BE LIMITED TO THE IMPLEMENTATION AND ADMINISTRATION OF THE EQUITY PRINCIPLE. BOTH NEGOTIATORS EXPRESSED CONCERN THAT IF THE EQUITY PRINCIPLE WAS LEFT TO THE COMMISSION TO DEVELOP WITHOUT VERY SPECIFIC GUIDELINES OR OPTIONS, THE COMMISSION MIGHT NOT BE ABLE TO COPE WITH THIS TASK.

6. IT WAS ALSO AGREED THAT IT WOULD BE USEFUL TO REVIEW THE LYNNWOOD ACCORD WITH A VIEW TO UP-DATING THE STATISTICS AND RE-DRAFTING WHERE NECESSARY TO BRING THE ACCORD IN LINE WITH THE CURRENT STATUS OF THE NEGOTIATIONS. THIS REVIEW IS TO OCCUR PRIOR TO THE OCTOBER MEETING. CANADA IS TO RE-DRAFT THE PRINCIPLES ON PAGE 4. PAGE 5 IS TO REMAIN UNCHANGED UNLESS A CHANGE IS REQUIRED TO BRING IT INTO LINE WITH OTHER SECTIONS OF THE LYNNWOOD ACCORD TO BE RE-DRAFTED. THE U.S. IS TO RE-DRAFT PAGES 6 THROUGH 9 CONCERNING THE INTERCEPTION LIMITATION SCHEME WITH CANADA ALSO RE-DRAFTING PAGE 9. PAGES 10 AND 11 AS THEY RELATE TO THE 1981 FISHERY ARE TO BE THE SUBSTANCE OF DISCUSSION AT THE GOVERNMENT-TO-GOVERNMENT MEETING PRIOR TO THE OCTOBER NEGOTIATING SESSION. PAGES 12 THROUGH 19 ARE TO BE LEFT AS THEY ARE SINCE THEY FORM THE BASIS OF THE TWO NEGOTIATION POSITIONS.

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PAGE 21 REGARDING THE COMMISSION IS TO BE REVIEWED BY THE U.S. AND TO BE CLARIFIED IN LIGHT OF PREVIOUS DISCUSSIONS. PAGE 23 REGARDING THE TECHNICAL DISPUTE RESOLUTION MECHANISM, CANADA IS TO PREPARE ITS COMMENTS ON THE PREVIOUS U.S. DRAFT OF THIS SECTION.

7. CONCERNING THE YUKON RIVER, AN INFORMAL TECHNICAL MEETING IS TO BE HELD IN WHITEHORSE, AUGUST 12-13 TO CHANGE INFORMATION AND TO LOOK AT THE TECHNICAL DETAILS OF THE YUKON FISHERY. ALVERSON INFORMED THE GROUP THAT IT WAS THE INTENTION OF THE U.S. TO HAVE A SMALL U.S. GROUP (INCLUDING HIMSELF) MEET WITH ALASKA NATIVES IN THE YUKON AND OTHERS TO EXPLORE THEIR VIEWS CONCERNING THE YUKON FISHERY AND ITS INCLUSION IN THE PACIFIC SALMON AGREEMENT AND TO ASCERTAIN THE NATURE AND DEGREE OF COMMITMENTS THAT CAN BE ACHIEVED WITH REGARD TO THE YUKON. THIS HE HOPES TO DO PRIOR TO THE JANUARY NEGOTIATING SESSION SO THAT IT MAY BE INCLUDED IN THE AGREEMENT TO THE FULLEST EXTENT POSSIBLE. HE ALSO AGREED TO DISCUSS THIS ISSUE IN A GOVERNMENT-TO-GOVERNMENT MEETING PRIOR TO THE JANUARY SESSION.

8. ALVERSON AND SHEPARD ARE TO DISCUSS OUTSTANDING ISSUES BY TELEPHONE AUGUST 19 CONCERNING THE WORKSHOP, THE WORKING GROUPS AND FUTURE MEETINGS. CONSEQUENTLY, SOME ADJUSTMENTS IN APPROACH OR TIMETABLE MAY BE MADE AT THAT TIME.

9. AMERICANS IN ATTENDANCE AT MEETING WERE: DR. LEE ALVERSON, WALT LOCKWOOD (NEW AMERICAN CONSUL, VCR); ROB MCVEY, NMFS, ALASKA; PETE BERGMAN, WDF; CHRIS DAWSON, DEPT OF STATE; MIKE DANAHER, DEPT OF STATE; DAVE FITCH, NMFS, WSHDC; DAN REIFSNYDER, NMFS, WSHDC. CANADIANS IN ATTENDANCE: DR. MIKE SHAPARD; GARNET JONES, FANDO, VCR; JUDY SWAN, FANDO, OTT; BUD GRAHAM, FANDO, VCR; BRIAN RIDDELL, FANDO, NANAIMO; AND F.D. MARTENS.

TRANSMITTAL AND RECEIPT NOTE - NOTE D'ENVOI ET DE RÉCEPTION

TO
A

EXTOTT/FLO/FADDEN

WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)

NO.

DATE 11 AUG81

QUANTITY QUANTITÉ	DESCRIPTION - DESCRIPTION	REFERENCE - RÉFÉRENCE																		
	FEDERAL REGISTER, Vol. 46, No. 154, Tuesday, August 11, 1981 "High Seas Salmon Fishery"																			
	FEDERAL REGISTER, Vol. 46, No. 153, Monday, August 10, 1981 "High Seas Salmon Off Alaska"																			
	<div data-bbox="636 633 1003 884" style="border: 1px solid black; padding: 5px; margin-bottom: 5px;"> <p>TO / A <i>FLO</i> From / De BICO A-4 AUG 17 1981</p> </div> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%;">DATE</td> <td colspan="2">ATTN:</td> </tr> <tr> <td>ACC</td> <td colspan="2">REF</td> </tr> <tr> <td>FILE</td> <td colspan="2">DOSSIER</td> </tr> <tr> <td colspan="3" style="text-align: center;">25-5-7-2-SALMON</td> </tr> <tr> <td>BY HAND</td> <td colspan="2">PAR PORTEUR</td> </tr> <tr> <td>ATTN:</td> <td colspan="2">RETURN TO / RETOURNER A</td> </tr> </table>		DATE	ATTN:		ACC	REF		FILE	DOSSIER		25-5-7-2-SALMON			BY HAND	PAR PORTEUR		ATTN:	RETURN TO / RETOURNER A	
DATE	ATTN:																			
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25-5-7-2-SALMON																				
BY HAND	PAR PORTEUR																			
ATTN:	RETURN TO / RETOURNER A																			
RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION	<p style="text-align: right;"><i>Copy to FANDU/Hunter and return J. HARLICK, CDN EMB, WSHDC</i></p> <p style="text-align: right;"><i>Done August 25th.</i></p> <p style="text-align: right;"><i>J. Harlick</i></p>																			
DATE	SIGNATURE																			

from the assignment of a first FM channel.

4. We believe the public interest would be served by the assignment of Channel 276A to Carthage, New York. The petitioner has shown interest in its use, and such an assignment would provide Carthage with a first FM station.

5. The Canadian Government has given its approval to the assignment of Channel 276A to Carthage, New York.

6. Authority for the adoption of the amendment herein is contained in §§ 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's Rules.

7. Accordingly, it is ordered, that effective October 6, 1981, § 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended with regard to the following community:

City	Channel No.
Carthage, N.Y.	276A

8. It is further ordered, that this proceeding is terminated.

9. For further information concerning the above, contact Mark N. Lipp, Broadcast Bureau, (202) 632-7792.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303)

Federal Communications Commission.

Henry L. Baumann,

Chief, Policy and Rules Division, Broadcast Bureau.

[FR Doc. 81-23313 Filed 8-10-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

High Seas Salmon Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Extension of emergency interim rule.

SUMMARY: This notice extends the emergency interim rule implementing Amendment No. 2 to the fishery management plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude through September 24, 1981. The Assistant Administrator for Fisheries, NOAA, has determined that the emergency situations stated in the original announcement of the emergency interim rule (46 FR 33041) continue to exist and that an extension for 45 days is necessary.

EFFECTIVE DATE: The emergency interim rule is extended from August 11, 1981, through September 24, 1981.

ADDRESS: Comments on this extension may be submitted to Mr. Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Regional Coordinator for Salmon), 907-586-7229.

SUPPLEMENTARY INFORMATION: On July 26, 1981, an emergency interim rule implementing Amendment No. 2 to the Fishery Management Plan for the High

Seas Salmon Fishery Off the Coast of Alaska East of 175 Degrees East Longitude (FMP) was published in the Federal Register (46 FR 33041) with a request for public comments to be submitted in writing by August 10, 1981. The emergency interim rule will expire on August 10, 1981, and is hereby extended effective August 11, 1981, in order to provide time to evaluate public comments and prepare a final rule implementing the FMP.

It has been determined that the emergency, as described at 46 FR 33042, continues to exist. Failure to extend the emergency interim rule would disrupt current management of the fishery and could cause irreparable economic damage in the future to the Southeast Alaska fishing community and biological harm to Pacific salmon resources. Continuity of this rule is necessary to achieve the chinook and coho salmon optimum yields as mandated by National Standard One of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Under authority of Section 305(e) of the Magnuson Act, an emergency rule may be repromulgated for an additional 45 days. For the reasons set forth above and in the notice of June 26, 1981, it is determined that this rule should continue in force for an additional 45-day period or until replaced by a final rule whichever occurs first.

(16 U.S.C. 1801 et seq.)

Dated: August 6, 1981.

E. Craig Felber

Acting Deputy Executive Director, National Marine Fisheries Service.

[FR Doc. 81-23330 Filed 8-10-81; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 674

High Seas Salmon Off Alaska

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The Director, Alaska Region, National Marine Fisheries Service, issues a final rule (field order) that closes the east management area in the Gulf of Alaska off southeast Alaska to commercial fishing for salmon by vessels of the United States for a period from 12:01 a.m., Pacific Daylight Time (PDT) on August 10, 1981, through 11:59 p.m. on September 20, 1981. The Director is taking this action: (1) to reduce the offshore catch of coho salmon and (2) to terminate the catch of chinook salmon in the fishery conservation zone. In the absence of this closure, insufficient numbers of coho salmon will escape to inshore waters to provide both for expected harvests by inshore fisheries and for spawning escapement; likewise, the catch of chinook salmon could exceed the optimum yield if fishing is allowed to continue beyond August 10, 1981.

EFFECTIVE DATE: Section 674.21(a)(2) subparagraphs (i) and (ii) are suspended from 12:01 a.m., PDT, August 10, 1981 until 12:01 a.m., PDT, September 21, 1981 and subparagraphs (iii) and (iv) are effective from 12:01 a.m., PDT, August 10, 1981 until 11:59 p.m., PDT, September 20, 1981.

Public comments are invited until September 9, 1981.

ADDRESS: Comments may be sent to Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (address above), 907-586-7229.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude (FMP) provides for inseason adjustments to season and area openings or closures. Implementing rules in 50 CFR Part 674 (published June 26, 1981 at 46 FR 33041) specify in Section 674.23(a) that these decisions shall be made by the Director, Alaska Region, National Marine Fisheries Service (Regional Director), under criteria set forth in that section.

FMP Amendment 1, adopted by the North Pacific Management Council (Council) and approved and implemented by the Secretary of Commerce in September 1980 (45 FR 59172), provides for an inseason closure of the commercial salmon troll fishery in the fishery conservation zone (FCZ) off Southeast Alaska to reduce the offshore catch of coho salmon, consequently increasing the escapement of coho salmon both to inshore fishing areas and to spawning streams. According to Amendment 1, the closure is to correspond with the State of Alaska closure of the fishery in State waters.

The closure was adopted because recent major shifts of troll effort and harvest from the inshore fishing districts to the offshore (FCZ plus outer territorial sea) fishing grounds have reduced the number of coho salmon reaching the inshore districts. This shift of effort and catch, especially by the power troll fleet, changed the harvest balance between inshore and offshore fisheries and applied greater fishing pressure to mixed coho stocks further from their natural streams (Table 1). The result has been reduced spawning escapements in some streams as well as greater restrictions on inshore net fisheries for pink, sockeye, and chum salmon and the inshore troll fishery.

Table 1.—Coho Salmon Power Troll Catch From Inshore Versus Offshore Fishing Areas, 1975-80

	Inshore		Offshore	
	Number	Percent	Number	Percent
1975.....	121,333	70	51,813	30
1976.....	201,281	46	234,707	54
1977.....	189,836	54	161,278	46
1978.....	240,865	34	463,792	66
1979.....	141,832	21	531,378	79
1980.....	296,813	42	409,667	58

Analysis of 1980 catch indicates that the 10-day closure from July 15-25, 1980, occurred too early to be fully effective. Despite the closure, the offshore coho salmon catch was still 58 percent of the total coho salmon troll catch compared to the 1975-77 average of 43 percent, and spawning escapements were poor.

Recent offshore power troll catches of coho salmon have been well below average for this time period. Recent coho salmon troll catches from Icy Straits, a corridor where coho salmon move from offshore to inshore, and terminal area gillnet fisheries are below average. The sport fishery for coho salmon in the Juneau area is similarly below average. Although early coho catches from the various fisheries cannot be used with precision to predict the ultimate size, it is evident, that the

run neither is larger than average nor has it yet moved into the inshore fishing districts. Current analysis of the timing of the 1981 coho salmon run indicates that the closure should begin on August 10, 1981.

Amendment 2 to the FMP, adopted by the Council and approved by the Assistant Administrator, reduces the chinook salmon optimum yield (OY) range for the East management area by 15 percent from 286,000-320,000 to 243,000-272,000 fish. The OY reduction was determined to be necessary to respond to severe conservation problems arising from the depleted condition of many of the chinook salmon stocks harvested by the Southeast Alaska troll fishery. The OY includes all chinook salmon commercially caught in both the FCZ and State of Alaska waters. Trolling is the only commercial fishing gear authorized by the FMP to harvest salmon in the FCZ off Southeast Alaska.

The chinook salmon OY reduction is to be implemented by a combination of a delayed season opening, an early season closure, gear restrictions, and inseason time/area closures. The inseason management strategy during 1981 was to attempt to delay the achievement of the chinook salmon OY in order to allow concurrent fishing for both coho and chinook salmon during most of July and August. Premature achievement of the chinook salmon OY could result in termination of the coho salmon fishery before the coho salmon OY was achieved, if it were determined that continued fishing only for coho salmon would be damaging to chinook salmon stocks. Although trollers can target on either coho or chinook salmon to some extent, a chinook-salmon-only closure at the end of the season could result in substantial chinook salmon hooking mortalities and wastage of legal-sized chinook salmon. Although this circumstance could be tolerated for a short time toward the end of the season when fishing effort and chinook salmon catches are normally declining, it would be intolerable during the first half of August when fishing effort and chinook salmon catches are still substantial.

Commercial trolling for salmon off Southeast Alaska began in 1981 on May 15, one month later than during 1980. Despite the late opening, early season catches of chinook salmon were extremely high and resulted in a projection that the chinook salmon OY would be achieved by August 8-15. As a consequence, the commercial troll fishery was closed for nine days from June 26 through July 4 in order to slow

the chinook salmon catch rate. Despite the June 26-July 4 closure, high chinook salmon catches have continued to occur. At the present rate of harvest the Southeast Alaska commercial troll catch of chinook salmon is estimated to be at least 240,000 fish by August 10. The State of Alaska intends to close its territorial waters for 10 days beginning August 10, but will reopen for both chinook and coho salmon fishing approximately August 20, 1981. Although the projected catch of 240,000 chinook salmon by August 10 is still below the maximum troll OY ceiling of 252,000 chinook salmon, it is expected that the OY will be achieved or exceeded by continued chinook salmon fishing in State waters after they are reopened. Therefore, the Regional Director has found that continued fishing for chinook salmon in the FCZ beyond August 10, 1981 will result in the OY being exceeded. The Regional Director has further found that the FCZ should not reopen to coho salmon fishing concurrently with the State reopening territorial waters on approximately August 20 because: (1) the incidental catch and consequent hooking mortalities to chinook salmon would be unacceptable; (2) coho salmon catches in the FCZ are normally declining after August 20; (3) the 1981 coho salmon run is, to date, below average and the coho salmon resource will benefit from the additional protection; and (4) this action is consistent with the stated objective of the FMP to "control and reverse recent trends of expanding effort and catch in outer coastal and offshore Southeast Alaskan waters to accomplish conservation goals." Therefore, the Regional Director has found that the east management area in the Gulf of Alaska off Southeast Alaska should close to commercial salmon trolling at 12:01 a.m. PDT August 10, 1981.

Because the information upon which the Regional Director based his finding has only recently become available, it would be impracticable to provide a meaningful opportunity for prior public notice and comment on this field order and still impose a prompt closure to assure attainment of the chinook salmon OY and sound conservation of the coho salmon resources. The Regional Director therefore finds, under 5 U.S.C. 553 (b)(3) and (d)(3), that there is good cause for

not providing opportunity for public comment on this field order prior to its promulgation, and for not allowing the passage of the normal 30-day period before it goes into effect. Therefore, this field order shall become effective immediately following its filing for publication in the Federal Register and publication and broadcast for 48 hours through procedures of the Alaska Department of Fish and Game, in accordance with 50 CFR 674.23(b)(2). Under 50 CFR 674.23(b)(3), public comments on this field order may be submitted to the Regional Director at the address stated above for 30 days following the effective date. During the 30-day comment period, the data upon which this field order is based will be available for public inspection during business hours (8:00 a.m.-4:30 p.m.) at the NMFS Alaska Regional Office, Federal Building, Room 453, 709 West 9th Street, Juneau, Alaska. The Regional Director will reconsider the necessity of this field order in light of the comments received, and subsequently publish in the Federal Register a notice either confirming this field order's continued effect or modifying or rescinding it.

National Environmental Policy Act

A final environmental impact statement was prepared on approval and implementation of the FMP under Section 102(2) of the National Environmental Policy Act and was filed with the Environmental Protection Agency (EPA) on January 18, 1979. A final supplemental statement was prepared on Amendment 2 to the FMP and was filed with EPA on May 1, 1981.

Classification

The Administrator of NOAA has determined that this field order is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The short-term restrictions imposed on troll fishermen by this field order are not expected to result in countervailing short-term decreases in investment, productivity, and competitiveness or in significant increases in consumer prices, and are inherent in the management regime already provided for in the FMP. Consequently, the Administrator certifies that this field order will not have a significant impact on a

substantial number of small entities, and thus does not require the preparation of a regulatory flexibility analysis under 5 U.S.C. 603 and 604. This rule does not contain a collection of information requirement, and does not involve any agency in collecting or sponsoring the collection of information, for purposes of the Paperwork Reduction Act of 1980.

Because of the need outlined previously for prompt action to prevent the chinook salmon OY from being exceeded and to reduce the offshore harvest of coho salmon, this field order responds to an emergency situation within the meaning of Section 8 of Executive Order 12291, and is thus exempt from the requirement of Section 3(c)(3) of that Order that it be submitted to the Director of the Office of Management and Budget 10 days prior to publication. This field order is being transmitted to the Director simultaneously with its filing in the Federal Register.

Dated: August 6, 1981.

E. Craig Felber,
Acting Deputy Executive Director, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 674 is amended as follows:

1. The authority citation for Part 674 reads as follows:

Authority: 16 U.S.C. 1855.

2. In 50 CFR 674.21(a)(2), subparagraphs (i) and (ii) are suspended until 12:01 a.m., PDT September 21, 1981 and two new subparagraphs (iii) and (iv) are added to read as follows:

§ 674.21 Time and area limitations.

(a) *Commercial Fishing.*

(2) *East Area.*

(iii) Commercial fishing for chinook, pink, chum, and sockeye salmon in the East Area is permitted for 1981 only from 12:01 a.m., PDT, on May 15 until 11:59 p.m., PDT on August 10.

(iv) Commercial fishing for coho salmon in the East Area is permitted for 1981 only from 12:01 a.m., PDT, on June 15 until 11:59 p.m., PDT, on August 10.

[FR Doc. 81-23395 Filed 8-7-81; 11:26 am]
BILLING CODE 3510-22-M

MEMORANDUM

NOTE DE SERVICE

TO: A. Campbell
Director-General
International Directorate

FROM: Associate Director
International Fisheries
Relations
International Directorate

SUBJECT: Canada/USA Pacific Salmon Negotiations

*File
DS*

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE/NOTRE RÉFÉRENCE
YOUR FILE/VOTRE RÉFÉRENCE
DATE August 11, 1981

DATE	August 11, 1981	
ACC	151909	REF
FILE	25-5-7-2-SALMON-1	DOSSIER
BY HAND	PAR PORTEUR	

Messrs. Shepard and Alverson met in Vancouver on August 6 to review the present situation and to set an agenda and timetable for further work, as follows.

On August 11, 12 and 13, there will be "technical" sessions with YTG, Alaska and the Council of Yukon Indians, basically to review the status of information on Yukon River stocks.

The next full negotiating session is set for October 13-16 in Warm Springs, Oregon, preceded by a government session in Seattle on October 8 and 9. (It should be noted that a holiday weekend intervenes). The session will review the conduct of 1981 fisheries in terms of compliance with the interim arrangements; agree on the régime foreseen for 1982 to meet the terms of those arrangements; review elements of a long-term agreement, including technical dispute settlement mechanism, the interception limitation scheme etc.; review and where necessary rewrite the principles contained in the Lynwood report; explore the "equity" question.

In the meantime, I understand that the negotiators have established a working group on the proposed research program for the northern boundary area, and another working group on "equity".

Judy Swan will be providing a fuller report on her return from Pacific Region.

M. Hunter
M. Hunter

- cc: G.C. Vernon
- H.D. Johnston
- D. Kowal
- J.R. MacLeod
- B. Applebaum
- J. Swan
- M. Goldberg
- R. Fadden (FLO)

MESSAGE

PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. N ^o D'ORIG.	DATE	FILE/DOSSIER 35-11-11	SECURITY SÉCURITÉ
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SUB/SUB ---PACIFIC SALMON-INDIAN LITIGATION

ATTACHED IS A COPY OF A DOCUMENT DATED AUG06/81, THE SUBJECT OF WHICH IS 1981 SALMON FISHERY MANAGEMENT PLAN, LITIGATION UPDATE. THE DOCUMENT WAS PREPARED BY THE ACTING NORTHWEST REGIONAL COUNSEL, U.S. DEPARTMENT OF COMMERCE, NOAA. ALSO ATTACHED TO THE DOCUMENT ARE TRANSCRIPTS OF JUDGE CRAIG'S DECISIONS IN THE TWO CASES WHICH LOCAL INDIAN TRIBES HAVE BROUGHT AGAINST THE SECRETARY OF COMMERCE. YOU WILL NOTE THAT THE NOAA COUNSEL WAS TO BRIEF THE PFMC DURING ITS AUG07 AND 08 MEETING. THE BRIEFING TOOK PLACE IN CAMERA AND UNFORTUNATELY WE WERE EXCLUDED.

2. YOU SHOULD NOTE THAT IN CASE NUMBER C80-342T, THE JUDGE HAS INCLUDED THE ALASKAN FISHERIES. TO OUR KNOWLEDGE THIS IS THE FIRST MENTION OF ALASKAN FISHERIES IN THE VARIOUS INDIAN/NON-INDIAN FISHERY DISPUTES. YOU SHOULD ALSO NOTE THAT IN CASE NUMBER C81-742, THE JUDGE HAS GIVEN A DEFINITION OF THE TERM QUOTE CONSERVATION UNQUOTE. IN OUR VIEW THIS DEFINITION MAY BEAR ON THE PACIFIC SALMON TREATY SINCE FROM THE AMERICAN PERSPECTIVE IT WILL BE RELEVANT TO THE MANAGEMENT OF THE SALMON RESOURCE.

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NO..... F.D. MARTENS			RG.....

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3. THESE DECISIONS ARE VERY RECENT AND THEIR FULL EFFECT HAS NOT YET BEEN ASSESSED. THEY WERE A MAJOR TOPIC OF DISCUSSION AMONG INDIVIDUALS ATTENDING THE PPMC MEETING: AUG 07 AND 08. ALTHOUGH THEY WERE NOT FORMALLY DISCUSSED AT THAT COUNCIL MEETING, THE INTENT OF THE DECISIONS RELATIVE TO CERTAIN MANAGEMENT DECISIONS REQUIRED TO BE MADE FOR THE 1981 SALMON FISHERY DID RECEIVE LIMITED DISCUSSION. WE EXPECT THAT THE IMPACT OF THE DECISIONS WILL HAVE GREATER RELEVANCE TO THE MANAGEMENT ACTION TO BE TAKEN AT THE PPMC MEETING AUG 21 AND 22. AS MORE INFORMATION COMES INTO OUR POSSESSION WE SHALL PASS IT ALONG ACCORDINGLY.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel, GONW
7600 Sand Point Way N.E., Bin C15700
Seattle, Washington 98115

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DATE: 6 August 1981

TO: Members of the Pacific Fishery Management Council, Scientific and Statistical Committee, Salmon Advisory Subpanel, and Other Interested Persons

FROM: Douglas M. Ancona, GONW
Acting Northwest Regional Counsel

SUBJ: 1981 Salmon Fishery Management Plan Litigation Update

Since the Council meeting in Boise, a number of events have taken place in the litigation involving this year's salmon fishery management plan amendment (FMP).

1. HOH, QUINVAULT, AND QUILEUTE TRIBES v. BALDRIDGE

You will recall that as of the Boise meeting, the Hoh Indian Tribe, Quinault Indian Nation, and Quileute Indian Tribe had brought an action against the Secretary of Commerce challenging this year's FMP. Since that time, the State of Washington (State) and the Washington State Charterboat Association (WSCA) have sought to intervene in the case. The State also asked that the court consolidate the case with the ongoing proceedings in United States v. Washington. The United States supported the State of Washington's motion to intervene but opposed its motion to consolidate the cases. The tribes opposed WSCA's and the State's intervention and attempts at consolidation. On July 25, Judge Walter E. Craig denied the State's motions for intervention and consolidation, and also denied WSCA's motion to intervene. On Friday, July 31, WSCA and the State filed with the Court of Appeals an emergency motion for a stay of the district court proceedings to allow time for reconsideration of their motion to intervene. The motion was denied.

At the hearing held on August 3 in Seattle, the State was successful in a renewed motion to intervene. Thus, the State, the United States, and the Washington coastal tribes were the only participants. The plaintiffs were allowed, over the objections of the United States, to present testimony on the issue of the 1981 salmon regulations' impact on the coastal tribes' fisheries.

After denying both plaintiff's and defendant's motions for summary judgment the Judge stated that he thought the suit stemmed from a "lack of communication" between Indians and non-Indians.

Judge Craig found that, for management of the coastal coho fishery, the "aggregate" principle should not apply; that is, the tribes are entitled to their 50 percent treaty share on a river-by-river, run-by-run basis. He, therefore,



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remanded the matter to the Secretary of Commerce and ordered the parties to the action (the tribes, the State of Washington, and the United States) and the Court's technical advisor to convene a conference for the purpose of deciding whether to further limit this year's ocean harvest or reduce the spawning escapement goals (or a combination of the two), in order to achieve a "reasonable run" up the Hoh and the other rivers involved in the litigation. A report to the Court from the conference is due Friday, August 7.

Judge Craig further ordered "the parties to this litigation and the representatives of all the tribes involved" to meet and come up with a "long-term" (i.e., five to ten year) plan for the ocean salmon fishery, which plan is to be submitted to the Court on or before February 1, 1982. The plan is to include escapement goals for each run on each river for each tribe, and should provide for an annual percentage of enhancement over the previous year's figure. The Judge added that, no matter how "salutary" the State's efforts to set escapement goals, it is impractical to attempt to enhance a run too fast. The plan would be subject to adjustment on a yearly basis.

Observing that the Salmon Plan Development Team was operating in a "vacuum" without technical input from the tribes, the Judge urged consideration of tribal participation in SPDT proceedings:

I am making a suggestion which is not in the form of an order but might well in the future reach that point. What I am suggesting is that the salmon plan development team invite the tribal input with respect to their technical advice. Now, I don't mean by that, that each Tribe should have somebody present at those meetings. I think the Tribes can agree on representation possibly through one person. Maybe it will take more than one but I certainly wouldn't suggest over three because when you get too many you can't do anything.

I'm making that suggestion and you can do with it what you want to do but if there isn't some progress in that respect you can expect me to be back again.

The United States' motion for a stay of the Court's order was denied.

2. CONFEDERATED TRIBES v. BALDRIDGE

In a separate lawsuit, the Confederated Tribes and Bands of the Yakima Indian Nation have sued the Secretary of Commerce, alleging that the Pacific Council's 1981 Salmon OMP failed to protect their treaty rights. The Tribes also indirectly challenged the Secretary's approval of the North Pacific Council's High Seas Salmon Fishery Management Plan for 1981. The Warm Springs Tribe also joined the action as an intervenor. The Confederated Tribes requested that the Secretary of Commerce be directed to impose a quota which would protect both their treaty fishing rights and their rights under the 1977 agreement approved by Judge Belloni, while providing for a substantial ocean harvest. Alternatively, they asked that the Secretary be ordered to immediately limit the Alaskan harvest in a meaningful manner, supplying greater numbers of fish for

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both Washington marine and treaty fisheries, or that he be directed to combine the two options. As in the Hoh River case, the State of Washington successfully moved to intervene. Both the plaintiff tribes and the Secretary moved for summary judgment, and a hearing on these motions was held on Tuesday, August 4.

At the conclusion of oral argument, Judge Craig decided not to close either the Alaskan or Washington offshore salmon fisheries. However, as in the Hoh River litigation, the parties and the Court's technical advisor were directed to meet to come up with a "reasonably satisfactory solution" to the dispute, and report back to the Court within 90 days.

In so ruling, the Judge was of the opinion that the Indians had been "done in," in large part because past estimates regarding fish runs and escapement goals were "woefully inadequate." The Court repeatedly noted the poor data base on which the federal and state fishery agencies based their decisions. He recognized that while the Secretary has tried to reduce the ocean harvest by a variety of methods, and it was apparent that catch reductions have been achieved, the efforts have not been enough, as more fish are not getting into the river. He stressed that in fishing rights cases, the treaty rights of the Indians and conservation of the resource have first priority, while other factors, including the economic consequences of a regulatory measure, are secondary.

Repeating his decision not to close the ocean fishery the Judge, nevertheless, suggested that the Secretary of Commerce take an immediate look at the ocean salmon fishery, particularly the fishery offshore Alaska, with the suggestion that he might want to curb it further. While he noted that severe economic impacts could result from settlement of the dispute in favor of the Indians' treaty rights, the Judge was of the opinion that "everyone will have to suffer, just as the Yakimas have." He also expressed hope that the Columbia River Plan would continue to operate, but that it should be modified by the parties for the future based on their experience with its historical effectiveness.

I have attached transcripts of the Judge's decisions in both cases and will brief you further this weekend at the Portland Council meeting.

cc (w/att.):

- J.P. Walsh, DA
- J.W. Brennan, GC
- W.H. Stevenson, F
- W.G. Gordon, F/CM
- J.S. Johnson, GCF
- P. Travers, CIAR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
SEATTLE, WASHINGTON

THE CONFEDERATED TRIBES AND
BANDS OF THE YAKIMA INDIAN NATION,
ET AL,

Plaintiffs,

vs

MALCOLM BALDRIGE,

Defendant.

NO. C80-342T

COURT'S DECISION
(Hearing on Motions)

Before The Honorable WALTER E. CRAIG
Tuesday, August 4, 1951
U.S. District Courthouse
Seattle, Washington

APPEARANCES:

For the Plaintiffs:

TIM WEAVER
316 North Third Street
Yakima, Washington 98907

For the Defendant:

DONALD A. CARR
Land & Natural Resources Division
U.S. Department of Justice
Washington, D. C. 20530

JAMES JOHNSON
Assistant Attorney General
Department of Game
600 No. Capitol Way
Olympia, Washington 98504

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THE COURT: Well, I guess the Court is going to try to do another Solomon^{esque} type ruling here, and I don't mean ~~just~~ ^{just} Solomon.

I am going to deny the motion for summary judgment and it may be that we will have to ultimately have a trial, but in the interim I am again going to call on the parties to this litigation with the help of the Court's technical adviser and see if you can come up with a recommendation to the Court on a reasonably satisfactory solution.

It is apparent to the Court that, to borrow a phrase from Mr. Justice Douglas, that at least to some degree the Indians have been "done in." Maybe that appearance is because the guesses with respect to run size and catch and escapement were woefully inadequate as history unfolds, and maybe you all ought to take a look at that side of it to see if you can't get some more realistic figures because where the Secretary has endeavored to control the ocean and fishery to some degree by reducing the seasons and limiting catches, and to some extent rather substantial reductions, it is apparent to the Court that in view of the hard facts that even though those reductions have been made by the Secretary, if it doesn't result in any more fish going up the river it doesn't do much good.

So, you want to get to the third step and talk about the economy. Maybe everybody is going to have to suffer

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1 for awhile the same way the Yakima's have suffered over
2 the past few years under the terms of the agreement.
3 That would be non-Indian as well as the Indian commercial
4 fishermen, the sports fishermen and everybody else.

5 I don't think at this juncture it would be helpful
6 or sound to close the ocean fisheries because I don't think
7 right now that would do very much good either. It would
8 make an awful lot of people unhappy, and I'm not afraid of
9 doing that, but I think as a practical matter it wouldn't
10 do too much good. But I would be hopeful that the parties
11 could agree that the Columbia River plan would continue.
12 We have had almost five years of it. You certainly by this
13 time have arrived at some conclusions with respect to its
14 good features and some conclusions with respect to its
15 faulty features, and maybe you can keep the good ones and
16 amend the bad ones until you arrive at a little closer
17 plan that will work over the long haul and in the meantime
18 continue to gather the data which, as I say, is not going
19 to have any immediate effect but down the road it may well,
20 so that there will be a better understanding of the
21 management of the entire industry.

22 I hesitate to set a time limit but I am going to anyway
23 and ask you gentlemen to confer and report back to the Court
24 in 90 days on this issue.

25 Does anybody have any questions?

MAXINE T. ROBINSON
Court Reporter
710 Howe Bldg.
Seattle, Washington 98104
MAin 7.8744

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1 MR. WEAVER: Yes, your Honor, I do. You are leaving
2 the fishery open, then, to take whatever fish remain out
3 there, is that correct?

4 THE COURT: I am allowing the Secretary to continue
5 with his efforts in the ocean fishery and I am suggesting
6 to the Secretary that he take another immediate look at it
7 with respect to the results, with the suggestion that he
8 might want to curb it further. I am also suggesting to
9 the Secretary that he take a real hard look at the
10 Alaska fishery because, as I understand it, and I'm not a
11 fish biologist either, my understanding is that bright
12 stock goes up there and comes back from there and it stays
13 there for a considerable amount of time and that's when
14 they take it. And, therefore, I am suggesting to the
15 Secretary that he take a hard look at that so he may want
16 to, in the effort which I think is paramount, allow enough
17 fish to get back down and up the Columbia to satisfy to
18 some degree the rights of the Indians under their Treaty
19 to take fish.

20 Now, that may take some comparatively strong measures
21 on the Alaska fisheries. One of the difficulties I think
22 we all have is that we are inclined to compare numbers,
23 and this is all right for an exercise, but, for example,
24 when you say, Well, there is expected to be 300,000 fish --
25 and that's a pretty good number -- and that's the goal to
be reached, or a guess on what is coming, and you wind up
with 200,000 fish, it doesn't do much good to say, Well,

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1 we have reduced our estimates to 250,000 fish next year,
2 because you are still 50,000 off in your own historical
3 analysis.

4 I think so far the Court has been acquainted in these
5 matters, and it doesn't make any difference which case it
6 is, as I said yesterday I have never seen -- except one
7 year, I believe -- where any of the estimates were any
8 good at all. The prospective fish run was overstated in
9 every instance and the escapement goals were never met.

10 Now, maybe one follows the other. If your escapement
11 goal is based on your anticipated run and your run is that
12 far off you are not possibly going to make the escapement
13 goal. So the escapement goal is too high.

14 As I've said before, this Court is concerned with the
15 fundamental law of the land that is the Indian fishing rights
16 under the Treaties of Governor Stevens; and secondly, the
17 conservation of the salmon fishery, whatever may be the
18 species.

19 Whatever happens economically is down the ladder as
20 far as the Court is concerned and I have the firm belief,
21 at least at this stage, that if the parties work together
22 to adequately conserve the fish, fulfil the terms of the
23 Stevens Treaty, the economics will take care of themselves
24 because under an adequate conservation program you are
25 going to increase the number of fish instead of decrease

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them.

As far as the Chinook is concerned, which was a meritorious effort and I think should continue, the number of fish has been dropping every year, the number of take has been dropping, the number of escapement has been dropping. It could go the way of the ^{Monterey} ~~Monterey~~ Sardine if you are not going to put a check on that trend somewhere along the line.

So I am asking you, again to see what you can do and the parties can make recommendations to the Secretary, and I hope the Secretary will take them in good faith and analyze them and if it is appropriate adopt them.

And you report back to me in 90 days.

(Court in recess)

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1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF WASHINGTON
3 SEATTLE, WASHINGTON

4 HOH INDIAN TRIBE, et al,)
5 Plaintiffs,)
6 vs.) No. C81-742
7 MALCOLM BALDRIDGE,)
8 Defendant.)

9 COURT'S DECISION
10 (Motion For Intervention)

11 *Hearing on Cross Motions for Summary Judgment*

Monday, August 3, 1981

12 Heard Before the Honorable WALTER E. CRAIG
13 United States District Court House
14 Seattle, Washington

15 APPEARANCES:

16 For the Plaintiffs: CARL V. ULLMAN
SUSAN KAY EVALSOE
17 For the Defendant: GEORGE DYSART
18 DONALD CARR
19 JAMES JOHNSON
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THE COURT: To keep the record straight both motions for summary judgment will be denied.

Mr. Dysart, I think, has heard this record once before but it appears to me that this litigation, as well as others the Court has been unfortunate enough to be involved in, stems to a great part from lack of communication. To this Court's knowledge in all of these cases where there has been effort to forecast the size of any given run of any given species the forecast has been short of expectations in every instance that this Court is familiar with. In the final analysis and the practical operation of the fishing industry the escapement goals have fallen short of anticipation. I think the attitude of the State of Washington and according to their conclusions with respect to perpetuation of the respective species, whatever that means, is salutary. I think also the Secretary of Commerce on the record that is before the Court presently since the Secretary has been in charge of the ocean fisheries has from year to year reduced the catch in the ocean fisheries in order to more equitably distribute the fish in the ocean. I don't know how you do that. I don't know how the Secretary expects to do it but somewhere along the line hopefully we'll reach a reasonably compatible solution.

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8/11 ●

1 I don't know really what the terms conservation
2 and perpetuation mean. They are not particularly
3 subject to a legal definition, but as I analyze
4 the problem perpetuation alone effects to say that
5 next year we are going to have the same number of
6 fish as we did this year, and the year after and
7 the year after. That would be in my book perpetuation.

8 Conservation, on the other hand, to me is
9 really what all of these cases are about. To me
10 conservation means the protection of each individual
11 species to the extent that the operation of the
12 respective fisheries will be in such a manner as to
13 increase over the long term the number of fish in
14 every one of the streams in this case and from
15 whatever the point south is to the end of the map
16 in Canadian waters, which necessarily would include
17 in escapement goals the percentage for enhancement of
18 the total number of fish of any given species in any
19 given stream.

20 As has been suggested, ideally we ultimately,
21 maybe in a hundred years, will get back to where we
22 were in 1855 but I rather doubt that will transpire
23 because greed has a way of diminishing everything,
24 and too many people want too much fish. So ultimately
25 we will have no fish. Where are we then? In that

8/11

1 event the Court's problem is solved. You people
2 wouldn't come running in all the time. That is a
3 pretty disastrous result and I hope it can be avoided.

4 With respect to the Pacific Fishery Management
5 Council's input it seems to the Court that the salmon
6 plan development team is operating in something of
7 a vacuum without adequate consideration of the input
8 from the technical advisors to the Tribes.

9 I am making a suggestion which is not in the
10 form of an order but might well in the future reach
11 that point. What I am suggesting is that the salmon
12 plan development team invite the tribal input with
13 respect to their technical advice. Now, I don't mean
14 by that, that each Tribe should have somebody present
15 at those meetings. I think the Tribes can agree on
16 representation possibly through one person. Maybe
17 it will take more than one but I certainly wouldn't
18 suggest over three because when you get too many you
19 can't do anything.

20 I'm making that suggestion and you can do with it
21 what you want to do but if there isn't some progress
22 in that respect you can expect me to be back again.

23 What we have underlying all of this litigation
24 are the Stevens Treaties and whether we like them
25 or not they are there and they are the law of the land

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and they have been recognized by the Supreme Court of the United States and the Congress. And whether we like it or not those treaties have been interpreted to mean that the signatory Indian Tribes are entitled to a river by river, run by run, basis to fifty percent of the catch.

Now as I recall it, on the first go around it so happened that Judge ^{Belloni} ~~Beloney~~ attempted to avoid that specific enumeration of percentages by saying "a just share." And I think he was probably right because the fish are never consulted in these matters and consequently no one knows what the fish are about to do so the result is in one year there may be fewer fish than there are in the next year, and a just share in one year may not be the same as a just share in the next year. But we aren't living under that philosophy. We are living under a flat out ~~flat~~ ^{fifty} percent take.

Now, on 1981 Coho run which we are now considering I don't know whether the forecast of the Secretary or the forecast of the State of Washington or the forecast of the Indians are going to be right or not. My guess is that they won't be on any one of them. And my guess is that they all fall short. I do not believe in the management of the ocean fisheries that

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1 the aggregate principle should apply in this case.
2 And what I am going to do is to remand the matter
3 to the Secretary of Commerce and I am going to order
4 that a conference be convened -- tonight if you want
5 to -- but with inordinate dispatch and that conference
6 shall include the State of Washington and the Indian
7 Tribes represented. And whether it will be necessary
8 to further limit the ocean catch or to reduce the
9 escapement goals to achieve a reasonable run up the
10 Hoh River, and the other rivers involved, will depend
11 on the good wisdom of those attending the conference.
12 It's the Court's personal opinion that no matter how
13 salutary the State of Washington was in attempting
14 to provide escapement goals that it's impractical to
15 attempt to do it too fast.

16 In addition to that order the Court is also
17 ordering the parties to this litigation and the
18 representatives of all the Tribes involved to confer
19 and come up with a reasonable plan that you all think
20 you can live with on a long term basis, and I would
21 hope that it would be on an initial term of ten years
22 but I don't think that is going to work. I think
23 maybe it would be more practical to go on a five year
24 basis. It should be long enough so that you can look
25 at the hard numbers when you get through each year

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1 to tell where you are going. I think there again
2 that the plan that I have in mind would contemplate
3 escapement goals for each run on each river for each
4 Tribe, which would provide a percentage each year of
5 enhancement over the previous year. You can see that
6 if you are successful in providing a ten percent
7 enhancement a year in ten years you would double
8 the quantity of fish. Of course, that is truly
9 theoretical because it doesn't take into account the
10 ordinary mortality rate regardless of people who pull
11 them out of the water. But in any event that's the
12 philosophy and, as I said, I think such a plan should
13 be flexible enough so that it might be subject to
14 adjustment on a year by year basis.

15 I'm going to suggest a deadline for submission
16 of that plan to the Court on or before February 1 of
17 1982.

18 I want to have on the first conference that I
19 referred to on this specific issue an answer by
20 Friday. That is the 7th of August. And as you can
21 see, what I have in mind is a long term role of
22 producing the optimum number of fish in every stream
23 on the west coast of Washington. I can already hear
24 the hues and cries, but let's try it and see what
25 we come up with.

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1 Is there anybody that doesn't understand what I
2 have said?

3 MR. CARR: Just one point, your Honor. You
4 spoke of a remand to the Secretary of Commerce to
5 consider what steps should be taken for this season.
6 Do I correctly understand you on that?

7 THE COURT: That's right. You've got it. I want
8 him to reconsider the ocean catch figure that he used.
9 As I see it, in order to supply the Hoh River with
10 an adequate number of Coho for the Indians to fish
11 in it, one of two things has to happen. You either
12 reduce the ocean catch to let them go in or you
13 reduce the escapement goal, or some of both.

14 MR. CARR: Indeed that is true, your Honor, and
15 I am merely asking for a little elaboration as to
16 your thoughts on the scope of the remand that you are
17 ordering as to whether you were specifically consider-
18 ing alternative choices or combinations of alterna-
19 tives by the Secretary of Commerce. Should he be
20 looking at the harvest level? Should he be looking
21 at spawning escapement levels?

22 THE COURT: All he can do really is to look at
23 the ocean harvest and the escapement goals. His.
24 The reason I am ordering the rest of the parties
25 to that conference and reconsideration is so that you

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8/11

1 will have some flexibility in reaching the goal that
2 the Court has indicated so that maybe you will come
3 up with a reduction in ocean harvest and a reduction
4 in the escapement goals as established by the Washington
5 Department of Fisheries which was adopted by the
6 Secretary.

7 MR. CARR: That was sufficient to explain to
8 me, I believe, what I need to tell my client, yes,
9 your Honor. I think at this time it is appropriate
10 and obligatory on me to ask your Honor to stay the
11 order he has just entered.

12 THE COURT: Pardon?

13 MR. CARR: I think it is obligatory on me at this
14 time to ask your Honor to stay that order that you
15 will have just entered because, first, the balance of
16 the irreparability of the harm and the considerations
17 of the public interest and the likelihood of success
18 on appeal argue for the entry of such a stay. At least
19 to permit the consideration by the United States of
20 the possible courses of an emergency appeal. I guess
21 what I am saying, your Honor, is don't enter an order
22 that gives us only until August 7 or we will have to--

23 THE COURT: Well, when is the run going to start?

24 MR. ULLMAN: They have, your Honor, caught about
25 three hundred thousand fish out there already.

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8/11

1 THE COURT: Let's see what you can do by Friday.
2 If you need help you can holler.

3 MR. CARR: I take it that your Honor is denying
4 my motion for a stay?

5 THE COURT: That's right.

6 MS. HVALSOE: If your Honor might answer one
7 question for clarification. Are you asking that the
8 parties come up with a proposed order to the Court
9 by the 7th or a plan by the Secretary?

10 THE COURT: I have made my order. If you want
11 a copy of it you can get it from the reporter.

12 MS. HVALSOE: You are just asking that we report
13 back to the court then?

14 THE COURT: That's right.

15 MS. HVALSOE: Thank you.

16 THE COURT: Now I would suggest not only at your
17 conference that you have the Indian representatives
18 from the state and feds but also the Court's technical
19 advisor, Mr. Olney who, I am sure, can give you some
20 input as to the attitude of the Court. And whatever
21 you come up with don't try to lock it in granite because
22 it won't work. We have to have flexibility not only
23 in this one but in the one I am asking for as of
24 February 1. And while it may be a difficult task
25 for you to do it, whatever you do is going to be

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much better than what I would do because you have the
input. What I might do nobody will like.

(Court recessed)

MESSAGE

E 64 / 11 / 20

PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. N° D'ORIG.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
OTT	EXT	FLO2057	AUG 11/81		CONF'D

AUG 11 19 55 '81 AUG 11 20 33 '81

TO/A GVALOS (CLARK) DELIVER BY 120900

INFO

DATE	
ACC	151876
REF	
FILE	25-5-7-2-SALMON-1
BY HAND	PAR PORTEUR
ATTN:	

DISTR.

REF

SUB/SUJ CDA/USA PACIFIC SALMON

GNG HAVE REQUESTED ANY COMMENTS YOU MAY HAVE ON FOLLOWING TEXT OF AIDE MEMOIRE TO BE PRESENTED TO USA EMBASSY. PURPOSE OF AIDE MEMOIRE IS TO REMOVE ANY REMAINING UNCERTAINTY ON PART OF USA WITH REGARD TO CDN POSITION. COMCENTRE PLEASE COPY ATTACHED TEXT.

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SG..... DWSMITH/mr	FLO	2 6692	SIG..... DW SMITH

ECOND
DRAFT

GNG/R.Willson/2-0905/nb/jf

A I D E M E M O I R E

Text Begins

Canada and the U.S.S.A. held bilateral consultations in Ottawa on July 29, 1981, which included discussion of Canadian enforcement procedures involving U.S. salmon trollers fishing south of the A-B line in Dixon Entrance.

In the consultations the Canadian position was that the principle of "flag-state enforcement" and the principle of "existing patterns" (i.e. no expansion of effort nor initiation of new fisheries) were equally necessary for the preservation of good relations. This had been so since the Reciprocal Fisheries Agreement of 1977. The Canadian side understood the U.S. position in the consultations to be that "flag-state enforcement" ought to take precedence over "existing patterns". Under the U.S. interpretation, restraint need not be exercised on the fishing grounds and ^aU.S. salmon fishery could be established where none had existed before.

In August of 1980, as a consequence of the arrest of the U.S. salmon seiner, "The Scorpion", Canada and the U.S.S.A. agreed that the principle of "existing patterns" does not allow for a U.S. net fishery for salmon in the disputed area of Dixon Entrance. The present consultations did not lead to agreement on whether ~~whether~~ the U.S.S.A. had prosecuted a traditional salmon troll fishery in that area. In the Canadian view, the statistics

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support

presented by the U.S. side tended to ~~prove~~ the Canadian case in that they did not ^{prove} establish the existence of ^{an established} U.S. troll fishery ~~[of any consequence]~~ in the years preceding mutual acceptance of the principle of "existing patterns" in 1977. Both sides undertook to conduct further research into the historical record.

Meanwhile, Canadian enforcement procedures involving U.S. salmon vessels fishing in the disputed area in Dixon Entrance will remain the same as they have been since the mutual agreement to abide by the principles of "flag-state enforcement" and "existing patterns". Canada reserves its right to enforce against U.S. salmon vessels not in compliance with "existing patterns". Those vessels will nevertheless be given ample opportunity to desist from fishing in the area. Canadian authorities anticipate that U.S. authorities would likewise respect the status quo.

OTTAWA, August _____, 1981.

Text ends.

TO / A M. Hunter

FROM / DE G. Jones
Advisor
International Gov't Affairs

SUBJECT / OBJET Re: "Kingfisher"

File # []
AUG 18 1981
D. Smith

Willson
A copy has also gone to FLP
SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE / NOTRE REFERENCE
YOUR FILE / VOTRE REFERENCE

DATE August 7th, 1981
227389
25-5-5-Cda-USA-18 1981
25-5-72-SALMON-1

Enclosed please find a copy of the telex and conversation between Wayne Shinnars and Admiral Knapp as requested.

G. Jones
G. Jones

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GNG
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*File of Willson GNG
Shinnars FLD
Baseclans/10*

Ulx message relayed by Ms. Jewett, Can Armed Forces, Jericho Beach, [732-4201]

To: Can Dir-Gen of Fisheries
From: Cgdsevenjeen Juneau, A.K.

Re: Salmon Closure in Dixon Entrance

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ON THE MORNING OF 2ND AUGUST, THE AMERICAN SALMON TROLLER KINGFISHER WAS ADVISED BY CANADIAN ENFORCEMENT VESSEL KITIMAT II THAT THE WATERS OF DIXON ENTRANCE WOULD BE CLOSED TO ALL SALMON TROLLING, BOTH AMERICAN AND CANADIAN, BEGINNING AT 1800T THE SAME EVENING.

THE US DOES NOT RECOGNIZE THE RIGHT OF THE GOVT OF CANADA TO REGULATE THE FISHERIES OF THE US BETWEEN THE AB LINE AND THE EQUIDISTANT LINE IN DIXON ENTRANCE AND MUST INSIST THAT THE PRINCIPAL OF FLAGS STATE ENFORCEMENT, AS AGREED TO BY BOTH GOVT OF 2ND JUNE 1978, REAFFIRMED ON 21ST AUGUST 1978, APPLIED AS IN THE DISPUTED AREA IN VIOLATIONS OF FISHERY REGULATIONS BY AMERICAN FISHERMEN IN DIXON ENTRANCE SHOULD BE REPORTED TO AMERICAN ENFORCEMENT AUTHORITIES FOR APPROPRIATE ACTIONS. REAR ADMIRAL J. KNAPP COMMANDER 17 COASTGUARD DISTRICT JUNEAU ALASKA SENDS.

Admiral Knapp

"Bob DeWary"

Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO / À
G. Jones
Advisor
International Gov't Affairs

FROM / DE
C.W. Shinnars
Director-General
Pacific - Fisheries & Oceans

SECURITY - CLASSIFICATION - DE SECURITE
OUR FILE/NOTRE REFERENCE
YOUR FILE/VOTRE REFERENCE
DATE August 6, 1981

SUBJECT / OBJET
CWS's phone conversation with Admiral Knapp -
Salmon Closure in Dixon Entrance

At approximately 1030 hours on Tuesday, August 4, I received a telephone call from Rear Admiral J. Knapp, Commander, 17 Coastguard District, Juneau Alaska regarding the American salmon troller - "Kingfisher". I advised Admiral Knapp that the recently announced Dixon Entrance closure refer to Canadian vessel only. However, Canada still consider the waters south of the AB line to be Canadian territory and in that the Americans did not have a traditional troll fishery in the area, American vessels found south of the line would be advised by Canadian patrol vessels to move north of the line. Should they not respond to that warning, Canada would have no choice, but to take enforcement action.

Admiral Knapp then expressed his personal opinion that it would be more appropriate to carry out flag state enforcement in the disputed zone. I advised him that flag state enforcement was unacceptable to Canada in terms of a newly initiated troll fishery. I also advised him of the reverse situation now in effect in the Gulf of Maine.

He advised me that the coastguard vessel Laurel had been assigned to the area over the weekend to provide assistance to American troll vessels fishing south of the line. The implications being that if Canada attempted to take enforcement action against any American vessel found south of the line, that the Laurel would attempt to interfere with such action by Canada.

In discussing flag state enforcement, Admiral Knapp expressed the hope that before Canada took any enforcement action, it would see fit to advise the American coastguard at which time, it would decide whether or not to instruct the American vessel to leave the zone or indeed support the vessel in its claim to fishing rights south of the AB line.

I advised Admiral Knapp that we Canada, are not interested in escalating this situation to an international incident, and that we would try to keep the ongoing incidents at a low profile. However, should the American troll vessels push the point, Canada would have no choice but to act.

cont'd/2

G. Jones

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Admiral Knapp indicated that he fully understand the Canadian position and that he would likewise try to take a low profile approach and would immediately advise the American coastguard vessel Laurel to leave the disputed area and to move to other duties.

We exchanged home phone numbers just in case night or weekend calls were necessary.



C.W. Shinnors

Aug 6/81

JOINT PRESS RELEASE BY THE DEPARTMENT OF EXTERNAL AFFAIRS OF CANADA

AND THE UNITED STATES DEPARTMENT OF STATE

DATE		REF
ACC	151870	
FILE	25-5-7-2-SALMON-1	DOSSIER
BY HAND		PAR PORTEUR

Canadian and U.S. federal officials met on June 19

in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Michael P. Sheppard for Canada, and Dr. Dayton P. Alverson for the United States recommended in a Progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In both Canada and the United States federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

After reviewing the recommendations of the Special Negotiators and noting the support they have received in

Both countries, the governments of Canada and the United States wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into formal arrangements.

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.

RESTRICTED

(CLASSIFICATION)

FILE

REQUEST FOR FACSIMILE TRANSMISSION
REQUETE POUR LA TRANSMISSION DE BELINOGRAMME

TO/A: ACTC

DATE: 6AUG81

FROM/DE: R.FADDEN/FLO

PLEASE TRANSMIT THE ATTACHED DOCUMENT(S) TO:
VEUILLEZ TRANSMETTRE LE(S) DOCUMENT(S) EN ANNEXE A:

WSHDC/HARLICK

(Indicate the address)

(Indiquez la destination)

HARLICK

(Indicate name of addressee)

(Indiquez le nom du destinataire)

at/à:

(Facsimile telephone number)

(Numéro de téléphone du béliño)

REF: Telcon Fadden/Harlick Aug 5/81
"As agreed in reftelcon, grateful you
pass text of attached joint press
release to State and seek agree-
ment on release date. We
would prefer early release and
would require two full working days
notice. Advize.



Signature

6-2643

Telephone number of originator
Numéro de téléphone du rédacteur

The Department of External Affairs
Ottawa, Ontario, K1A 0G2

Ministère des Affaires Extérieures
Ottawa, Ontario, K1A 0G2

**ACTION
 SUITE A DONNER**

MESSAGE

RR

FM/DE	PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY
	LIEU	MINISTÈRE	N ^O D'ORIG.		35-11-	SÉCURITÉ
	SEATL	UAGR	5741	05AUG81		U/C

TO/A EXTOTT FLO

004/05

P 10/2

INFO SFAX WSHDC DE SEA

002/05

Handwritten notes and signatures

DATE	
ACC	152159
REF	
FILE	25-5-7-2-SALMON-1
DOSSIER	
BY HAND	PAR PORTEUR
ATTN:	

B.H. FANDOOPT DE OTT

B.H. FANDO VNCVR DE SEA

DISTR. GNG

RE5 OURTEL UAGR 5645 OF 02JUL81

SUB/SUB ---PACIFIC SALMON-INDIAN LITIGATION

IN TWO SEPARATE ACTIONS A U.S. DISTRICT COURT JUDGE HAS RULED THAT PACIFIC COAST INDIAN TRIBES WERE NOT GETTING THEIR FAIR SHARE OF SALMON AND THAT COLUMBIA RIVER INDIAN TRIBES HAVE BEEN ADVERSELY AFFECTED BY A FEDERAL FISH MANAGEMENT PLAN AND CONSEQUENTLY WERE NOT GETTING THEIR FAIR SHARE OF THE RESOURCE.

2. IN THE FIRST ACTION WHICH WAS BROUGHT BY THE HOH, QUINALT AND QUILEUTE AGAINST THE SECRETARY OF COMMERCE, THE INDIANS CLAIMED THAT UNDER THE 1981 PLAN SALMON TOO MANY FISH WERE PROTECTED FOR SPAWNING AND THE REMAINDER WERE CAUGHT BY NON-TREATY FISHERMEN IN THE OCEAN THEREBY DEPLETING THE INDIAN FISH HARVEST IN THE RIVER. UNDERSTAND THAT THE EFFECT OF JUDGE'S RULING WILL REQUIRE THE MANAGEMENT OF THE RESOURCE ON A RIVER BY RIVER BASIS (WEAKEST RUN BASIS) RATHER THAN ON AN AGGREGATE BASIS. THIS WILL REQUIRE FURTHER RESTRICTION ON THE OFF-SHORE SPORTS AND COMMERCIAL FISHERIES.

3. IN SECOND ACTION BROUGHT BY THE YAKIMA, NEZ PERCE, UMATILLA AND WARM SPRING TRIBES AGAINST THE SECRETARY OF COMMERCE, FEDERAL JUDGE HAS AGREED THAT THE

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DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SG..... F.D. MARTENS/cn			SG..... <i>[Signature]</i>

SEA 004/25

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FEDERAL OCEAN MANAGEMENT PLAN IS PREJUDICIAL TO TRIBAL FISHING RIGHTS. HOWEVER, JUDGE CLAIMED THAT CLOSURE OF OCEAN FISHING AT THIS TIME WOULD NOT BE USEFUL. JUDGE HAS ORDERED U.S. DEPARTMENT OF COMMERCE AND WDF TO MEET WITH COLUMBIA RIVER TRIBES AND NEGOTIATE A MORE EQUITABLE PLAN WHICH IS TO BE SUBMITTED TO THE COURT WITHIN 90 DAYS. TRIBAL LEADERS HAD HOPED JUDGE WOULD HAVE BEEN MORE DECISIVE IN HIS RULING AND VIEWED WITH DISMAY HAVING TO GO BACK AND RE-NEGOTIATE WITH THE DEPARTMENT OF COMMERCE AND WDF.

4. IN A RELATED ACTION, WDF HAS REDUCED THE SPORTS CHINOOK BAG LIMIT (EFFECTIVE AUG07) FROM THREE TO TWO FOR THE AREA EAST OF THE SEKIU RIVER (PUNCH CARD AREAS FIVE THROUGH THIRTEEN). THIS ACTION IS BEING TAKEN IN AN ATTEMPT TO BALANCE SALMON CATCHES BETWEEN TREATY AND NON-TREATY FISHERMEN.

5. ALSO EFFECTIVE AUG04 WDF HAS CLOSED ALL SPORT SALMON FISHING IN THE COLUMBIA RIVER FROM THE HOOD RIVER BRIDGE UPSTREAM TO CHIEF JOSEPH DAM. CONSERVATION OF DEPRESSED SPRING AND SUMMER STOCKS HAS BEEN GIVEN AS THE REASON.

Wg
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Kowal Aug 4/81

PROGRESS REPORT BY THE NEGOTIATORS
ON CONSULTATIONS TOWARDS A COMPREHENSIVE AGREEMENT
FOR MANAGEMENT AND DEVELOPMENT OF THE PACIFIC SALMON FISHERIES

DATE	Kowal Aug 4/81	
ACC	152380	REF
FILE	25-5-7-2-SALMON	DOSSIER
BY	PAR	PORTEUR
ATTN:		

1. Following the negotiating session held in Vancouver, B.C. from April 27 - May 2, the two negotiators held a series of meetings with officials of the two countries in Juneau, Alaska on May 11 - 13 and in Vancouver on May 18 - 20. The purpose of the meetings was to clarify technical issues that had created difficulties in the April 27 - May 2 session and to explore possible avenues for solution to the outstanding problems in the negotiations. As the result of the technical consultations, the negotiators developed a number of new options for solutions of the outstanding issues, which were then discussed internally with advisory groups within each country.

2. On the basis of these separate consultations with advisory groups, the negotiators strongly reaffirm their belief that a long term agreement for cooperative management and development of the Pacific salmon resource is urgently required to ensure adequate conservation, enhancement and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord. The negotiators believe that the technical clarifications achieved over the past month have been sufficient to further warrant attempts to reach a comprehensive agreement and therefore recommend that formal negotiations toward a long term agreement be resumed in the autumn of 1981 (following the 1981 fishing season).

3. With respect to a long term agreement, the negotiators reaffirm their agreement on the principles for cooperative management and development and on the approaches to implementation of these principles as outlined in the record of the October 1980 negotiating session held in Lynnwood, Washington, including:

- (a) Cooperation in conservation, enhancement, management and research to increase and optimize salmon yields in both countries.

- 2 -

- (b) Tailoring of fisheries regulations (including interception limitation schemes) and enhancement programs to achieve the aforementioned objectives and to provide each country with benefits commensurate with salmon production in its own rivers, taking into account the desirability of reducing interceptions and of not unduly disrupting existing fisheries.
- (c) Mechanisms for joint management, enhancement and sharing of catches in all transboundary rivers.
- (d) Transfer of upriver management and development authority to Canada for Fraser River sockeye and pink stocks and development of new arrangements for cooperative regulation of the fisheries of the two countries on these stocks to provide United States fishermen with agreed entitlements and to provide required spawning escapements.
- (e) Development of a new international Commission to coordinate the management and development programs of the two countries.

4. The negotiators believe that, because of the highly technical nature of a long term agreement, approximately one year of consultations and negotiations ~~will be required to develop formal arrangements that would ensure full and~~ effective implementation of the principles to which both sides now subscribe. Such an agreement therefore could not come into force until 1983. The negotiators note the positive management measures each country intends to put into place in 1981 to improve conservation of the stocks in a manner which will be of mutual benefit. They further note that a number of proposals under discussion in the negotiations bear on the conduct of fisheries in 1982 and that implementation of such proposals would be of mutual benefit. In this light, negotiators believe that, pending efforts over the next year to develop a full comprehensive agreement, the positive momentum of the present discussions between governments should be maintained through practical actions in the fisheries in both 1981 and 1982.

The negotiators therefore recommend that the two governments enter into an interim agreement with respect to the conduct of the Pacific Salmon fisheries of the two countries for the remainder of the 1981 fishing season and throughout 1982. The elements of such an agreement are outlined in the following paragraph.

5. Specifically, the negotiators recommend that, with a target date for completion by May 31, 1982, technical consultations and formal negotiations be conducted to develop a comprehensive long-term agreement regarding the management and development of Pacific Salmon stocks of mutual concern; such negotiations to be based on the principles and to take into account the general approaches to implementation outlined in the record of the negotiating session held in Lynnwood, Washington in October 1980. They further recommend that, for 1981/82 the two parties develop an interim agreement that will include the following elements:

- (B)
- (a) During 1981 and 1982, interception in the United States fishery in Alaska District 104 (i.e. Noyes Island) shall be limited by adjusting fishing effort in a manner which would result in an average annual harvest of sockeye totalling approximately 160,000 fish.
 - (b) All other fisheries in Alaska shall be conducted in a manner pursuant to the understandings recorded in the record of the October 1980 Lynnwood meeting.
 - (c) In 1982, the troll salmon fishery in B.C. Statistical Area I and in fisheries by all gear in B.C. Statistical sub-areas 3X, 3Y, 5-1 and the western portion of Sub-area 3Z shall be regulated in a manner which would limit the aggregate catch of pink salmon to approximately 1.49 million fish. The portion of this aggregate total taken in the troll fishery in Area I shall be limited to the approximate level taken in even numbered years during 1971 - 74, namely about 85,000 fish.

- 4 -

- (d) In 1981, with respect to fisheries on stocks bound for Canadian sections of the Taku River, the two sides shall establish escapement target for each species. Canadian authorities shall regulate the fisheries under their jurisdiction to ensure that the percentage of the allowable catch for each species taken by Canadian fishermen in 1981 shall be somewhat less than the percentages of the catch of each species taken in 1979. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (e) In 1982, the percentages of the total allowable catches by species taken by Canadian fishermen in the Taku River shall be reduced to approximately 15% of the 1979 level.
- (f) In both 1981 and 1982, Canadian authorities shall limit the catch by Canadian fishermen on the Stikine River in the same manner as for the Taku River in 1981, subject, however, to conservation adjustments that may be agreed upon through consultations between the two sides. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (g) With respect to Fraser sockeye and pink salmon, the IPSFC regime shall continue to apply in 1981 and 1982. In 1982, in the event of amigratory diversion of sockeye through Johnstone Strait, Canada shall exert restraint in its fisheries outside the Fraser River Convention Area taking into account proposed future sharing arrangements under discussion in the negotiations.

- 5 -

(h) All other Canadian intercepting fisheries and all United States intercepting fisheries in Washington, Oregon and California shall be conducted in conformity with the general interception limitation scheme under discussion in the negotiations (i.e. limited to 1971 - 74 base levels).

(i) In 1982, the two governments shall conduct a large scale tagging program in the southern Southeast Alaska and Northern British Columbia area and other programs as may be agreed in order to provide improved information on the composition of the runs in intercepting fishing areas.

6. The negotiators recommend that pending the coming into force of the interim agreement, competent fisheries authorities in both countries conduct their programs of fisheries regulation in accord with the spirit of the interim agreement.

FLO/R.B. Fadden/6-2643/dg

MIN (2)
AEG (2)
DMM
POL SEC
SER
FPR

FILE/DIARY/CIRC/DIV

RESTRICTED

FLO-2020

July 30, 1981

Return to FLO DS

MEMORANDUM FOR THE MINISTER

SUBJECT: Pacific Salmon Negotiations

DATE	
ACC	15185B
REF	
FILE	25-5-7-2 SAHUN-1
DOSSIER	
BY HAND	PAR PORTEUR
ATTN:	

The purpose of this memorandum is (i) to brief you on recent developments and, (ii) to seek your approval of the attached joint Canada-USA press release.

BACKGROUND

You will recall the memorandum of May 12 reported on the temporary breakdown of the Pacific Salmon negotiations which had then just concluded in Vancouver. At that time, the negotiators were unsuccessful in reaching accord on recommendations to Governments regarding the elements of a long-term comprehensive agreement. While both sides reiterated their support for the basic principles of a long-term agreement (worked out last October), there was disagreement on the number of "interceptions" that each side would be permitted to make during the first four years of the agreement. Specifically, there were problems with U.S. catches of salmon from the Fraser River, and with Canadian catches of Alaska salmon in Northern British Columbia.

The deadlock occurred partly because of a marked difference in each side's estimates of the number of salmon currently being intercepted by fishermen of the two countries, and partly because, in the Canadian view, the amount of compensation (in terms of allowable numbers of fish Canada could intercept) the USA was prepared to offer to Canada, in return for adjustments in their favour, was unacceptably low.

Immediately after the Vancouver session, the two negotiators began a series of technical consultations with fisheries officials of the States of Oregon, Washington and Alaska. As a result, they produced a "Progress Report on Consultations Towards a Comprehensive Agreement" in early June recommending that negotiations on a long term agreement continue. However, because of the

.../2

- 2 - RESTRICTED

highly technical nature of the remaining issues relating to the long-term agreement, the negotiators recommended that Governments consider entering into an interim agreement which would maintain and consolidate the results of their consultations and of the "practical understandings" reached by the fisheries administrations of both countries for the 1981 and 1982 seasons.

In our view, these recommendations indicate a reasonable degree of progress and a fair distribution of the burdens of required cutbacks. With the exception of the recommendation suggesting additional research (which will require additional funding in both countries), the proposals can be implemented by parallel unilateral actions of the appropriate fisheries authorities in both countries, which are already underway. In a context characterized by mutual distrust, this represents a major advance in the negotiations as both sides are voluntarily (without any guarantees under international law that the other party will fulfill its commitments) implementing a series of regulatory measures desired by the other state.

Consultations with U.S. officials on the possibility of an interim agreement were held in Washington on June 19. The State Department indicated emphatically that, because of the sensitive nature of the subject, and the additional funding requirement, any form of agreement would have to be referred to Congress. Because of the delays involved in such a course of action (the interim agreement would barely be approved before the long-term agreement would require consideration) and because a final agreement is not necessary to implement the recommendations for 1981 and 1982, it was agreed, subject, on our part, to ministerial concurrence, to seek another means of formalizing the 1981-82 arrangements.

Publicly acknowledging and confirming the 1981-82 arrangements is considered necessary in order to give the negotiations additional impetus and to reassure the fishing industries of both countries that we have fully recovered from the Vancouver "break-down". At the same time, the acquisition of additional funding (especially in the USA) will be facilitated if this Department and the U.S. State Department are clearly seen to view the arrangements as being in the long-term interests of both countries.

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- 3 - RESTRICTED

... Because the USA is unable to enter into any form of agreement without the matter being referred to Congress, we have tentatively agreed to issue the attached press release.

RECOMMENDATION

I recommend that you approve the attached joint press release.

Do you agree?

DMM

A.E.G.

Progress Report by Canada and United States Pacific Salmon Negotiators:
Recommendations for 1981-82 Sessions

- (A) During 1981 and 1982, interception in the United States fishery in Alaska District 104 (i.e. Noyes Island) shall be limited by adjusting fishing effort in a manner which would result in an average annual harvest of sockeye totalling approximately 160,000 fish.
- (B) All other fisheries in Alaska shall be conducted in a manner pursuant to the understandings recorded in the record of the October 1980 Lynnwood meeting.
- (C) In 1982, the troll salmon fishery in B.C. Statistical Area 1, and in fisheries by all gear in B.C. Statistical sub-areas 3X, 3Y, 5-1 and the western portion of Sub-area 3Z, shall be regulated in a manner which would limit the aggregate catch of pink salmon to approximately 1.49 million fish. The portion of this aggregate total taken in the troll fishery in Area 1 shall be limited to the approximate level taken in even numbered years during 1971-74, namely about 85,000 fish.
- (D) In 1981, with respect to fisheries on stocks bound for Canadian sections of the Taku River, the two sides shall establish escapement target for each species. Canadian authorities shall regulate the fisheries under their jurisdiction to ensure that the percentage of the allowable catch for each species taken by Canadian fishermen in 1981 shall be somewhat less than the percentages of the catch of each species in 1979. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (E) In 1982, the percentages of the total allowable catches by species taken by Canadian fishermen in the Taku River shall be reduced to approximately 15% of the 1979 level.
- (F) In both 1981 and 1982, Canadian authorities shall limit the catch by Canadian fishermen on the Stikine River in the same manner as for the Taku River in 1981, subject, however, to conservation adjustments that may be agreed upon through consultations between the two sides. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (G) With respect to Fraser sockeye and pink salmon, the International Pacific Salmon Fisheries Commission (IPSF) regime shall continue to apply in 1981 and 1982. In 1982, in the

- 2 -

event of a migratory diversion of sockeye through Johnstone Strait, Canada shall exercise restraint in its fisheries outside the Fraser River Convention Area, taking into account proposed future sharing arrangements under discussion in the negotiations.

- (H) All other Canadian intercepting fisheries and all United States intercepting fisheries in Washington, Oregon and California shall be conducted in conformity with the general interception limitation scheme under discussion in the negotiations (i.e. limited to 1971-74 base levels).
- (I) In 1982, the two governments shall conduct a large scale tagging program in the southern Southeast Alaska and Northern British Columbia area and other programs as may be agreed in order to provide improved information on the composition of the runs in intercepting fishing areas.

JOINT PRESS RELEASE BY THE DEPARTMENT OF EXTERNAL AFFAIRS OF CANADA
AND THE UNITED STATES DEPARTMENT OF STATE

Canadian and U.S. federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Michael P. Sheppard for Canada, and Dr. Dayton P. Alverson for the United States recommended in a Progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In both Canada and the United States federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

After reviewing the recommendations of the Special Negotiators and noting the support they have received in

both countries, the governments of Canada and the United States wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into formal arrangements.

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.



Government of Canada / Gouvernement du Canada
Fisheries and Oceans / Pêches et Océans

11

*Called Hunter to
indicated we have an
agreement -
Annex 1 to
Agreement
News /*

113
M. Hunter

Your file / Votre référence

Our file / Notre référence

Ottawa, Ontario.
K1A 0E6.

July 30, 1981.

*no answer
required*

Mr. R.J. Rochon,
Department of External Affairs,
Legal Operations Division (FLO),
4th fl., Tower A,
Lester B. Pearson Building,
Sussex Drive,
Ottawa, Ontario.
K1A 0G2

To / À: *FLO*
From / De: *BICO-A-4*
MAY 2 1981

DATE
ACC: *151874*
FILE: *25-5-7-2-SALMON*
BY HAND: _____
PAR PORTEUR: _____
ATTN: _____

Dear Bob:

Re: Pacific Salmon Interim Agreement

Following the receipt of the recommendations of the Canadian and U.S. negotiators on Pacific salmon that an interim agreement be concluded, we have given some thought to the manner in which the recommendations might be implemented.

It is our view that the essence of the recommendations has been implemented by regulations and technical arrangements made within each country. Although we understand that following our June 19 meeting in Washington, D.C., State Department may be preparing some documentation which we should be prepared to consider, we believe that it may be unnecessary to formalise an interim agreement. I believe that you share this view at the present time, and I would suggest that we review the situation once we have received any documents from the USA.

Yours sincerely,

Mike H

M. Hunter,
Associate Director,
International Fisheries
Relations Branch.

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Canada

010909

183 13 10 '81

OMF 054/142

COMCENTRE FILE DIARY CIRC DIV

DATE	
ACC	REF
FILE	DOC. <i>25-5-7-2-SALMON-1</i>
B. HAND	PAR PORTEUR
A. TIME	

U N C L A S S I F I *JUL 28 19 34 '81*

FM EXTOTT FLO-2004 JUL28

TO PARIS DELIVER BY 29/0900 *[Signature]*

INFO/ FANDOTT/HUNTER

---CDA/USA PACIFIC SALMON TALKS

GRATEFUL YOU PASS FOLLOWING MESSAGE BY PHONE TO RICHARD

FADDEN, FLO, AT CAP D'ANTIBES, TELEPHONE(93) 336-590.

BEGINS IN LIGHT OF FANDO ASSURANCES THAT VCVR MTG NEXT WEEK

WILL NOT DEAL WITH ANY SUBSTANCE BUT ONLY SCHEDULING, IT

WILL NOT/NOT BE NECESSARY FOR YOU TO ATTEND. LOOK FORWARD

TO YOUR RETURN DIRECT TO OTT. *ENDS*

L.S. CLARK/dr

FLO

66287

[Signature]
DIRECTOR

001039

LSC

**ACTION
SUITE A DONNER**

DATE	
ACC	REF
FILE	DOSSIER
25-5-7-2-SALMON-1	
BY HAND	PAR PORTEUR
ATTN:	

R E S T R I C T E D
FM LDN XNGR1549 27JUL81
TO EXTOTT FLO

---CDA-USA PACIFIC SALMON TALKS-FADDEN'S PARTICIPATION
AS REQUESTED, WE PASSED ON TO FLO/FADDEN YOUR REQUEST THAT
HE ATTEND SUBJECT TALKS ON AUG5 IN VNCVR. GIVEN LACK OF
LEAD AVAIL TO FADDEN, GRATEFUL YOU OBTAIN AIR TICKETS FOR
TRAVEL ON MORNING AUG4. SUGGEST THESE AND ANY
INSTRUCTIONS/INFO/MAIL BE LEFT IN FADDEN'S FILING CABINET.
2. GRATEFUL IN PARTICULAR FOR SITREP ON FOLLOWING TWO
POINTS: (1) JOINT CDA-USA PRESS RELEASE ON PAC SALMON AND
(2) JOINT LET TO SALMON COMMISSION-QUOTE SCHMITTEN
LET UNQUOTE RE-DRAFT OF WHICH WAS LEFT WITH US SIDE
APPROX THREE WEEKS AGO.
3. FADDEN PRESUMES HIS RE-ASSIGNMENT TO O/AEG WILL BECOME
EFFECTIVE AUG10? GRATEFUL YOU CONFIRM AS SUGGESTED PARA 1.
4. IN EVENT ABOVE PRESENTS ANY DIFFICULTIES FADDEN CAN BE
REACHED AT (93) 336-590 IN ANTIBES, FRANCE.

CCC/170 271229Z XNGR1549

OFFICE
● THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

CABINET
DU
SECRÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

TO/A: FLO

Date 31.7.81

FROM/DE: MIN

REFERENCE/RÉFÉRENCE:

SUBJECT/SUJET: Minister's decision/Décision du Ministre

Seen & Agreed by SSEA

001041

R.B. Fadden/6-2643

Legal Operations Division

DATE	
ACC	152365
REF	
FILE	25-5-7-20
BY HAND	
PAR (OR)	
AT RESTRICTED	
July 27, 1981	

File
ms
 I have to handle with the press when to handle with the press he such agreement with the press early release date with FPR/ separate for an is higher but will be about the best handle for FPR. *GH*

MEMORANDUM FOR THE MINISTER

SUBJECT: Pacific Salmon Negotiations

The purpose of this memorandum is (i) to brief you on recent developments and, (ii) to seek your approval of the attached joint Canada-USA press release.

BACKGROUND

You will recall the memorandum of May 12 reported on the temporary breakdown of the Pacific Salmon negotiations which had then just concluded in Vancouver. At that time, the negotiators were unsuccessful in reaching accord on recommendations to Governments regarding the elements of a long-term comprehensive agreement. While both sides reiterated their support for the basic principles of a long-term agreement (worked out last October), there was disagreement on the number of "interceptions" that each side would be permitted to make during the first four years of the agreement. Specifically, there were problems with U.S. catches of salmon from the Fraser River, and with Canadian catches of Alaska salmon in Northern British Columbia.

The deadlock occurred partly because of a marked difference in each side's estimates of the number of salmon currently being intercepted by fishermen of the two countries, and partly because, in the Canadian view, the amount of compensation (in terms of allowable numbers of fish Canada could intercept) the USA was prepared to offer to Canada, in return for adjustments in their favour, was unacceptably low.

Immediately after the Vancouver session, the two negotiators began a series of technical consultations with fisheries officials of the States of Oregon, Washington and Alaska. As a result, they produced a "Progress Report on Consultations Towards a Comprehensive Agreement" in early June recommending that negotiations on a long term agreement continue. However, because of the

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30.7.21 (U.S).

- 2 - RESTRICTED

highly technical nature of the remaining issues relating to the long-term agreement, the negotiators recommended that Governments consider entering into an interim agreement which would maintain and consolidate the results of their consultations and of the "practical understandings" reached by the fisheries administrations of both countries for the 1981 and 1982 seasons.

In our view, these recommendations indicate a reasonable degree of progress and a fair distribution of the burdens of required cutbacks. With the exception of the recommendation suggesting additional research (which will require additional funding in both countries), the proposals can be implemented by parallel unilateral actions of the appropriate fisheries authorities in both countries, which are already underway. In a context characterized by mutual distrust, this represents a major advance in the negotiations as both sides are voluntarily (without any guarantees under international law that the other party will fulfill its commitments) implementing a series of regulatory measures desired by the other state.

Consultations with U.S. officials on the possibility of an interim agreement were held in Washington on June 19. The State Department indicated emphatically that, because of the sensitive nature of the subject, and the additional funding requirement, any form of agreement would have to be referred to Congress. Because of the delays involved in such a course of action (the interim agreement would barely be approved before the long-term agreement would require consideration) and because a final agreement is not necessary to implement the recommendations for 1981 and 1982, it was agreed, subject, on our part, to ministerial concurrence, to seek another means of formalizing the 1981-82 arrangements.

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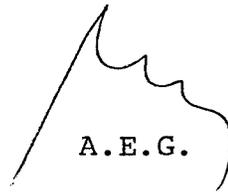
- 3 - RESTRICTED

... Because the USA is unable to enter into any form of agreement without the matter being referred to Congress, we have tentatively agreed to issue the attached press release.

RECOMMENDATION

I recommend that you approve the attached joint press release.

Do you agree?


A.E.G.)



Progress Report by Canada and United States Pacific Salmon Negotiators:
Recommendations for 1981-82 Sessions

- (A) During 1981 and 1982, interception in the United States fishery in Alaska District 104 (i.e. Noyes Island) shall be limited by adjusting fishing effort in a manner which would result in an average annual harvest of sockeye totalling approximately 160,000 fish.
- (B) All other fisheries in Alaska shall be conducted in a manner pursuant to the understandings recorded in the record of the October 1980 Lynnwood meeting.
- (C) In 1982, the troll salmon fishery in B.C. Statistical Area 1, and in fisheries by all gear in B.C. Statistical sub-areas 3X, 3Y, 5-1 and the western portion of Sub-area 3Z, shall be regulated in a manner which would limit the aggregate catch of pink salmon to approximately 1.49 million fish. The portion of this aggregate total taken in the troll fishery in Area 1 shall be limited to the approximate level taken in even numbered years during 1971-74, namely about 85,000 fish.
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- (E) In 1982, the percentages of the total allowable catches by species taken by Canadian fishermen in the Taku River shall be reduced to approximately 15% of the 1979 level.
- (F) In both 1981 and 1982, Canadian authorities shall limit the catch by Canadian fishermen on the Stikine River in the same manner as for the Taku River in 1981, subject, however, to conservation adjustments that may be agreed upon through consultations between the two sides. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (G) With respect to Fraser sockeye and pink salmon, the International Pacific Salmon Fisheries Commission (IPSPC) regime shall continue to apply in 1981 and 1982. In 1982, in the

- 2 -

event of a migratory diversion of sockeye through Johnstone Strait, Canada shall exercise restraint in its fisheries outside the Fraser River Convention Area, taking into account proposed future sharing arrangements under discussion in the negotiations.

- (H) All other Canadian intercepting fisheries and all United States intercepting fisheries in Washington, Oregon and California shall be conducted in conformity with the general interception limitation scheme under discussion in the negotiations (i.e. limited to 1971-74 base levels).
- (I) In 1982, the two governments shall conduct a large scale tagging program in the southern Southeast Alaska and Northern British Columbia area and other programs as may be agreed in order to provide improved information on the composition of the runs in intercepting fishing areas.

JOINT PRESS RELEASE BY THE DEPARTMENT OF EXTERNAL AFFAIRS OF CANADA
AND THE UNITED STATES DEPARTMENT OF STATE

Canadian and U.S. federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Michael P. Sheppard for Canada, and Dr. Dayton P. Alverson for the United States recommended in a Progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In both Canada and the United States federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

After reviewing the recommendations of the Special Negotiators and noting the support they have received in

both countries, the governments of Canada and the United States wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into formal arrangements.

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.

COMCENTRE FILE DIARY CTRE DIV

MESSAGE

OMD 67/24/81

SECURITY/SÉCURITÉ

ACC	FILE/DOSSIER	REF
FILE	25-5-7-2-SALMON-1	DOSSIER
BY HAND	1-6-81	PAR-PORTEUR

JUL 24

U N C L A S S I F I E D NO.

DEPT/MIN. PLACE/LIEU No D'ORIG. DATE

FM EXTOFF FLO-1083 JUL 24/81

PRECEDENCE

Fm/de
To/à
Info
Distr
Ref
Sub/suj

TO LDN DELIVER BY 24/1600 *h*

--- CDA/USA PACIFIC SALMON TALKS

GRATEFUL YOU INFORM FADDEN OF FLO, CURRENTLY ATTENDING IWC
 MTG BRIGHTON, THAT CDA/USA TALKS ARRANGED FOR VANCOUVER
 AUG5 AND THAT WE WOULD WISH HIM TO ATTEND

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SIG..... L.S. CLARK/dr

FLO

66287

SIG..... *L.S. Clark*
DIRECTOR

94

7/15

50

1/3

WTDC 03/22

SUITE A DONNER

FACSIMILE TRANSMISSION

7/29/81

FAX CCF NO:
(for Concentre Use Only)

CLASSIFICATION: **UNCLASSIFIED**

FROM: WSHDC

DATE	22 JULY 81	
DATE:	ACC	REF.
FILE	25-5-7-2-SALMON-1	
BY HAND	PAR PORTEUR	
(DEPT/POST/ADDRESSEE/PHONE NO.)		

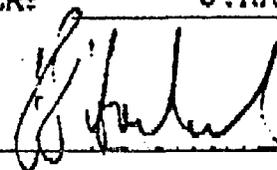
TO: FLO/CLARK

INFO: _____ (DEPT/POST/ADDRESSEE/PHONE NO.)

NO. OF PAGES: 2 + COVER

SUBJECT: JOINT PRESS RELEASE -- PACIFIC SALMON

AUTHORIZING OFFICER: J. HARLICK

SIGNATURE: 

ADDITIONAL COMMENTS OR INSTRUCTIONS:

FOR IMMEDIATE TRANSMISSION

DRAFT

7/17/81

JOINT PRESS RELEASE BY THE UNITED STATES DEPARTMENT OF
STATE AND THE MINISTRY OF EXTERNAL AFFAIRS OF CANADA

U.S. and Canadian federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Dayton L. Alverson for the United States, and Dr. Michael P. Sheppard for Canada, recommended in a Progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time, they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In the United States and Canada the federal and state fishery management agencies have expressed general concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

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- 2 -

After reviewing the recommendations of the Special Negotiators and noting the support they have received in both countries, the governments of the United States and Canada wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that all relevant fisheries are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into a formal agreement.

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments are at present considering the projects recommended for next year.

DATE	
ACC	152068 RLF
FILE	25-5-5-CDA-USA DOSSIER
BY HAND	PAR PORTEUR
ATTN:	Your file / Votre référence

Minister of Fisheries and Oceans / Ministre des Pêches et des Océans

JUL 20 1981

Am Shamus
25-5-72-SALMON-1
4/8

The Honourable Herb Gray
Minister
Department of Industry, Trade
and Commerce
House of Commons
Ottawa, Ontario
K1A 0A6

My dear Colleague:

We have been running into further difficulties on the west coast with a U.S. salmon fishery in the disputed boundary waters in Dixon Entrance. An important consideration in deciding how to react to American provocations has been the possibility that the U.S. Government would impose an embargo on salmon imports in the event that Canada exercises its sovereignty by arresting U.S. fishing vessels.

We are working with External Affairs to avoid any unnecessary confrontation on this issue. However, it underlines once again the importance to Canada of a successful conclusion to the GATT panel procedure on albacore tuna which was undertaken following the U.S. tuna embargo of 1979. I was concerned to learn recently that not only has Canada failed to achieve a successful conclusion to that GATT procedure but that officials of your Department are recommending that Canada not pursue the issue to conclusion.

I would like to underline again how important it is that no effort be spared to discredit the American legislation which threatens Canada with trade retaliation every time it seeks to impose its sovereignty over U.S. vessels in Canadian waters. To date, I must admit that I have not been very impressed with the protection we have received from your Department on this issue and I would welcome anything you can do to lend renewed urgency and priority to this question.

.../2..

Ottawa, Canada
K1A 0E6

- 2 -

Because of the important role in this question of the Mission in Geneva, I am sending a copy of this letter to our colleague, the Honourable Mark MacGuigan.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roméo LeBlanc'. The signature is fluid and cursive, with a large initial 'R' and 'L'.

Roméo LeBlanc.

cc: The Honourable Mark MacGuigan

**ACTION
SUITE A DONNER.**

*File
to
22/7*

R E S T R I C T E D

FM WSHDC UNGR3806 20JUL81

TO EXTOTT FLG

INFO ITCOTT/OGR/USR/FPB FINOTT/IER

BH FANDOTT/CAMPBELL/APPLEBAUM/HUNTER DE OTZ

SFAX SEATL BOSTN DE WDC

DISTR FLP EGL GNG ECO

---CDA/USA FISHERIES DOCS

DATE	
ACC	REF
FILE	25-5-7-2-SALMON-1
HAND	PAR PORTEUR
ATTN:	25-5-5-CDA-USA

WE ARE FORWARDING TO YOU AND INFO POSTS BY BAG LEAVING 23 JULY

FOLLOWING DOCS WHICH WE HAVE RECEIVED FROM USA AUTHORITIES:

- 1)JOINT PRESS RELEASE ON PACIFIC SALMON NEGS.USA ACCEPTS CHANGES MADE BY CDN SIDE TO THEIR ORIGINAL DRAFT.DOC HAS BEEN RETYPED TO INCLUDE THESE CHANGES.
 - 2)AGREED SUMMARY RECORD OF CDA/USA DISCUSSIONS ON EAST COAST FISHERIES HELD IN WSHDC 17 JULY 81.
- 2.WE LEAVE FURTHER DISTRIBUTION TO YOU.

CCC/188 202053Z UNGR3806

DATE	RESTRICTED
ACC	149961
FILE	25-5-5 CDA-USA
REF	
ATTN	25-5-7-2 - SALMON

AIDE MEMOIRE

Reference is made to recent events in the vicinity of the international boundary between Canada and the United States in the Dixon Entrance area on the west coast. The Canadian Government views with deep concern the commencement of salmon trolling operations by United States vessels in Canadian fisheries waters south of the A-B line. Initial informal consultations with United States government officials which took place in Washington D.C. on July 16, 1981, and further developments in the area have increased this concern.

Continuation of the present situation would be to the detriment of all interests involved and could put at risk valuable progress made in the discussions toward a comprehensive West Coast salmon agreement. An important element of that agreement would be no change in traditional fishing patterns. That same element is critical to the regime of mutual restraint which has enabled both governments to avoid difficulties in the boundary region and pursue a mutual policy of flag state enforcement.

The Canadian Government proposes that formal consultations on the present problem take place early next week in Washington, D.C. or Ottawa. In the meantime, the Canadian Government requests that the United States Government encourage restraint on the part of United States fishing vessels in the area.

File

REQUEST FOR FACSIMILE TRANSMISSION
REQUETE POUR LA TRANSMISSION DE BELINOGRAMME

TO/A: ACTC

DATE: July 17, 1981

FROM/DE: FLO/D.W. Smith

PLEASE TRANSMIT THE ATTACHED DOCUMENT(S) TO:
VEUILLEZ TRANSMETTRE LE(S) DOCUMENT(S) EN ANNEXE A:

Canadian Embassy, WSHDC

(Indicate the address)

(Indiquez la destination)

Attention: Mr. J.E. Harlick

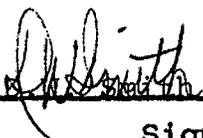
(Indicate name of addressee)

(Indiquez le nom du destinataire)

at/à:

(Facsimile telephone number)

(Numéro de téléphone du bélino)



Signature

2-6692

Telephone number of originator
Numéro de téléphone du rédacteur

The Department of External Affairs
Ottawa, Ontario, K1A 0G2

Ministère des Affaires Extérieures
Ottawa, Ontario, K1A 0G2



TRANSMITTAL NOTE AND RECEIPT NOTE D'ENVOI ET REÇU

GOVERNMENT OF CANADA — GOUVERNEMENT DU CANADA

TO
À

EXTOTT/FLO/FADDEN

SECURITY CLASSIFICATION
CLASSIFICATION DE SÉCURITÉ
WITH ENCLOSURE(S) — AVEC ANNEXE(S)

WITHOUT ENCLOSURE(S) — SANS ANNEXE(S)

LF/OK

DATE	
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ACC	REF
DESCRIPTION	DOSSIER
25-3-7-2-SALMON-1	
BY HAND	PAR PORTEUR
ATTN:	

QUANTITY QUANTITÉ	REFERENCE/COPY NO. N° DE RÉFÉRENCE
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FEDERAL REGISTER, Vol. 46. No. 122, Thursday, 25 June 1981
(Fraser River Sockeye and Pink Salmon Fishery).

CC done
[Handwritten signatures and initials]
4/8

To / A	<i>FLO</i>
From / De	BICO A-4
DATE	JULY 20
ATTN:	

SENT BY — TRANSMIS PAR
[Signature]
James E. Harlick 15 July 81
Signature Date

RECEIVED BY — REÇU PAR
Signature Date

The Canadian Embassy
Washington, DC

- PLEASE SIGN AND RETURN TO ORIGINATOR
PRIÈRE DE SIGNER ET DE RETOURNER AU SIGNATAIRE
- RECEIPT NOT REQUIRED
REÇU NON REQUIS

ORIGINATOR'S ADDRESS — ADRESSE DU SIGNATAIRE

in this Part for calculating persons capacity under § 183.41, or for pre-conditioning for the test under § 183.220. The actual weight of the "OMC Sea Drive" and its related mounting hardware shall be used instead.

(b) No boat shall be equipped with an "OMC Sea-Drive" that exceeds its horsepower capacity, as determined under § 183.53.

(46 U.S.C. 1454, 1458 and 1488; 49 CFR 1.46(n)(1))

Dated: May 13, 1981.

H. W. Parker,

Rear Admiral, U.S. Coast Guard.

[FR Doc. 81-18798 Filed 6-24-81; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 86

[EN-FRL-1844-6]

Revised Motor Vehicle Exhaust Emission Standards for Carbon Monoxide (CO) for 1981 and 1982 Model Year Light-Duty Vehicles

Correction

In FR Doc. 81-17805, published at page 31411, on Tuesday, June 16, 1981, make the following corrections:

(1) On page 31412, in the third column, in the table under § 86.082-8, in the fourth line under "Engine Family" "316" should be corrected to read "326".

(2) In the same table the last two lines should read as two entries: "Toyota Motor Co., Ltd." beside "88.8 CID." and on a separate line "Volkswagen of America" beside "1.7 liter/FBC."

BILLING CODE 1505-01-M

40 CFR Part 761

[OPTS-62012; TS-FRL-1832-4]

Polychlorinated Biphenyls (PCB's); Court Order Regarding PCB's in Concentrations Below Fifty Parts Per Million

Correction

In FR Doc. 81-15043 appearing at page 27615 in the issue of Wednesday, May 20, 1981, on page 27616, the line reading: "Dated: May 14, 1981." should appear just above the signature reading, "Edward H. Clark II".

BILLING CODE 1505-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73 Radio Broadcast Services

[Docket No. 21473; FCC 81-45]

Conversion of Radiation Patterns for AM Broadcast Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final Rule; Correction.

SUMMARY: This document corrects an error made concerning the effective date of the Final Rule in this proceeding regarding the rules governing the Conversion of Radiation Patterns for AM Broadcast Stations (46 FR 11983; published on February 12, 1981).

FOR FURTHER INFORMATION CONTACT: John Boursy, Broadcast Bureau, 632-6485.

On January 29, 1981, the Commission adopted a Final Rule (Report and Order, FCC Number 81-45) which appeared in the Federal Register on February 12, 1981 on page 46 FR 11983 concerning the above-mentioned Docket proceeding. Inadvertently, the effective date of the Report and Order was misquoted as being March 16, 1981. The correct date should read March 17, 1981.

William J. Tricarico,

Secretary, Federal Communications Commission.

[FR Doc. 81-18739 Filed 6-24-81; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 371

Fraser River Sockeye and Pink Salmon Fishery

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final rule.

SUMMARY: NOAA reprints the International Pacific Salmon Fisheries Commission's 1981 regulations to implement the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System between the United States and Canada (Convention). The regulations discharge a foreign affairs obligation of the United States and are necessary to achieve the objectives of the Convention in 1981. The intended effect of the regulations is

to ensure adequate escapement of each spawning unit and an equitable division of catch between U.S. and Canadian fishermen. These rules do not apply to Treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places.

EFFECTIVE DATE: 12:01 a.m. on June 21, 1981.

FOR FURTHER INFORMATION CONTACT:

Mr. H. A. Larkins, Regional Director, 1700 Westlake Avenue North, Seattle, Washington 98109, Telephone: (206) 442-7575.

SUPPLEMENTARY INFORMATION: On February 26, 1981, the International Pacific Salmon Fisheries Commission (the Commission) forwarded proposed regulations for the 1981 commercial fishing season for sockeye and pink salmon in Convention Waters to the Government of the United States for approval, as required by Article VI of the Convention for Protection, Preservation, and Extension of the Sockeye Salmon and Pink Salmon Fisheries of the Fraser River System (the Convention) between the United States and Canada. The United States has provisionally approved those regulations, with the exception that the regulations would not apply to Treaty Indians exercising treaty-secured fishing rights at the tribes' usual and accustomed fishing places. These fisheries are regulated by 25 CFR Part 256, published by the Department of Interior.

At the May 15, 1981, meeting of the IPSFC, the Commission approved revision of the regulations that were approved on February 6. The Commission also added a sockeye and pink salmon troll fishing regulation in United States Convention waters westerly of the Tatoosh Island—Bonilla Point (Vancouver Island) line. This notice of final rulemaking incorporates these changes and, thus, is the most recent information.

Regulations for 1981 are similar to regulations adopted by the Commission in previous years to implement the Convention. The regulations for 1980 were published at 45 CFR 43768. The 1981 regulations include pink salmon which returns every other year and which were not included in 1980 and amend the 1980 schedules of fishing by gillnets, purse seines and reef nets to 1981 calendar dates.

The pre-season fishing schedule in 1980 established by the Commission, and approved by the U.S. Government, provided for a 7-week season with one day of fishing per week. In-season emergency changes in fishing schedules

by the Commission, in response to developing information on the abundances and migration routes and timing of the spawning races of Fraser River sockeye salmon, resulted in one day of fishing the first and third weeks, no fishing the second week, two days in the fourth week, and four days in the fifth week, after which fishing in U.S. waters was closed.

The 1981 pre-season regulations for sockeye salmon and pink salmon fishing provide for an 11-week season with one day of fishing per week for the all-citizen, or non-Indian, fishery. This pre-season schedule will undoubtedly be adjusted during the season by the Commission to meet the paramount objectives of the Convention with Canada: (1) conservation, i.e., adequate escapement through the fisheries of certain portions of the various races of salmon for spawning purposes, and (2) equal division of Convention Waters catches between fishermen of the two nations. Such changes in the fishing schedule often occur as the season progresses because fish abundance (run size), catches, racial compositions and migration routes are monitored and analyzed daily.

These regulations for the all-citizen fisheries will be effective in High Seas Convention Waters and in Convention Waters inside the Bonilla Point-Tatoosh Island line. These regulations are necessary to achieve the objectives of the Convention and provide for a rational fishery by U.S. fishermen.

Part 371 gives notice of the effectiveness and content of regulations adopted by an international commission and in force for the United States through the operation of the Convention. Reprinting the Commission's regulations here helps fulfill the United States treaty obligation to make the Commission's regulations effective and as such involves a foreign affairs function not subject to the requirements of E.O. 12291 or the Regulatory Flexibility Act.

Dated: June 19, 1981.

William H. Stevenson,
Deputy Assistant Administrator, National Marine Fisheries Service.

50 CFR Part 371 is amended as follows:

1. The authority citation for Part 371 reads as follows:

Authority: Sockeye Salmon or Pink Salmon Fishing Act of 1947, 16 U.S.C. 776-776f.

§ 371.6 [Amended]

2. Section 371.6 is amended by removing the telephone number "1-800-562-2670" and inserting in its place, the number "1-800-562-6513".

3. Section 371.9 and Appendix A are revised to read as follows:

§ 371.9 Commission regulations.

Appendix A sets forth regulations of the Commission for the 1981 fishing season. These regulations as may be modified from time to time by emergency orders of the Commission and disseminated pursuant to § 371.6 of this Part 371, are the "Regulations of the Commission," violation of which is unlawful under the Act.

Appendix A.—International Pacific Salmon Fisheries Commission Regulations

1. No person shall fish for sockeye or pink salmon with nets from the 21st day of June, 1981, to the 4th day of July, 1981, both dates inclusive.

2. (1) No person shall fish for sockeye or pink salmon with purse seines in Puget Sound Salmon Management and Catch Reporting Areas 4B, 5 and 6C:

(a) From the 5th day of July, 1981, to the 15th day of August, 1981, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 16th day of August, 1981 to the 12th day of September, 1981, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday of each week.

(2) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 26th day of July, 1981 to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July, 1981; and from the 19th day of July, 1981 to the 25th day of July, 1981, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday of each week; and

(c) From the 16th day of August, 1981, to the 22nd day of August, 1981, and from the 30th day of August, 1981 to the 5th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday of each week; and

(d) From the 23rd day of August, 1981, to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday of each week.

(3) No person shall fish for sockeye or pink salmon with commercial trolling gear in the waters described in subsection (1) of this section from the 5th day of July, 1981, to the 12th day of September, 1981, both dates inclusive, except from Monday through Friday of each week on those days when purse seine fishing is permitted within that area.

3. (1) No person shall fish for sockeye or pink salmon with purse seines in Puget Sound Salmon Management and Catch Reporting Areas 6, 6A, 7, 7A and 7D:

(a) From the 5th day of July, 1981 to the 15th day of August, 1981, all dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday of each week; and

(b) From the 16th day of August, 1981 to the 19th day of September, 1981, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday of each week.

(2) No person shall fish for sockeye or pink salmon with reef nets in the waters described in subsection (1) of this section:

(a) From the 12th day of July, 1981, to the 18th day of July, 1981; from the 26th day of July, 1981, to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from six o'clock in the forenoon to nine o'clock in the afternoon of Sunday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July, 1981; from the 19th day of July, 1981 to the 25th day of July, 1981, and from the 2nd day of August, 1981 to the 8th day of August, 1981, all dates inclusive, except from nine o'clock in the forenoon to half past nine o'clock in the afternoon of Sunday of each week; and

(c) From the 23rd day of August, 1981 to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from half past five o'clock in the forenoon to nine o'clock in the afternoon of Sunday of each week.

(3) No person shall fish for sockeye or pink salmon with gill nets in the waters described in subsection (1) of this section:

(a) From the 12th day of July to the 18th day of July, 1981; from the 26th day of July, 1981, to the 1st day of August, 1981; and from the 9th day of August, 1981 to the 15th day of August, 1981, all dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday of each week; and

(b) From the 5th day of July, 1981 to the 11th day of July, 1981; from the 19th day of July, 1981, to the 25th day of July, 1981, and from the 2nd day of August, 1981, to the 8th day of August, 1981, all dates inclusive; except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday of each week; and

(c) From the 16th day of August, 1981, to the 22nd day of August, 1981; from the 30th day of August, 1981 to the 5th day of September, 1981, and from the 13th day of September, 1981, to the 19th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday of each week; and

(d) From the 23rd day of August, 1981, to the 29th day of August, 1981, and from the 6th day of September, 1981 to the 12th day of September, 1981, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday of each week.

4. (1) No person shall fish for sockeye or pink salmon with nets in that portion of the waters described in subsection (1) of section 3 lying northerly and westerly of a straight

line drawn from Iwersen's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia from the 30th day of August, 1981, to the 5th day of September, 1981, and from the 20th day of September, 1981, to the 3rd day of October, 1981, all dates inclusive.

(2) No person shall fish for sockeye or pink salmon with nets in that portion of waters described in subsection (1) of section 3 lying westerly of a straight line drawn from the low water range marker in Boundary Bay on the International Boundary through the east tip of Point Roberts in the State of Washington to

the East Point Light on Saturna Island in the Province of British Columbia from the 6th day of September, 1981, to the 19th day of September, 1981, both dates inclusive.

5. The foregoing recommended regulations shall not apply to the following waters:

(1) Puget Sound Salmon Management and Catch Reporting Areas as follows:

- (a) Commencing July 5, 1981, Area 7B.
- (b) Areas 6B and 7C.

(2) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

6. No person shall fish for sockeye or pink salmon by commercial trolling gear in that portion of Convention Waters westerly of a straight line drawn from Tatoosh Island Lighthouse in the State of Washington to Bonilla Point in the Province of British Columbia comprising the Territorial waters of the United States and those High Seas waters contained in the United States Fishery Conservation Zone from the first day of June 1981 to the 14th day of July 1981, both dates inclusive.

7. All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

[FR Doc. 81-18838 Filed 6-24-81; 6:45 am]

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MESSAGE REF

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TO/A EXTOTT (FLO)

SEA 003/02

ACTION SUITE A DONNER

PRECEDENCE

INFO SPAX WEHUC DE SEA

SEA 002/02

B.H. FANDUOTT/HUNTER DE OTT

BY BAC FANDO VNCVR/JONES DE OTT

DATE	143157 ^{EF}
AGE	
FILE	25-7-2 SALMON-1
BY HAND	34
ATTN:	

DISTR. GNG

REF NORTON/JONES TELECON OF 02JULY81

SUB/SUJ ---CANADA-USA SALMON INTERCEPTION

ATTACHED IS COPY OF NEWS RELEASE FROM ALASKAN GOVERNOR HAMMOND DATED JUNE 23, CONCERNING HIS POSITION WITH REGARD TO THE CDA-USA INTERIM SALMON INTERCEPTION AGREEMENT, AS WELL AS A COPY OF AN ARTICLE FROM SEATEL POST-INTELLIGENCER OF JULY 01 REGARDING THE AGREEMENT.

2. THESE DOCUMENTS HAVE BEEN READ TO FANDO VNCVR VIA TELEPHONE, HOWEVER, WE SHOULD APPRECIATE OTT SENDING COPY TO THEM IN LIGHT OF CURRENT POSTAL STRIKE.

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
NO. <u>CN</u> C. NORTON			<u>J.R. Sharpe</u> J.R. SHARPE

2/5 de SEA

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

NEWS RELEASE

JAY S. HAMMOND
GOVERNOR



FOR INFORMATION CONTACT:
Chuck Kilgus
Press Secretary
Office of the Governor
Pouch A, JUNEAU, Alaska 99801

Bus. Phone: (907) 465-3509
Res. Phone: (907) 586-1068

HAMMOND EXPLAINS STATUS OF U.S.-CANADIAN FISHERY TREATY NEGOTIATIONS

6-23-81
#107

FOR IMMEDIATE RELEASE

JUNEAU--Governor Jay Hammond this morning released the following statement, explaining the status of the talks between the United States and Canada over a new North Pacific fishery treaty.

"I was very pleased to be informed late last week by Dr. Lee Alverson, the chief negotiator for the United States in the U.S.-Canada salmon interception talks, that substantial progress has been made over the last few months toward the successful culmination of the treaty talks that have been going on now for some 20 years. While a number of issues remain to be resolved and agreed upon treaty language must be finalized, the negotiators believe that the issues are narrow enough that it seems likely that a final accord could be reached by early next year.

MORE

Add 1-1-1-1

"My administration has placed a high priority on achieving a fair and equitable agreement for Alaska which will allow the successful conservation and enhancement of Southeastern Alaska salmon stocks with assurance that our efforts would not be thwarted by unrestricted interceptions of fisheries not under our control. Rational conservation is the responsibility of all parties sharing in the harvest of salmon stocks which migrate across international boundaries.

"To this end, state agency personnel, representatives of the Governor's Office, and gear group representatives from Southeastern Alaska have been assisting Dr. Alverson as an Alaskan delegation in these discussions.

"Regardless of the dedication of both sides to achieve agreement, it is unlikely that formal treaty ratification would be possible in time for the 1982 season. The negotiators have, therefore, suggested that their governments adopt an interim agreement for the 1981-82 season to stabilize salmon interceptions, ensure conservation of jointly managed stocks and allow the initiation of joint research efforts on certain stocks in the Canadian-U.S. boundary area of Alaska and British Columbia.

"For most of the fisheries in Southeastern Alaska and Northern British Columbia the interim agreement conforms to the content and general character of the long-term agreement that the Alaska delegation has been working toward, and would prevent unregulated escalation of intercepting fisheries by both parties.

"It has always been the intent of Alaska to act in a responsible fashion in its management of fisheries during the period in which both sides were attempting to reach agreement on a long-term treaty.

NOTE

Add 2-2-2-2

"This is evidenced by the actions of the Alaska Board of Fisheries last January which, when it was realized that a final treaty would not be possible for the 1981 season, adopted regulations which would allow the stabilization of intercepting Alaskan fisheries in 1981 if it appeared satisfactory progress was being made toward reaching a long term agreement, and if the Canadian government would reciprocate in a satisfactory fashion for fisheries on their side of of the border. We are apparently at this stage and are proceeding to implement the 1981 management plan, details of which will be announced by the Alaska Department of Fish and Game this week.

"The 1981 management regime has been discussed at length by the Alaskan delegation, and was subject to the public review process through the Board of Fisheries regulations adopted last January. The interim agreement the negotiators are proposing be adopted for the 1982 season contains most of the same provisions for Alaskan fisheries, but also includes nearly total withdrawal of the Canadian fishery in the Yuko River. I expect that the provisions of this agreement, as well as the final treaty, will receive broad public scrutiny this fall. The Board of Fisheries will be involved in this review, as will key members of my administration and the Alaskan delegation.

"I support the efforts of our negotiators and the concept of the interim agreement to stabilize interceptions and promote joint management and conservation in our fisheries until a final solution is agreed upon. I am very concerned that two items in particular be addressed by the negotiators this fall, and the full support of my administration for such an agreement is dependant on satisfactory resolution of these items.

NOTE

3/5-ALL FOR
001064

Ad 1-3-1-1

"The first of these has to do with financial support for the implementation of the agreement. Many of the issues revolving around interception of salmon in Southeast Alaska-British Columbia boundary area waters are clouded by the poor data available on stocks being harvested in these fisheries. Even in the short term (1982 season) information on pink salmon being taken in Dixon Entrance is needed to implement the provisions of this agreement. Additionally, the questions of entitlement and payback for imbalances of interception are dependent upon a federally funded enhancement program. This will require planning, site investigation and ultimately hatchery construction. It has been our feeling all along that the long-term treaty should not be ratified unless implementing funding is made available. The same thing holds true for the ratification of a formal two-year arrangement; appropriate research and management funding must be made available prior to the 1982 season.

"I am also very concerned about the status of the salmon fisheries of the Stikine River. Presently the draft interim agreement and provisions in the long-term agreement say not meet the expectations or aspirations of our gillnet fishermen dependent on these resources. It is currently the Canadian government's intent to maintain their fisheries in the Stikine River at something less than the percentage of the harvest taken by that fishery in the 1979 season. This would hold true both in 1981 and 1982.

"The fishery in this river is in Canadian territory and without agreement there would be no restriction on the magnitude of the fishery or provision for joint management and conservation of the stock. Nevertheless, the 1979 harvest level, in our view, was unacceptably high in terms of percentage of the total catch.

XXXX

Ad 1-4-1-1

"While I can understand the Canadian position regarding their right to conduct a fishery in their own country on fish destined for spawning areas in that country, one of the basic tenets of our agreement is that disruption of existing fisheries be minimized where possible. The Stikine sockeye runs are cyclic and fishermen in this area are dependent upon higher harvest peak cycle years to make up economically for poor harvests expected in the low-cycle years. The Canadian percentage could, if kept at 1979 levels, lead to a dramatic escalation of their fishery in terms of numbers of fish caught in peak years and a concurrent reduction and dislocation in ours.

"We understand the Canadian desire to maintain a viable fishery in the river and certainly welcome the Canadian government's and fishermen's assistance in dealing with current problems regarding hydroelectric development in this drainage, but do not think it is in the best interests of either country for trying to reach a long-term agreement to allow this fishery to escalate dramatically. Language in the proposed interim agreement does not specify how much less than the 1979 level the fishery will be held to and makes provisions for other changes in this fishery by mutual agreement.

"I would encourage the negotiators to work very hard to find an acceptable solution for this problem this fall," Hammond said.

-33-

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SEATTLE P-I

JUL 1 1981

Salmon interception part of U.S.—Canadian treaty

By Bruce Ramsey
P-I Reporter

Commercial salmon fishermen from the U.S. and Canada may face restrictions, imposed for the first time, on intercepting salmon bound for the other country's rivers.

After 12 years of negotiations, teams representing both nations have agreed in general on a new North Pacific salmon treaty. The treaty would regulate Americans' access in Canadian waters to salmon spawned in Canada and Canadian access in American waters to salmon spawned in the U.S.

The purpose is to allow each nation to make investments in its own fishery and be able to reap more of the rewards.

The group recommended that negotiations on this detailed treaty be finished in May 1982 and ratified by the U.S. Senate and by Canada before the beginning of the 1983 fishing season. It recommended a temporary agreement for the 1981 and 1982 sea-

sons, which could be proclaimed if necessary by executive fiat, to stop "interception" of salmon from increasing.

For years, "interception" has nagged fishery officials. Says Rolland Scamitten, state fisheries director, "Our biologists indicate that over 50 percent of Washington coho and chinook salmon are currently harvested by Canadian fishermen."

Temporary agreement

The treaty will limit Canadian interception west of Vancouver Island of chinooks and cohos bound for rivers in Washington. Likewise, it will limit U.S. interception in the San Juan Islands of sockeyes and pinks bound for the Fraser River in Canada.

Lee Alverson, former director of the National Marine Fisheries Service here and chief negotiator for the U.S. team, said the temporary agreement and final treaty would especially protect runs of kings and cohos returning to coastal rivers and Puget Sound.

Bill Wilkerson, deputy director of the state's Department of Fisheries, said the agreement will provide more incentive for each country to increase its own fish. He said some of his department's hatcheries on Puget Sound are keeping chinooks in the hatchery ponds an extra year to kill their migratory urge, so they won't swim across the border and be caught by Canadians. With an interception treaty, he said, this practice would end. By letting fish go earlier, hatcheries could raise more fish.

Likewise, he said, Canadian fishery authorities want to spend \$100 million on salmon enhancement in the Fraser, "but they're not inclined to do that without an interception agreement."

Resented by gillnetters

The agreement also included Alaska. Several key salmon-spawning rivers, especially the Taku and Stikine, flow almost their entire distance within British Columbia and cross over into Southeast Alaska and U.S. waters

in their last few miles. The agreement calls for joint management of these rivers, with the U.S. getting most of the fish in the Taku and the Canadians more of the fish in the Stikine.

Alverson said the limits on U.S. fishing of the Stikine sockeye runs is resented by the gillnetters of the nearby town of Wrangell. The Stikine restrictions also provoked a blast from Gov. Jay S. Hammond of Alaska, who said the Wrangell fleet has traditionally relied on the peak years in the Stikine run to make up for poor harvests in other years. Otherwise Hammond supported the agreement.

The agreement also calls for a large-scale tagging program along the Southeast Alaskan and northern B.C. coasts, starting in 1982.

The announcement of the agreement was welcomed wholeheartedly by the Washington Department of Fisheries, and, more cautiously, by Gov. Spellman's office, which acknowledged "receipt" of it but said the staff hadn't had time to read it.

JUN 26 1981

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OFFICIAL
411 ALBERNI
PO BOX ALBERNI B.C. V9Y 1
TEL 724-1912
441 UNSMUIR ST
NANAIMO, BC V9R 2V2
TEL 754-4133
137 HIRST ST.
PARKSVILLE, BC. V0R 2S0

HOUSE OF COMMONS
CHAMBRE DES COMMUNES
CANADA

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file
R*

FJ (6)
343-81

TED MILLER, M.P.
ANAIMO-ALBERNI
TEL: (613) 905-0881 OTTAWA

The Hon. Romeo LeBlanc
Minister of Fisheries & Oceans
Room 418-N, House of Commons
Ottawa, Ontario

Dear Mr. LeBlanc:

DATE	
ACC	OTTAWA 145504
REF	
JUNE 22, 1981	DOSSIER
05-5-7-2-SALMON-1	
PAR PORTEUR	
ATTN:	05-5-7-2-TUNA

As you will know, I have been concerned for some time about the West Coast salmon treaty currently being negotiated with the United States government.

My concerns were heightened following the recent signing of the West Coast tuna treaty with the U.S.; I feel that B.C.'s tuna fishermen were badly served by that agreement and I hope that such a betrayal of Canadian interests will not be repeated in the important salmon fishery. As I pointed out in the House on June 10, one way we could avoid such mistakes is to allow more Parliamentary participation in international agreements before they are ratified.

Therefore I urge that you ask our negotiators to appear before the Commons Fisheries and Forestry Committee prior to the signing of an agreement. We should also delay ratification of any treaty until it has received the approval of the U.S. Senate's Foreign Relations Committee. Most importantly, I believe that Parliament should not allow the treaty to be signed until it has been given the chance to debate the effects it would have on our West Coast salmon fishery.

I would very much like to avoid the kind of defeat our fishermen suffered in the tuna negotiations. To this end, Parliament should participate more fully in future fisheries negotiations. I would appreciate hearing your views on these suggestions and urge you again to accept them.

Yours truly,

Ted Miller
Ted Miller, M.P.

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NUMBER OF PAGES: 2 + cover

SUBJECT: USA / CDA SALMON NEG5

AUTHORIZING OFFICER: [Signature]

SIGNATURE: [Signature]

ADDITIONAL COMMENTS OR INSTRUCTIONS:

Attached text rec'd from
D. Colson today

DATE	
ACC	REF
FILE	DOSSIER
BY HAND	PAR PORTEUR
ATTN:	

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GPA/Wilson
Fund of America
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[Signature]

U.S. DRAFT

6/26/81

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JOINT PRESS RELEASE BY THE UNITED STATES DEPARTMENT OF STATE AND
AND THE ^{Department} MINISTRY OF EXTERNAL AFFAIRS OF CANADA

U.S. and Canadian federal officials met on June 19 in Washington, D.C., to consider recommendations made by their Special Negotiators dealing with bilateral Pacific salmon issues. The Special Negotiators, Dr. Dayton L. Alverson for the United States, and Dr. Michael P. Shepard for Canada, recommended in a Progress report issued June 11 that both countries continue efforts to reach a comprehensive agreement to provide for cooperative management and enhancement of the Pacific salmon resource. At the same time, they recommended that both countries implement certain interim arrangements for the remainder of 1981 and for 1982 to improve conservation of the Pacific salmon stocks in a manner that will be of mutual benefit.

Participants at the June 19 meeting noted that support for the recommendations appears widespread in both countries. In the ^{both sides and} United States the fishery management agencies of the ^{fish and deer} States of Oregon, Washington, and Alaska ^{sheep and deer} have expressed ~~general~~ concurrence with the approach recommended by the Special Negotiators. They have also indicated that they will work to enact the provisions of the interim arrangements during 1981 and will actively work to finalize 1982 management regimes so that they are in conformance with the recommendations.

^{out} [Because many of the salmon fisheries that will be affected

by the recommended interim arrangements are managed by those agencies, their support is critical to the success of the interim measures.]

3/3

In Canada,
After reviewing the recommendations of the Special Negotiators and noting the support they have received in both countries, the governments of the United States and Canada wish to reaffirm their support for the efforts of the Special Negotiators to reach a comprehensive agreement. The governments concur in the belief of the Special Negotiators that a long term agreement for cooperative management and enhancement of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord.

In addition, the governments consider that the 1981 and 1982 interim arrangements recommended by the Special Negotiators will build on the progress of the negotiations and materially assist both sides in achieving a long term agreement. The governments intend to work during 1981 and 1982 to ensure that ^{all relevant} fisheries [subject to federal management jurisdiction] are conducted in accordance with the recommendations of the Special Negotiators. The governments are also studying the desirability of incorporating the recommendations into a formal agreement [for 1982.]

The governments acknowledge that proposed research projects are important to the success of long term arrangements, and note that the Special Negotiators have recommended that certain projects be conducted in 1982. Both governments ^{are} will give careful ^{at first considering means of implementation} consideration to the possibilities for undertaking the projects recommended for next year.

ACTC/FILE/DIARY/CIRC/DIV

MESSAGE

FILE/DOSSIER

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SECURITY/SÉCURITÉ

UNCLASSIFIED

DEPT/MIN. PLACE/LIEU ORIG. NO. N° D'ORIG. DATE
Fm/de FM: EXTOTT FLO-936 25 JUN 81

To/à TO: COPEN

Info REF: OURLET FLO-837 OF 05JUN81

---SALMON SAMPLING IN WEST COAST

Distr GRATEFUL EARLY REPLY TO REFTEL.

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PRECEPENCE
DATE

ACC	REF
FILE 25-5-7-2-Salmon-1	DOSSIER
BY HAND	PAR PORTEUR
ATTN:	

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SIG..... R. B. Fadden/dg

ELO

6-2643

SIG..... DIRECTION *[Signature]*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A P. Heimbeker

FROM
De R. Willson

REFERENCE
Référence

SUBJECT
Sujet June 19 Canada/USA Salmon Talks in Washington

DATE 810825
REF 150058
BY HAND 25-5-7-2-SALMON
DOSSIER
ATTN: PAR PORTEUR

SECURITY
Sécurité Confidential
DATE June 24, 1981
NUMBER
Numéro GNG- 710

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MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

FLO/Clark opened by proposing that the talks be exploratory in nature and making the caveat that he would be putting forward mainly personal views. Colson agreed, saying that too little time had passed for the U.S. to consider its position since the two negotiators, Alverson and Shepherd, had submitted their recommendations.

2. Clark wondered whether it would not be possible to make commitments now instead of postponing the day of reckoning, especially as final agreement had kept eluding us in the 20-year history of salmon negotiations. Perhaps instead of turning the negotiators' recommendations into an interim agreement now and doing a long-term agreement later, we could collapse the process and have one agreement. If it contained the Lynnwood principles and other elements of the basic commitment, the regulatory or management parts could be attached as an annex (much like the tuna treaty) which could be replaced later with another annex at the second stage. However, FANDO/Hunter pointed out that when such major issues as the inclusion of the Yukon River have not yet been settled, it would be difficult to do so in annexes.

3. Colson said that annexes would not be a way to escape Congressional consideration twice. He then set out his views, which seemed to go in a circle. He would like to see some sort of interim agreement now so that U.S. managers would have something to point to in seeking funding and arguing their case with U.S. fishermen. The basic problem remained the lack of confidence between our respective fishermen and managers and an interim agreement would allow for a period of confidence-building between them. Time and

.../2

again Colson said that he did not want an agreement now that spelled out commitments that would lead to mutual recriminations that the other party had not lived up to them, as had happened with past agreements. The process should be educational. An interim agreement would also allow time to improve the data base, which was good on the Fraser but not elsewhere. This research would require millions of dollars worth of funding.

It was unclear, however, whether he thought an interim agreement should be an executive one or a treaty. If cast in the form of an agreement, the paper/recommendations put forward by the two negotiators contained at least three elements which in his judgement would require Congressional approval:

- 1) State override: this was the biggest problem and the most difficult political issue on the U.S. side. Alaska in particular would have to be committed to any agreement. The U.S. management measures called for in the negotiators' paper mostly involve state waters.
- 2) Financial commitments for research.
- 3) Congruity with the Fishery Conservation and Management Act of 1976, though Colson's preliminary view was that this might not be a problem at all.

Funding is basic to an agreement and the discussion here was similarly circular. Clark pointed out the benefits of the Department of State's going to Congress now and lining up support and funds for an agreement. Colson prefers to work the other way round. This to him is a regional issue and if the Senators concerned really want an agreement, they will be prepared to fight for funds notwithstanding the budget-cutting going on. In this as in other aspects State appears reluctant to play any kind of major role but would rather things worked themselves out, if possible, at the local and political levels. The fundamental approach to the salmon negotiations appears to be not dissimilar to that taken on the East Coast (cf. Ambassador Ridgway's recent exchange with the New England Council on the conclusion of arrangements with Canada).

When Clark suggested greater Washington and Ottawa involvement in the negotiations, Colson returned to the regional theme. We had adopted the present approach in the first place because the issue was highly regional and technical. Even at a practical level it would be difficult to get the large contingent of U.S. industry advisers to travel to Washington at their own expense.

-3-

Confidential

The meeting ended inconclusively on the question of what sort of agreement was necessary. The approach would in effect be to wait and see whether Alaska, in particular, follows through with the required management measures in the coming weeks. The U.S. side would draft a press release or joint statement. FANDO/Hunter's information was that the Western Governors had already issued one.

On a separate note, I spoke to the NMFS lawyer at the meeting about the GATT tuna embargo case and the East Coast scallop management plan. He thought our GATT case was solid but hoped the U.S. would at least get a moot decision. According to him the U.S. is currently embargoing tuna from five countries. He is involved in an exercise going on in Washington to look at the legality, particularly the Gattability, of possession limits (i.e. import controls) on scallops. He was personally convinced the proposal did not have much chance of being implemented.



R. Willson

PACIFIC SALMON DISCUSSIONS

1. Dave Colson
Assistant Legal Advisor
Oceans, Environment and Science
2. Mike Danaher
Attorney-Advisor
Department of State
3. Dan Reifsnnyder
NOAA/NMFS
Department of Commerce
4. Bill Newlin
Canadian Affairs
Department of State
5. J.E. Harlick
Canadian Embassy
Washington, D.C.
6. Mike Hunter
Fisheries and Oceans
Ottawa, Canada
7. L.S. Clark
External Affairs - Legal Ops.
8. R.B. Fadden
External Affairs - U.S. Bureau
9. Ron Willson
10. David Allan Fitch
General Counsel
NMFS
Department of Commerce
11. H.R. Beasley
NMFS/NOAA
Department of Commerce
12. Prudence Fox
International Fisheries Office
NMFS/NOAA
Department of Commerce
13. Christine Dawson
OES/Fisheries
Department of State

Washington, D.C.

June 19, 1981

PROGRESS REPORT BY THE NEGOTIATORS
ON CONSULTATIONS TOWARD A COMPREHENSIVE AGREEMENT
FOR MANAGEMENT AND DEVELOPMENT OF THE PACIFIC SALMON FISHERIES

Your copy e.w.

1. Following the negotiating session held in Vancouver, B.C. from April 27 - May 2, the two negotiators held a series of meetings with officials of the two countries in Juneau, Alaska on May 11-13 and in Vancouver on May 18-20. The purpose of the meetings was to clarify technical issues that had created problems in the April 27 - May 2 session and to explore possible avenues for solution to the outstanding problems in the negotiations. As the result of the technical consultations, the negotiators developed a number of new options for solution of the outstanding issues, which were then discussed internally with advisory groups within each country.

2. On the basis of these separate consultations with advisory groups, the negotiators strongly reaffirm their belief that a long term agreement for cooperative management and development of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord. The negotiators believe that the technical clarifications achieved over the past month have been sufficient to warrant further attempts to reach a comprehensive agreement and therefore recommend that formal negotiations toward a long term agreement be resumed in the autumn of 1981 (following the 1981 fishing season).

3. With respect to a long term agreement, the negotiators reaffirm their agreement on the principles for cooperative manage

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ment and development and on the approaches to implementation of these principles as outlined in the record of the October 1980 negotiating session held in Lynnwood, Washington, including:

- (a) Cooperation in conservation and enhancement to increase and optimize salmon yields in both countries.
- (b) Tailoring of fisheries regulations and development programs (including interception limitation schemes) to achieve the aforementioned objectives and to provide each country with benefits commensurate with salmon production in its own rivers, taking into account the desirability of reducing interceptions and of not unduly disrupting existing fisheries.
- (c) Mechanisms for joint management, enhancement and sharing of catches in all transboundary rivers.
- (d) Transfer of management and development authority to Canada for Fraser River sockeye and pink stocks and development of new arrangements for cooperative regulation of the fisheries of the two countries on these stocks to provide United States fishermen with agreed entitlements and to provide required spawning escapements.
- (e) Development of a new international Commission to coordinate the management and development programs of the two countries and to monitor the implementation of the agreement.

4. The negotiators believe that, because of the highly technical nature of a long term agreement, approximately one year of consultations and negotiations will be required to develop formal arrangements that would ensure full and effective implementation of the principles

to which both sides now subscribe. Such an agreement therefore could not come into force until 1983. The negotiators note the positive management measures each side intends to put into place in 1981 to improve conservation of the stocks in a manner which will be of mutual benefit. They further note that a number of proposals under discussion in the negotiations bear on the conduct of fisheries in 1982 and that implementation of such proposals would be of mutual benefit. In this light, negotiators believe that, pending efforts over the next year to develop a full comprehensive agreement, the positive momentum of the present discussions between governments should be maintained through practical actions in the fisheries in both 1981 and 1982. The negotiators therefore recommend that the two governments enter into an interim agreement with respect to the conduct of the Pacific Salmon fisheries of the two countries for the remainder of the 1981 fishing season and throughout 1982. The elements of such an agreement are outlined in the following paragraph.

5. Specifically, the negotiators recommend that with a target date for completion of May 31, 1982, that technical consultations and formal negotiations be conducted to develop a comprehensive long-term agreement regarding the management and development of Pacific Salmon stocks of mutual concern; such negotiations to be based on the principles and to take into account the general approaches to implementation outlined in the record of the negotiating session held in Lynnwood, Washington in October 1980. They further recommend that, for 1981/82 the two parties develop an interim agreement that will include the following elements:

- (a) During 1981 and 1982, the United States fishery in Alaska District 104 (i.e. Noyes Island) shall be regulated in a manner which would result in the average annual harvest of sockeye totalling 160,000 pieces.
- (b) All other fisheries in Alaska shall be conducted in a manner pursuant to the understandings recorded in the record of the October 1980 Lynnwood meeting.
- (c) In 1982, the aggregate catch of pink salmon in the troll salmon fishery in B.C. Statistical Area 1 and in fisheries by all gear in B.C. Statistical sub-areas 3X, 3Y, 5-1 and the western portion of Subarea 32 shall be limited to 1.49 million pieces. The portion of this aggregate total taken in the troll fishery in Area 1 shall be limited to the level taken during 1971-74, namely _____ pieces.
- (d) In 1981, with respect to fisheries on stocks bound for Canadian sections of the Taku River, the two sides shall establish escapement target for each species. Canadian authorities shall regulate the fisheries under their jurisdiction to ensure that the percentage of the allowable catch for each species taken by Canadian fishermen in 1981 shall be somewhat less than the percentages of the catch of each species taken in 1979. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (e) In 1982, the percentages of the total allowable catches by species taken by Canadian fishermen in the Taku River shall be reduced to 15% of the 1981 level.

- (f) In both 1981 and 1982, Canadian authorities shall limit the catch by Canadian fishermen on the Stikine River in the same manner as for the Taku River in 1981, subject, however, to adjustments that may be agreed upon through consultations between the two sides.
- (g) With respect to Fraser sockeye and pink salmon, the IPSFC regime shall continue to apply in 1981 and 1982. In 1982, in the event of a migratory diversion of sockeye through Johnstone Strait, Canada shall exert restraint in its fisheries outside the Fraser River Convention Area taking into account proposed future sharing arrangements under discussion in the negotiations.
- (h) All other Canadian intercepting fisheries and all United States intercepting fisheries in Washington, Oregon and California shall be conducted in conformity with the general interception limitation scheme under discussion in the negotiations (i.e. limited to 1971-74 base levels).
- (i) In 1982, the two governments shall conduct a large scale tagging program in the southern Southeast Alaska and Northern British Columbia area and other programs as may be agreed in order to provide improved information on the composition of the tons in intercepting fishing areas.

6. The negotiators recommend that pending the coming into force of the interim agreement, competent fisheries authorities in both countries conduct their programs of fisheries regulation in accord with the spirit of the interim agreement.

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cc Campbell
Applebaum
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TO RUEHKO/AMEMBASSY TOKYO PRIORITY 6513
RUEHUL/AMEMBASSY SEOUL PRIORITY 6393
RUEHOT/AMEMBASSY OTTAWA PRIORITY 2351
BT
UNCLAS STATE 148732

E.O. 12065: N/A
TAGS:EFIS, JA

SUBJECT: POTENTIAL PROBLEM WITH FOREIGN SALMON PROCESSORS

(11)

DATE	Fadden
AT	140905
FILE	25-5-7-2-SALMON
BY HAND	PAR PORTEUR
ATTN.	(11)

DOSSIER

Spoke to [unclear] who did not know of any [unclear] vessels planning to go up on to state of Alaska. Possibility who had called me on another matter.

RF

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1. DEPT HAS RECEIVED REPEATED REQUESTS FROM CONGRESS AND U.S. FISH PROCESSORS TO INFORM FOREIGN GOV'TS OF POTENTIAL PROBLEM INVOLVING FISH PROCESSING IN ALASKA.

2. FEDERAL LAW (THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT) PROHIBITS FOREIGN VESSELS FROM OPERATING IN THE FCZ WHEN ADEQUATE DOMESTIC PROCESSING CAPACITY EXISTS AND PROHIBITS THEM FROM OPERATING AT ANYTIME IN THE TERRITORIAL SEA. THE FCMA HAS BEEN INTERPRETED NOT TO APPLY TO INTERNAL WATERS, LEAVING THOSE TO STATE REGULATIONS..

3. RECENTLY, U.S. DISTRICT COURT IN ALASKA ENJOINED ENFORCEMENT OF THE ALASKAN STATE LAW IN INTERNAL WATERS. PENDING A FINAL DECISION IN THAT CASE ON THE LEGALITY OF THE ALASKAN LAW, NEITHER FEDERAL NOR STATE FISHERIES LEGISLATION PROHIBITS FOREIGN OPERATIONS WITHIN ALASKAN INTERNAL WATERS.

4. THE DEPT OF COMMERCE IS DEVELOPING REGULATIONS TO REMEDY THIS LEGAL GAP, AND CONGRESS IS REPORTEDLY CONSIDERING LEGISLATION AS WELL. HOWEVER, THE ALASKA SALMON SEASON IS

APPROACHING AND PROCESSORS ARE CONCERNED ABOUT POTENTIAL PROBLEMS.

5. THE EXECUTIVE ALSO POSSESSES THE INHERENT FOREIGN AFFAIRS AUTHORITY TO PROHIBIT ANY FOREIGN VESSEL FROM OPERATING IN U.S. INTERNAL WATERS, BUT WE BELIEVE THAT VOLUNTARY RESTRAINT WOULD BE PREFERABLE TO EXECUTIVE ACTION, WHICH WOULD BE HIGHLY PUBLIC.

6. EMBASSY IS THEREFORE REQUESTED TO DRAW ON ABOVE AND CONTACT APPROPRIATE GOVERNMENT OFFICIALS TO REQUEST THEIR COOPERATION IN INFORMING FOREIGN PROCESSORS THAT PROCESSING OPERATIONS WILL NOT BE PERMITTED IN ALASKAN INTERNAL WATERS DURING THE UPCOMING SEASON. IF FOREIGN OFFICIALS KNOW OR LEARN OF ANY PROCESSING PLANS OF THIS NATURE, THEY ARE REQUESTED TO CONTACT US.

7. EMBASSY SHOULD STRESS IMPORTANCE OF THIS MATTER TO CERTAIN SEGMENTS OF U.S. INDUSTRY AND TO CONGRESS, AND THAT COOPERATION OF FOREIGN GOV'TS IN THIS REGARD WILL BE CONSIDERED IN OUR OVERALL FISHERIES RELATIONS.

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STATE 148732

8. FYI DEPT IS PRESENTLY UNAWARE OF ANY SPECIFIC COUNTRY PLANNING TO ENTER ALASKAN WATERS TO PROCESS SALMON (INFORMAL CONTACTS WITH JAPANESE AND KOREAN SOURCES INDICATE NO INTEREST). HOWEVER, DEPT HAS BEEN ASKED TO ALERT FOREIGN GOV'TS TO THE POTENTIAL PROBLEM AND IS THEREFORE TRANSMITTING THIS INFO TO COUNTRIES WITH FISH PROCESSING CAPABILITY IN ALASKA. END FYI. CLARK
BT

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Embargoed until 1300
EDT Friday June 19

PRESS RELEASE

CANADA AND USA CONCLUDE INTERIM ARRANGEMENTS
FOR CONSERVATION OF PACIFIC SALMON FOR 1981 AND 1982

DATE		REF
ACC		
25-5-7-2-SALMON-1		DOSSIER
		PAR PORTEUR

The Minister of Fisheries and Oceans, the Honourable Roméo Leblanc welcomed today the recommendations formulated by Canadian and U.S. negotiators that the two countries enter into a two-year interim arrangement on Pacific salmon management and conservation.

"The recommendations and the possible form of the agreement to give legal force to the arrangements are under examination and will be discussed with the USA in the near future. I am convinced that an interim deal of the kind thrashed out by the negotiators represents an important step towards the resolution of a number of issues which have proved contentious in the past."

Pending formal acceptance of the recommendations, Mr. Leblanc explained that his Department and its counterparts in Alaska, Washington and Oregon would impose certain conservation measures on key intercepting fisheries in both countries, as well as establish an important salmon tagging program in the Northern British Columbia - South East Alaska area, and set a one year timetable for the development of a longer term agreement.

"During the term of the interim arrangement", Mr. Leblanc said "the negotiators have recommended that the International Pacific Salmon Fisheries Commission would continue to manage sockeye and pink salmon stocks of the Fraser River, but that a long-term agreement would lead to the termination of the Commission in its present form".

- 2 -

The State of Alaska, which controls fishing within 3 miles of the Alaskan coast will implement significant cut backs in the 1981 and 1982 catches of sockeye salmon by U.S. fishermen at Noyes Island, Alaska compared to catch levels in earlier years. Mr. Leblanc stated that his Department will take action to limit Canadian catches of pink salmon in 1982 in Dixon Entrance to close to recent levels and to limit catches of salmon returning to the Canadian sections of the Taku and Stikine rivers during the two years of the arrangement

"I feel the interim arrangement that has been recommended is well balanced" Mr. LeBlanc said. "I am particularly pleased that the two countries are prepared to preserve and formalize conservation programs that are of great importance, to the fishing industries in both countries. I am also gratified," he continued, "that the USA will be taking action to conserve Fraser River chinook salmon in its fishery at Point Roberts, and equivalent actions by Canada should be seen as very positive developments in our relations."

Officials of the two sides will be meeting soon to discuss the form of an interim agreement, and to set out the timetable for future negotiations.

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RT

**ACTION
SUITE A DONNER**

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FM WSHDC UNGR3321 16JUN81

TC EXTOTT (FLO)

INFO BH FANDOTT/CAMPBELL/HUNTER DE OTZ

SFAX SEATL DE WDC

DISTR FLP GNG

REF HARLICK/FAEDEN TELECON 16JUN81

---PACIFIC SALMON NEGS:PROPOSED MTG

CHRIS DAWSON OF STATE DEPT CONTACTED EMBATT TODAY TO PROPOSE THAT

USA AND CDN OFFICIALS HOLD MTG AT 0900 HRS 19JUN IN STATE DEPT

TO DISCUSS FUTURE HANDLING OF THESES NEGS, TAKING INTO ACCOUNT

RECENT PROGRESS REPOROFEGOTIAPRSUECMEQJINI THT LQJG

TE AS WELL AS INTERIMAGS SHLD BE RSUED.MTG WLD NOT/NOT

DISCUSS SUBSTANTIVE ISSUES.USA SIDE WLD BE COMPOSED OF:

DAVE COLSON,CHRIS DAWSON AND MIKE DANEHER FROM STATE DEPT AND
PRUDENCE FOX,DAN RIEFSCHNEIDER AND DAVE FITCH OF NMFS.

2.UNDERSTAND FROM REFTELCON THAT MTG IN PRINCIPLE IS ACCEPTABLE
TC YOU.ADVISE COMPOSITION OF CDN DEL,ARRIVAL TIME AND HOTEL
REQUIREMENTS ASAP.

CCC/073 161945Z UNGR3321

DATE		
ACC	145123	REF
FILE	25-5-7-2-SALMON	DOSSIER
BY HAND		PAR PORTEUR

PAGE TWO UNGR3221 RESTR

PROHIBIT FOREIGN FISH PROCESSING VESSELS FROM ENGAGING IN THIS ACTIVITY IN ALASKAN STATE WATERS, IE, THOSE LANDWARDS OF BASELINES. STATE DEPT IS UNDER GREAT PRESSURE FROM ALASKAN FISHERIES INTERESTS AND FROM CONGRESS TO ENSURE THAT FOREIGN VESSELS DO NOT/NOT START PROCESSING IN ALASKAN WATERS. (WE UNDERSTAND CERTAIN STATES, INCLUDING CDA, HAVE BEEN OR WILL SOON BE INFORMED OF USA CONCERNS ON THIS ISSUE.) WE HAVE PASSED TO YOU NAMES OF THREE CDN COMPANIES WHICH STATE DEPT UNDERSTANDS MIGHT BE INTERESTED IN PURSUING PROCESSING OPPORTUNITY: OAKLAND INDUSTRIES OF VICTORIA, CASSIER CO (?) OF PRINCE RUPERT, AND BC PACKERS.

3. IN ATTEMPT TO HEAD OFF POTENTIALLY DIFFICULT SITUATION AND IN ORDER TO RESPOND TO ALASKAN PRESSURES, STATE DEPT DESK OFFICER AND NOW KRONMILLER HAVE CONTACTED EMB TO EXPRESS VIEW THAT IT WLD BE PREFERABLE IF CDN PROCESSING VESSELS DO NOT/NOT EXPLICIT THIS PROCESSING OPPORTUNITY. KRONMILLER INFORMED US THAT SHOULD THEY CHOOSE TO DO SO, THEN USA AUTHORITIES WLD ACT TO BAR THEIR ENTRY INTO USA WATERS OR ASK THEM TO LEAVE IF THEY HAD ENTERED. KRONMILLER WAS FULLY CONFIDENT THAT USA HAD GENERAL EXECUTIVE AUTHORITY, BOTH IN USA CONSTITUTION AND IN FOREIGN POWERS ACT TO ACCOMPLISH THIS, DESPITE HAVING NO/NO EXPLICIT AUTHORITY UNDER USA FISHERIES LEGISLATION TO DO SO.

4. SINCE DICTATING ABOVE, WE HAVE BEEN CALLED BY STAFFER OF REP DON YOUNG (R-AK) WHO RELAYED TO US SIMILAR CONCERNS TO THOSE NOTED ABOVE.

...3

PAGE THREE UNGR3221 RESTR

HE MENTIONED THAT YOUNG HAD JUST INTRODUCED INTO HOUSE OF REPS
BILL TO PROHIBIT FOREIGN PROCESSING VESSELS IN ALASKAN INTERNAL
WATER FOR THIS SUMMER. THIS, PLUS SIMILAR BILL IN SENATE, IS
EXPECTED TO BE PASSED QUICKLY AND AS STAFFER PUT IT CDN VESSELS
CLD BE ON WAY NORTH WHEN LEGISLATION WLD COME INTO FORCE EXPLICITLY
BLOCKING THEIR ACCESS. THEREFORE THIS CLD PROVE TO BE COSTLY AND
RISKY VENTURE TO PROCESSING VESSEL OWNERS IF THEY ATTEMPT TO TAKE
ADVANTAGE OF OPPORTUNITY. HE ALSO REFERRED TO STATE DEPT ASSURANCES
THAT IN ABSENCE OF SUCH LEGISLATION, USA AUTHORITIES WLD ACT TO
BAR FOREIGN PROCESSING VESSEL ENTRY INTO ALASKAN INTERNAL WATERS.
5. GRATEFUL YOU ADVISE HOW YOU WLD WISH US TO RESPOND TO USA
REPRESENTATIONS.

CCC/173 102232Z UNGR3221



TRANSMITTAL NOTE AND RECEIPT NOTE D'ENVOI ET REÇU

GOVERNMENT OF CANADA - GOUVERNEMENT DU CANADA

TO
À

EXTOTT/FLO/FADDEN

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BY HAND PAR PORTEUR

ATTN:

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Federal Register, Vo. 46. No. 111, June 10, 1981

"Ocean Salmon Fisheries Off the Coasts of California,
Oregon and Washington"

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JUN 28 1981
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SENT BY - TRANSMIS PAR	RECEIVED BY - REÇU PAR
<u>J. HART</u> J. HART Date 23 June 1981	Signature Date

The Canadian Embassy
Washington, DC

PLEASE SIGN AND
RETURN TO ORIGINATOR
PRIÈRE DE SIGNER ET DE RETOURNER
AU SIGNATAIRE

RECEIPT NOT REQUIRED
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ORIGINATOR'S ADDRESS - ADRESSE DU SIGNATAIRE

1473 Service Order No. 1473; Various Railroads Authorized To Use Tracks and/or facilities of the Chicago, Rock Island and Pacific Railroad Company, Debtor, (William M. Gibbons, Trustee)

Eighteenth Revised Service Order No. 1473 is amended by substituting the following paragraph (N) for paragraph (N) thereof:

(n) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1981, unless otherwise modified, amended, or vacated by order of this Commission.

Effective date. This order shall become effective at 12:01 a.m., June 6, 1981.

This action is taken under authority of 49 U.S.C. 10304-10305 and Section 122, Public Law 96-254.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with Director, Office of the Federal Register.

By the Commission, Railroad Service Board members, Joel E. Burns, Robert S. Turkington and John H. O'Brien.

Agatha L. Mergenovich,
Secretary.

[FR Doc. 81-17215 Filed 6-9-81; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 91

Migratory Bird Hunting and Conservation Stamp Contest; Notice of Contest Dates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Announcement of contest, changing final rule entry dates.

SUMMARY: The Service announces the date and location of the 1981 Migratory Bird Hunting and Conservation Stamp Contest. The growing popularity of the contest has resulted in a steady increase in the number of entries, with over 1,500 in the 1980 contest. To provide adequate time for preparing entries for judging, the Service is also changing the entry deadline from October 15 to October 1,

DATES: This amendment is effective June 10, 1981. The new entry deadline is October 1. The contest will be held on November 5, 1981, beginning at 9 a.m.

ADDRESS: The 1981 contest will be held in the Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Anastasi or Ms. Bea Boone, Public Affairs/Audio Visual, U.S. Fish and Wildlife Service, Washington, D.C. 20240, telephone (202) 343-8770/5612.

SUPPLEMENTARY INFORMATION: The annual Migratory Bird Hunting and Conservation Stamp Contest is held by the U.S. Fish and Wildlife Service to select a design for the following year's Migratory Bird Hunting and Conservation Stamp, popularly known as the Duck Stamp. The contest has steadily increased in popularity, with 1,507 entries in the 1980 contest. As a result, the Service has determined that the entry deadline of October 15 (postmarked date) does not provide adequate time to acknowledge receipt and prepare the entries for judging before each year's contest. The proposed change to an October 1 deadline would allow a July 1 to October 1 period for submitting entries.

The Department has determined that this is not a major rule under Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act. All other portions of the contest rules remain unchanged.

As provided in 50 CFR 91.14, entries may not portray any of the species that were the dominant feature for the winner of the Migratory Bird Hunting and Conservation Stamp Contest during the preceding 5 years. For the 1981 contest, the species ineligible are Ross' geese, hooded merganser, green-winged teal, mallards, and ruddy ducks.

In accordance with 50 CFR 91.22, the date and location of the 1981 contest is November 5, 1981, at 9 a.m. in the Department of the Interior Auditorium, 18th and C Streets, NW., Washington, D.C.

Since the deadline for submitting entries is purely administrative in nature and announced well in advance of October 1, the Service has determined that notice and public comment procedure on the change is unnecessary and would be contrary to the public interest. This modification would thus be immediately effective when published. Additionally, each applicant for the contest will be notified of the

deadline when they request a copy of the contest rules and Reproduction Rights Agreement under 50 CFR 91.11.

For the reasons noted above, the Service is revising the last sentence of 50 CFR 91.11 as follows:

§ 91.11 Contest deadlines.

Entries may be received any time after July 1, but must be received or postmarked no later than midnight of October 1.

Dated: June 4, 1981.

C. F. Layton,

Acting Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 81-17247 Filed 6-9-81; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

Ocean Salmon Fisheries Off the Coasts of California, Oregon and Washington

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule with notice of availability of plan amendment.

SUMMARY: NOAA issues emergency regulations to implement on an interim basis the 1981 amendment to the fishery management plan for the salmon fisheries off the coasts of Washington, Oregon and California. Proposed regulations soon will be published for public review and comment. This action also constitutes a notice of availability and request for comments upon the plan amendment which was approved by the Assistant Administrator for Fisheries, NOAA, on May 18, 1981. Specific management measures and implementing regulations vary by fisheries and area, but generally establish fishing seasons, provide harvest guidelines or quotas and other inseason management modifications, set daily catch limits for recreational fisheries and size limits on fish. The 1981 amendment and implementing regulations are intended to prevent overfishing, to apportion equitably the ocean harvest between commercial and recreational fisheries, to allow more salmon to survive the ocean fisheries

and such the various inside fisheries, to meet U.S. obligations to treaty Indian fisheries, and to achieve spawning escapement requirements. The 1981 fisheries are presently being governed by regulations that were in place during 1980. These regulations are not adequate to meet conservation needs after June 1, 1981.

DATES: Interim rules are effective on June 5, 1981, and remain effective until July 20, 1981.

ADDRESS: Send comments on the 1981 amendment to the Director, Northwest Region, National Marine Fisheries Service (NMFS), 1700 Westlake Avenue North, Seattle, Washington 98109. Copies of the 1981 amendment, the regulatory impact review, and the final supplement to the final environmental impact statement are available from the Pacific Fishery Management Council, 526 S.W. Mill Street, Portland, Oregon 97201.

FOR FURTHER INFORMATION CONTACT: H. A. Larkins (Regional Director, NMFS) 206-442-7575.

SUPPLEMENTARY INFORMATION: The fishery management plan (FMP) for the Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, prepared by the Pacific Fishery Management Council (the Council) was approved by the Assistant Administrator for Fisheries (Assistant Administrator) on March 2, 1978. Regulations to implement the FMP were first published on April 14, 1978, (43 FR 15629) as emergency rules; regulations to implement amendments to the FMP were last issued as a final rulemaking on July 31, 1980 (45 FR 50764).

The Council has amended the FMP to improve management of the salmon fisheries in 1981. A supplement to the environmental impact statement (SEIS) for the 1981 amendment has been filed with the Environmental Protection Agency. A notice of availability of the SEIS was published on May 1, 1981 (46 FR 24674). The Council held six hearings on the amendment during the period February 19-21, 1981. The current FMP amendment was approved by the Assistant Administrator on May 18, 1981, under section 304 of the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* (Magnuson Act). The 1981 amendment is intended to: (1) provide adequate spawning escapements from ocean salmon fisheries for the various salmon runs; (2) meet treaty obligations to Indian fishermen; and (3) allow for a viable harvest for each segment of the salmon fishery, including the commercial and recreational ocean fisheries and the

various internal water fisheries. NOAA issues a notice of availability of the FMP amendment for public review and comment, as required by Section 305(a) of the Magnuson Act.

Section 305(e) of the Magnuson Act authorizes the Secretary of Commerce to promulgate emergency regulations to implement fishery management plans. The Assistant Administrator has determined that the 1981 amendment should be implemented under that Section, by emergency regulations. This emergency rulemaking remains in-effect for 45 days and may be extended for a second 45-day period. The regulations published here include both the regulations implementing the 1981 amendment and provisions from existing regulations not affected by the amendment (but which have been revised to some degree).

Proposed regulations soon will be published for public review. The final regulations, following publication in the Federal Register, will be effective for 1981 and subsequent years unless superseded or otherwise modified; except that, regulations establishing harvest guidelines and open seasons off California in 1981 (§ 661.10 to § 661.12) will remain in effect only for 1981. If regulations setting new harvest guidelines and open seasons off California are not adopted, approved, and implemented specifically for the 1982 season, then 1980 regulations (§ 661.10 to § 661.12) will apply in that area.

Status of the Salmon Resource in 1981

Current information on the abundance of the major stocks of chinook and coho salmon available to the ocean fisheries in 1981 indicates (1) that some stocks continue to be depressed, to the extent that their future productivity may be jeopardized if ocean harvests are not reduced, and (2) other stocks are expected to improve somewhat, although they are not expected to attain optimal levels of population abundance. The management objectives set forth in the FMP can only be achieved by carefully balancing a decrease of the ocean harvests for some areas with somewhat less restrictive regulations in other areas.

The following paragraphs summarize expectations regarding stock abundance for the 1981 fisheries and explain the basis for the desired levels of ocean harvests:

1. Coho stocks from the Oregon coast and Columbia River are predicted to be at a near-record low in 1981; only 772,000 coho can be taken in the ocean south of Cape Falcon without jeopardizing coho stocks. A reduction in

the ocean harvest of these stocks is necessary to achieve the 1981 escapement goal. Spawning escapement of Oregon coastal and Columbia River coho stock showed improvement last year over the three previous years, but it was still quite far below desired levels. Harvests must continue to be restricted to allow an adequate number of coho to reach the spawning grounds.

2. Low abundance of natural runs of Washington coastal coho is predicted to continue; returns of artificially propagated stocks to hatcheries are expected to be similar to those of 1980. Reduced ocean harvests of these stocks in 1981 are necessary to meet natural-stock escapement and treaty-Indian allocation goals. As a result, only 620,000 coho can be taken in the ocean north of Cape Falcon without further depleting coho stocks returning to the Washington coast and Puget Sound.

3. Natural coho stocks from Puget Sound are predicted to be below average, but the abundance of hatchery coho can be expected to be slightly higher in 1981 than in 1980. Allocation and spawning escapement goals for coho in Puget Sound should be met with the exception of Skagit River. A complete ocean closure plus elimination of the Puget Sound sport fishery would not return enough coho to the Skagit to meet the spawning escapement goal.

4. Fall chinook stocks from the Columbia River remain at a depressed level and are not expected to be any more abundant in 1981 than in 1980. Fall chinook from the lower river and the Bonneville pool are managed mainly for hatchery production. The upriver bright fall chinook stocks will remain at a low level of abundance, but closures off southeast Alaska, along with closures off Washington when 620,000 coho are taken, should increase the size of the in-river fall chinook run. Populations of spring and summer chinook originating in the upper Columbia River basin are stabilizing at new-record lows; escapement goals are not attainable in 1981. These stocks, however, constitute a minor part of the ocean catches off the Washington coast, because the mature spring chinook have entered the river before the ocean fishing season begins and because summer chinook comprise only about four percent of the troll catch off the Washington coast during May.

5. California chinook stocks, although recovering from the 1975-77 drought, are expected to be below optimal levels. Fall chinook from the Klamath River are predicted to be substantially above the 1980 level, but catch restrictions in 1981 should be continued if the short-range spawning escapement goal is to be

realized. Sacramento River chinooks may return in numbers slightly above the 1980 run but are still well below historical levels.

The Council and its advisors considered these and many other factors during their deliberations on the 1981 amendment. The management measures adopted by the Council are considered to be those most consistent with the FMP objectives and with the requirements of the Magnuson Act.

The Ocean Salmon Fisheries

The ocean salmon fisheries primarily harvest chinook and coho salmon, although those off Washington usually harvest substantial numbers of pink salmon in odd-numbered years (e.g., 1981). The fisheries include commercial trollers and recreational anglers; a significant portion of the latter depend upon services provided by commercially-operated charterboats. Oceanic processes and ocean harvesting activities affect the numbers of fish returning to fisheries in internal waters and to spawning grounds, some as far inland as several hundred miles. Coho and chinook salmon range widely during their ocean residence, intermingling with the races from different spawning grounds. Ocean-harvested salmon are considered by many to be of the highest quality. Market qualities are also affected by the size and maturity of the fish, type of fishing gear used, and the degree of care in handling and processing the catch. All of these factors affect prices, and market supplies and demands. The Council has recognized that the ocean commercial salmon fishery and the ocean recreational salmon fishery involve different and distinct motivations and benefits; its management measures are intended to fully reflect those differences. Management goals for the commercial fishery, after giving full consideration to resource conservation requirements and legal decisions affecting distribution of the catches, are intended to optimize poundage yield and financial returns to commercial fishermen. Management of the recreational fishery is intended to achieve the greatest amount of angler participation and recreational satisfaction.

Treaty-Indian and Internal Water Fisheries

Some of the runs of salmon that contribute to the ocean fisheries are subject to treaties between the United States and various Indian tribes in Washington and on the Columbia River. The treaties reserve to the tribes a right to take a portion of the harvestable surplus of salmon that pass through their

usual and accustomed fishing grounds. Recent Federal court decisions, affirmed by the United States Supreme Court, have interpreted the treaties as reserving to some tribes the right to harvest up to fifty percent of the runs that would return to their tribal fishing grounds. For Columbia River stocks, a separate agreement sets forth the obligations regarding the management of salmon returning to tribal fishing grounds. That agreement establishes numerical goals for salmon escapement from the ocean into the Columbia River and allocates the river harvest according to principles that are in lieu of the 50/50 allocation formula of the other treaty fisheries.

The Council, in developing the 1981 amendments to the management measures in the FMP, gave extensive consideration to the impacts that various management options would have on the rights of treaty-Indian fishermen. The Council gave thorough consideration to the expected returns of salmon to each of the areas of interest of the treaty tribes and designed these management measures to be consistent with treaty obligations. The inseason management provisions, particularly those which would automatically close the fishery when a specified number of fish are caught, should provide additional assurance that fishery obligations to treaty Indians will be met.

Certain season and area closures are applied to both commercial and recreational fisheries in the ocean to reduce ocean harvests in order to allow a greater proportion of the stocks to reach "inside" fisheries and to increase spawning escapements. Treaty-Indian fishermen, "inside" net fishermen other than treaty Indians, and recreational river fishermen should be assured a continuing opportunity to harvest salmon. There are significant commercial harvests in the internal waters of Washington State and on the Columbia River by fishermen other than treaty Indians. There is also an Indian reservation fishery on the Klamath River in California. These fisheries are expected to receive additional benefit under the 1981 regulations.

1981 Fishery Management Options

Six management options and corresponding management measures were set forth in January of 1981 in a document entitled "Proposed Plan for Managing the 1981 Salmon Fisheries off the Coast of California, Oregon and Washington." Three options were developed by the Council's Salmon Plan Development Team (Team); of these, one option was considered to contain restrictions necessary to meet the

Council's stated goals, another option was slightly more liberal and the third was slightly more restrictive. The other three options, one much more restrictive and two much less restrictive, were proposed by representatives of the commercial trollers, recreational fishermen, and treaty-Indian fishery interests. This document was widely distributed. All options were considered at six public review hearings in the three coastal states and in Idaho. As a result of these hearings and written comments on the proposed plan, the Team refined the resultant management packages and analyzed their impacts. The Council adopted the management measures contained in the 1981 amendment following its review of the Team's analysis.

1981 Management Measures

The Council selected management measures which are intended to prevent overfishing in the ocean fisheries, to achieve treaty-Indian allocations, to minimize impacts on weaker salmon stocks, while equitably apportioning the increased regulatory burden, and minimizing shifts in fishing effort along the coast.

For California, the Council adopted management measures that are a combination of seasonal restrictions and harvest guidelines. The seasonal controls allow commercial fishing from May 1 to May 15 for chinook salmon only, with an all-species season from May 16 to May 31 and from July 1 to September 30. The recreational season is open now and will close November 15. Harvest guidelines permit a commercial catch of 300,000 chinook north of Point Arena and 265,000 chinook south of that point. Recreational guidelines permit catches of 15,000 and 115,000 north and south of Point Arena respectively, with a two fish daily bag limit. The seasons for either user group in either area will be closed for the year by the Director, Northwest Region, NMFS (Regional Director), if that particular guideline is reached, before the scheduled end of the 1981 season. Unused portions of the harvest are to be transferred to the other user group in those areas, but not between areas.

For Oregon, the Council adopted management measures for the commercial fishery south of Cape Falcon, which provide for an all-species-except-coho season from May 1 to May 31, and an all-species season from July 1 to September 8. The total troll catch of coho salmon south of Cape Falcon (including California) cannot exceed 548,000 fish. Procedures for inseason control, described later, provide that the

fishery will close when 548,000 coho are taken. A chinook-only season south of Cape Falcon opens on September 8 and closes on October 31. If it is necessary to close the all-species fishery before September 8, a special chinook fishery using only whole bait or 5-inch or longer salmon plugs would begin immediately from Cape Falcon to Cape Sebastian and would end on September 8. The recreational season is scheduled for May 15 to September 20 for the Oregon coast, and a chinook-only recreational fishery is scheduled south of Cape Blanco from September 21 to October 31. The bag limit is two fish per day. Inseason control of coho harvests also may close the recreational fishery when 224,000 coho are taken south of Cape Falcon (including California).

For the ocean fisheries off Oregon north of Cape Falcon and off Washington, the Council adopted management measures that allow commercial trolling for all salmon except coho from May 1 to May 31, and for all species of salmon from July 15 to September 1. The recreational season is from May 23 to September 7 with a daily bag limit of two fish per day, except that three fish per day, only two of which may be chinook and/or coho, may be taken north of the mouth of the Queets River. Minimum size limit for coho for the recreational fishery is increased from 16 to 20 inches off Washington only. The coho harvest is limited to 372,000 troll-caught coho and a 248,000 recreational coho catch unless inseason information on the stocks and harvests require changing these numbers.

For the four treaty tribes fishing at their usual and accustomed fishing grounds in the ocean, the all-salmon season is from May 1 to October 31. The coho minimum size limit is 16 inches and the chinook minimum size limit is 28 inches except for persons exercising rights under the Treaty with the Makah for whom the chinook minimum size limit is 24 inches.

Inseason Management Procedures

A procedure for inseason management review, applicable only to coho off Washington and Oregon, was included in the 1980 regulations and, with some modification, is included also for the 1981 season. The inseason review is adopted again in recognition that pre-season estimates of coho abundance north of Cape Falcon, Oregon, (i.e., the Washington Production Projection area or WPP) are less accurate than inseason estimates made after catch and catch-per-effort data are available. Projections of total ocean harvest for coho in the WPP area and the Oregon Production Index (OPI) area (i.e., south from

Leadbetter Point, Washington) early in the season are subject to a variety of factors outside the Council's control (e.g., availability of albacore tuna as substitute targets for commercial trollers, weather conditions, salmon prices, and vessel operating costs). The inseason procedure provides for monitoring the fishery and updating the validity of estimates and projections for coho as the season progresses and more data are available. Current data may (1) verify that original stock estimates were accurate and that the original seasons should not be changed; (2) indicate that original stock abundance was overestimated and that the fishery should be closed immediately or earlier than originally planned; or (3) indicate that original stock abundance was underestimated and that the originally planned season should be extended or that the fishery should be reopened if prematurely closed by the Regional Director, as described below. After the opening of the all-species season, 21 days elapse before reliable catch and effort information is available for preliminary assessments. The preliminary assessments will be published in the Federal Register. After an additional 7 days of data are accumulated, plus 6 more days of agency analysis, final assessments are completed and recommendations are proposed by the State agencies. Agency reports are available on day 36. Two days are required for the Team to review the reports and prepare its recommendations (a process that was omitted in 1980), bringing the total elapsed time to 38 days for 1981. This is the absolute minimum time for NMFS and Team action. The Council's Scientific and Statistical Committee and its Salmon Advisory Subpanel meets with the Council on the 39th day. The Regional Director of NMFS makes his decision on the 40th day. Allowing two days for drafting decision documents, the decision will be filed with the Federal Register and becomes effective on the 43rd day. Current internal DOC review and E.O. 12291 requirements of a 10 day review by the Office of Management and Budget could extend this date even further. An exemption, if granted, could allow the 43 day response time to be more realistic.

Because the inseason management procedures would require a minimum of 43 days for implementation, it is possible that allowable harvest guidelines may be reached before that time. For this reason, separate WPP or OPI harvest guidelines are established for both the ocean troll and recreational fisheries, based on 1971-75 harvest

ratios. If projections based on catch data indicate that a WPP or OPI harvest guideline will be reached by either the troll or recreational fishery before the 43rd day of the all-species troll season, then the Regional Director will publish a notice in the Federal Register as soon as possible before the projected attainment of the harvest guideline and will close the ocean troll and/or recreational fisheries in the affected areas on the date the harvest guideline is predicted to be attained. If the WPP guideline is reached, the area closed will be north of Cape Falcon; if the OPI guideline is reached, the area closed will be south of Cape Falcon to the Oregon-California border. For each area, the Regional Director will specify whether the troll or recreational fishery, or both, would be closed on that date.

The inseason management process will still continue and, subsequent to a closure, the Regional Director may determine that that fishing could be reopened if current stock abundance were higher than pre-season predictions.

Off California, inseason management provisions consist only of provisions to close the fisheries if chinook harvest guidelines are reached before the end of the season. No provision is included for inseason evaluation of previously established harvest guidelines with the possibility of increasing the allowable catch. Data and procedures are not available for evaluating the abundance of the two or three year-classes of chinook salmon that are involved in the fishery.

Experimental Fishery in 1981

In the 1981 amendment, the Council made provision for an experimental fishery, proposed by the Washington Department of Fisheries (WDF), during calendar year 1981. The dimensions of that experimental fishery are as follows:

(a) *Area:* between Leadbetter Point, Washington (46°38'10" N. lat.) and Cape Falcon, Oregon (45°46'00" N. lat.), shoreward of a line 12 miles from the baseline from which the territorial sea is measured;

(b) *Season:* commences on September 20 and terminates on October 3;

(c) *Participants:* No more than 10 vessels (to be selected by WDF) each of which shall carry on board a letter of authorization from WDF and an observer placed by WDF.

The Assistant Administrator has determined that it is best to treat the Council's approval of this experimental fishery as a recommendation under Section 661.16 of these emergency regulations. That section provides criteria and procedures for the Regional

Director to use in allowing an experimental fishery. It also contains requirements relating to vessels which participate in the experimental fishery.

Changes in Regulations From 1980

Certain regulations published here implement the 1981 amendment. That is, §§ 661.10, 661.11 and 661.13 implement the 1981 management measures (areas, seasons, bag limits) for the commercial, recreational and treaty-Indian salmon fisheries. Section 661.12 implements the 1981 amendment's provisions regarding inseason management (including harvest guidelines). Section 661.16 implements the 1981 amendment's provision on experimental fisheries; this section also contains guidelines and procedures for the Regional Director to follow in permitting an experimental fishery and provisions regarding the vessels participating in such a fishery.

A new § 661.17, on scientific research activities, implements the Magnuson Act policy on this subject. It has been added with the aim of reducing enforcement activities against scientific research vessels which engage in scientific research activities on salmon.

Certain definitions in § 661.5 have been modified from the 1980 regulations. The definitions of commercial and recreational fishing have been changed in order to maximize the enforceability of this Part. The definitions of the OPI and WWP Areas have been modified to incorporate the original intent of utilizing these terms for inseason management.

Some sections (certain definitions in § 661.5 and certain prohibitions in § 661.7) from the 1980 regulations have been rewritten to track the language of the Magnuson Act. Various other sections have been reworded for purposes of clarity or have been consolidated, without substantive change from the 1980 regulations.

Supporting Documents and Data Sources

The salmon FMP and the 1981 amendment incorporate by reference a number of documents and data sources utilized in deriving salmon fishery management measures. These documents and data sources or copies thereof will be made available to interested parties at reasonable times and places, and at a reasonable cost (if personal copies are desired), upon request to: H. A. Larkins, Regional Director, NMFS, 1700 Westlake Avenue, North, Seattle, Washington, 98109 (206) 442-7575.

Classification

The Assistant Administrator has determined that this amendment to the

FMP is necessary and appropriate for conservation and management of the salmon fisheries resources off the coasts of California, Oregon and Washington, and that it is consistent with the Magnuson Act, including the national standards, and other applicable law, including treaty obligations.

The amendment has been initially approved and comments thereon are requested for a 45 day period. Recognizing the critical need for specific regulations for the 1981 ocean salmon fisheries, the Assistant Administrator has determined that an emergency exists and that these regulations are issued under Section 305(e) of the Magnuson Act. He has determined that continuance of the 1980 regulations would not provide the safeguards necessary for the resource, and it is necessary to promulgate these emergency regulations immediately.

The Assistant Administrator also finds that, because of the emergency situation, the emergency regulations must be promulgated prior to publication of notice of proposed rulemaking.

The Assistant Administrator finds for good cause that the reasons justifying promulgating emergency regulations under Section 305(e) of the Magnuson Act also make it impracticable and contrary to the public interest to provide notice and opportunity for comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of Section 553 (b) and (d) of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*

The final supplement to the environmental impact statement (SEIS) for this action, which supplements the original environmental impact statement and previous supplements prepared for the FMP, is on file with the Environmental Protection Agency. A notice of availability of this SEIS was published on May 1, 1981 (46 FR 24674), and the 30-day cooling-off period required by the National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*, and regulations promulgated by the Council on Environmental Quality, 40 CFR Part 1500 *et seq.*, has run.

The NOAA Acting Administrator has determined that the FMP does not constitute a major rule under E.O. 12291 requiring a regulatory impact analysis. However, a regulatory impact review/initial flexibility analysis has been prepared. This review focuses on the issues and problems in the fishery and contains an analysis of the expected impacts of the adopted management measures and alternative management

options. Some issues could only be partially analyzed because of data limitations. The review supports the determination that the proposed regulations is not likely to: result in an annual effect on the economy of \$100 million or more; result in a major increase in costs or prices for consumers, the salmon industry, government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The regulatory impact review also demonstrates that the regulations to implement the 1981 amendment to the plan comply with the requirements of Section 2 of E.O. 12291:

(a) The management measures specified in the 1981 amendment are based upon adequate information concerning the need for the consequences of regulation of the salmon fisheries;

(b) The potential benefits to society from regulation of the salmon fisheries outweigh the potential costs to society;

(c) The regulatory objectives chosen maximize the net benefits to society; and

(d) Alternative approaches to regulatory objectives which involved the least net cost to society were chosen.

The NOAA Acting Administrator has determined that the resource emergency which justifies the promulgation of emergency regulations under Section 305(e) of the Magnuson Act also constitutes an emergency situation under Section 8(a)(1) of E.O. 12291. Because it is imperative to implement the 1981 amendment immediately, it is impracticable to comply with Section 3(c)(3), which requires that NOAA transmit to the Director of the Office of Management and Budget (OMB) a copy of every final non-major rule, at least 10 days prior to publication. However, a copy of these emergency regulations and the regulatory impact review has been transmitted to the Director of OMB.

The NOAA Acting Administrator has determined that the rules implementing the 1981 amendment will have a significant economic impact on a substantial number of small entities, for purposes of the Regulatory Flexibility Act, 5 U.S.C. 601-12. An initial regulatory flexibility analysis (IRFA) has been prepared in conjunction with the regulatory impact review. A summary of the IRFA will be included in the preamble to the proposed regulations when those proposed rules

are published in the Federal Register, as required by 5 U.S.C. 603(a); the summary is not included here because the requirements of 5 U.S.C. 603-604 do not apply to rules (such as these emergency regulations) which are exempted, for good cause from the requirements of 5 U.S.C. 553 regarding publication of a general notice of proposed rulemaking.

Neither the emergency regulations nor the FMP, as amended, purport to "conduct or sponsor the collection of information," which activities would be subject to the Paperwork Reduction Act requirements of 44 U.S.C. 3507.

Dated: June 5, 1981.

Robert K. Crowell,

Deputy Executive Director, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 661 is revised to read as follows:

1. The authority citation for Part 661 reads as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Part 661, including the title, is revised to read as follows:

PART 661—OCEAN SALMON FISHERIES OFF THE COASTS OF CALIFORNIA, OREGON, AND WASHINGTON

- Sec.
- 661.1 Purpose.
- 661.2 Relation to U.S.-Canada Sockeye and Pink Salmon Convention.
- 661.3 Relation to State laws.
- 661.4 Effective dates.
- 661.5 Definitions.
- 661.6 Salmon management sub-areas.
- 661.7 General restrictions.
- 661.8 Facilitation of enforcement.
- 661.9 Penalties.
- 661.10 Commercial fishing.
- 661.11 Recreational fishing.
- 661.12 In-Season adjustments.
- 661.13 Treaty Indian fishing.
- 661.14 Emergency regulations.
- 661.15 Catch reports.
- 661.16 Experimental fisheries.
- 661.17 Scientific research.

Authority: 16 U.S.C. 1801 *et seq.*

§ 661.1 Purpose.

The purpose of this Part 661 is to provide for the management of the salmon fisheries off the coasts of Washington, Oregon and California in the Fishery Conservation Zone (the FCZ, also known as the 3-to-200 mile zone) over which the United States exercises exclusive fishery management authority (i.e., the Pacific Fishery Management Council Fishery Management Area). This Part 661 implements the Pacific Council's Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California, pursuant to authority conferred by the Magnuson Fishery Conservation and Management Act.

§ 661.2 Relation to U.S.-Canada sockeye and salmon convention.

This Part 661 does not apply to fishing for pink and sockeye salmon conducted under the Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fishery of the Fraser River System as amended by the Pink Salmon Protocol, in U.S. Convention Waters between 48° North latitude and the provisional international boundary between the United States and Canada.

§ 661.3 Relation to State laws.

This Part 661 recognizes that any state law which pertains to vessels registered under the laws of that state while in the Fishery Management Area, and which is consistent with the Salmon Management Plan, including any state landing law, shall continue to have force and effect with respect to fishing activities addressed herein.

§ 661.4 Effective dates.

These regulations shall become effective as Emergency Regulations upon the date of filing with the Federal Register, and shall remain in effect for 45 days unless extended or replaced by

Final Regulations. Any Final Regulations duly promulgated shall be effective until superseded or otherwise modified, except that those portions of §§ 661.10-661.12 relating to Sub-Area C (the FCZ adjacent to California) shall remain in effect no longer than the 1981 fishing season, after which time those portions of §§ 661.10-661.12 of the 1980 ocean salmon fishing regulations (45 FR 50764) relating to the FCZ adjacent to California shall again become effective for that area unless superseded or otherwise modified.

§ 661.5 Definitions.

(a) *Act*—means the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801-1882.

(b) *Authorized Officer*—means:

(1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified-enforcement agent or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary and the Secretary of Transportation to enforce the provisions of the Act; and

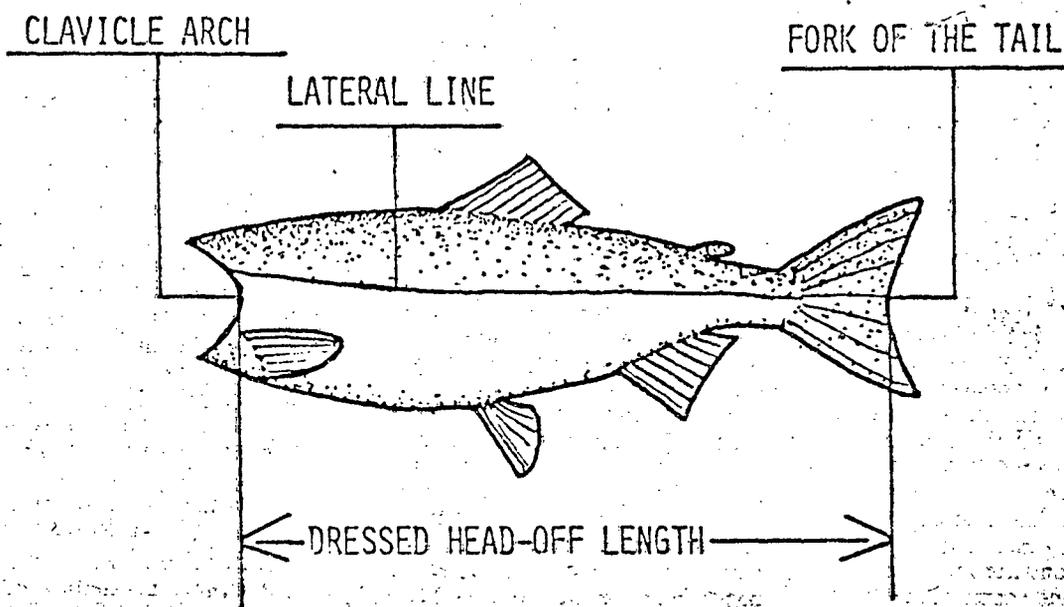
(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this subsection.

(c) *Commercial fishing*—means fishing with troll fishing gear as defined in paragraph (v) of this section, or fishing for the purpose of sale or barter of the catch.

(d) *Council*—means the Pacific Management Council.

(e) *Dressed, Head-off Length of Salmon*—means the shortest distance between the mid-point of the clavicle arch (see illustration) and the fork of the tail, measured along the lateral line while the fish is lying on its side, without resort of any force or mutilation of the fish other than removal of the head, gills, and entrails.

(f) salmon and gutted vertebrae for one will re (g) A (1) T of fish (2) T harvest (3) A reason catching (4) A of, or in describ (g)(3) c (h) F ship or equip which (i) F fishing fishing capabil the cat frozen (j) F the Fish the coa Californ offshore the Pro between bounde Bounda



(f) *Dressed, Head-off Salmon*—means salmon that have been beheaded, gilled and gutted, without further separation of vertebrae, and are either being prepared for on-board freezing, or are frozen and will remain frozen until landed.

(g) *Fishing*—means:

(1) The catching, taking or harvesting of fish;

(2) The attempted catching, taking or harvesting of fish; or

(3) Any other activity which can reasonably be expected to result in the catching, taking or harvesting of fish; or

(4) Any operations at sea in support of, or in preparation for, any activity described in paragraph (g)(1) through (g)(3) of this section.

(h) *Fishing Vessel*—means any boat, ship or, other craft which is used for, equipped to be used for, or of a type which is normally used for fishing.

(i) *Freezer Trolling Vessel*—means a fishing vessel, equipped with troll fishing gear, which has a present capability for (1) on-board freezing of the catch, and (2) storage of the fish in a frozen condition until they are landed.

(j) *Fishery Management Area*—means the Fishery Conservation Zone (FCZ) off the coast of Washington, Oregon and California between 3 and 200 miles offshore, and bounded on the north by the Provisional International Boundary between the U.S. and Canada, and bounded on the south by International Boundary between the U.S. and Mexico.

(k) *Land or Landing*—means bringing fish to shore or off-loading fish from a fishing vessel.

(l) *ODF&W*—means the Oregon Department of Fish and Wildlife.

(m) *Oregon Production Index (OPT) Area*—means marine waters of the territorial sea and the FCZ south of a line extended due west from Leadbetter Point, Washington, at 46°38'10" N. latitude.

(n) *Recreational Fishing*—means fishing with recreational fishing gear as defined in paragraph (o) of this section and not for the purpose of sale or barter.

(o) *Recreation fishing gear*—means conventional angling tackle consisting of a rod, reel, line, and hooks with bait or lures attached.

(p) *Regional Director*—means the Regional Director of the Northwest Region of the National Marine Fisheries Service, or his designee.

(q) *Salmon*—means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Chinook (King) salmon—*Oncorhynchus tshawytscha*.

Coho (Silver) salmon—*Oncorhynchus kisutch*.

Pink (Humpback) salmon—*Oncorhynchus gorbuscha*.

Chum (Dog) salmon—*Oncorhynchus keta*.

Sockeye (Red) salmon—*Oncorhynchus nerka*.

(r) *Secretary*—means the Secretary of Commerce or a designee.

(s) *Single, barbless hook*—means a hook with a single shank and point, with no secondary point or barb curving or projecting in any other direction. Hooks manufactured with barbs can be made "barbless" by forcing the point of the barb flat against the main part of the point.

(t) *Sub-area*—means one of the three salmon management subdivisions of the Fishery Management Area, as specifically described in § 661.6(a).

(u) *Total length of salmon*—means the shortest distance between the tip of the snout or jaw (whichever extends furthest while the mouth is closed) and the tip of the longest lobe of the tail, without resort to any force or mutilation of the salmon other than fanning or swinging the tail.

(v) *Troll fishing gear*—means fishing gear that consists of one or more lines that drag hooks with bait or lures behind a moving fishing vessel, and which lines originate from a spool or receptacle which is affixed to the vessel during the fishing operation, which spool or receptacle is not disengaged from the vessel at any time during the fishing operation.

(w) *Washington Production Projection (WPP) Area*—means marine waters of the territorial sea and the FCZ, between the U.S.-Canada boundary [as defined § 661.6(a)(1) (i) and (ii)] and a line

extended due west from Cape Falcon, Oregon, at 45°46'00" N. latitude.

(x) *WDF*—means the Washington State Department of Fisheries.

§ 661.6 Salmon management sub-areas.

(a) The Fishery Management Area shall be divided into the following Sub-Areas for regulation of commercial and recreational salmon fishing, with the following designations and boundaries:

(1) Sub-Area A:

(i) Northeastern boundary—that part of a line connecting the light on Tatoosh Island, Washington, with the light on Bonilla Point on Vancouver Island, British Columbia, southerly of the International Boundary between the U.S. and Canada (at 48°29'37" N. lat., 124°43'33" W. long.), and northerly of the point where that line intersects with the boundary of the U.S. territorial sea.

(ii) Northern and northwestern boundary is a line connecting the following coordinates:

48°29'37.19" N. lat., 124°43'33.19" W. long.;

48°30'11" N. lat., 124°47'13" W. long.;

48°30'22" N. lat., 124°50'21" W. long.;

48°30'14" N. lat., 124°52'52" W. long.;

48°29'57" N. lat., 124°59'14" W. long.;

48°29'44" N. lat., 125°00'06" W. long.;

48°28'09" N. lat., 125°05'47" W. long.;

48°27'10" N. lat., 125°08'25" W. long.;

48°26'47" N. lat., 125°09'12" W. long.;

48°20'16" N. lat., 125°22'48" W. long.;

48°18'22" N. lat., 125°29'58" W. long.;

48°11'05" N. lat., 125°53'48" W. long.;

47°49'15" N. lat., 126°40'57" W. long.;

47°36'47" N. lat., 127°11'58" W. long.;

47°22'00" N. lat., 127°41'23" W. long.;

46°42'05" N. lat., 128°51'56" W. long.;

46°31'47" N. lat., 129°07'39" W. long.;

(iii) Southern boundary: a line extended due West from Cape Falcon, Oregon, at 45°46'00" N. latitude.

(2) Sub-Area B:

(i) Northern Boundary: A line extended due west from Cape Falcon, Oregon, at 45°46'00" N. latitude.

(ii) Southern Boundary: A line extended due west from the Oregon-California border at 42°00'00" N. latitude.

(3) Sub-Area C:

(i) Northern Boundary: A line extended due west from the Oregon-California border at 42°00'00" N. latitude.

(ii) Southern Boundary: The United States-Mexico International Boundary, which is a line connecting the following coordinates:

32°35'22" N. lat. 117°27'49" W. long.;

32°37'37" N. lat. 117°49'31" W. long.;

¹ The line joining these coordinates is the provisional international boundary of the U.S. FCZ as shown on NOAA/NOS Charts #12460 and #12462.

31°07'58" N. lat. 118°36'18" W. long.;

(b) Any person fishing subject to this Part 661 shall be bound by the above described international boundaries, notwithstanding any dispute or negotiation between the United States and any neighboring country regarding their respective jurisdictions, until such time as new boundaries are published by the United States.

(c) The inner boundary of the Fishery Management Area is a line coterminous with the seaward boundaries of the States of Washington, Oregon, and California (the "3-mile limit").

(d) The outer boundary of the Fishery Management Area is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured, or is a provisional or permanent international boundary between the United States and Canada or Mexico.

§ 661.7 General restrictions.

The following restrictions apply to all salmon fishing in Sub-Areas A through C, except that the restrictions in this Part 661 shall not apply to fishing for pink and sockeye salmon regulated under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fishery of the Fraser River System, as amended by the Pink Salmon Protocol, north of 48° north latitude.

(a) No person shall use nets to fish for salmon in the Fishery Management Area, except that a hand-held net may be used to bring hooked salmon on board a vessel.

(b) No person shall fish for, or take and retain any species of salmon:

(1) During closed seasons or in closed areas specified in this Part;

(2) Once any catch limit specified in this Part is attained;

(3) By means of gear or methods other than recreational fishing gear or troll fishing gear as defined in this Part 661; or

(4) In violation of any Field order issued under § 661.12.

(c) No person shall take and retain any species of salmon which is less than the minimum length specified in this Part [See §§ 661.7 (d), (e), (f), and (h); § 661.10(c); and § 661.11(c), regarding minimum lengths for commercially and recreationally caught fish, and exceptions for "Dressed, Head-off" salmon aboard a "Freezer Trolling vessel"].

(d) No person shall possess on board a fishing vessel in the Fishery Management Area any salmon for which a minimum total length is set by these

regulations, in such condition that its total length cannot be determined; except that "Dressed, Head-off" salmon [as defined in § 661.5(f)] may be possessed aboard a "Freezer Trolling Vessel" [as defined in § 661.5(i)].
Exception: see Paragraph (h) of this section.

(e) No person while fishing shall possess on a fishing vessel during an open season in any Sub-Area, any salmon that is less than the minimum total length for that species in that Sub-area; except that "Dressed, Head-off" Salmon [as defined in § 661.5(f)] aboard a "Freezer Trolling Vessel" [as defined in § 661.5(i)] shall not be less than the "Dressed, Head-off length" [as defined in § 661.5(e)] for that species in that Sub-Area. *Exception:* see paragraph (h) of this section.

(f) No person, while on board a fishing vessel, shall mutilate or otherwise disfigure any salmon in a manner that extends its length to conform to any minimum "Total Length" or "Dressed, Head-off length" requirement specified in this Part. Salmon may be gilled and gutted, if in doing so there is no separation of vertebrae. In addition, on board a "Freezer Trolling Vessel" [as defined in § 661.5(i)] salmon may be prepared [as defined in § 661.5(f)] for on-board freezing, if in doing so there is no further separation of vertebrae.
Exception: see Paragraph (h) of this section.

(g) No person shall fail to return to the water immediately and with the least possible injury any salmon the retention of which is prohibited by this Part.

(h) No person shall remove the head of any salmon caught in the Fishery Management Area, nor possess a salmon with the head removed, if that salmon has been marked by removal of the adipose fin, which missing fin indicates that a Coded Wire Tag has been implanted in the head of the fish.

(i) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any species of salmon or salmon part which was taken or retained in violation of the Act, this Part 661, or any regulation issued under the Act.

§ 661.8 Facilitation of enforcement.

(a) No person shall:

(1) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this Part, or any other regulation issued under the Act;

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(2) Verbally assault, resist, oppose, intimidate or interfere with any Authorized Officer in the conduct of any search or inspection described in Paragraph (a)(1) of this section;

(3) Resist a lawful arrest for any act prohibited by this Part; or

(4) Interfere with, delay, or prevent, by any means, the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part.

(b) Each person aboard a fishing vessel shall comply immediately with instructions given by Authorized Officers to facilitate safe boarding and inspection of the vessel for purposes of enforcing the Act and this Part.

§ 661.9 Penalties.

Any person or fishing vessel found to be in violation of this Part 661 will be subject to the civil and criminal penalty provisions and forfeiture provisions prescribed in the Act.

§ 661.10 Commercial fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to commercial salmon fishing as opened by this Part 661 or superseding regulations. All open fishing periods shall commence at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) Sub-Area A (U.S.-Canada Border to Cape Falcon, Oregon):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 15, and terminate on September 1.

(2) Sub-Area B (Cape Falcon to the Oregon-California border):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 31.

(ii) The season for all salmon species, including coho, shall begin on July 1, and terminate on September 8.

(iii) The season for all salmon species, except coho, shall begin on September 9, and terminate on October 31.

(iv) If the July 1—September 8 season is terminated prior to September 8 pursuant to § 661.12, then a season for all salmon species, except coho, shall begin on the date of termination and continue until September 8 in that part of Sub-Area B between Cape Falcon and Cape Sebastian (at 42°19'26" N. lat.). During such season, no person shall use any fishing gear other than hooks with whole natural bait, or salmon plugs at least five (5) inches in length.

(3) Sub-Area C (Oregon-California border to the U.S.-Mexico border):

(i) The season for all salmon species, except coho, shall begin on May 1, and terminate on May 15.

(ii) The season for all salmon species, including coho, shall begin on May 16, and terminate on May 31.

(iii) The season for all salmon species including coho, shall begin on July 1, and terminate on September 30.

(b) *Gear restrictions.* (1) No person shall engage in commercial salmon fishing using other than troll fishing gear [as defined in § 661.5(v)] in the Fishery Management Area; however in Subarea C, troll fishing gear need to be affixed to the fishing vessel as specified in § 661.5(v).

(2) No person shall engage in commercial salmon fishing in the Fishery Management Area using other than single, barbless hooks [as defined in § 661.5(s)] prior to July 15 in Subarea A, prior to July 1 in Subarea B, or prior to May 16 in Subarea C, except that bait hooks with natural bait attached as the primary attraction and hooks on artificial salmon plugs may be barbed. Spoons, wobblers, dodgers, flies and flexible plastic lures shall not be considered artificial salmon plugs under this sub-paragraph, and therefore must be equipped with barbless hooks in all Subareas during the time periods described in this Paragraph § 661.10(b)(2).

(c) *Length Restrictions.* Minimum total lengths of salmon and minimum dressed, head-off lengths of salmon are as follows:

	Minimum total length ¹	Minimum dressed head-off length ¹
Subarea A:		
Chinook.....	28	21½
Coho.....	16	12
Subarea B:		
Chinook.....	26	19½
Coho.....	16	12
Subarea C:		
Chinook.....	26	19½
Coho.....	22	16½
All subareas:		
Species other than Chinook and Coho.....	None	None

¹In inches.

(d) *Steelhead.* No person engaged in commercial salmon fishing shall take and retain, or possess, any steelhead (*Salmo gairdneri*) within the Fishery Management Area.

(e) *Restriction on use of commercial troll fishing gear for recreational fishing.* No person while on a fishing vessel with troll fishing gear on board shall use any part of that troll fishing gear to engage in recreational fishing for salmon.

§ 661.11 Recreational fishing.

(a) *Open seasons and areas.* The Fishery Management Area is closed to recreational salmon fishing except as opened by this Part 661 or by superseding regulations. All seasons shall begin at 0001 hours and terminate at 2400 hours local time on the dates specified herein.

(1) In Subarea A (U.S.-Canada border to Cape Falcon, Oregon), the season for all salmon species shall begin on May 23 and terminate on September 7.

(2) In Subarea B (Cape Falcon to Oregon-California border), the season for all salmon species shall begin on May 15 and terminate on September 20.

(3) In that part of Subarea B between the Oregon-California border and Cape Blanco (42°15'14" N. lat.), a season for all species of salmon, except coho, shall begin on September 21 and terminate on October 31.

(4) In Subarea C (Oregon-California border to the U.S.-Mexico border) the season for all salmon species shall begin on the Saturday closest to February 15 and terminate on the Sunday closest to November 15. (For calendar year 1981, the opening date is February 14 and the closing date is November 15.)

(b) *Gear restrictions.*

(1) No person shall engage in recreational salmon fishing in the Fishery Management Area using other than recreational fishing gear [as defined in § 661.5(o)], to which may be attached not more than one artificial lure or natural bait, with no more than four single or multiple hooks.

(2) No person shall use more than one rod and line for recreational salmon fishing in Subareas A and B; there shall be no limit to the number of rods and/or lines used for recreational salmon fishing in Subarea C.

(3) No person engaged in recreational fishing for salmon in Subarea C may use weights of more than four (4) pounds attached directly to the line.

(4) Recreational fishing gear (as defined in § 661.5(o)) shall be held by hand by the angler while the angler is playing a hooked fish and reducing it to possession.

(c) *Length restrictions.*

Minimum total lengths of salmon are as follows:

	Minimum total length (in inches)
Subarea A:	
Chinook.....	24
Coho, FCZ off Washington.....	20
Coho, FCZ off Oregon.....	16

	Minimum total length (in inches)
Subarea B:	
Chinook.....	22
Coho.....	16
Subarea C:	
Chinook and Coho.....	122
All subareas:	
Species other than Chinook and Coho.....	None.

¹ Except that one chinook or coho salmon per day may be less than 22 inches but not less than 20 inches.

(d) *Catch limits.* No person shall fish for, or take and retain, or possess more than two salmon per day while recreationally fishing in the Fishery Management Area; *except* that three salmon, only two of which may be chinook or coho, may be taken and retained, or possessed per day while recreationally fishing in the area between the mouth of the Queets River (47°31'42" N. lat.) and the U.S.-Canada border (WDF Salmon Punch-card Areas 3 and 4).

§ 661.12 In-season adjustments.

(a) *Automatic fishing season closures based on harvest guidelines.* Harvest guidelines for the salmon fisheries subject to this Part are:

(1) The WPP Area (U.S.-Canada border to Cape Falcon, Oregon):

The total harvest quota for coho salmon has been established at 620,000, of which 40% or 248,000 coho are allocated to the recreational fishery and 60% or 372,000 to the commercial fishery.

(2) The OPI south of Cape Falcon, including California: The total harvest quota for coho salmon has been established at 772,000 coho salmon, of which 29% or 224,000 salmon are allocated to the recreational fishery, and 71% or 548,000 coho to the commercial fishery; *provided that*, the 548,000 coho allocated to the commercial fishery shall be reduced by the number of coho projected to be taken incidentally during the open season specified in § 661.10(a)(2)(iv).

(3) The California Area (marine waters of the territorial sea and the FCZ between the Oregon-California border and the U.S.-Mexico Border):

(i) For that part of the California Area north of Point Arena (38°57'20" N. lat.) the total harvest quota for chinook salmon has been established at 315,000 salmon, with 300,000 allocated to the commercial fishery and 15,000 to the recreational fishery.

(ii) For that part of the California Area south of Point Arena, the total harvest quota for chinook salmon has been established at 380,000 salmon with 267,000 allocated to the commercial

fishery and 115,000 to the recreational fishery.

(4) When a harvest guideline for the commercial, the recreational fishery, or both, in any Area or specified portion of an Area is projected by the Regional Director [for the area described in Paragraph (a)(3) of this section, the Southwest Regional Director of the National Marine Fisheries Service shall make the projections] to be reached prior to the end of a season scheduled in this Part 661, the Regional Director shall, by publication of a field order in the Federal Register, close the commercial or recreational fishery, or both, as of the date the harvest guideline will be reached in that Area or specified portion of an Area.

(5) If it appears that either the commercial or recreational fishery will not catch all of its quota of chinook salmon in either the area north of Point Arena or the area south of Point Arena in the California Area by the end of the scheduled season, the surplus that will not be harvested shall be re-allocated to the other fishery in that portion of the California Area by field order of the Regional Director upon recommendation of the Southwest Regional Director.

(6) *Availability of Data:* The Regional Director shall compile in aggregate form all data and information relevant to the projections and field orders specified in Paragraph (a) of this section and shall make them available for public review during normal office hours at the Northwest Regional Office, 1700 Westlake Avenue North, Seattle, Washington 98109, or subsequent address of that office. Data and information pertaining to the California Area shall also be available for public review at the Southwest Regional Office of the National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731.

(7) *Public Comment:* Interested persons may submit comments, relevant to the actions taken as described in Paragraph (a) of this section, to the Regional Director from the date of filing any required notices with the Federal Register through the 15th day following any closure of fishing.

(b) *Modifications of regulations based on in-season developments.*

(1) In addition to automatic fishing season closures based on harvest guidelines, the Regional Director may also modify the open seasons and catch limits in § 661.10 and § 661.11 in Sub-Areas A and B by issuing a field order, in accordance with the provisions of this section, if the Regional Director determines that:

(i) Actual conditions of abundance and distribution of coho salmon, and of

fishing effort and catches, differ from conditions anticipated prior to the opening of the fishing season; or

(ii) In-season modifications are reasonably necessary to provide adequate escapement of coho salmon from the ocean fisheries for spawning, to meet treaty Indian allocation requirements, or to maintain the historical harvest ratio between commercial and recreational salmon fisheries as set forth in Paragraph (b)(4) of this section.

(2) *Procedures for Preliminary Determinations:* Within 24 days following the opening of an All-Salmon Species season in Sub-Areas A or B, or the working day closest following, the Regional Director shall, based on catch data, make a preliminary projection of total ocean harvests that will occur by the end of the commercial and recreational salmon fishing seasons in the WPP and OPI Areas. The preliminary projections and determinations shall be published in the Federal Register and disseminated to public news media as soon as practicable after they are made.

(3) *Procedures for Final Determinations and Field Orders:* Within 40 days following the opening of an All-Salmon Species season in Sub-Areas A or B (hereinafter referred to as Day-40), or the working day closest following, the Regional Director, following consultation with the Chairman of the Council, the Director of WDF, and the Director of ODF&W, and taking into consideration all information received as provided for in this paragraph, shall estimate coho stock abundances in the WPP and OPI Areas and make a final projection of fishing effort and total ocean harvests that will occur by the end of the scheduled fishing season by the commercial and recreational fisheries. The final determinations by the Regional Director and any field order issued under Paragraph (b) of this section shall be published in the Federal Register and disseminated to public news media as soon as practicable after they are made, together with the reasons therefore. The following factors shall be considered in the final projection of coho abundance, ocean fishing effort and coho harvests in the WPP and OPI Areas:

(i) The amount, distribution, and trends of fishing effort and coho salmon catches of the commercial and recreational fisheries in the WPP and OPI areas as of Day-40, compared to similar data and time periods in prior years; and

(ii) The current and historical coho salmon harvest ratios between the

commercial fishery and the recreational fishery as set forth in Paragraph (b)(4) of this section; and

(iii) Updated estimates of coho salmon abundance and distribution in the WPP and OPI Areas compared to the pre-season WPP and OPI predictions; and

(iv) Any available data from marked-fish recoveries, including analyses of recoveries of coho salmon with implanted coded-wire tags; and

(v) Any other available scientific information relevant to the abundance and distribution of coho salmon stocks, total fishing effort and catches of coho salmon in the WPP or the OPI Areas.

(4) Any modifications of fishing regulations made by the Regional Director under paragraph (b) of this section, shall, insofar as possible, maintain the historical coho salmon harvest ratios between the commercial and recreational fisheries as follows:

(i) For the WPP Area, a 60:40 coho harvest ratio between the commercial and recreational fisheries, respectively.

(ii) For the OPI Area south of Cape Falcon, a 71:29 coho harvest ratio between the commercial and recreational fisheries, respectively.

(5) Availability of Data: The Regional Director shall compile in aggregate form all data relevant to the preliminary projections and final determinations under paragraph (b) of this section, and shall make them available for public review during normal office hours at the Northwest Regional Office of the National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109, or subsequent address of that office.

(6) Public Comments: Interested persons may submit comments that are relevant to the projections and determinations in paragraphs (b)(2) and (b)(3) of this section to the Regional Director, for at least 10 days following filing with the Federal Register.

(c) *Effective Dates.* (1) Any field order issued under Paragraphs (a) or (b) of this section shall be disseminated to public news media and shall be effective on the date specified in the field order or on the date the field order is filed with the Federal Register, whichever is later.

(2) Any field order issued under paragraphs (a) or (b) of this section shall remain in effect until the expiration date stated in the order, or until rescinded or superseded; *Provided that* no such field order shall have any effect beyond the end of the calendar year in which

issued, at which time provisions of this Part 661 that were superseded by such field order shall again become effective and subsequently modified or amended.

(d) Nothing contained in this Section shall limit the authority of the Secretary to issue emergency regulations under Section 305(e) of the Act as specified in § 661.14.

§ 661.13 Treaty Indian fishing.

(a) Persons authorized by the Makah Tribe to exercise rights under the Treaty with the Makah may fish for all salmon species in that portion of Sub-Area A north of 48°07'36" North latitude (Sandy Point) and such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court, from 0001 hours on May 1, to 2400 hours on October 31. Minimum size limits shall be 24-inches for chinook salmon and 16-inches for coho salmon. Except as specified by this paragraph (a), such persons are subject to the provisions of this Part 661, the Act, and any other regulation issued under the Act.

(b) Persons authorized by the Quileute and Hoh Tribes to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 48°07'36" North latitude (Sandy Point) and north of 47°31'42" North latitude (mouth of Queets River), and such other areas as may hereafter be authorized for those tribes' fisheries by a federal court, from 0001 hours on May 1, to 2400 hours on October 31. Except as specified in this paragraph (b), such persons are subject to the provisions of this Part 661, the Act, and any other regulations issued under the Act.

(c) Persons authorized by the Quinault Tribe to exercise rights under the Treaty of Olympia, may fish for all salmon species in that portion of Sub-Area A south of 47°40'06" North latitude (Destruction Island) and north of 46°53'03" North latitude (Point Chehalis), and such other areas as may hereafter be authorized for that tribe's treaty fishery by a federal court, from 0001 hours on May 1, to 2400 hours on October 31. Except as specified by this paragraph (c), such persons are subject to the provisions of this Part 661, the Act, and any other regulations issued under the Act.

(d) The Secretary will give due consideration in promulgating emergency regulations under § 661.14 to the treaty fishing rights of Indian tribes with federally adjudicated usual and accustomed fishing grounds in the area affected by such regulations.

§ 661.14 Emergency regulations.

The Secretary may issue emergency regulations under Section 305(e) of the Act, if the Secretary determines that an emergency involving the salmon resource exists. Such emergency

regulations will become effective upon filing with the Federal Register. Information on emergency regulations will be disseminated to affected persons through public news media.

§ 661.15 Catch reports.

This Part 661 recognizes that catch and effort data necessary for implementation of this Fishery Management Plan shall be collected by the States of Washington, Oregon and California under existing State data-collection provisions. No additional catch reports will be required of fishermen or processors as long as the data-collection and reporting systems operated by State agencies continue to provide the Secretary with statistical information adequate for management.

§ 661.16 Experimental fisheries.

(a) The Pacific Council may recommend to the Director of the Northwest Region of the National Marine Fisheries Service that experimental fisheries for research purposes be allowed in the Fishery Management Area, as may be proposed by the Council, the Federal Government, State Governments, and Treaty Indian Tribes having usual and accustomed fishing grounds in the Fishery Management Area.

(b) The Regional Director shall not allow any experimental fishery recommended by the Council unless he determines that the purpose, design, and administration of the experimental fishery are consistent with the goals and objectives of the Council's fishery management plan, the national standards (as set forth in § 301(a) of the Act), and other applicable law.

(c) Each vessel participating in any experimental fishery recommended by the Council and allowed by the Regional Director shall be subject to all provisions of this Part 661, except those portions necessarily relating to the purpose and nature of the experimental fishery. These exceptions shall be specified in a letter issued by the Regional Director to each vessel participating in the experimental fishery and that letter shall be carried aboard each participating vessel.

§ 661.17 Scientific research.

Nothing in this Part 661 is intended to inhibit or prevent any scientific or oceanographic research which is conducted in the fishery management area by a scientific research vessel. The Regional Director shall acknowledge any notification he might receive of any scientific or oceanographic research with respect to salmon being conducted

scientific research vessel, by issuing to the operator or master of that vessel a letter of acknowledgement, containing information on the purpose and scope (locations and schedules) of the activities. The Regional Director shall transmit copies of such letter to the Council, and to State and Federal administrative and enforcement agencies, to ensure that all concerned parties are aware of the research activities.

[FR Doc. 81-17136 Filed 6-5-81; 12:55 pm]

BILLING CODE 3510-22-M

FLL

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



TO L.S. Clark

SECURITY CONFIDENTIAL
Sécurité

FROM FLO/R.B. Fadden

DATE June 11, 1981

REFERENCE
Référence

NUMBER Numéro	FLO-863
ACC	140911
FILE Dossier	OTTAWA
BY Par	MISSION
ATTN:	

SUBJECT Pacific Salmon Negotiations - Update
Sujet

ENCLOSURES
Annexes

DISTRIBUTION

As requested, I attended the Sheppard/Industry advisers consultations held on June 8 and 9. Dr. Sheppard briefed the advisers on the results of his consultations with the States of Washington and Alaska and outlined an interim proposal he wished to place on the table. The advisers agreed to this approach and Sheppard intended to meet Alverson at the Seattle airport on June 10.

2. In general terms, Sheppard is of the view that the U.S. has not moved sufficiently (since the Vancouver negotiating session in April/May) towards our position to permit the formulation of a full agreement on Pacific Salmon. Moreover, the negotiations over the course of the past year have yielded positive results in terms of much increased consultations at the regional level and of actual conservation measures benefitting our stocks. Consequently, to allow for more time to reach an overall agreement, Sheppard is proposing (and the advisers agreed to) an interim "agreement" of 2 years' duration. The main features of the plan are:

On the Taku and Stakine:

- For 1981 - Both countries would develop fishery plans.
 - The Canadian plan would limit Canadian catches to 1979 levels.
 - The USA plan would allow adequate escapements to permit Canadian catches at the 1979 level.

- For 1981 - As concerns the Stakine, no change from 1981.
 - On the Taku, Canadian catches to be reduced 85% to 15% of the 1979 level.

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- 2 -

At Noyes Island:

In 1981 and 1982 - The U.S. catch of sockeye would be 160,000.

For 1981 - No change for Canada.

For 1982 - Canada would take 1.49 m. (3X, Y, Z triangle and 5.1) aggregate pink.

In the South:

For 1981 and 1982 - The Salmon Commission remains in place.

-All other stocks are limited to 1971-74 catch levels.

Other:

-The final agreement would, because of the additional delay allowed for negotiation, be much more specific than had been planned up to now (e.g. Definition of equity, status of the Yukon, etc.)

-No final agreement on Pacific Salmon until the Yukon River question is resolved.

-As wide a tagging programme as possible for the North would be instituted in 1982.

3. Dr. Sheppard indicated that the USA is not willing to discuss the Yukon in the context of the general Pacific Salmon negotiations. The USA suggests negotiations at the level of officials as soon as possible. Note: These should not be led by Sheppard and serious consideration should be given to holding the talks in Ottawa and/or Washington. In such circumstances, Dr. Sheppard should be the Delegation's technical/scientific adviser.

4. I provide below a very candid assessment of the negotiating context: The 1980 fishing season was bad, this year's will likely be horrible. For the first time since I have been involved with these negotiations, the industry advisers are saying openly that we must avoid a "fish war" at all costs. This view is shared by FANDO Pacific Region scientists/technical personnel attached to the negotiations. In other words, given the distribution of the stocks we would lose the war almost before it was begun. Moreover, at the rate Alaska is developing

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enhancement facilities their interception of our stocks will soon be unimportant to Alaska (with a consequent reduction in the pressure on Alaska to make the compromises necessary for us to reach an agreement).

5. While it is clear both sides want an agreement, there is a certain lethargy setting in which will slow down progress. On both sides, obtaining the necessary funding for research is going to be difficult and on the U.S. side, Senate approval is no longer assured, (as it was under the previous Congress). More work will be required in this area.

6. Dr. Sheppard indicated that he would be willing to see through the negotiations as long as he saw prospects for agreement (I was told by State (off the record) that Alverson is of the same view).

7. In my view, consideration should be given not to abandoning the Sheppard/Alverson approach but to supplementing it by immediate consultations between State and External in an attempt to bring additional political pressure to bear on Alaska. For example, you might meet with the State Director of Fisheries Affairs.

May we discuss?


R.B. Fadden

CIRC CHRON DIARY FILE AM

CONFIDENTIAL
(CLASSIFICATION)

DATE	
ACC	RLF
FILE	DOSSIER
25-5-7-2-Salmon-1	
BY HAND	PAR PORTEUR

REQUEST FOR FACSIMILE TRANSMISSION
REQUETE POUR LA TRANSMISSION DE BELINOGRAMME

TO/A: ACTC
FROM/DE:

DATE: June 11, 1981

PLEASE TRANSMIT THE ATTACHED DOCUMENT(S) TO:
VEUILLEZ TRANSMETTRE LE(S) DOCUMENT(S) EN ANNEXE A:

DELIVER BY 1200 JUN81

SEATTLE AND WSHDC
(Indicate the address) (Indiquez la destination)

(Indicate name of addressee) (Indiquez le nom du destinataire)

at/à:
(Facsimile telephone number) (Numéro de téléphone du bélino)

WE ATTACH A DRAFT OF THE "PROGRESS REPORT BY THE NEGOTIATORS ON CONSULTATIONS TOWARD A COMPREHENSIVE AGREEMENT FOR MANAGEMENT AND DEVELOPMENT OF THE PACIFIC SALMON FISHERIES" (JUN 11/81) WHICH WE MAY/MAY SHORTLY ASK YOU TO TRANSMIT TO DR. ALVERSON. DO NOT PASS ON REPORT UNTIL YOU RECEIVE CLEARANCE FROM US TO DO SO. WHEN NECESSARY, DR. ALVERSON CAN BE REACHED AT (206) 285-3480.

R. B. Padden
R. B. Padden

Signature

6-2643
Telephone number of originator
Numéro de téléphone du rédacteur

The Department of External Affairs
Ottawa, Ontario, K1A 0G2

Ministère des Affaires Extérieures
Ottawa, Ontario, K1A 0G2

PROGRESS REPORT BY THE NEGOTIATORS
ON CONSULTATIONS TOWARD A COMPREHENSIVE AGREEMENT
FOR MANAGEMENT AND DEVELOPMENT OF THE PACIFIC SALMON FISHERIES

1. Following the negotiating session held in Vancouver, B.C. from April 27 - May 2, the two negotiators held a series of meetings with officials of the two countries in Juneau, Alaska on May 11-13 and in Vancouver on May 18-20. The purpose of the meetings was to clarify technical issues that had created problems in the April 27 - May 2 session and to explore possible avenues for solution to the outstanding problems in the negotiations. As the result of the technical consultations, the negotiators developed a number of new options for solution of the outstanding issues, which were then discussed internally with advisory groups within each country.

2. On the basis of these separate consultations with advisory groups, the negotiators strongly reaffirm their belief that a long term agreement for cooperative management and development of the Pacific salmon resource is urgently required to ensure adequate conservation and optimum utilization of the stocks and that the fishing communities on both sides are deeply committed to reaching an accord. The negotiators believe that the technical clarifications achieved over the past month have been sufficient to warrant further attempts to reach a comprehensive agreement and therefore recommend that formal negotiations toward a long term agreement be resumed in the autumn of 1981 (following the 1981 fishing season).

3. With respect to a long term agreement, the negotiators reaffirm their agreement on the principles for cooperative manage-

ment and development and on the approaches to implementation of these principles as outlined in the record of the October 1980 negotiating session held in Lynnwood, Washington, including:

- (a) Cooperation in conservation and enhancement to increase and optimize salmon yields in both countries.
- (b) Tailoring of fisheries regulations and development programs (including interception limitation schemes) to achieve the aforementioned objectives and to provide each country with benefits commensurate with salmon production in its own rivers, taking into account the desirability of reducing interceptions and of not unduly disrupting existing fisheries.
- (c) Mechanisms for joint management, enhancement and sharing of catches in all transboundary rivers.
- (d) Transfer of management and development authority to Canada for Fraser River sockeye and pink stocks and development of new arrangements for cooperative regulation of the fisheries of the two countries on these stocks to provide United States fishermen with agreed entitlements and to provide required spawning escapements.
- (e) Development of a new international Commission to coordinate the management and development programs of the two countries and to monitor the implementation of the agreement.

4. The negotiators believe that, because of the highly technical nature of a long term agreement, approximately one year of consultations and negotiations will be required to develop formal arrangements that would ensure full and effective implementation of the principles

to which both sides now subscribe. Such an agreement therefore could not come into force until 1983. The negotiators note the positive management measures each side intends to put into place in 1981 to improve conservation of the stocks in a manner which will be of mutual benefit. They further note that a number of proposals under discussion in the negotiations bear on the conduct of fisheries in 1982 and that implementation of such proposals would be of mutual benefit. In this light, negotiators believe that, pending efforts over the next year to develop a full comprehensive agreement, the positive momentum of the present discussions between governments should be maintained through practical actions in the fisheries in both 1981 and 1982. The negotiators therefore recommend that the two governments enter into an interim agreement with respect to the conduct of the Pacific Salmon fisheries of the two countries for the remainder of the 1981 fishing season and throughout 1982. The elements of such an agreement are outlined in the following paragraph.

5. Specifically, the negotiators recommend that with a target date for completion of May 31, 1982, that technical consultations and formal negotiations be conducted to develop a comprehensive long-term agreement regarding the management and development of Pacific Salmon stocks of mutual concern; such negotiations to be based on the principles and to take into account the general approaches to implementation outlined in the record of the negotiating session held in Lynnwood, Washington in October 1980. They further recommend that, for 1981/82 the two parties develop an interim agreement that will include the following elements:

- (a) During 1981 and 1982, the United States fishery in Alaska District 104 (i.e. Noyes Island) shall be regulated in a manner which would result in the average annual harvest of sockeye totalling 160,000 pieces.
- (b) All other fisheries in Alaska shall be conducted in a manner pursuant to the understandings recorded in the record of the October 1980 Lynnwood meeting.
- (c) In 1982, the aggregate catch of pink salmon in the troll salmon fishery in B.C. Statistical Area 1 and in fisheries by all gear in B.C. Statistical sub-areas 3X, 3Y, 5-1 and the western portion of Subarea 32 shall be limited to 1.49 million pieces. The portion of this aggregate total taken in the troll fishery in Area 1 shall be limited to the level taken during 1971-74, namely _____ pieces.
- (d) In 1981, with respect to fisheries on stocks bound for Canadian sections of the Taku River, the two sides shall establish escapement target for each species. Canadian authorities shall regulate the fisheries under their jurisdiction to ensure that the percentage of the allowable catch for each species taken by Canadian fishermen in 1981 shall be somewhat less than the percentages of the catch of each species taken in 1979. United States authorities shall regulate fisheries under their jurisdiction to allow sufficient salmon to enter the river to provide for required spawning escapements and the Canadian entitlement.
- (e) In 1982, the percentages of the total allowable catches by species taken by Canadian fishermen in the Taku River shall be reduced to 15% of the 1981 level.

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- (f) In both 1981 and 1982, Canadian authorities shall limit the catch by Canadian fishermen on the Stikine River in the same manner as for the Taku River in 1981, subject, however, to adjustments that may be agreed upon through consultations between the two sides.
- (g) With respect to Fraser sockeye and pink salmon, the IPSFC regime shall continue to apply in 1981 and 1982. In 1982, in the event of a migratory diversion of sockeye through Johnstone Strait, Canada shall exert restraint in its fisheries outside the Fraser River Convention Area taking into account proposed future sharing arrangements under discussion in the negotiations.
- (h) All other Canadian intercepting fisheries and all United States intercepting fisheries in Washington, Oregon and California shall be conducted in conformity with the general interception limitation scheme under discussion in the negotiations (i.e. limited to 1971-74 base levels).
- (i) In 1982, the two governments shall conduct a large scale tagging program in the southern Southeast Alaska and Northern British Columbia area and other programs as may be agreed in order to provide improved information on the composition of the tons in intercepting fishing areas.

6. The negotiators recommend that pending the coming into force of the interim agreement, competent fisheries authorities in both countries conduct their programs of fisheries regulation in accord with the spirit of the interim agreement.

MESSAGE

/diary/file/chron

FM/DE	PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY
	LIEU	MINISTÈRE	N° D'ORIG.		35-11-5	SÉCURITÉ
	SEATL	UAGR	5565	04JUN81		U/C

TO/A EXTOTT FLO *SEA 004/04* *P1074*

INFO SFAX WSHDC DE SEA *SEA 002/04*
 B.H.FANDO OTT/HUNTER DE OTT
 REGAM FANDO VNCVR/JONES DE SEA

DATE	
ACC	<i>141524</i>
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BY HAND	PAR PORTEUR
ATTN	<i>25-5-7-2-Pack 1</i>

DISTR. GNG

REF OURTEL UAGR 5188 OF 06MAR81

SUB/SUBJ ---NORTH PACIFIC FISHERIES MANAGEMENT COUNCIL (NPFMC) MEETING

FOLLOWING ARE HIGHLIGHTS OF THE NPFMC MEETING WHICH WAS HELD IN ANCHORAGE MAY 28 AND 29.

2. SALMON. UNFORTUNATELY, DR. ALVERSON, WHO WAS TO ADDRESS THE COUNCIL CONCERNING THE PACIFIC SALMON TREATY, WAS UNABLE TO DO SO BECAUSE OF ILLNESS. THIS WAS INDEED UNFORTUNATE SINCE AN EXPOSITION OF THE CURRENT STATUS OF THOSE NEGOTIATIONS WOULD HAVE BEEN VERY TIMELY. OFFICIALS, INCLUDING DEPARTMENT OF STATE REPRESENTATIVE, AND INDUSTRY ADVISORS WITH WHOM WE SPOKE, DO NOT KNOW WHERE THESE NEGOTIATIONS STAND. DOS REP, OF COURSE, WAS AWARE THAT TECHNICAL DISCUSSIONS HAD BEEN HELD BUT DID NOT HAVE ANY SUBSTANTIVE DETAILS. INDUSTRY REPRESENTATIVES ON THE OTHER HAND HAD ONLY HEARD VAGUE QUOTE RUMOURS UNQUOTE THAT THE TWO SIDES WERE STILL TALKING AT THE LEVEL OF THE NEGOTIATORS BUT HAD NO SUBSTANTIVE DETAILS NOR ANY COMPREHENSION OF THE NATURE AND EXTENT OF THE DISCUSSIONS.

3. CONCERNING OTHER SALMON ISSUES, THE COUNCIL EXPRESSED ITS DISAPPOINTMENT THAT THE ALASKA BOARD OF FISHERIES DID NOT MATCH THE COUNCIL'S FIFTEEN PERCENT

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DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SG..... F.D.MARTENS/ch			SG..... <i>[Signature]</i> F.D.MARTENS

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004104

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REDUCTION IN O.Y. (REFTEL REFERS), BUT HELD TO THEIR TEN PERCENT REDUCTION. CONSEQUENTLY, THE COUNCIL WANTS ADF&G TO MANAGE THE FISHERY IN SUCH A MANNER THAT WOULD RESULT IN A DE FACTO FIFTEEN PERCENT O.Y. REDUCTION. THIS WAS STRONGLY EXPRESSED BY CHAIRMAN TILLION WHO SAID THAT HE WOULD BE DISAPPOINTED IF THIS (FIFTEEN PERCENT REDUCTION) IS NOT REALIZED.

4. CONCERNING ANOTHER SALMON MATTER OF WHICH YOU MAY NOT BE AWARE, ADF&G, DURING THE APRIL 15-MAY 15 CLOSURE OF ALL SOUTHEASTERN ALASKAN WATERS TO COMMERCIAL SALMON FISHING, CONDUCTED A TEST FISHERY TO TAG CHINOOKS AND RECOVER CODED WIRE TAGS (CWT). THE RESULTS WERE MUCH BETTER THAN EXPECTED WITH 764 KINGS AND 1 COHO TAGGED WITH EXTERNAL PETERSEN DISK TAGS. ABOUT 50 PERCENT OF THE CHINOOKS WERE MATURE FISH. ALSO NINE CWT'S WERE RECOVERED, NONE OF WHICH WERE TAKU RIVER FISH. ACCORDING TO REPORTS THE CATCH PER UNIT OF EFFORT (CPUE) IN THE JUNEAU AREA SPORT FISHERY IS MUCH HIGHER THAN AVERAGE THIS YEAR, INDICATING THAT THE CLOSURE SUCCESSFULLY MOVED FISH INSIDE. SOME TAGS HAVE BEGUN TO SHOW UP IN THE COMMERCIAL AND SPORTS FISHERIES ALREADY AND A REPORT ON THE STUDY WILL BE AVAILABLE FROM ADF&G IN THE NEAR FUTURE.

5. YOU MAY BE INTERESTED TO KNOW THAT AN ANALYSIS OF SOUTHEASTERN ALASKA TROLL FISHERY DATA HAS BEEN COMPLETED UNDER A COUNCIL CONTRACT. THE REPORT, COMMONLY KNOWN AS THE QUOTE FRITZ FUNK REPORT UNQUOTE, SHOULD BE AVAILABLE TO THE PUBLIC IN THE NEAR FUTURE. FROM THE INFORMATION AVAILABLE TO US, THE OBJECT OF THE RESEARCH PROJECT WAS TO INVESTIGATE THE FEASIBILITY OF USING THE DATA ON TROLL LANDINGS, MICRO-WIRE TAG RECOVERIES AND TROLL LOG BOOK OBSERVATIONS AS THE BASIS FOR THE TIME-AREA MANAGEMENT OF THE SOUTHEASTERN ALASKAN FISHERY. THE REPORT CONCLUDES THAT IF CERTAIN CHARACTERISTICS REMAIN CONSISTENT IN SUCCEEDING YEARS DATA, TIME-AREA MANAGEMENT COULD BE UTILIZED TO CONTROL HARVEST RATIOS OF STOCKS FROM DIFFERENT AREAS OF ORIGIN AND TO INCREASE YIELD PER RECRUIT FROM THE FISHERY.

6. ON ANOTHER ISSUE, TO WIT, THE EUROPEAN ECONOMIC COMMUNITY PROPOSAL TO INCREASE

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004/04

TAXES ON SALMON IMPORTED FROM THE PACIFIC COAST BY ESTABLISHING A REFERENCE PRICE AND COMPENSATORY TAX SYSTEM, THE COUNCIL NOTED THAT THE PACIFIC FISHERIES MANAGEMENT COUNCIL HAD WRITTEN THE DEPARTMENT OF STATE PROTESTING THIS NEW TRADE POLICY INDICATING THAT THE PACIFIC COUNCIL WOULD LOOK UNFAVOURABLY AT REQUESTS FOR FUTURE ALLOCATIONS OR JOINT VENTURES BY EEC COUNTRIES.

7. FINALLY, THE COUNCIL CONSIDERED THE ISSUE OF LIMITED ENTRY FOR TROLLERS IN THE FCZ. A WORKING GROUP WAS REQUESTED TO FURTHER STUDY THIS ISSUE AND TO REPORT ITS FINDINGS AND RECOMMENDATIONS AT THE JULY COUNCIL MEETING.

8. JOINT VENTURES. THE COUNCIL RECEIVED A REQUEST FOR A POLISH JOINT VENTURE PERMIT WHICH IT SUBSEQUENTLY APPROVED. THE POLISH VESSELS WILL RECEIVE MAINLY POLLOCK AND PACIFIC COD IN THE BERING SEA/ALEUTIAN ISLAND AREA AND THE GULF OF ALASKA AREA FROM TWO U.S. FISHING VESSELS OPERATING FROM JUNE TO SEPTEMBER 15TH. THE REQUESTED ALLOCATION IS 9810 METRIC TONNES IN THE BERING SEA/ALEUTIAN ISLAND AREAS (INCLUDING 3,000 TONNES OF POLLOCK AND 800 TONNES OF COD) AND 8620 METRIC TONNES IN THE GULF OF ALASKA AREA (INCLUDING 7,000 TONNES OF POLLOCK AND 700 TONNES OF COD). MRS PAUL'S KITCHEN WILL ACT AS AGENT AND PAYER AND WILL RECEIVE TEN PERCENT OF THE PROCESSED PRODUCT AS FILET BLOCKS (THE REST WILL BE MARKETED IN POLAND). ALTHOUGH THERE WAS SOME CONCERN THAT THE JOINT VENTURE WOULD ADVERSELY AFFECT THE US MARKET FOR DOMESTICALLY CAUGHT AND PROCESSED GROUND FISH, THE PERMIT APPLICATION WAS APPROVED. THERE WAS ALSO A QUESTION AS TO HOW THIS PRODUCT WOULD ENTER THE US MARKET BUT THE REPRESENTATIVE FROM MRS. PAUL'S DID NOT HAVE THAT INFORMATION.

9. FOR YOUR INFORMATION THE COMMERCIAL COUNSELLOR (ROGUE FELIX DIAZ) FROM THE PORTUGUESE EMBASSY IN WSHDC WAS ALSO IN ANCHORAGE RECONNOITRING THE GROUND FISH SCENE SINCE THERE IS A PORTUGUESE INTEREST TO ESTABLISH A JOINT VENTURE FOR PRIMARILY POLLOCK AND COD. WE UNDERSTAND THAT THE JOINT VENTURE WOULD INVOLVE THREE PORTUGUESE VESSELS AND THAT A GROUP OF REPRESENTATIVES FROM THE PORTUGUESE FISHING INDUSTRY WILL TOUR THE AREA IN APPROXIMATELY ONE MONTHS TIME. HAVE ALSO HEARD THAT THE FRENCH MAY HAVE SOME INTEREST IN ALASKAN GROUND FISH BUT WE HAVE

H. J. H.
0-04/84

NO DETAILS CONCERNING THEIR PLANS.

10. CONCERNING THE REDUCTION OF THE CATCH OF PROHIBITED SPECIES IN THE BERING SEA/ALEUTIAN ISLAND GROUND FISH FISHERY, THE COUNCIL FAVOURED A TWO STEP PROCEDURE FOR FOREIGN FISHERIES (JOINT VENTURES AND DOMESTIC FISHERIES WOULD BE EXCLUDED AT THIS TIME). AN ALLOWABLE INCIDENTAL CATCH (AIC) LEVEL WOULD BE ESTABLISHED FOR EACH FOREIGN COUNTRY WHO HAVE A FISHERY IN THE AREA. WITHIN THE AIC LEVEL THERE WOULD BE A SUB-LEVEL WHICH, WHEN THE CATCH OF A PROHIBITED SPECIES REACHED IT, THAT NATION'S FISHERY WOULD CLOSE BUT MAY BE RE-OPENED BY THE REGIONAL DIRECTOR OF NMFS WITH SUBSEQUENT TIME-AREA AND GEAR RESTRICTIONS. THE FISHERY WOULD THEN BE ALLOWED TO CONTINUE UNTIL THE UPPER AIC LEVEL WAS REACHED FOR ANY PROHIBITED SPECIES, AT WHICH TIME THAT NATION'S FISHERY WOULD CLOSE FOR THE REMAINDER OF THE FISHING YEAR. IT IS ALSO THE INTENT TO REDUCE THE AIC BY 75 PERCENT OVER FIVE YEARS. THE JAPANESE LONG LINERS WOULD BE EXEMPT FROM THE AIC FOR SALMON AND CRAB SINCE THEIR CATCH OF THOSE SPECIES IS NEXT TO ZERO AND THEY MAY BE EXEMPT FOR HALIBUT AS RECOMMENDED BY THE IPHC BUT THIS IS SUBJECT TO FURTHER REVIEW AT THE JULY MEETING. ALL PROHIBITED SPECIES, IF CAUGHT, MUST BE RETURNED TO THE SEA.

11. FOR YOUR INFORMATION, THE COUNCIL'S MEETING SCHEDULE FOR THE REST OF 1981 IS AS FOLLOWS: JULY, NOMER, ALASKA; AUGUST, NO MEETING; SEPTEMBER, ANCHORAGE; OCTOBER, SITKA; NOVEMBER, NO MEETING; DECEMBER, ANCHORAGE.

FLO/R.B. Fadden/6-2643/dg

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO À *LSC*

FROM De FLO/R.B. Fadden

REFERENCE Référence FLO memorandum 792 of May 29, 1981

SUBJECT Sujet Pacific Salmon

Campbell is asking Sheppard to come to Ottawa next week after next

2/4/81

SECURITY RESTRICTED
Sécurité

DATE June 2, 1981

NUMBER FLO-811

140916	
FILE	DOSSIER
OTTAWA	
25-5-7-2-SALMON-1	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

FLP
FLO/Smith

I received a telephone call on June 1 from Chris Dawson of the Office of Fisheries Affairs (U.S. State Department) who called to discuss a number of issues relating to the above negotiations.

2. Dawson had just returned from a meeting, in Juneau, of the North Pacific Fisheries Management Council where she took the opportunity to raise the question of Northern Salmon Limited's request to trans-ship Canadian fish in Alaska waters. She discussed the issue with the Assistant Attorney General (Alaska) handling the review of the legal question of whether or not the Alaska Fisheries regulations permitted Alaska department of Fisheries and Game (AD F & G) to deny Northern salmon a trans-shipment permit. She was given the clear signal that, AD F & G was fully within its rights to do so. On the policy side, it would appear that Alaska had firmly decided not to issue the permit for two reasons: (1) The risk of creating a precedent and, (2) The unwillingness of Alaska to facilitate, in any way, the growth of Canadian fisheries on any of the transboundary rivers.

3. Given the unwillingness of the U.S. Department of State to intervene (Para 4, memorandum under reference), Dr. Sheppard was asked to raise this question with Dr. Alverson in the course of their technical consultations. While we do not yet have a report from Dr. Sheppard, Dawson indicated that Alverson simply promised to look into the question. However, according to Dawson the Alaskans are quite annoyed that we have muddied the waters by raising the issue.

.../2

4. We also briefly discussed the question of hydro development on the Stikine (FLO-793 of June 1, 1981). Dawson noted that this issue is clearly simmering in the background and is likely not improving the general disposition of the Alaskans who have asked for consultations with Federal and B.C. officials on this issue. A/USSEA Lee will brief interested division/departments on June 4 on his recent attempts to convince B.C. officials to meet the Alaskans (I shall attend).

5. As you have agreed, I shall attend the June 8-9 Sheppard/Industry advisers meetings in Vancouver. However, I wonder if this is sufficient? Both Sheppard and Alverson are committed to making recommendations to their respective Governments by June 19 on whether or not the negotiations can be continued yet, insofar as I can determine, no further Sheppard/Ottawa officials consultations are planned, nor is a final "joint review" by Alverson and Sheppard. Given that both we and the State Department seem to be the object of a partial information blackout it seems to me imperative that officials have an opportunity to discuss the situation and impact on it and on Sheppard's recommendations both with Sheppard and with the U.S. Delegation before the recommendations are made.

6. State/Dawson agreed with the foregoing and is canvassing her colleagues in Washington with a view to gaining agreement to urge the same course of action upon Dr. Alverson. Earlier today I suggested to Judy Swan that Sheppard should be asked to meet with Ottawa based officials and the U.S. Delegation after both negotiations have had the opportunity of consulting the industry advisers. She checked with Bob Applebaum who had no firm views on the question of a Sheppard/Alverson meeting aside to say that External Affairs should arrange for the meeting if one was thought necessary. As concerns a Sheppard/Ottawa officials meeting, he thought that in practice one could be arranged by Mike Hunter and myself.

7. I would suggest that you consider calling Tony Campbell (5-2035) or Mike Sheppard (175-569-477-0715) and ask that a Sheppard/Alverson meeting (with Ottawa officials, etc.) be held during the week of June 7 (after industry consultations) to permit a final review and assessment of the situation. I should think that the foregoing would be useful if only, at the worse, to consider the modalities of a "no-agreement scenario" and/or to give Headquarters officials a clearer view of the situation.


R.B. Fadden

*done
I would like
to attend as
well! Where
and when?*

*I'm calling
Campbell to suggest
make stops in Ottawa
en route from
home*

FLO/R.B. Fadden/6-2643/dg

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

s.23

TO LSC
A

SECURITY RESTRICTED
Sécurité

DATE June 2, 1981

FROM FLO/R.B. Fadden
De

REFERENCE FLO memorandum 792 of May 29, 1981
Référence

SUBJECT Pacific Salmon
Sujet

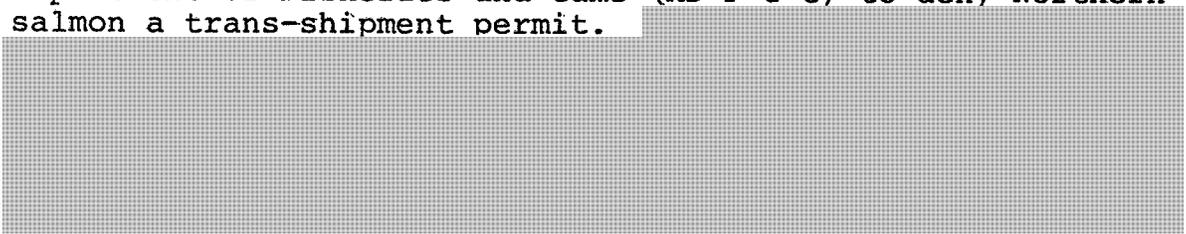
NUMBER	FLO-811	
Numéro		
ACC		REF
FILE	140916	DOSSIER
OTTAWA		DOSSIER
FILE	25-5-7-2-SALMON-1	
MISSION		PAR PORTEUR
BY		
ATTN:		

ENCLOSURES
Annexes

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FLP
FLO/Smith

File

- 2 -

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R.B. Fadden

FLO/R.B. Fadden/6-2643/dg *Fu*

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

FLP

SECURITY RESTRICTED
Sécurité

DATE June 1, 1981

FROM FLO/R.B. Fadden

NUMBER	FLO-795
FILE	12/1351
OTTAWA	
FILE	25-3-8-1
MISSION	
B. HAND	PAR PORTEUR
ATTN:	25-5-7-2-SALMON-1

REFERENCE
U.S. Request for Discussions on Stikine River

ENCLOSURES
Annexes

DISTRIBUTION

O/Rochon
T/Bowker

As you know, Assistant Under-Secretary Lee and Mr. Bowker of GNT will be travelling to Victoria on May 29 to meet with British Columbia officials with a view to convincing B.C. officials to meet with U.S. authorities to discuss potential hydro-electric developments on the Stikine River. The meeting is aimed exclusively at convincing British Columbia to agree to a technical-level meeting which has been requested by the U.S. Department of State acting at the behest of the Alaskan Congressional delegation.

2. The concerns expressed to you by Mr. Hunter of the Department of Fisheries and Oceans to the effect that these (and subsequent discussions) concerning the Stikine may impact on the Pacific Salmon negotiations have been met, for the time being, by our agreement to include a West Coast fisheries official in the May 29 meeting.

3. In the course of my conversation with Messrs Lee and Bowker, I relayed a number of the concerns we share with Fisheries concerning hydro developments on the Stikine. I emphasized that the delicate state of the Pacific Salmon negotiations require that we be kept fully abreast of any developments in this field. Mr. Bowker and I have agreed to keep each other fully apprised of developments in our respective areas.

4. I have made arrangements with Mike Hunter for Garnet Jones, FANDO Pacific Region International Adviser, to attend the May 29 meeting. Messrs Jones and Bowker intend meeting prior to the meeting with B.C. officials in order to familiarize each other with the issues to be discussed.

.../2

- 2 -

5. In more general terms, it would appear that a permit application by British Columbia Hydro to develop the Stikine is at least two years down the road. The U.S. Affairs Bureau is concerned that public knowledge of this possibility may create bilateral difficulties with the USA because of concerns by Alaskans over possible fisheries and environmental repercussions of damming on the Stikine. The object of the U.S. Bureau's meeting is to encourage British Columbia to have a full and open exchange of views with the U.S. and Alaskan officials in order to foreclose the possibility that this question will become an irritant. I will keep you advised of any developments.


R.B. Fadden

FLO/R.B. Fadden/6-2643/dg

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

Wf

TO
À L.S. Clark

FROM
De R.B. Fadden

REFERENCE
Référence

SUBJECT
Sujet Pacific Salmon Negotiations - Update

SECURITY
Sécurité CONFIDENTIAL

DATE May 29, 1981

NUMBER FLO-792

141214	
- FILE	DOSSIER
OTTAWA	Ottawa
25-5-7-2-SALMON-1	
MISSION	

ENCLOSURES
Annexes

DISTRIBUTION

FLP
GNT
GNG
EGL

I spoke today with Don Kowall, of FANDO's Pacific and Freshwater Branch in Ottawa, to ask for an update on Mike Sheppard's recent consultations with the Alaskans and Washingtonians.

2. The general view at Fisheries seems to be that the prospects for agreement on the concessions necessary to put into operation the first four years of the Pacific Salmon agreement are very good. However, difficulties are being encountered on all fronts (Fraser and transboundary rivers) as concerns the longer term. For this reason, both sides are beginning to shy away from the last phases of the negotiating process.

3. Another difficulty is the seemingly firm unwillingness of the USA to include the Yukon River in this agreement. U.S. officials apparently prefer that the Yukon be dealt with by officials of the two governments rather than by the two negotiators. Fisheries and Oceans continue to be of the view that more than a passing reference to the Yukon must be included in the Pacific Salmon agreement (time frame in which Yukon question would be addressed, general statement of principles, etc.).

4. Another difficulty which arose very recently concerns the refusal of the Alaskan authorities to permit the trans-shipment in Alaskan waters of Canadian fish. It is the view of the U.S. State Department that the pertinent Alaskan Fisheries regulation was drafted with the intent of restricting the trans-shipment by foreigners of American fish in "Alaska's three-mile zone". However, the regulation is drafted in such a way as to permit Alaska to deny the request made by the Canadian firm, Northern Salmon Limited. The State Department has indicated that it is loathe to intervene as the trans-shipment would take place in "Alaskan" waters outside the purview of FCMA. If this decision is not reversed a very important fishery on the Taku will become uneconomical and Fisheries and Oceans will have to consider some form of compensation.

.../2

CONFIDENTIAL

AT ODDS WITH WHAT
FLP SAID TO
CTTEE LAST
WEEK!

5. Yesterday, Wayne Shinnars, the Director General of Fisheries for the Pacific Region testified before the House Committee on Fisheries and Forestry and indicated, somewhat to the surprise of Headquarters officials, that given the difficulties being encountered by the negotiators in the transboundary area, the latter are now considering the possibility of a no-agreement scenario. This scenario appears both to Kowall and to me to be overly pessimistic especially as an overall short term agreement (four years) appears possible and given that agreement on the Fraser appears to be possible. I will pursue this question with Fisheries officials next week. I would suggest that I attend the Sheppard/Industry advisers meeting tentatively scheduled for June 10 in Vancouver in order to be able to get a clearer picture of developments. Do you agree?

YES, WE SPOKE



R.B. Fadden

OFFICE OF THE MINISTER/CABINET DU MINISTRE
 Document disclosed under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information
ACTION REQUEST/FICHE DE SERVICE

From/De <i>CARLO</i>	No. No 15118	Action to be completed and white slip returned to MIN by/L'action doit être complétée et la feuille blanche retournée à MIN avant Date <i>MAY 27/81</i>
Letter dated/Lettre en date du <i>MAY 14</i>	Date received in MIN/Date de réception à MIN <i>MAY 20</i>	Date sent to Division/Date d'envoi à la direction <i>MAY 20</i>
Action Division/Direction responsable <i>FLO</i>	Information Division/Direction(s) informée(s)	Referred by/Référée
Subject/Sujet <i>CDM/MSA Committee</i> <i>an Sabmon</i>	Comments/Commentaires	

ACTION REQUIRED/ACTION REQUISE

- Reply for minister's signature
Réponse pour la signature du ministre
- Reply for the signature of
Réponse pour la signature de
- Reply by division
Réponse de la direction
- Note and file
Noter et mettre au dossier
- Draft reply to be incorporated in letter by Minister's staff
Projet de réponse requis pour inclusion dans lettre rédigée par les assistants du Ministre

Noted
 OK
 FLO
 8/5

FOR DIVISIONAL USE

POUR L'UTILISATION DE LA DIRECTION

Date received in Division/Date reçu à la direction
MAY 20 1981

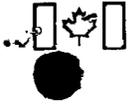
Action officer/Agent responsable
FLO

Disposition and date/Disposition et date
MAY 20 1981

For MIN use/Pour utilisation de MIN

ALL TRANSFERS TO BE REPORTED TO MIN REGISTRY (5-1047)

LE REGISTRE DE MIN DOIT ÊTRE AVISÉ DE TOUT CHANGEMENT (5-1047)



Office of the Minister
Fisheries and Oceans
Cabinet du Ministre
Pêches et Océans

DATE	
ACC	REF
FILE	DOSSIER
25-5-7-2-SALMON-1	
BY HAND	PAR PORTEUR
ATTN:	

MAY 14 1981
MAI

Ms. Catherine Anderson
Executive Assistant to
The Honourable Mark MacGuigan, P.C., M.P.
Secretary of State for External Affairs
Room 209-CB
House of Commons
Ottawa, Ontario
K1A 0A6

Dear Ms. Anderson:

On behalf of the Honourable Roméo LeBlanc, I would like to acknowledge receipt of your Minister's letter dated May 1, 1981, regarding the 1937 Canada/U.S.A. Convention for the Protection Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System.

Please be assured that your Minister's letter has been brought to Mr. LeBlanc's attention.

Yours sincerely,

Jayne C. McArthur
for: Mario DiCarlo
Special Assistant

MESSAGE

RF

PLACE	DEPARTMENT	ORIG. NO.	DATE	FILE/DOSSIER	SECURITY
LIEU	MINISTÈRE	N ^o D'ORIG.			SÉCURITÉ
SEATL	UAGR	5500	15MAY81		RESTRICTED

TO/A ECIOTT/FLO SEA 00 3/15

DATE	REF
ACC	
FILE	DOSSIER
25-5-72	SALMON-1
BY HAND	PAR PORTEUR
ATTN:	

DISTR.

REF FADDEN TEL XNCR 0900 06MAY DE LUN

SUB/SUJ ---CDA-USA PACIFIC SALMON NEGOTIATIONS-VNCVR 27APR-02MAY

COPY OF AGREED RECORD REFERRED TO IN PARA FIVE REFTEL TO BE PROVIDED BY FANDU OTT/HUNTER AND NOT SEATTLE SINCE FINAL AGREED COPY WAS NOT AVAILABLE UNTIL FIRST OF FOLLOWING WEEK.

Flo
19/5

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
NO..... F.D.MARTENS			<i>[Signature]</i>

MESSAGE

RF

PLACE		DEPARTMENT	ORIG. NO.	DATE	ACC	REF
LIEU		MINISTÈRE	N ^o D'ORIG.		157121	
FM/DE	SEATL	UAGR	5499	15MAY81	FILE/BOURNE	25-5-7-2-SALMON-1
					B HAND	PAR PORTEUR
						SECURITY SÉCURITÉ
						CONFIDENTIAL

TO/A EXTOTT/FLO **SEA 002/15 P173**

INFO

B.H. FANDO OTT/HUNTER DE OTT

REGAM FANDO VNCVR/JONES

DISTR. FLP GNT

REF LDN TEL FROM FADDEN KNGR 0900 OF 06MAY81

SUB/SUBJ ---CANADA/USA PACIFIC SALMON NEGOTIATIONS

CON AND USA NEGOTIATORS AND TECHNICAL ADVISORS MET IN JUNEAU MAY 11-13 FOR TECHNICAL DISCUSSIONS REGARDING NORTHERN B.C., TRANSBOUNDARY AND SOUTHEAST ALASKAN FISHERIES. CONGEN REPRESENTATIVE WAS ALSO PRESENT IN JUNEAU.

2. INTENT OF DISCUSSIONS WAS TO HAVE IN-DEPTH EXPLORATION OF OUTSTANDING ISSUES AND TO PROBE THE ALASKAN POSITION TESTING THEIR DESIRE FOR AND COMMITMENT TO AN EVENTUAL SALMON TREATY. DISCUSSION PROVED FRUITFUL, ALASKANS EXHIBITED DESIRE TO PROCEED WITH NEGOTIATIONS AND TO CONSIDER AND DISCUSS WITH SINCERITY AND FRANKNESS POSSIBLE SOLUTIONS TO CURRENT DIFFICULT ISSUES. CONSEQUENTLY THERE IS GUARDED OPTIMISM REGARDING THE FUTURE COURSE OF THE TREATY NEGOTIATIONS.

3. ALTHOUGH AN ACCORD WAS NOT REACHED A SOLUTION APPEARED TO BE DEVELOPING TO BRIDGE THE DATA GAP BETWEEN THE TWO SIDES WHICH WAS ONE OF MAJOR STUMBLING BLOCKS OF VNCVR MEETING. BOTH SIDES APPEAR TO BE REACHING A CONSENSUS ON THE ADJUSTMENTS WHICH WOULD BE REQUIRED IN THE SHORT TERM ALTHOUGH FINAL RESOLUTION OF DIFFERENCES MAY INVOLVE THE POLITICAL RATHER

DRAP/ER/REDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
NO..... F.D. MARTENS			NO..... <i>[Signature]</i>

P273

SEA 107/15

-2-

THAN THE TECHNICAL ARENA. THIS IS A POINT RECOGNIZED BY GOV HAMMOND OF ALASKA. CRITICAL TO ANY AGREEMENT WILL ALSO BE ALASKA'S WILLINGNESS TO MAKE THE COMMITMENTS REQUIRED BEYOND THE SHORT TERM OF THE AGREEMENT. THIS WILL REQUIRE FURTHER EXPLORATION AND WILL BE A TEST OF ALASKA'S SINCERITY IN THE NEGOTIATIONS. IN SIMILAR LIGHT, THE VARIOUS ARRANGEMENTS WHICH HAVE BEEN MADE AND THE CHANNELS OF COMMUNICATIONS WHICH HAVE BEEN OPENED BETWEEN CDA AND USA FISHERIES MANAGERS FOR 1981 ARE IMPORTANT AND SHOULD NOT BE LIGHTLY CAST ASIDE SINCE BOTH SIDES ARE VIEWING THESE ARRANGEMENTS AS A BENCHMARK ^{AGAINST} WHICH THE COMMITMENT AND SINCERITY OF THE OTHER SIDE CAN AND WILL BE MEASURED.

4. WHILE IN JUNEAU, CDN AND USA NEGOTIATORS MET BRIEFLY WITH GOV HAMMOND. MEETING WAS CORDIAL AND SERVED TO ENHANCE GOVERNOR'S APPRECIATION OF THE TREATY NEGOTIATIONS AND TO UNDERLINE THEIR POLITICAL DIMENSION. MEETING COULD ALSO BE VIEWED AS A STIMULUS AND SIGNAL TO ALASKAN OFFICIALS TO MAKE CONCERTED AND SINCERE EFFORTS TO RESOLVE REMAINING DIFFERENCES. INDEED, IT WAS NOTED THAT ATTITUDE OF ALASKAN OFFICIALS TO THE NEGOTIATIONS AND DISCUSSIONS WAS POSITIVE AND CONSIDERABLY CHANGED FROM THAT OF PREVIOUS OCCASIONS.

5. IT IS WORTH NOTING THAT THE USA NEGOTIATOR HAS BEEN MAKING THE POINT TO THE USA ADMINISTRATION THAT AGREEMENT SHOULD BE VIEWED IN CONTEXT OF A VEHICLE TO MEND USA FISHERY RELATIONS WITH CANADA. ALTHOUGH THIS TACT ON HIS PART IS A SELF-SERVING ATTEMPT TO CREATE A FAVOURABLE POLITICAL CLIMATE FOR THE FINANCIAL AND PERSONNEL RESOURCES THAT WILL SUBSEQUENTLY BE REQUIRED TO IMPLEMENT THE AGREEMENT, IT SHOULD ALSO BE ADVANTAGEOUS TO CDA IF AND WHEN THE NEGOTIATIONS REACH A CRITICAL POLITICAL STAGE.

6. FOLLOWING IS A TENTATIVE SCHEDULE OF FUTURE ACTIVITIES: MAY 15: MEETING OF CDA AND USA NEGOTIATORS AND TECHNICAL ADVISORS IN VNCVR REGARDING FRASER RIVER FISHERIES ISSUES EMANATING FROM THE VNCVR APR-MAY NEGOTIATIONS; MAY 19 AND 20: A FURTHER TECHNICAL MEETING WITH ALASKAN OFFICIALS REGARDING THE NORTHERN FISHERIES; MAY 21: A FURTHER TECHNICAL MEETING, IF NECESSARY, CONCERNING FRASER RIVER ISSUES. DURING THE FIRST WEEK OF JUNE IT IS PLANNED THAT THE CDN

AND USA NEGOTIATORS WILL MEET WITH THEIR RESPECTIVE ADVISORY GROUPS. BASED ON

001127

P303
SEA 002/15

THE RESULTS OF THESE VARIOUS DISCUSSIONS, THE NEGOTIATORS WILL SUBMIT THEIR
RECOMMENDATIONS TO THEIR RESPECTIVE GOVERNMENTS BY JUNE 10.

FLE/J.O. Parry/6-7194/so
AFFAIRES EXTÉRIEURES

EXTERNAL AFFAIRS



TO
À FLE

FROM
De FLE

REFERENCE
Référence Meeting with Bob Rochon
and Mike Hunter - May 15/81

SUBJECT
Sujet Pacific Salmon Treaty
with the United States

SECURITY
Sécurité UNCLASSIFIED

DATE May 20, 1981

NUMBER Numéro	FLE-756	REF
ACC	135718	
FILE OTTAWA	25-5-7-2-SALMON-1	DOSSIER DOSSIER
BY MISSION		PAR PORTEUR
ATTN:		

ENCLOSURES
Annexes

DISTRIBUTION

The scenario we discussed was the negotiation of an umbrella treaty, followed by a series of technical annexes, all of which would be submitted as a package to the U.S. Senate.

The procedure, as I see it, would be as follows:

(a) Treaty

The umbrella treaty would set out the purpose of the agreement and general principles. If desired, it could specify general and specific objectives and list programs that the Parties agree to develop and implement on the lines of the Great Lakes Water Quality Agreements of 1972 and 1978. It would be short and succinct (the 1972 Water Quality Agreement has 15 articles arranged under these headings: Definitions, Purpose, General Objectives, Specific Objectives, Standards and Research, Programs and Other Measures, Powers and Responsibilities of Commission, Joint Institutions and Regional Office, Exchange of Information, Consultation and Review, Implementation, Amendment, etc.).

(i) Annexes

On the assumption that the umbrella treaty will be completed by a series of technical annexes, the definitions section should specify that:

"Annex" means any of the Annexes to this treaty, each of which is attached to and forms an integral part of this treaty.

(ii) Implementation

The implementation article should provide that the obligations undertaken in the treaty shall be subject to the appropriation of funds

FLO/Rochon
Fadden

FANDO/Hunter

in accordance with the constitutional procedures of the Parties. It should go on to say that the Parties commit themselves to seek:

1. The appropriation of funds required to implement the treaty;
2. The enactment of any additional legislation that may be needed to implement the programs or other measures outlined in the treaty; and
3. The cooperation of the State and Provincial Governments in all matters relating to the treaty (if this is required).
(Source: Article XI, Great Lakes Water Quality Agreement, 1978)

Congress will have to enact legislation appropriating funds; conceivably other legislation might be required in the United States.

(iii) Amendments

I suggest we follow the pattern of the Great Lakes Water Quality Agreement and include an article along these lines:

" This Treaty and the Annexes may be amended by agreement of the Parties. The Annexes may also be amended as provided therein, subject to the requirement that such amendments shall be within the scope of this Treaty. All such amendments to the Annexes shall be confirmed by an exchange of notes or letters through diplomatic channels which shall specify the effective date or dates of such amendments."

This provides two methods of amendment:

(a) a regular amendment procedure (meaning, in this case, an amending Protocol subject to the advice and consent of the U.S. Senate); and (b) an informal amendment procedure for the technical annexes that would not even require an international agreement. However, all technical amendments would have to be confirmed through diplomatic channels. This system has worked well in the case of the Great Lakes Water Quality Agreement and enables changes in technical annexes to be made very rapidly and informally while providing a method for confirming them through diplomatic channels.

(iv) Supplementary Agreements

There may be a need at some time for a supplementary agreement between the Parties. If so, it would be desirable for any such agreement to take the form of an executive agreement under U.S. constitutional law, rather than a treaty subject to the advice and consent of the Senate.

In this case it is essential to include an article that specifically authorizes the President to conclude agreements to carry out the purpose of the treaty.

Whiteman: Digest of International Law,
Vol. 14 at p. 229:

"a. General. An executive agreement made by the President under the authority of a treaty may be coextensive with the treaty with regard to its scope and subject-matter. It has the same effect and validity as the treaty. The limitations imposed upon it by the Constitution are the same as those imposed upon the treaty itself.

"b. Delegation. An executive agreement made on the basis of a treaty must be appropriately authorized thereby. The delegation is sufficient if the intention is expressed that the President make the subsidiary agreement in a manner that will carry out the purpose of the treaty. It is not necessary that the President's action meet the precise standards that are required for presidential action taken pursuant to congressional legislation on domestic matters."

American Law Institute, Restatement of the Law, Second, Foreign Relations Law of the United States (1965), p. 375.

(The statement in the above quotation that an executive agreement made under the authority of a treaty "has the same effect and validity as the treaty" may go too far.)

(b) Annexes

The technical annexes would be negotiated and initialled immediately following the negotiation and initialling of the treaty. The treaty and annexes would be submitted as a package to the U.S. Senate.

- 4 -

If it is desired to employ an informal amendment procedure for the Annexes, each Annex must contain an amending procedure, e.g. "The Parties are empowered to amend this Annex subject to the requirement that such amendments shall be consistent with the purpose and objectives of the Treaty. All such amendments shall be confirmed by an exchange of notes or letters through diplomatic channels which shall specify the effective date or dates of the amendments."

J. O. Parry
Head, Treaty Section
Economic Law and Treaty Division

Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

L. Legault

TO
A

Minister of Fisheries and Oceans

RECEIVED

MAY 19 1981

FROM
DE

Donald D. Tansley

FLP

John
20/5

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YOUR FILE/VOTRE RÉFÉRENCE	
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BY HAND	PAR PORTEUR
ATTN	

SUBJECT
OBJET

Pacific Salmon Negotiations

Purpose

The purpose of this memorandum is to report to you the outcome of the round of negotiations held in Vancouver from April 27-May 2, 1981.

Summary

The negotiators were unsuccessful in reaching accord on a recommendation to Governments regarding the elements of a long-term comprehensive agreement. While they were able to reconfirm their conclusions on the basic principles of a long-term agreement, difficulties arose over the implementation of these principles, particularly over the regime of interception limitation that should be put into place during the first four years.

However, the negotiators have set out three options for the consideration of governments, as set out in the attached Agreed Summary Record. These options are basically cosmetic in nature, and represent an attempt by the negotiators to keep channels open, rather than conclude now that an agreement is impossible. Indeed, consultations at the officials level will continue next week in Alaska, and the current situation can, therefore, be characterized as a hiatus rather than a breakdown in the negotiating process. It is our intention to make a final recommendation to you on whether or not to proceed with further negotiations by June 19, 1981.

Details

As noted above, the negotiations ran into difficulties over the question of the commitments which either side was willing to make during the first four years of an agreement. There remains broad agreement on the principles of a long-term agreement-conservation, optimum yield, equitable balance in

the value of interceptions, reduction in interceptions. However, in attempting to develop a specific program of limitation of interceptions which would freeze interceptions for four years, it quickly became clear that the implementation of these principles would be difficult.

Three issues became key to the establishment of a four year freeze on interceptions. Not unexpectedly they were the issues of U.S. entitlements for sockeye and pink salmon returning to the Fraser; compensation for a reduction in Canadian fishing on the Panhandle rivers (especially the Taku); compensation for Canada for our agreement to raise the interception limit on sockeye at Noyes Island, Alaska above the 1971-74 base year average level.

In the latter two cases, Canada sought compensation in terms of an increase in our own interceptions of Alaskan pink salmon in northern B.C. The U.S. offer for compensation was far below Canada's demand, and the difference is due, in part, to differences in opinion over the extent of interceptions in northern B.C./SE Alaska.

The USA contends that northern B.C. fishermen catch far more Alaskan pink salmon than the existing interception data show, a contention which probably has a valid basis given recent increases in Canadian catches in the north. Both sides recognize the importance of improving interception data by means of tagging programs, especially in the northern boundary area, and irrespective of whether or not agreement can be reached, the negotiators recommend that research programs be established to fill such gaps in knowledge.

The reaction of industry advisers to the break off in negotiations was one of disappointment, with the exception of the UFAWU which, for once, supported the Canadian delegation in its decision to suspend the talks. It was stressed to the industry advisers that consultations would be continuing in an effort to find a way around the problems now exposed in stark terms.

The U.S. delegation reaction was one of shock. Following the final plenary session, a number of officials and industry advisers expressed the view that the USA possessed further negotiating room (although the gap was so wide, especially in the north that no further progress could have been made). From a tactical viewpoint, the suspension of negotiations may, therefore, have a salutary effect on the U.S. delegation, an assessment which will be either confirmed or denied during the consultations with Alaska on May 11 and 12, 1981.

.../3...

Conclusions

The negotiations have finally evolved to a stage where a complete assessment of the negotiable package will be able to be made within a month. Your officials and the negotiator remain fundamentally optimistic that a satisfactory agreement can be negotiated for consideration by the Government, and we will be advising you of our final views by June 19, 1981.

Attached to this memorandum are briefing notes and anticipated questions and suggested answers for your use in the House, and during your visit to British Columbia this week, as well as a copy of the Agreed Summary Record of the Vancouver meeting.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
D. D. TANSLEY

c.c. Minister's Office (2)
D.D. Tansley (2)
ADM's - H.D. Johnston
A.W. May
G.C. Vernon
G.N. Ewing
International Directorate (6)
Central Registry

AGREED SUMMARY RECORD OF DISCUSSIONS BETWEEN
CANADA AND THE UNITED STATES OF AMERICA ON AN AGREEMENT
FOR THE MANAGEMENT AND DEVELOPMENT OF PACIFIC SALMON STOCKS,
VANCOUVER, BRITISH COLUMBIA,
APRIL 27 - MAY 2, 1981

Delegations from Canada and the United States of America, including advisors from the fishing industry, state and provincial governments, and domestic United States fishery management agencies, met in Vancouver, British Columbia, April 27 - May 2, 1981, to continue negotiations toward a Pacific Salmon agreement.

The negotiators were unable to reach agreement on several difficult issues and therefore could not develop a comprehensive accord.

Because of the pressing management problems faced by both countries, the negotiators agreed on the necessity of making further attempts to reach agreement as soon as possible and therefore recommend that the Governments consider three options described below, or some variant of them, as a possible basis for subsequent actions to resolve outstanding issues. However, at this time the two sides cannot agree on any of these options.

The three options outlined by the negotiators are set out below:

OPTION 1.

(A) Long-term Arrangements.

(i) Principles

Both sides remain committed to the principles expressed in the Lynnwood agreement, including:

- a. the two Parties shall cooperate to conserve salmon stocks subject to interception in a way that provides optimum yields;
- b. the two Parties shall cooperate on programs of management, research, monitoring and enhancement for the increased production and optimal harvest of salmon; and
- c. the two Parties shall adjust fisheries as required for conservation and for each country to receive benefits commensurate with the salmon production of its own rivers. Such adjustments should attempt to reduce rates of interception and avoid undue disruptions of existing fisheries. Special provisions apply to the Fraser and transboundary rivers.

(ii) Establishment of Commission

The Parties agree to create a Commission which will undertake a program to implement the above principles. In the third year after the entry into force of the Convention, the Commission shall determine the numbers of salmon of each species intercepted by each party and shall develop formulae to equate the values of the different species of salmon in

different systems. On the basis of this information, and on the basis of mutual agreement, the Parties shall develop and, in the fifth year of the Convention, shall embark upon a long term program of cooperative management and enhancement and of fisheries adjustment.

(iii) Transboundary Rivers

With respect to the transboundary rivers in the long term, the two sides agree to special arrangements which would include:

- (a) close coordination in the setting of escapement targets and in planning the conduct of fisheries in order to achieve those targets,
- (b) coordinated, jointly agreed enhancement programs,
- (c) agreed upon shares between the two countries of jointly established allowable catches, and
- (d) mechanisms to compensate Canada for contribution to United States fisheries of fish originating in the Canadian sections of the rivers.

Specific arrangements for the Yukon River should be negotiated in the near future and any agreed upon adjustments should be limited to fisheries on the Yukon River and in Northwest Alaska.

B. Research

The negotiators note particularly that the scarcity of scientific data was a major impediment to reaching agreement and that, regardless of the options below or any others that may be considered, the early initiation of intensive research will be required if a solution is to be found. Taking this into account, both sides should conduct intensive research on intercepting fisheries particularly in the northern British Columbia and Southeast Alaska area.

C. Conservation

In managing their intercepting fisheries, both sides shall take into account the conservation objectives of the Lynnwood agreement.

D. Short-term Arrangements

1. The United States gillnet fishery at Tree Point which takes sockeye and its troll fishery for coho and chinook salmon in Southeast Alaska and in the Fisheries Conservation Zone (FCZ), bound for spawning grounds in British Columbia; Canadian fisheries that intercept salmon bound for spawning grounds in Washington, Idaho, Oregon and California; and United States fisheries off the coast of Washington, Oregon and California that

intercept salmon bound for spawning grounds in Canada (except for sockeye and pink salmon bound for the Fraser River - see below) would be managed consistent with the general interception limitation scheme.

2. For Fraser River sockeye and pinks, arrangements would be made for the transfer of specific upriver management and enhancement responsibilities from the International Pacific Salmon Fisheries Commission to Canada. During the first four years the United States entitlement for Fraser-bound sockeye and pink salmon would be 35% of the total allowable catch of each, regardless of where such salmon were caught.

OPTION 2

Option 2 is the same as Option 1 except that fisheries on Fraser-bound sockeye and pink salmon would continue to be managed and allocated under the existing International Pacific Salmon Fisheries Convention regime.

OPTION 3

This option would not have specific provisions for limiting interceptions during the first four years but would contain the three common elements outlined above.

AGREED SUMMARY RECORD OF DISCUSSIONS BETWEEN
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ANTICIPATED QUESTIONS AND SUGGESTED ANSWERS

- Q. Can the Minister of Fisheries and Oceans comment on the breakdown in Pacific salmon talks with the USA?
- A. The negotiations were suspended because the two sides were unable to agree on how to implement in the short term the basic principles of a long term agreement. There remains a substantial agreement as to principles, and the negotiators, with officials, are meeting this week to try and resolve those short term issues.
- Q. What caused the breakdown in negotiations?
- A. There was disagreement on the number of interceptions that each side would be permitted to take during the first four years of an agreement. Specifically there were problems with U.S. catches of salmon from the Fraser, and with Canadian catches of Alaskan salmon in northern B.C.
- Q. Can the Minister outline the basic elements of the long term agreement which are not apparently in dispute?
- A. The elements are set out in the Summary Record of last October's meeting in Lynnwood, Washington. The principles of the need for conservation and optimum utilization of salmon are established. The USA recognizes the need, within four years of an agreement, to measure which country is ahead in interceptions, and then to reduce interceptions until there is a balance. All these elements are agreed, as is the idea of the creation of a new umbrella Commission to be a forum for consultation between fisheries managers in the two countries.
- Q. How long will we negotiate while our salmon stocks decline?
- A. The breakdown in negotiations had a positive effect in that it revealed the alternative to an agreement in stark terms. Neither country wants a fish war, because either can do irreparable harm to domestic as well as intercepted stocks. Our negotiators and officials are consulting to try and find a possible way around the problems that were exposed in Vancouver.

Prepared by:

M. Hunter
International Fisheries
Relations Branch
International Directorate
May 11, 1981

BRIEFING NOTES

CANADA-USA PACIFIC SALMON NEGOTIATIONS

The negotiating session ended (see Agreed Summary Record of the meeting) with the negotiators concluding that, because they could not find acceptable solutions to a number of key issues, a comprehensive accord could not be concluded. In the Canadian view, the differences between the two sides on the key issues were so serious that it was not deemed profitable to pursue the negotiations further in Vancouver; to do so would have crystalized the positions of both sides and would have decreased the chances of reaching agreement this year. The United States, on the other hand, indicated that they had more flexibility and would have been prepared to proceed with the negotiations.

The atmosphere of the meeting was positive and cordial throughout and the decision to break off the negotiations, although deeply disappointing to both sides, was reached without rancour. In short, an agreement was made to part as friends, giving time for reflection on the serious problems that divide the two sides and for consultations that might suggest avenues for solution that could not be developed under the pressure packed circumstances of a formal negotiating session.

Considering the deteriorating state of some stocks fished competitively by both countries, the fact that, for the first time, the fisheries administrations in Alaska, Canada and Washington State had worked informally together in developing regulatory plans for the 1981 fishing season represents a real advance. Because of the fear on both sides that a fish war might develop if an Agreement is not concluded soon, both sides are determined that a solution must be found quickly even though at the present time, the means of reaching agreement are not clear.

At the Vancouver session, it was gratifying that both sides reiterated their support for the long-term provisions of the Lynnwood understanding. (It should be noted, however, that a number of implementation details still need to be worked out.) The negotiations broke down over the short-term arrangements, namely the specific obligations each side would undertake in order to freeze their intercepting fisheries during the first four years of the Agreement. The particular issue that broke up the talks was the short-term regime that would apply to the Northern B.C.-Southeast Alaska area. This was by no means the only issue that separated the two sides at the conclusion of the meeting; e.g. the important question of the United States entitlement to Fraser River-bound sockeye and pinks (in both the short and long term) was far from settlement. However, less time was spent on these issues than on the northern problems. At the present time, it is difficult to assess whether or not these issues could have been resolved in Vancouver had the northern controversy been settled.

The deadlock occurred partly because of a marked difference in the estimates each side made of the number of salmon currently being intercepted by fishermen of the two countries and partly because the amount of compensation (in terms of allowable number of fish Canada could intercept) the United States was prepared to offer Canada in return for some adjustments favourable to the United States was, in the Canadian view, unacceptably low. Even if the difference in estimates could have been resolved, the Canadian side is doubtful that a satisfactory compromise could have been reached; a substantial shift in Alaska's position will therefore be necessary to resolve the Northern B.C.-Southeast Alaska short-term problem.

Despite the suspension of negotiations, the discussions held in Vancouver were extremely valuable in revealing the basic detailed positions of both sides; the difference in the "numbers" proposed by each side and in regulatory methods that would be used to limit fisheries to such numbers was far greater than

- 2 -

either had expected before the meeting. Now that the objectives of each side and the dimensions of the problems associated with short-term arrangements have been revealed, a thorough review by both Canada and the United States will be necessary if future negotiations are to be successful.

Further technical discussions are to be held amongst the negotiators and officials, beginning in Juneau, Alaska on May 11, 1981. The purpose of the discussions is to attempt to determine the degree of flexibility each side may still have with respect to all problems and to identify the approach to each of the problems that is most likely to lead to solution. Although there is some bitterness on the United States side regarding the Canadian decision to break off the Vancouver negotiations, there is still much good will left and a realization on both sides of the dangers of losing the momentum created by the three positive negotiating sessions held between May and October of last year. It would be our intention that if the informal talks over the next month show promise, separate meetings will be held with private sector advisors in both countries to determine the degree of support in each country for possible avenues for solution. The break off of negotiations may, therefore, have strengthened Canada's hand; certainly the shock waves created in the U.S. delegation would indicate a firm desire on the U.S. side to reach agreement.

During the Vancouver meeting it became apparent that despite presenting a very hard line position, the United States is extremely concerned about the danger of escalating Canadian intercepting fisheries in the north and the possibility of a fish war along the Northern B.C.-Southeast Alaska boundary. This is the first time such concern has been evident; it arose mainly because the Canadian troll catch in the north on pink salmon (probably mainly of Alaskan origin) mushroomed from a few tens of thousands in earlier years to over 700,000 in 1980. This new concern plus the fact that Canada felt strongly enough about the unreasonable Alaskan demands to terminate the Vancouver session over the Alaskan issue, should quickly elicit the maximum possible flexibility from the United States.

In short, because it was felt that continuation of the Vancouver negotiating session would have led to irreconcilable deadlock, the Canadian side broke off the negotiations with no promise to resume formal discussions at a later date. Nevertheless, the positive spirit that has characterized all four rounds of negotiations over the past year has been preserved largely intact and further informal consultations between the two negotiators and their officials will continue over the next month to explore the issues in greater depth and, if possible, to develop proposals for breaking the present deadlock. Both negotiators plan to report back to their Governments on the results of the informal consultations before June 10.

Prepared by:

M. Hunter
International Fisheries
Relations Branch
International Directorate
May 11, 1981

001148

OFFICE
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

CABINET
DU
SECRÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

TO/A: FLO Date 14.5.81

FROM/DE: MIN

REFERENCE/RÉFÉRENCE:

SUBJECT/SUJET: Minister's decision/Décision du Ministre

Seen by SSEA

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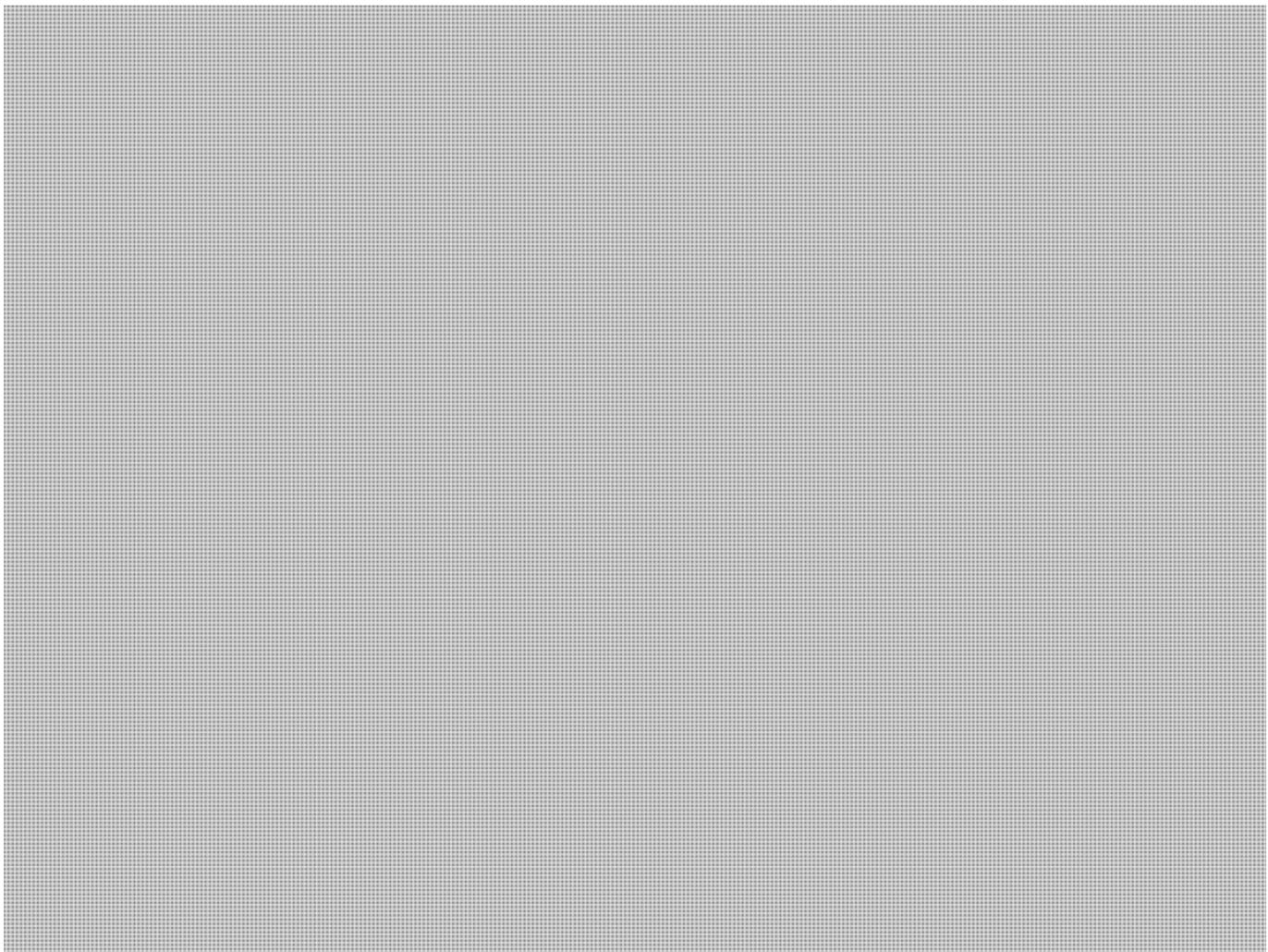
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May 12th 1981

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B. HAND		PAR PORTEUR
ATTN:		

MEMORANDUM FOR THE MINISTER

SUBJECT: Canada/USA Pacific Salmon Negotiations

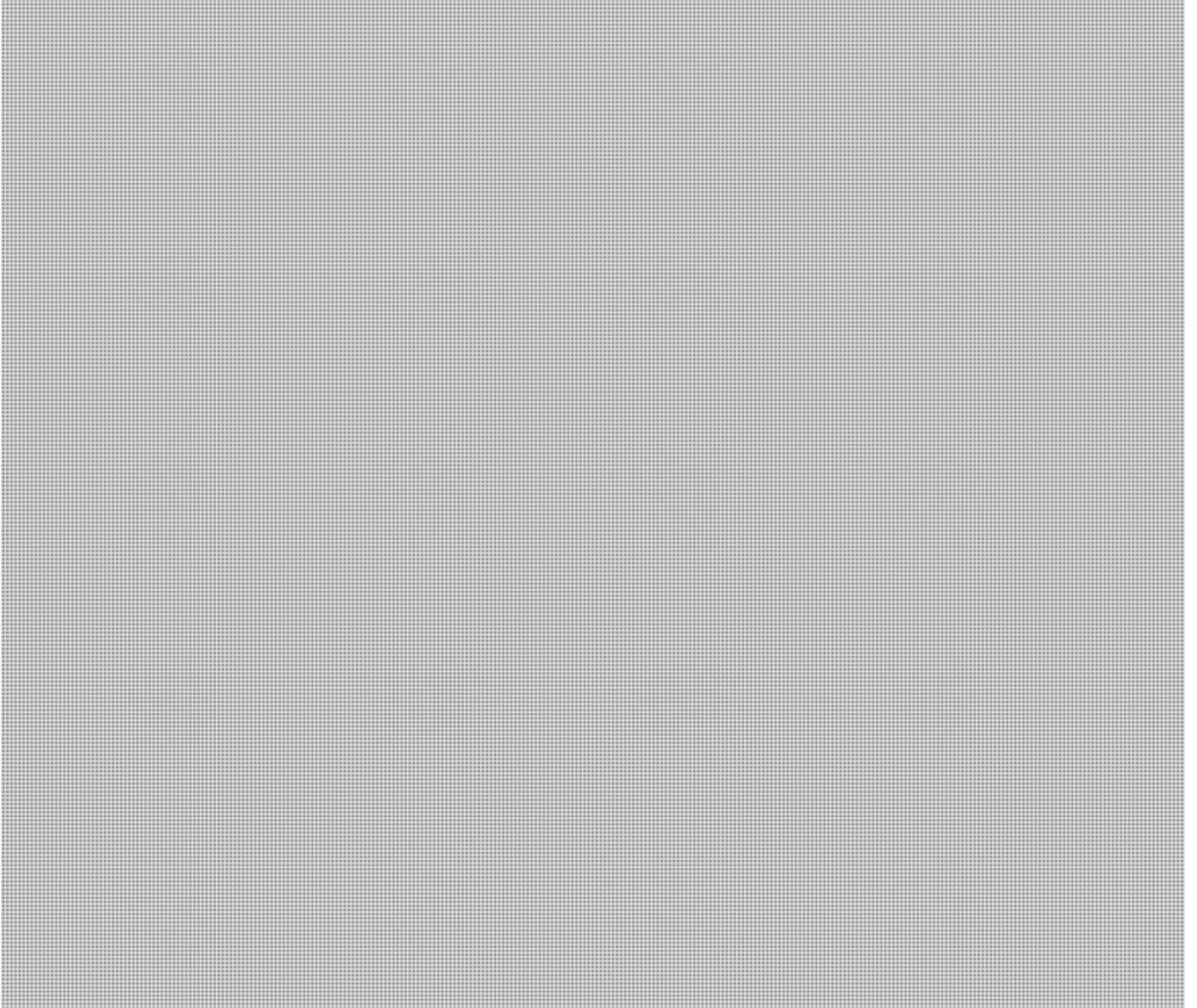


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A.E.G.)

FLE/L.L. Herman/2-9553/nb

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



s.23

TO / À FLP/L.H. Legault

FROM / De FLE/L.L. Herman

REFERENCE / Référence Attached memorandum of April 6, 1981 to Director, Legal Services, DFO

SUBJECT / Sujet Aboriginal Rights and the Pacific Salmon Negotiations

RF(OR)
Mr Rochon
Phase discus

SECURITY / Sécurité CONFIDENTIAL

DATE May 7, 1981

NUMBER / Numéro FLE-0663

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ENCLOSURES / Annexes

DISTRIBUTION

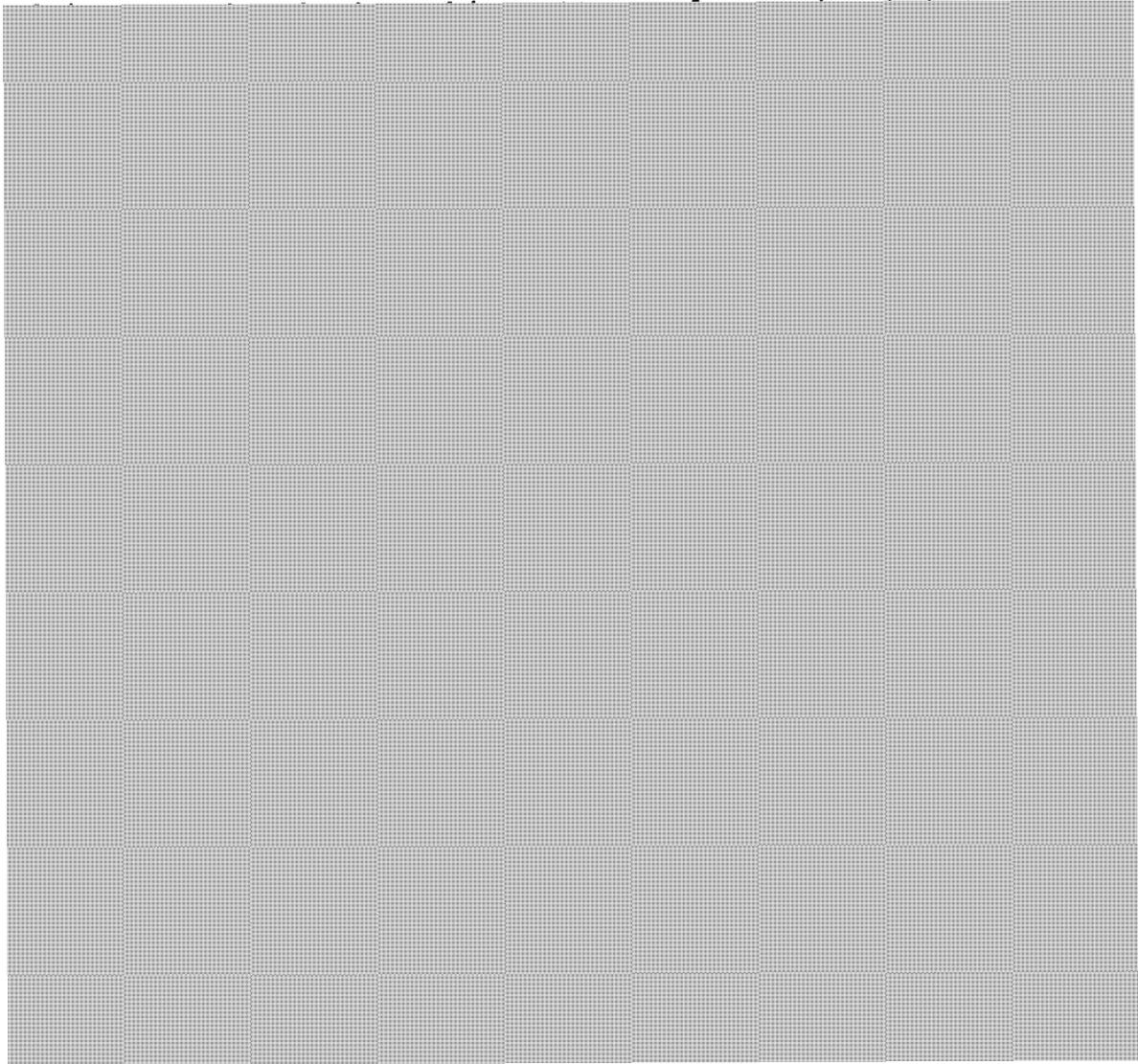
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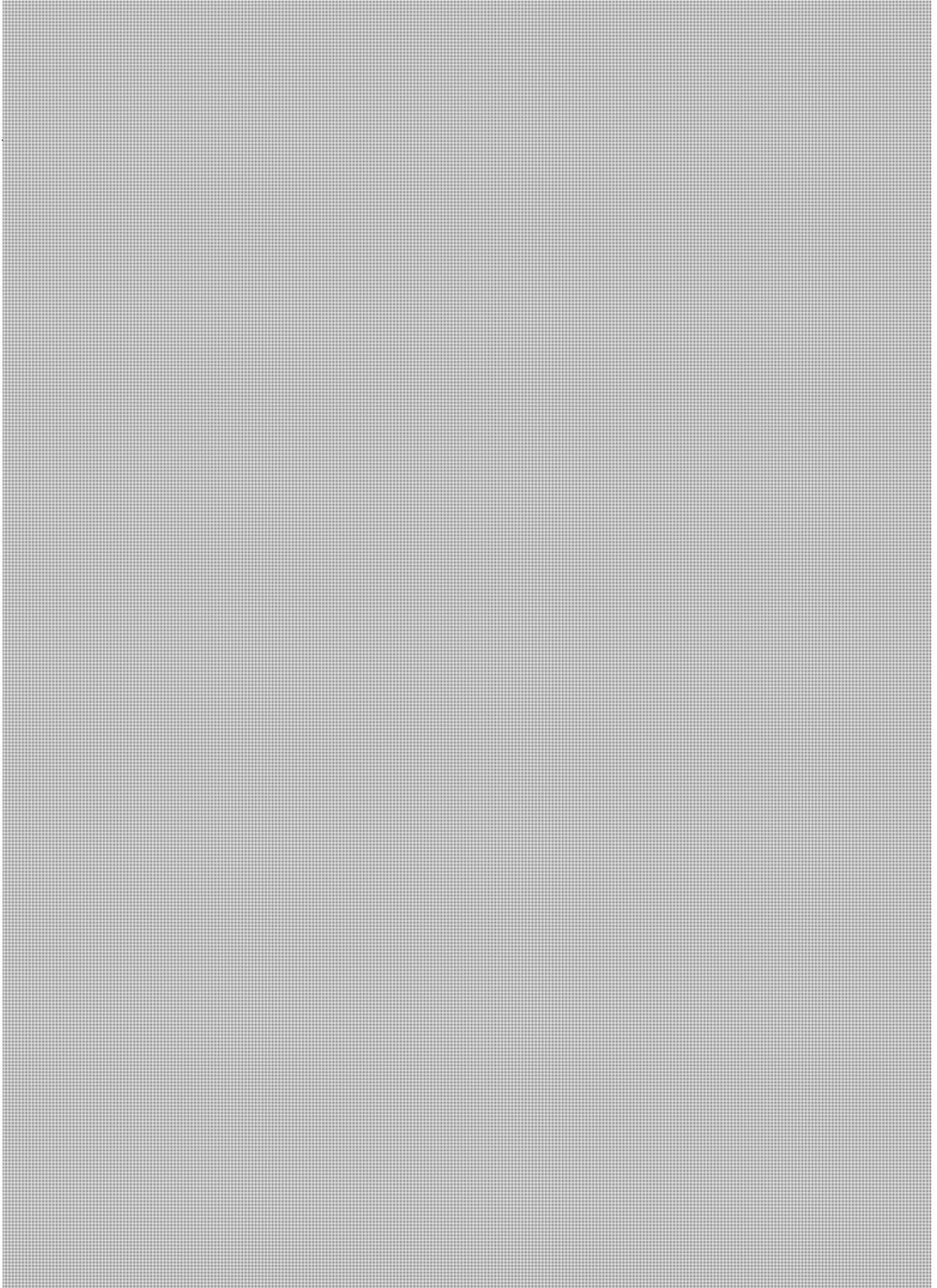
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I have discussed the matter raised in the memorandum under reference regarding the rights of the aboriginal peoples in Canada, as enshrined in Section 34(1) of the proposed Constitution Act, 1981, with Bob Green, Director, Legal Services, Department of Fisheries and Oceans, and with Jack Parry, Treaty Section.



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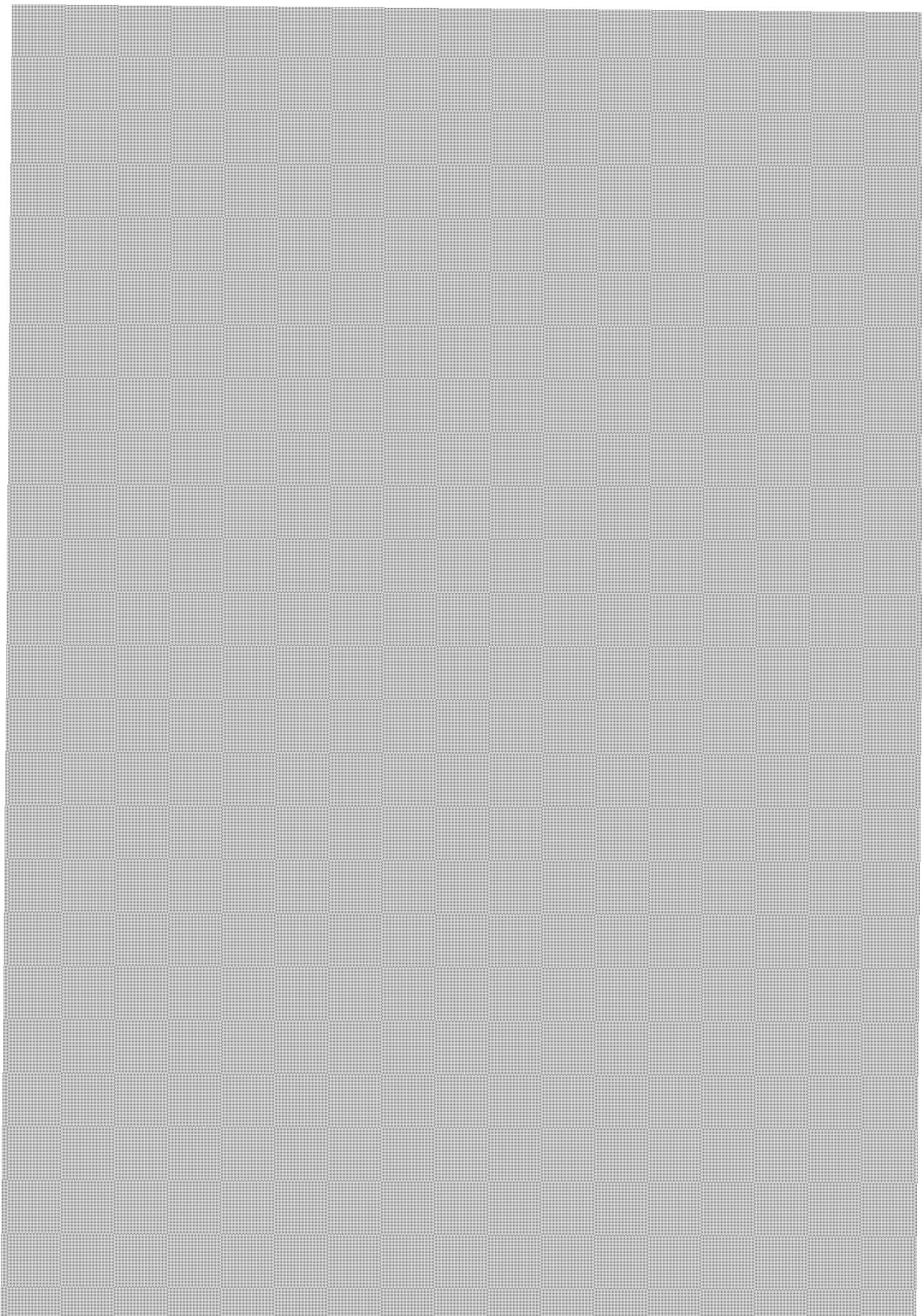
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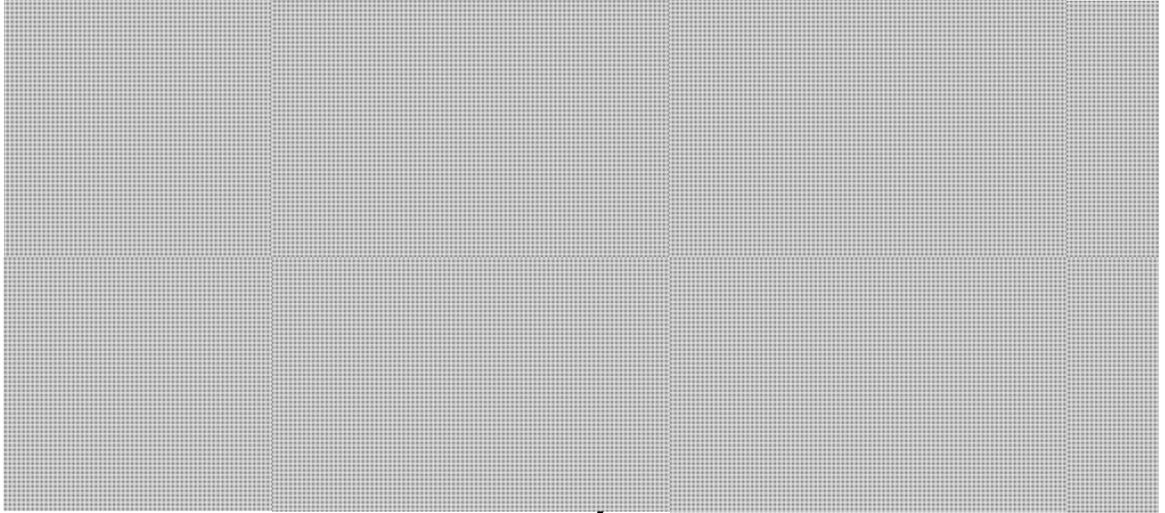
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L.L. Herman
Deputy Director
Economic Law and Treaty Division



Government of Canada / Gouvernement du Canada

MEMORANDUM

LEGAL SERVICE

s.23

TO
A

R. Green
Director
Legal Services

RECEIVED

APR 9 1981

FLP
[Handwritten signature]

FROM
DE

A. Campbell
Director-General
International Directorate

SECURITY - CLASSIFICATION - DE SÉCURITÉ
CONFIDENTIAL
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
DATE April 6, 1981

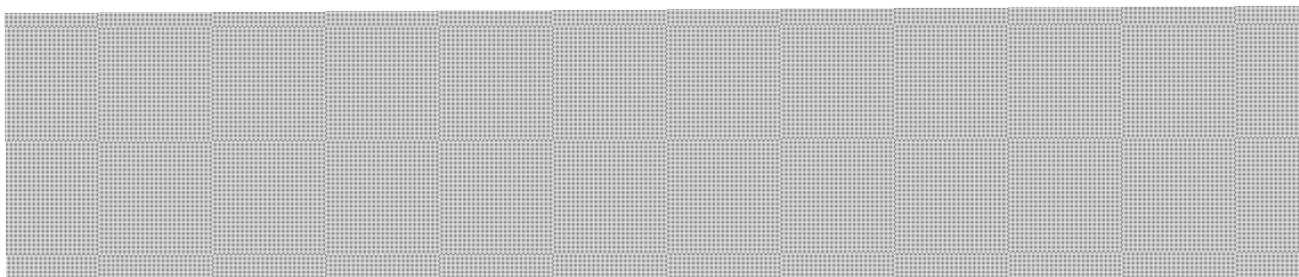
SUBJECT
OBJET

Aboriginal Rights and the
Pacific Salmon Negotiations

Mr. Herman
To review and discuss
Bill
[Handwritten initials]

It has been brought to our attention by the attached memorandum that the proposed Constitution Act, by entrenching aboriginal and treaty rights of the aboriginal People of Canada, could result in the inability of the Canadian Government to carry out international treaty obligations in fisheries matters.

This is of particular concern to us at the moment since the Canada-USA Pacific Salmon negotiations are in their final stages with the next round scheduled for 27 April 1981.



[Handwritten signature]
A. Campbell

c.c. L. Legault - FLP ✓
J.R. MacLeod

Govern
of Canada Gouvernement
du Canada

MEMORANDUM

NOTE DE SERVICE

Mr. C.W. Shinnars
Director-General

G.E. Jones
Advisor International and
Intergovernmental Affairs

SECURITY - CLASSIFICATION - DE SÉCURITÉ
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOIRE RÉFÉRENCE
DATE March 26, 1981

SUBJECT
OBJET

I recently had occasion to talk to Mr. W. Phelps, Chief Negotiator for the Yukon Territorial Government presently negotiating Indian land claim issues. I contacted Mr. Phelps to bring him up to date on the U.S./Canada negotiations and our present negotiating position on the Yukon River and what the implications are for the Yukon Territories and its citizens. During our discussions Mr. Phelps raised an issue I feel may have tremendous bearing on our international negotiations as well as domestic management responsibilities.

My concern centers around changes to the Proposed Constitution Act and more specifically Section 33 which reads:

- 33 1) the aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed.
- 2) in this Act, "aboriginal people of Canada" includes the Indian, Inuit and Metis people of Canada.

On the surface the above change does not appear to be too significant, however, on closer examination the possible implications become rather disturbing. As Section 33 entrenches aboriginal rights in the Constitution they become unalterable without constitution amendment. If Section 33 enshrines aboriginal rights then legislation that interferes with these rights becomes ultra vires. Sections of the Fisheries Act, which definitely deals with aboriginal fishing rights, would fall in this category. This could mean that amendments to the Fisheries Act, ~~supporting regulatory changes, or possible changes in Departmental policy would be impossible.~~

For day to day fisheries management this might prevent Departmental access across Indian lands or tie our hands in adopting certain fisheries management strategies. We might very well end up like Washington State where there are two completely separate management agencies, which do not always agree on the strategy for obtaining optimum yields.

-2-

In the international arena the changes might suggest that we may not be able to live up to our commitments made in the proposed salmon agreement. The agreement may call for a certain management regime that could provide benefits to both countries, however, if the Indians decided to operate outside of this regime we may not be able to fulfil our obligations defined in the agreement. Two systems that come to mind immediately in which I can foresee numerous problems are the Fraser and Yukon Rivers.

At the very least I believe the changes to the Constitution Act will result in a great deal of litigation, which with the Canadian judicial system would result in long delays before management actions could take place.

The Yukon Territorial Government are concerned to the degree that they have prepared a short note on the matter (attached) and have contacted the provincial Premiers and several Federal Cabinet Ministers, including the Hon. Romes LeBlanc, to make them aware of their concerns. I am also lead to believe that members of the Department of Justice and D.I.N.A. are concerned about the way Section 33 has been written.

It is my understanding that this particular section has not as yet had full discussion in the House. I therefore recommend that we raise our concerns with our Minister to make him aware of the situation. I also recommend we formally ask the Department of Justice for an interpretation of Section 33 and its implications. This question should also be raised with the "legal treaty people" in External Affairs. By alerting our Minister of our concerns and following the Department of Justice review, it might be possible to have Section 33 reworded, or another Section added that more clearly defines the intent of the Section. The Yukon territorial Government paper has some suggestions in this regard.

As time is rather limited I request your direction as to how this matter should be put through the system.

cc.: D. Wilson
A. Gibson
M. Hunter
M. Shepard

G.E. Jones

GEJ/je
Attachment

MEMORANDUM RE: SECTION 33
PROPOSED CONSTITUTION ACT 1981

OBJECT

The object of this Memorandum is to identify certain problems raised by Section 33 of the Proposed Constitution Act 1981, and to propose a possible solution.

BACKGROUND

Following extensive lobbying by native people for the entrenchment of aboriginal and treaty rights in the Constitution, the Government inserted the following Section:

- 33.(1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

At present, aboriginal rights may be extinguished or diminished by competent legislation.

Section 33 may change this. One possible construction is that it entrenches aboriginal rights and makes them immutable except by Constitutional amendment.

This view is held by some Indian organizations and the national press, and is supported by certain members of the legal community. It gains support from the wording of Section 58(1) which appears to contemplate

.../2

- 2 -

immutable rights throughout the Constitution. It also appears to be the assumption underlying the proposed amendment of February 2, 1981, which was subsequently withdrawn (see attachment "A"). Our view is that this construction is a distinct and dangerous possibility should the issue be decided in court.

IMPLICATIONS

1. Settlement of Aboriginal Claims

If Section 33 entrenches aboriginal rights then a Land Claims Settlement would require amendment of the Constitution. It is unlikely that the Provinces would support the type of Comprehensive Land Claims Settlement envisaged for parts of Northern Canada and without that support settlement may never be achieved.

2. Laws of General Application

If Section 33 makes aboriginal rights immutable then legislation which conflicts with aboriginal rights will be ultra vires to the extent of the conflict (Section 58(1)). This would render development in large areas of Northern Canada virtually impossible if imposed by aboriginal people. It would also make parts of federal legislation such as the Fisheries Act, the Migratory Birds Convention Act, the National Parks Act and the Northern Pipeline Act constitutionally invalid.

.../3

3. Expectations of Aboriginal People

The view that section 33 entrenches aboriginal rights is bound to result in extensive litigation. If that view is wrongly held then the Federal Government will be blamed by natives for falsely raising expectations when the matter should have been clarified at the outset.

ALTERNATIVES

1. Take no action on the basis that the courts will not construe Section 33 as entrenching aboriginal rights.
2. Amend Section 33 so as to make it clear that aboriginal rights are not entrenched thereby.

RECOMMENDATIONS

1. Alternative 2 be adopted. Section 33 be amended by adding the following Subsection:

33.(3) The aboriginal rights referred to in subsection (1) shall be construed as having the legal status of rights cognizable at common law.
2. Government justify this amendment on the basis that it was necessary in order to remove possible impediments to the settlement of aboriginal land claims.

SUBMITTED BY GOVERNMENT OF YUKON

9 MARCH 1981

ATTACHMENT "A"

Proposed Amendment - February 2, 1981

"The rights recognized and affirmed by Section 31 may be modified
(a) in the case of rights of aboriginal peoples of Canada within
one or more provinces, in accordance with the appropriate procedure
for amending the Constitution of Canada; and (b) in the case of
rights of aboriginal peoples of Canada in areas of Canada outside
the provinces, by Parliament".

This proposed amendment assures that Section 33 entrenches aboriginal
rights. Otherwise it would be unnecessary to confer constitutional
power on Parliament to modify aboriginal rights in Northern Canada.

11-2-1981

Constitution du Canada

57 19

(i) it is in the form in which it exists upon its recovery, or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood.

(i) soit le produit qui se présente sous la même forme que lors de son extraction du milieu naturel,

(ii) soit le produit non manufacturé de la transformation, du raffinage ou de l'affinage d'une ressource, à l'exception du produit du raffinage du pétrole brut, du raffinage du pétrole brut lourd amélioré, du raffinage des gaz ou des liquides dérivés du charbon ou du raffinage d'un équivalent synthétique du pétrole brut;

b) on entend par production primaire tirée d'une ressource forestière la production constituée de billots de poteaux, de bois d'œuvre, de copeaux, de sciure ou d'autre produit primaire du bois, ou de pâte de bois, à l'exception d'un produit manufacturé en bois.

PART VIII

GENERAL

PARTIE VIII

DISPOSITIONS GÉNÉRALES

Preamble to Constitution of Canada

58. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

Constitution of Canada

(2) The Constitution of Canada includes

- (a) the *Canada Act*;
- (b) the Acts and orders referred to in Schedule I; and
- (c) any amendment to any Act or order referred to in paragraph (a) or (b).

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada.

Repeals and new names

59. (1) The enactments referred to in Column I of Schedule I are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

Consequential amendments

(2) Every enactment, except the *Canada Act*, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting

58. (1) La Constitution du Canada est la loi suprême du Canada, elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

(2) La Constitution du Canada comprend :

- a) la *Loi sur le Canada*;
- b) les textes législatifs et les décrets figurant à l'annexe I;
- c) les modifications aux textes législatifs et aux décrets mentionnés aux alinéas a) ou b).

(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle

59. (1) Les textes législatifs énumérés à la colonne I de l'annexe I sont abrogés ou modifiés dans la mesure indiquée à la colonne II. Sauf abrogation, ils restent en vigueur en tant que lois du Canada sous les titres mentionnés à la colonne III

(2) Toute loi, sauf la *Loi sur le Canada*, qui fait mention d'une loi figurant à l'annexe I par le titre indiqué à la colonne I est modifiée par substitution à ce titre du titre

BACKGROUND

I Sec. 33 - two different Constructions

1. s.33 merely removes any existing uncertainty as to the legal existence of aboriginal and treaty rights and asserts their importance. It directs the courts to take cognizance of aboriginal rights at common law.
2. s.33 renders aboriginal rights immune to change by ordinary statute. It requires that any modification of aboriginal rights be effected by an amendment to the Constitution Act, 1981.

II Some Arguments for the Construction #1 Position

1. The language of s.33 is essentially declaratory and confirmatory. The language - "recognized and affirmed" - is consistent with the objective of merely removing doubt and asserting importance. Compare s.1 of the Charter which states that the Charter "guarantees" the rights and freedoms set out in it.
2. A provision merely removing uncertainty regarding the status of aboriginal and treaty rights, and emphasizing their importance would not be meaningless. In decisions such as La Société de Développement de Baie James et al. v. Robert Kuotawat et al., (1975) C.A. 166 (Q.C.A.), for example, there have been doubts cast on the legal status of aboriginal rights. Although these rights were recognized as having a status cognizable at law in the recent Meiorin decision, the Supreme Court of Canada has yet to pronounce conclusively on the question. Although there is currently no doubt regarding the legal status of treaty rights, a constitutional affirmation of

these rights could certainly encourage a more liberal judicial approach to construing the rights contained in them.

3. Construction # 1 could avoid some of the drastic practical implications of Construction # 2, and might commend itself to the courts for these reasons as well.

III Some Arguments for the Construction # 2 Position

1. Some members of the federal government were apparently of this view earlier. On February 2, the federal government attempted to introduce the following amendment:

"The rights recognized and affirmed by section 31 may be modified (a) in the case of rights of aboriginal peoples of Canada within one or more provinces, in accordance with the appropriate procedure for amending the Constitution of Canada; and (b) in the case of rights of aboriginal peoples of Canada in areas of Canada outside the provinces, by Parliament".

The amendment was later withdrawn, although not because the federal government deemed it unnecessary. The fact that the federal government considered it necessary to introduce an amendment providing for the modification of the rights in s.33 indicates that the federal government considered that these rights could not be modified otherwise, short of the amendment procedures specified in the constitution.

2. That, it might be asked by those favouring this construction, would be the point of enshrining aboriginal rights in the constitution if they were not to be given constitutional status

vis à vis ordinary laws? In this context, what would be the use of recognizing and affirming aboriginal rights if the day after the passing of the Constitution Act they could be extinguished or otherwise modified by ordinary legislation?

IV Implications of the Number Two Construction

1. Settlement of Aboriginal Claims

Settlement of aboriginal land claims in northern Canada and possibly within the provinces would require constitutional amendment by a procedure such as the Victoria formula or a national referendum. The resulting possibilities for delays, political lobbying, and vetos by parties unaffected by the claims in question could delay, hinder and even prevent the successful conclusion of land claims settlements.

2. Laws of General Application

The application of federal and territorial (and possibly provincial) legislation of general application could be drastically curtailed. Instead of prevailing over aboriginal rights, as is presently the case, federal legislation which conflicted with aboriginal rights would be of no effect to the extent of the conflict.

There could be large areas of Canada, particularly northern Canada, in which parts of federal legislation such as the Fisheries Act, the Migratory Birds Convention Act, the National Parks Act, the Northern Pipeline Act, the Territorial Lands Act and the proposed Canada Oil and Gas Act could be constitutionally invalid. Attempts to rectify gaps in legislation as a result of inconsistency with aboriginal rights would require - in northern Canada

and possibly within the provinces as well - constitutional amendment by a procedure such as the Victoria formula or a national referendum. There would be no guarantee that such efforts would meet with the prescribed level of constitutional support to enable them to succeed.

3. Expectations of Aboriginal Peoples

The national press and at least some native groups appear to believe that s.33 entrenches aboriginal rights. As indicated above, there is some basis for a legal interpretation to this effect. Native people who take this view can be expected to resort to litigation to attempt to use the immutable status of their rights to their advantage. If the ultimate result of this litigation is a judicial opinion that aboriginal rights are not entrenched, native groups will blame the Federal Government for falsely raising expectations. The resulting bitterness and deterioration in relations between aboriginal and other peoples in Canada could far outweigh any short term adverse reaction which could result from clarifying the situation at the outset.

V. Arguments in Favour of Recommended Amendment to s.33

The proposed amendment to s.33 would remove any existing uncertainty regarding the legal status of aboriginal rights by giving them the status of rights cognizable at common law. At the same time the amendment would make it clear that aboriginal rights, like all other common law rights, are subordinate to competent legislation rather than prevailing over it. In so doing, the amendment would remove the impediments to the settlement of aboriginal claims, the

- 5 -

threat to the integrity laws of general application, and the problems generated by the expectations of the native people, which would all result if s.33 could be construed as entrenching aboriginal rights.

Government of Canada / Gouvernement du Canada

Fisheries and Oceans / Pêches et Océans

M. Hunter/Int'l Directorate
Typist: Elaine Somenzi/5-2186

Your file / Votre référence

Our file / Notre référence

Ottawa, Ontario
May 6, 1981

Dr. M.P. Shepard,
M.P. Shepard & Associates
Limited,
4009 White Rock Street,
Victoria, B.C.

File/Pacific Salmon

DATE	
ACC	136199
REF	
FILE	25-6-7-2-SALMON-1
B. HAND	PAR PORTEUR
ATTN:	

20/5

Dear Dr. Shepard,

Further to the discussions which you have held with regional and headquarters officials on the question of follow-up to the recent round of salmon negotiations in Vancouver, I would like to confirm our understandings as to future activities.

I agree that you, with the assistance of regional officials, should proceed to hold a series of consultations with U.S. officials in an effort to determine, on the basis of U.S. responses, whether or not it is worthwhile to proceed further with the negotiations. I understand that you will be meeting next week in Juneau, to be followed by consultations with Washington State interests at a later date.

I support the idea of meeting again with industry advisers early in June to review the results of these consultations. I understand that this course of action has been discussed with the ADM, Pacific and Freshwater Fisheries, who concurs with it.

Yours sincerely,

A. Campbell
AIDA

A. Campbell
Director-General
International Directorate

- c.c. G.C. Vernon
- H.D. Johnston
- M. Hunter
- G. Jones - via telecopier
- L.H. Legault ✓

[Handwritten initials]

[Handwritten signature]

**ACTION
SUITE A DONNER**

C O N F I D E N T I A L
FM LDN XNGR0900 06MAY81
TO EXTOTT FLO
INFO WSHDC

DATE		
ACC	135986	REF
FILE	25-5-7-2-SALMON-1	DOSSIER
BY HAND		PAR PORTEUR
ATTN:		

BH FANDOTT/HUNTER/GOLDBERG DE OTZ SFAX SEATL DE OTT
DISTR FLP GNG FPR

---CDA-USA PACIFIC SALMON NEGS-VNCVR,27APR-02MAY

THIS TEL SENT AT REQUEST OF FLO/FADDEN WHO IS ON TRANSIT TO WHALING
CONF/REYKJANK.

2.CDN AND USA NEGOTIATORS DID NOT/NOT REACH AGREEMENT ON
COMPREHENSIVE SET OF RECOMMENDATIONS TO GOVTS ON BASIS OF WHICH
DRAFTING OF PACIFIC SALMON AGREEMENT COULD BEGIN.WHILE BOTH SIDES
CLEARLY SHARED STRONG DESIRE TO REACH AGREEMENT,THEY WERE UNABLE TO
DO SO WHEN ATTEMPT WAS MADE TO APPLY LONG TERM PRINCIPLES AGREED TO
IN LYNNWOOD TO SHORT TERM(IE AUST FOUR-YEAR PERIOD OF AGREEMENT).

3.TWO NEGOTIATORS RE-AFFIRMED GEN PRINCIPLES TO WHICH THEY HAD
AGREED ON LYNNWOOD(EG EQUITY,COOP IN MGT AND STOCK DEVELOPMENT,
CONSERVATION,ETC.).IN ATTEMPTING TO REDUCE THESE MUTUALLY UNDERSTOOD
AND ACCEPTED OBJECTIVES TO SHORT TERM CONCRETE OBJECTIVES,BOTH
PARTIES WERE SURPRISED AT DISTANCE WHICH SEPARATED THEM.NEVERTHELESS,
WITH BOTH PARTIES STILL FIRMLY COMMITTED TO REACHING AN AGREEMENT,
VNCVR MTG VERY USEFUL AS BOTH PARTIES QUOTE GOT DOWN TO BRASS TACKS
UNQUOTE FOR FIRST TIME AND WERE COMPELLED TO FOCUS ON THEIR OWN
POSITIONS AS WELL AS ON DATA WHICH IS BASIS FOR VIEWS FORMULATED

...2

PAGE TWO XNGR0900 CONF

BY BOTH PARTIES.

4. IN VIEW OF ABOVE, NEGOTIATORS INTEND MTG AGAIN IN LATE MAY, IN ALASKA, TO CONSULT WITH STATE OFFICIALS. JUNEAU TALKS WILL BE TECHNICAL IN NATURE AND IT IS INTENDED THAT NEGOTIATORS WILL BE ACCOMPANIED ONLY BY SMALL NUMBER OF TECHNICAL ADVISORS. US NEGOTIATOR HAD URGED THAT ADVISORS BE LIMITED TO FISHERIES OFFICIALS WITH SPECIFIC KNOWLEDGE REQUIRED FOR TALKS ON ISSUES AFFECTING ALASKA AND CDN NEGOTIATOR AGREED IN PRINCIPLE. ON BASIS OF FOREGOING, RECOMMEND THAT EXTOTT FOREGO REPRESENTATION AT JUNEAU TALKS. POSSIBILITY OF SEATL BEING REPRESENTED WAS STILL UNDER DISCUSSION AT TIME OF FADDENS DEPARTURE. SEATL TO ADVISE. IF RESULTS OF JUNEAU TALKS POSITIVE, NEGOTIATORS INTEND MTG AGAIN IN MID-JUN WITH FULL CONTINGENT OF GOVT ADVISORS (BUT WITHOUT INDUSTRY ADVISORS).

5. TO MAINTAIN FORWARD MOMENTUM OF NEGS AND TO FOCUS REVIEW OF ISSUES BY GOVTS, NEGOTIATORS AGREED TO RECOMMEND STUDY OF THREE SEPARATE APPROACHES FOR FIRST FOUR-YEAR PERIOD. SEATL IS FORWARDING TO YOU COPY OF AGREED RECORD WHICH OUTLINES FOREGOING (WHICH WAS STILL BEING FORMULATED LATE SUNDAY, 03MAY).

5. WHILE BOTH DELS VERY DISAPPOINTED AGREEMENT NOT/NOT REACHED, VNCVR MTG WAS PRODUCTIVE IN HAVING COMPELLED GOVTS/INDUSTRY ON BOTH SIDES TO CONSIDER POSSIBILITY OF QUOTE NO/NO AGREEMENT UNQUOTE SCENARIO (WITH FISH WAR LIKELY ENSUING). AS THIS SCENARIO NOT/NOT DESIRED BY BOTH PARTIES, SOME RE-ASSESSMENT OF NATL/INDUSTRY POSITIONS WITH

...3

PAGE THREE XNGR0900 CONF

CONSEQUENT INCREASE IN FLEXIBILITY FOR NEGOTIATORS IS POSSIBLE. ALSO,
OFFICIALS OF BOTH SIDES HAVE MUCH MORE FOCUSED VIEW OF AIM AND OTHER
PARTYS POSITION. ONE ISSUE WHICH GAINED FULL SUPPORT OF BOTH DELS IS
PRESSING NEED FOR MORE RESEARCH AND FOR FUNDING TO PERMIT SAME. CDN
NEGOTIATOR SHEPPARD AND PACIFIC REGION STAFF WILL BE REVIEWING
TECHNICAL REQUIREMENTS FOR FURTHER DISCUSSIONS DURING WEEK OF 04MAY.
FADDEN WILL REPORT FURTHER ON RETURN TO OTT. 19MAY.

CCC/291 061218Z XNGR0900

OFFICE
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

CABINET
DU
SECRÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

TO/A: FLO

Date 1.5.81

FROM/DE: MIN

REFERENCE/RÉFÉRENCE:

SUBJECT/SUJET: Minister's decision/Décision du Ministre

Seen and agreed by SSEA
Letter signed by SSEA and sent

001173

R.J. Rochon/2-2002
R.B. Fadden/6-2643
Legal Operations Division

FLO 662

DATE		
ACC	134030	REF
<u>CONFIDENTIAL</u>		
FILE	25-5-7-2-SALMON	CLASSIER
April 29, 1981		
B. HAND		PAR PORTEUR
ATTN:		

MEMORANDUM FOR THE MINISTER

SUBJECT: Possible Canadian Notice of Withdrawal from the 1937
Canada-USA Fraser River Convention

... The purpose of this memorandum is to recommend that you sign the attached letter to your colleague, Mr. LeBlanc, agreeing, in principle, with his suggestion that Canada serve notice of withdrawal from the 1937 Canada-USA Fraser River Convention, should it become necessary to apply pressure on the USA in the context of the Canada-USA Pacific Salmon negotiations.

BACKGROUND

Cabinet Committees on Foreign and Defense Policy and on Economic Development have approved the resumption of the Pacific Salmon negotiations with the USA. The meetings are scheduled to take place in Vancouver from April 27 to May 5. While technical level consultations have advanced since the October, 1980 negotiating session, a number of potential problems remain. We agree with the view expressed by the Minister of Fisheries and Oceans in his April 21 letter to you that a decision by Canada to serve notice of withdrawal from the Fraser River Convention would be an effective means of pressuring the USA to respond to Canada's concerns. As the Convention provides for a one-year notice of withdrawal to the other Party, Canada would retain the option at any time during that notice period of taking a decision to remain a party to the Convention.

.../2

- 8 -

RECOMMENDATION

I recommend you sign the attached letter to Mr. LeBlanc. Any final recommendation on withdrawal will, of course, be referred to you and will be subject to a joint decision by you and Mr. LeBlanc.

A E.G.

A.E.G.

Agreed
C.R.

Minister of Fisheries and Oceans
Ministre des Pêches et des Océans

CONFIDENTIAL

Your file Votre référence

APR 21 1981

Our file Notre référence

The Honourable Mark MacGuigan
Secretary of State for External
Affairs
House of Commons
Ottawa, Ontario
K1A 0A6

My dear Colleague,

As you know, our respective officials are working closely together on preparations for the negotiations of an international agreement with the USA on the management of Pacific salmon.

At the present time, the only formal cooperative mechanism that exists between Canada and the USA with respect to the management of Pacific salmon is the International Pacific Salmon Fisheries Commission (IPSFC). This Commission manages the sockeye and pink salmon of the Fraser River watershed under the terms of the 1937 Fraser River Convention. In the negotiations to date, agreement has been reached that Canada will assume these management functions once a new agreement enters into force. In the meantime, the USA continues to benefit from IPSFC activities, while those activities in Canada are increasingly perceived to be contrary to the national interest.

In light of the progress we have made towards a new salmon agreement, I believe it would be appropriate at this time to prepare for Canada's withdrawal from IPSFC, and to use withdrawal as a negotiating tactic, if and when such tactics might be useful. The Fraser River Convention provides for a one-year notice of withdrawal to the other Party, so that we would have the option of taking a decision to remain in the Convention at any time during that notice period.

.../2..

Ottawa, Canada
K1A 0E6

001176

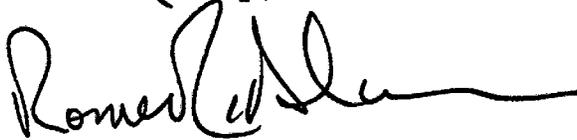
- 2 -

The reasons for this suggestion are twofold. Firstly, from a presentational point of view, we would indicate to the USA that we are serious about negotiating a new agreement, and that present arrangements are unsatisfactory. Secondly, we have received indications of some foot-dragging by U.S. interests in Puget Sound which depend on Fraser River fish, and some lack of cooperation from the USA in responding to Canadian conservation concerns in the boundary area in the southern Gulf of Georgia. Notice of Canadian withdrawal from IPSFC would have a salutary effect on U.S. attitudes as we move into the next round of negotiations.

I want to be clear that I am not advocating immediate notice of withdrawal. I would like to be prepared, however, to make certain that such notice can be given quickly if we jointly so decide, based on the advice of our negotiator and our respective officials.

I would appreciate your views on this matter at an early date.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Roméo LeBlanc". The signature is fluid and cursive, with a long horizontal stroke at the end.

Roméo LeBlanc.

FLO/R.J. Rochon/2-2002/eg
R.B. Fadden/6-2643 FLO-663

MIN (2)
AEG
PA SEC
DIA
POL
FILE
DIARY
CIRC
DIV

CONFIDENTIAL

April 29, 1981

My dear Colleague,

Thank you for your letter of April 21, 1981, requesting my comments on the possibility of Canada serving notice of withdrawal from the 1937 Canada-USA Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System.

As one of Canada's main aims in this context is to regain management authority over the Fraser River stocks, I share your view that serving notice of withdrawal from the Fraser River Convention may be a useful way of emphasizing to the USA the seriousness of our intent to bring the Pacific Salmon negotiations to a prompt and successful conclusion. Given the amount of progress achieved on a number of points since the October, 1980, Lynnwood negotiations, I am hopeful that Dr. Sheppard and our officials will be successful in concluding the negotiations without having to recommend that Canada serve notice of withdrawal from the Fraser River Convention. However, I will keep in mind this possibility and will respond expeditiously to any recommendations from officials.

Yours sincerely,

Original Signed by
Original signé par
MARK MacGUIGAN

Mark MacGuigan

The Honourable Roméo LeBlanc, P.C.M.P.,
Minister of Fisheries and Oceans,
240 Sparks Street,
OTTAWA, Ontario.

MIN (2)
AEG
P SEC
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POL
FILE
DIARY
CIRC
DIV

FLO/R.J. Rochon/2-2002/dg
R.B. Fadden/6-2643

CONFIDENTIAL

April 29, 1981

FLO-662

MEMORANDUM FOR THE MINISTER

SUBJECT: Possible Canadian Notice of Withdrawal from the 1937
Canada-USA Fraser River Convention

... The purpose of this memorandum is to recommend that you sign the attached letter to your colleague, Mr. LeBlanc, agreeing, in principle, with his suggestion that Canada serve notice of withdrawal from the 1937 Canada-USA Fraser River Convention, should it become necessary to apply pressure on the USA in the context of the Canada-USA Pacific Salmon negotiations.

BACKGROUND

Cabinet Committees on Foreign and Defense Policy and on Economic Development have approved the resumption of the Pacific Salmon negotiations with the USA. The meetings are scheduled to take place in Vancouver from April 27 to May 5. While technical level consultations have advanced since the October, 1980 negotiating session, a number of potential problems remain. We agree with the view expressed by the Minister of Fisheries and Oceans in his April 21 letter to you that a decision by Canada to serve notice of withdrawal from the Fraser River Convention would be an effective means of pressuring the USA to respond to Canada's concerns. As the Convention provides for a one-year notice of withdrawal to the other Party, Canada would retain the option at any time during that notice period of taking a decision to remain a party to the Convention.

.../2

- 8 -

RECOMMENDATION

I recommend you sign the attached letter to Mr. LeBlanc. Any final recommendation on withdrawal will, of course, be referred to you and will be subject to a joint decision by you and Mr. LeBlanc.

A.E.G.

Minister of
Fisheries and Oceans

Ministre des
Pêches et des Océans

CONFIDENTIAL

Your file Votre référence

APR 21 1981

Our file Notre référence

The Honourable Mark MacGuigan
Secretary of State for External
Affairs
House of Commons
Ottawa, Ontario
K1A 0A6

DATE		
ACC	141485	REF
FILE	25-5-7-2-SALMON-1	DOSS.
B. HAND		PAR PORTEUR
ATTN:		

My dear Colleague,

As you know, our respective officials are working closely together on preparations for the negotiations of an international agreement with the USA on the management of Pacific salmon.

At the present time, the only formal cooperative mechanism that exists between Canada and the USA with respect to the management of Pacific salmon is the International Pacific Salmon Fisheries Commission (IPSFC). This Commission manages the sockeye and pink salmon of the Fraser River watershed under the terms of the 1937 Fraser River Convention. In the negotiations to date, agreement has been reached that Canada will assume these management functions once a new agreement enters into force. In the meantime, the USA continues to benefit from IPSFC activities, while those activities in Canada are increasingly perceived to be contrary to the national interest.

In light of the progress we have made towards a new salmon agreement, I believe it would be appropriate at this time to prepare for Canada's withdrawal from IPSFC, and to use withdrawal as a negotiating tactic, if and when such tactics might be useful. The Fraser River Convention provides for a one-year notice of withdrawal to the other Party, so that we would have the option of taking a decision to remain in the Convention at any time during that notice period.

.../2..

Ottawa, Canada
K1A 0E6

001181

- 2 -

The reasons for this suggestion are twofold. Firstly, from a presentational point of view, we would indicate to the USA that we are serious about negotiating a new agreement, and that present arrangements are unsatisfactory. Secondly, we have received indications of some foot-dragging by U.S. interests in Puget Sound which depend on Fraser River fish, and some lack of cooperation from the USA in responding to Canadian conservation concerns in the boundary area in the southern Gulf of Georgia. Notice of Canadian withdrawal from IPSFC would have a salutary effect on U.S. attitudes as we move into the next round of negotiations.

I want to be clear that I am not advocating immediate notice of withdrawal. I would like to be prepared, however, to make certain that such notice can be given quickly if we jointly so decide, based on the advice of our negotiator and our respective officials.

I would appreciate your views on this matter at an early date.

Yours sincerely,

A handwritten signature in cursive script, appearing to read "Roméo LeBlanc". The signature is written in black ink and is positioned below the typed name.

Roméo LeBlanc.

Assessment Note Note d'évaluation

Meeting/Reunion: April 14, 1981
PACIFIC
Item/Article: SALMON NEGOTIATIONS

Discussion paper: EA-I-81
Document de travail:
Sponsoring Department: DFO/EA
Ministère responsable:

[Handwritten signature]

DATE	
ACC	132313
FILE	25-5-7-2-SALMON-1
ATTN:	

Proposal

1. The Memorandum recommends that:
 - a) Canada proceed to negotiate and conclude on an ad referendum basis an agreement for Pacific salmon; and
 - b) Cabinet approve in principle the provision over a ten year period of some \$50.3 million in 1980 constant dollars (\$86.9 million in current dollars) to implement the agreement as well as the continuation of the current annual \$900,000 contribution to the International Pacific Salmon Fisheries Commission.

Background

2. Negotiations on the proposed Canada-U.S. Salmon Management Treaty are scheduled to recommence on April 27, 1981. The Memorandum, which requests both approval of a negotiating mandate and approval in principle for subsequent funding, is also being reviewed by the Cabinet Committee for Foreign and Defence Policy on April 13, 1981.

Key Factors

3. The salmon fishery employs some 17,500 fishermen and 6,000 shore workers and is the most important of the B.C. fisheries. The annual landed value of the catch to fishermen averages \$140 million with a wholesale value of approximately \$280 million per year. In addition it is estimated that approximately 350,000 sports fishermen expend approximately \$55 million annually. As a result of a severe over fishing and habitat degradation, west coast salmon stocks have declined significantly in recent years and some stocks are now in severe difficulty.

4. The migratory nature of salmon is such that a number of stocks are subject to competitive fishing by Canadian and U.S. fishermen. Stocks originating in Canadian rivers are caught ("intercepted") by American fishermen in U.S. waters and similarly stocks from American rivers are caught by Canadian fishermen in Canadian waters. Some Fraser River fish are currently under international control, but the lack of a comprehensive international agreement results in over fishing by both countries and under investment in salmon conservation and enhancement programs.

5. Although numerous attempts have been made over the years by Canada and the U.S. to resolve the management problems caused by interceptions, the salmon stock situation is now such that both countries are now anxious to proceed with an agreement which would

include the following elements:

- a) limitation of fishery interceptions by both countries;
- b) cooperation in salmon resource developments;
- c) management and harvest sharing arrangements based on salmon production by each country;
- d) conservation and sharing arrangements for stocks originating in Canada/U.S. transboundary rivers;
- e) termination of the current Canada/U.S.A. Fraser River convention so as to permit sole Canadian management of fish originating in this Canadian river; and
- f) establishment of a new international consultative fisheries organization.

6. Without an agreement, much-needed resource management measures are very difficult to implement because conservation and enhancement measures do not appear beneficial to either country. The proposed agreement appears to be well supported by most groups and would provide benefits for both Canadian and American fishermen, although it is understood that the states of Oregon and Washington will have to continue to put pressure on Alaska to ensure their full participation in the agreement.

7. Implementation of this agreement would require substantial expenditures for the establishment and operation of a new Commission for the monitoring of interceptions, for the undertaking of management and research studies in the Canada/U.S. transboundary rivers and for costs associated with the administration and management of the Fraser River. In addition, the Department of Fisheries and Oceans has also requested further investment be undertaken in research and reconnaissance activity to support a new resource management regime which would take full advantage of the opportunities afforded by the agreement.

8. The long term benefits arising from this agreement and from the proposed research and reconnaissance activities could be quite substantial. The reduction of interceptions would most likely be in Canada's favour and long term stock improvements would result from new enhancement opportunities and from better management of natural stocks.

9. Although stricter management measures to assist stock recovery would result in reduced catches in the first five years of the Agreement, the Department of Fisheries and Oceans believes that full implementation would result in major benefits in ten to twenty years with an increased annual wholesale value of salmon catches of some \$500 million (in 1980 constant dollars) by the year 2000. D.F.O. officials estimate a long term benefit cost ratio of 3 to 1. These benefits would accrue directly from the agreement and associated research but the benefits would be reduced closer to the break-even point if the government does not impose the necessary fishery management measures and does not decide to proceed with Phase II of the Salmonid Enhancement Program which will require some \$56 million over the next four years.

Financial Requirements

10. The Memorandum estimates that activities directly related to the agreement (including operation of the Commission and research and monitoring activities) would require additional expenditures over a ten year period of \$32.5 million in 1980 dollars. Assuming commencement of expenditures in 1982/83 and a 10% inflation factor, this will require expenditures of some \$58.7 million to be spent between 1982/83 and 1991/92. This is in addition to the current annual contribution of \$900,000 to the International Pacific Salmon Fisheries Commission.

11. The Memorandum also requests an additional \$17.8 million in 1980 dollars (\$28.2 million in current dollars) to be spent over a ten year period for other fisheries research and reconnaissance activities which would be needed to take full advantage of the opportunities afforded by the agreement.

12. The annual flow of funding for the two proposals in constant 1980 dollars and current dollars (assuming 10% inflationary factor) would be as follows:

	New funds for Activities Directly Related to Agreement		New Funds for Agreement Plus Additional Funds for Research and Reconnaissance Activities	
	(\$ million)		(\$ million)	
	1980	current	1980	current
1982/83	3.8	4.6	7.5	9.1
1983/84	4.3	5.7	8.0	10.7
1984/85	4.1	6.0	7.8	11.4
1985/86	4.2	6.8	6.0	9.7
1986/87	3.6	6.4	5.4	9.5
1987/88	3.3	6.4	4.0	7.8
1988/89	2.5	5.4	3.2	6.9
1989/90	2.3	5.4	3.0	7.1
1990/91	2.2	5.7	2.7	7.0
1991/92	2.2	6.3	2.7	7.7
10 year total	32.5	58.7	50.3	86.9

Communications

13. While the Discussion Paper refers to some key public information considerations, the Communication Plan is unsatisfactory. It does not provide Ministers with an adequate description of those groups expected to support or criticize the government's negotiating position or recommend how such criticism might be handled. The Plan does not indicate whether the Minister of Fisheries and Oceans intends to make an announcement and makes no reference to the proposal that the Discussion Paper not be released.

14. While there is general support from the industry, opposition to the proposed agreement can be expected from the United Fishermen and Allied Workers Union (UFAWU), which has, for years, accused Canada of "selling out" to the Americans. In addition, the recently imposed restrictions on the sports fishery in B.C. has generated strong opposition from the sports fishery lobby with the support of the B.C. government. Ministers may wish to request that, prior to a decision by the Committee, the Communication Plan be revised and submitted for the Committee's consideration.

Assessment

15. In view of the fact that additional requests for resources are anticipated for other West Coast fishery activities (i.e. Salmon Enhancement, DFO vessel replacement, surveillance, vessel buy back program, etc.), the request for additional funds for fisheries research and reconnaissance activities supportive of but not directly related to the proposed agreement may be best considered in the context of the departmental strategic overview.

16. The proposed Canada U.S. Salmon Management Agreement would provide major benefits to both Canada and the U.S. and would permit the implementation of better resource management practices and provide more effective use of conservation and enhancement expenditures. Ministers may wish to instruct Canadian negotiators to proceed with concluding the proposed agreement on an ad referendum basis.

17. The request for resources for activities directly related to the agreement (i.e. \$32.5 million in 1980 dollars or \$58.7 million in current dollars to be spent over a ten year period) should probably be considered as part of the May "auction". Canada/U.S. negotiations on the agreement could proceed as scheduled in late April, but with the clear understanding that no commitment has been made at this time for the funds required to implement the agreement and that if and when funding is provided, it would be conditional upon the provision of adequate assurances of an appropriate level of funding from the U.S. Government.

R. Bilodeau
A/Director



for Secretary

FLO/R.B. Fadden/6-2643/jt

EXTERNAL AFFAIRS

AFFAIRES EXTÉRIEURES



s.23

keep me
change informed 14/4
FLP
15/4

TO
À Mr. L.S. Clark

FROM
De R.B. Fadden

REFERENCE
Référence Our memorandum to FLP, FLO-544 of April 13, 1981

SUBJECT
Sujet Cda-USA Pacific Salmon Negotiations
Cabinet Committee on Economic Development -
14 April 1981

SECURITY
Sécurité CONFIDENTIAL

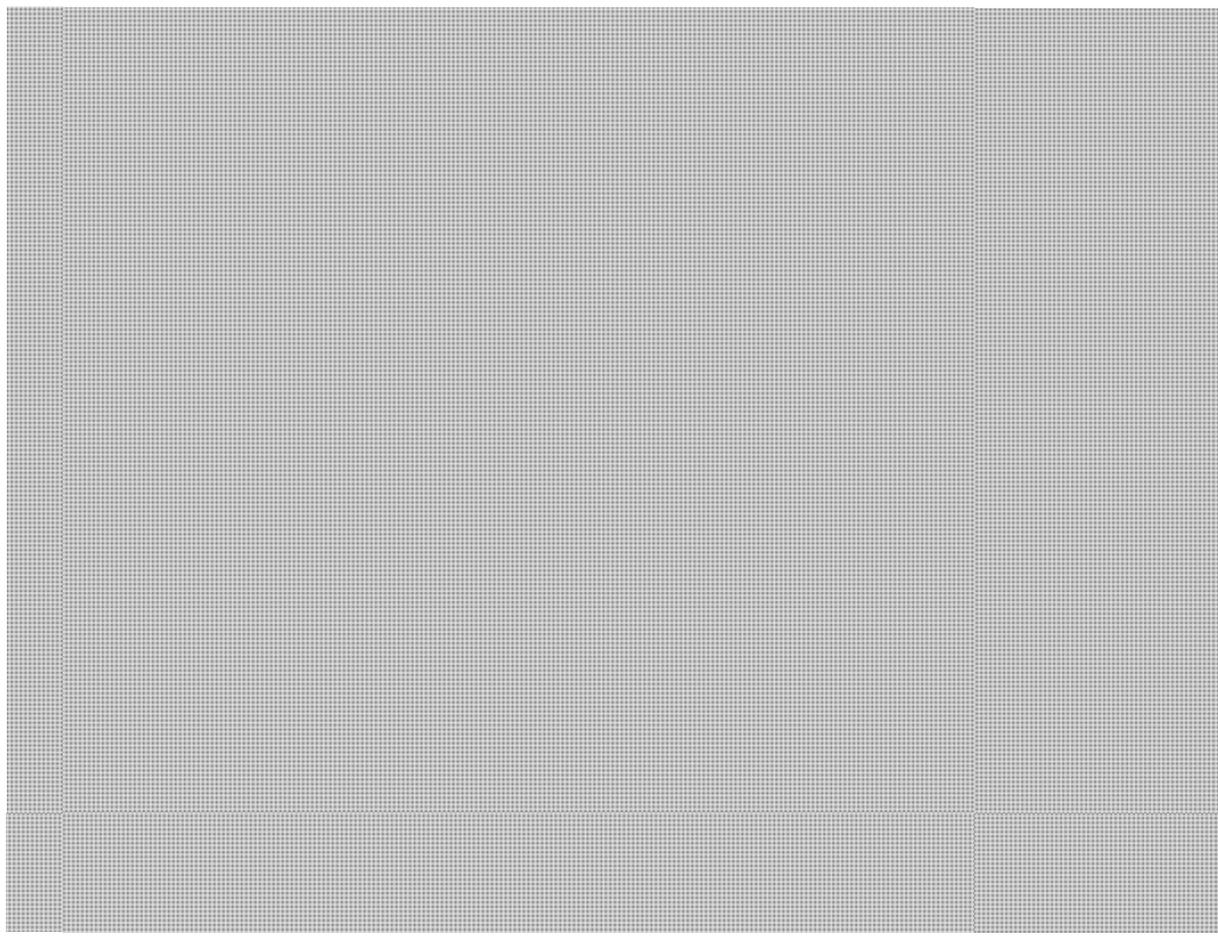
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ENCLOSURES
Annexes

DISTRIBUTION

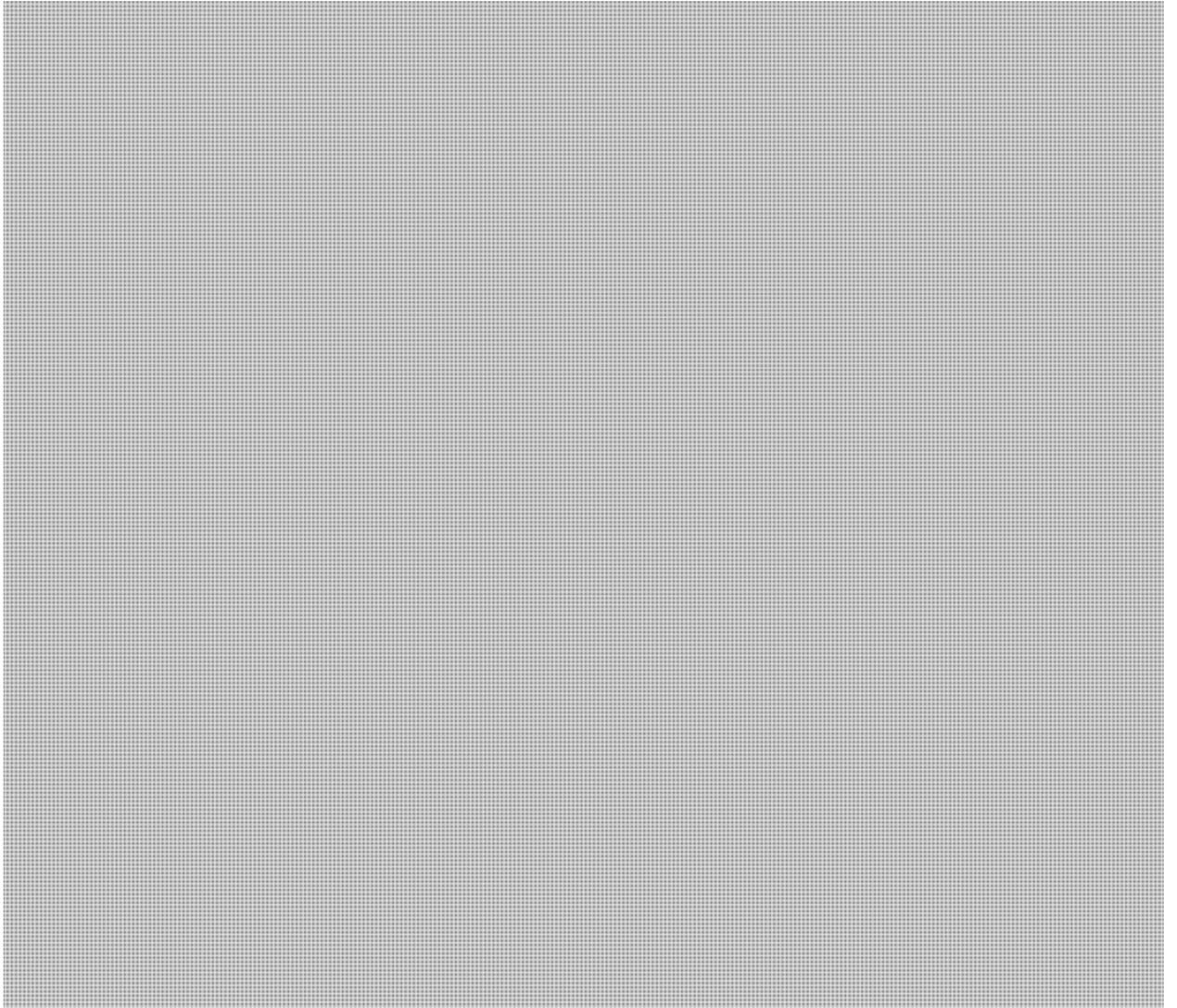
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- 2 - CONFIDENTIAL



R.B. Fadden
Legal Operations Division

11
Mr. Clark,
As you agreed this
morning, I am passing
a copy of this memo to
JRM who will be representing
the Dept. at this afternoon's
meeting.

RF
14/4

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14/4

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ATTN:	

Canada/USA Pacific Salmon Negotiations
Négociations entre le Canada et les États-Unis
sur le Saumon du Pacifique

Minister of Fisheries and Oceans
Ministre des Pêches et des Océans

Secretary of State for External Affairs
Secrétaire d'État aux Affaires extérieures

Discussion Paper Attached
Document de travail affiché

CONFIDENTIAL

MEMORANDUM TO CABINET

CANADA/USA PACIFIC SALMON NEGOTIATIONS

OBJECT

- 1.(a) To seek approval in principle by Cabinet for financial and manpower resources required to carry out the work program necessary to meet Canadian obligations with respect to the proposed Convention between Canada and the United States regarding the management and development of the Pacific Salmon Resource.
- (b) To seek the guidance and instructions of Cabinet with respect to the terms of the proposed Convention under negotiation with the United States.

DECISIONS REQUIRED

2. Approval is required of elements of an agreement to be negotiated ad referendum, providing for cooperation between Canada and the United States in the management and development of Pacific salmon resources and on the provision, in principle, of person year and financial resources to implement such an agreement.

CONSIDERATIONS

3. The background to this matter is set out in the attached Discussion Paper and its Annexes.
4. A substantial number of salmon stocks originating in Canadian rivers on the Pacific Coast are fished competitively by Canadian and United States fishermen. The same situation applies to stocks originating in United States rivers. This creates severe management problems which have resulted in declines in a number of important stocks in both countries. Interceptions of salmon bound for the other country also reduce the economic benefits accruing to each country from its own enhancement efforts and discourages development. An Agreement to curb international competitive fishing and to provide for sharing of catches so that each country benefits from its own production is required in order to permit each country to effectively manage its salmon fisheries and to achieve full benefits from its enhancement programs. Conclusion of such an agreement is therefore viewed as essential for the effective functioning of both the Canadian Salmon Management and Salmonid Enhancement Programs.
5. Problems created by interceptions of salmon bound for the rivers of one country by fishermen of the other have existed ever since commercial salmon fishing began on the Pacific Coast a century ago. These problems may be described as follows:
 - (a) The management problems arise because a number of stocks are subject to competitive fishing by fishermen of both countries. Without a mechanism for international control, both countries are reluctant to cut back their fisheries, even when conservation problems develop, for fear of losing a competitive advantage to the other side. As a

result, most runs subject to interception fisheries are overfished and the runs are declining. In a crisis situation, the country of origin has generally had to bear the brunt of severe restrictions with the other country taking less severe measures. This repeatedly results in friction between management agencies in the two countries and great bitterness in their respective fishing communities.

- (b) Often local Canadian stocks are mixed with the intercepted stocks bound for the USA or with Fraser-bound sockeye and pink salmon stocks (which are managed on an international basis by the existing International Pacific Salmon Fisheries Commission (IPSFC) with the catch in Convention waters divided on a 50-50 basis between the two countries). The premium of maintaining interceptions has outweighed the desirability of preserving the local stocks with the result that the latter are declining. Thus, an agreement which removes the premium of intercepting fisheries must form an integral part of the overall Canadian salmon management program if that program is to achieve its maximum objectives.
- (c) Canadian estimates of the quantity and value of interceptions suggest that the USA takes a higher value of Canadian fish than do Canadians of USA fish, and there is a basic economic inequity as a result. In the period 1975-78 the USA is estimated to have had a favourable balance of about \$7.7 million landed value annually.
- (d) Both sides have foregone a number of attractive opportunities for development (enhancement) of certain stocks which are subject to interception by fishermen of the other country; neither country has been willing to build enhancement facilities which substantially benefit the other country. Canada to date has limited most of its activity under the Salmonid Enhancement Program to producing fish not subject to interception, leaving a number of high potential projects (e.g. Fraser sockeye and pinks) untouched. Fully 60% of the overall enhancement potential of B.C. salmon runs involve stocks subject to substantial interceptions by United States fishermen. Most of the projects required to realize the potential of intercepted stocks would not be built because interceptions by USA fishermen reduce their benefit/cost ratios below acceptable levels. An agreement which would control interception or give Canada credit for USA interceptions would make such projects feasible. [Thus, such an agreement would improve the prospects of the Canadian Salmonid Enhancement Program.]
- (e) Canada receives few benefits from salmon produced in rivers which rise in Canada and flow to the sea through the United States (primarily through Alaska); USA fishermen are the primary beneficiaries of the production from these runs. Canada can receive full benefits only through an agreement which would give Canada credit for the contributions of these stocks to the USA fishery.

6. Discussions between the two countries of the interrelated issues of intercepting fisheries, management cooperation, and enhancement have been proceeding for a number of years. Recent discussions have led to the following proposed approach to resolving these issues:
 - (a) an initial limitation of interceptions to levels existing in a recent base period (1971-74);
 - (b) the development of a new international organization to replace the existing IPSFC through which consultation on the management of intercepting fisheries and coordination of national enhancement programs would be facilitated;
 - (c) the development of a system for bringing about adjustments in intercepting fisheries in the future so that, of the total available salmon harvest, each country would catch an amount of salmon equivalent to the production from its own rivers, with a balance in the value of interceptions;
 - (d) establishment by Canada of the management objectives for all species in the Fraser watershed (now carried out for sockeye and pink salmon by the IPSFC under the terms of the Fraser River Convention). It is, however, conceded that an international regulatory agency within the new Commission organization would continue to be needed to develop regulations for fisheries on the approaches to the Fraser in Canadian and USA waters. Such regulations would be based on Canadian management objectives and the interception limitation provisions of the agreement with respect to the USA fisheries;
 - (e) the provision of benefits to Canadian fishermen to take account of fish produced in the Canadian sections of the "Panhandle" and Yukon Rivers from which Canada now receives virtually no benefit.
7. The current Fraser River Convention under which Fraser River sockeye and pink salmon are jointly managed by IPSFC came into force in 1937. It is increasingly perceived by Canadians as being inequitable, since Canada, in addition to its share of the expenses of the Commission, pays all the costs of habitat protection, but receives only part of the benefits from returning fish. In addition, the terms of the Convention do not permit Canada to enhance sockeye and pink salmon unilaterally, a fact which limits the ability of the Salmonid Enhancement Program to enhance the other three species in the river, since, from a biological point of view, it is desirable to enhance all five species in harmony.
8. If negotiations continue to proceed well, Canada as early as May, could serve notice, consistent with the intent of the agreement to discontinue the current Fraser River Convention. Upon termination of the Convention (one year after notice is served), Canada would assume full responsibility for sockeye and pink salmon management on the Fraser River as early as 1982-83.

FINANCIAL CONSIDERATIONS

9. Canadian estimates of the value of interceptions made by the fishermen of both countries indicate that, in the period 1975-78 the landed value of USA interceptions of Canadian fish exceeded the landed value of Canadian interceptions of USA fish by some \$7.7 million annually. If secondary benefits to the economy are taken into account, the imbalance in wholesale values amounts to \$15 million annually. It should be noted that, of this total, the landed value of USA interceptions of Fraser River sockeye and pink salmon made under existing treaty arrangements accounts for \$4 million of this annual imbalance.
10. Full implementation of an agreement would reduce the imbalance in the value of interceptions, would lead to improved stock management and would accelerate salmon enhancement and increase the net annual wholesale values of Canadian salmon catches by some \$505 million per year (1980 constant dollars).
11. The anticipated cost to Canada of an agreement can be broken down into three elements:
 - (a) costs of sole Canadian management of the Fraser watershed for all five species of Pacific salmon would be approximately \$1.76 million annually (1980 dollars)¹. This money would have to be provided, along with some 48 person years, to the Department of Fisheries and Oceans to enable it to undertake the necessary managerial and scientific functions. (This cost would be incurred irrespective of whether Canadian management is achieved through agreement with the USA, or by withdrawal from the current Convention). Over a ten year period the total cost would be \$17.6 million.
 - (b) new research costs of approximately \$39.15 million (1980 dollars) over a ten year period and 25 person years annually for continuing assessments of the extent and location of interceptions; and to provide the data base required for future adjustments in intercepting fisheries to bring about an equitable balance in the value of interceptions; to provide the necessary flexibility in management to enable Canada to achieve the maximum benefits from an agreement; and, to provide a basis for cooperation in enhancement activities;
 - (c) Canada would pay one-half of the annual operating budget of a new Pacific Salmon Commission to be established by an agreement. Expected annual costs to Canada are presently estimated to be \$250,000 (1980 dollars), for a ten year total of \$2.5 million.
12. The attached Discussion Paper contains detailed cost and benefit data to support the expenditure of these funds. If the recommendations contained in this document are accepted by Cabinet, the benefit/cost ratio from the expenditure of these funds is estimated to be 3.0:1.

¹ This total is comprised of \$900,000 which Canada currently contributes to the IPSFC and \$865,000 which the USA currently contributes and which Canada would have to absorb.

FEDERAL-PROVINCIAL CONSIDERATIONS

13. Since 1971 senior officials of the Province of British Columbia have actively participated in previous discussions with USA delegations, and have contributed fully to the development of Canadian positions.
14. The Province has to date been fully supportive of the Canadian negotiating objectives.

OTHER CONSIDERATIONS

15. The Canada-USA Pacific Salmon Convention negotiations have been pursued in an atmosphere largely unaffected by the controversy surrounding bilateral fisheries relations on the Atlantic coast. With the recent initialling of the Canada-USA agreement on albacore tuna, the proposed Pacific Salmon Convention is the only major Pacific coast fisheries issue remaining unresolved. No direct linkage has been made with the Atlantic coast fisheries issues by delaying signature of a Pacific Salmon Agreement until those issues are resolved. An agreement with the USA on salmon would have a positive effect on our bilateral fisheries relationship, provided it is ratified by both parties within a reasonable time after signature.
16. Since it became evident there would be difficulties in securing USA ratification of the Atlantic coast treaties, Canadian officials involved in the Pacific salmon negotiations have regularly emphasized to USA officials the critical importance of ensuring that the relevant USA Federal and State authorities are kept informed of developments and are in general agreement with the approaches being worked out by the two negotiators.
17. The USA negotiator has, in fact, been very active throughout the negotiations in attempting to avoid the ratification problems encountered with the Atlantic coast treaties. At the federal level, the USA negotiator has consulted both with members of the Senate to facilitate ratification and with members of the House of Representatives whose support will be necessary to ensure enactment of the necessary implementing legislation. In this regard, the USA Congress has already enacted a law appropriating the funds for some of the USA salmon enhancement programs which will likely be required under the terms of the proposed Convention.
18. Canadian officials have advised both the USA negotiator and the Department of State that, before signing the Convention, Canada would require appropriate assurances that the USA Senate will give its advice and consent in an expeditious manner. In conveying Canadian concerns on this question to the USA, officials have suggested that the format agreed upon in the case of the Albacore Tuna Agreement (i.e. a letter from Secretary of State Haig to the SSEA stating inter alia that the USA Senate will promptly consent to the agreement) would likely meet Canadian concerns in this regard.

INTERDEPARTMENTAL CONSULTATIONS

19. This memorandum was prepared by officials of the Departments of Fisheries and Oceans and External Affairs, in consultation with the Ministry of State for Economic Development and Treasury Board.

PUBLIC INFORMATION STRATEGY

20. Throughout the course of the negotiations over the last 15 years, the various interest groups (16 in total), through their representatives, have actively participated in developing negotiating positions and strategies. The representatives in turn have reported back to their member organizations to keep them apprised of developments. This in itself provides coverage of a significant portion of the public as there is representation at negotiating sessions from all segments of the public that will be directly affected by an agreement. In addition, Departmental staff have attended a number of public meetings in the main interest centres of the Province, to explain the nature of the understanding emerging from the negotiations, and to obtain indications of their support or rejection. Further, separate discussions have been held with all the principal interest groups to review in detail the Agreed Summary Record of the last round of negotiations.
21. Following completion of the next round of negotiations, assuming considerable progress is made, an expanded public information program would be required. This program would be exercised through present communication channels like the Department of Fisheries and Oceans' "Fishermen's Newsletter", open line radio and television programs and Departmental representation at public and special interest group meetings.
22. The public atmosphere towards Canada reaching an agreement is very good at present. Fishermen and the public alike are becoming more aware of the conservation problems that exist with some salmonid stocks. They realize that the Department of Fisheries and Oceans has little chance of saving these stocks unilaterally, and that a salmon agreement with the USA would provide the vehicle for proper management and enhancement of the resource. However, in order to retain public support for an Agreement both now and in the future Canada must develop and maintain an effective assessment and monitoring program capable of ensuring that Canadian interests are fully protected. Without a visible program of this nature public sympathy will be lost.

POLITICAL CONSIDERATIONS

23. The achievement of an agreement with the USA along the lines set out in this memorandum would be broadly supported on the Pacific coast, particularly by most of the 16 industry advisory groups which have been represented on all Canadian delegations in the past.
24. Significant opposition can be expected from the United Fishermen and Allied Workers Union (UFAWU). For years, the UFAWU has accused Canada of "retreating" in the face of USA pressure, and has conducted large-scale campaigns to advertise an alleged "sell-out" of Canada's salmon to the USA. The UFAWU has a distinct advantage over other advisory groups in this sphere since it has the publication "The Fisherman" at its disposal. The UFAWU would seek to reduce interceptions by the USA and to impose penalties on USA fishermen for past activities, despite the fact that representatives of the organization were present when such an approach by Canada proved to be non-negotiable in the early 1970's.

CONCLUSIONS

25. It is concluded that a comprehensive agreement with the USA on cooperative management of Pacific Salmon resources based on the elements discussed in this memorandum and the accompanying Discussion Paper

represents the best option for resolution of the serious problems of conservation of stocks, an inequitable balance in the value of intercepted catches, and lost potential earnings resulting from reduced enhancement potential and from reduced natural stock abundance.

RECOMMENDATIONS

26. It is recommended that:

- (a) Cabinet authorize the Canadian negotiator to continue consultations with advisors and negotiations with the USA towards a comprehensive agreement on cooperative Pacific salmon management and to conclude such an agreement ad referendum based on, the following elements:
 - (i) limitation of interceptions in the fisheries of both countries to levels existing in an agreed base period, or to such other levels as might be mutually agreeable to take into account particular circumstances;
 - (ii) cooperation respecting future development of salmon resources in both countries;
 - (iii) future adjustments in fisheries of both countries to bring about a sharing of the salmon harvest such that each country receives catches equivalent to the production from its own rivers;
 - (iv) provisions respecting the conservation and sharing of the salmon stocks of transboundary rivers;
 - (v) return to Canada of management responsibility for Fraser River sockeye and pink salmon presently managed on behalf of Canada and the USA by the International Pacific Salmon Fisheries Commission;
 - (vi) the establishment of a new international organization to act as a forum for consultation between the two countries and to facilitate the cooperation outlined above.
- (b) Cabinet approve in principle the provision of resources required to implement an agreement so as to permit Canada to obtain full benefits therefrom, as outlined in Alternative C of the attached Discussion Paper upon entry into force of an Agreement.
- (c) Cabinet approve in principle the provision of resources required if Canada assumes management responsibility for Fraser River sockeye and pink salmon prior to the signing of an Agreement by virtue of possible Canadian withdrawal from the current Fraser River Convention.

(d) The attached Discussion Paper not be made public because of the foreign policy considerations contained in paragraphs 38-43.

Minister of Fisheries
and Oceans

Secretary of State for
External Affairs

*Original
signed
by*

Serial
No. EA-1-81-DP
Série

Confidential
Confidentiel

Discussion Paper
Document de travail

Canada/USA Pacific Salmon Negotiations
Négociations entre le Canada et les Etats-Unis
sur le Saumon du Pacifique

Minister of Fisheries and Oceans
Ministre des Pêches et des Océans

Secretary of State for External Affairs
Secrétaire d'Etat aux Affaires extérieures

OBJECT

1. To report on the status of discussions with the USA related to the possible terms of an international agreement regarding cooperation in management and development of salmon resources, and to discuss the requirements for financial and person-year resources to implement such an agreement.

BACKGROUND

2. Five species of Pacific salmon (Sockeye, Pink, Chum, Coho, Chinook) are bred in the rivers of British Columbia, the U.S. Pacific Northwest, the Yukon and Alaska. These salmon freely intermingle in the ocean, so that Canadian fishermen intercept salmon of U.S. origin, and U.S. fishermen intercept salmon of Canadian origin. Given the location of fisheries, the types of gear employed, and the migration patterns of the fish stocks themselves, it is impossible to eliminate interceptions and this poses numerous problems for management of the salmon resource.
3. The value of interceptions, as well as the numbers of fish intercepted by each country, is not equal - a fact which raises questions of "equity"; that is, one country may be benefiting economically from intercepting fisheries at the expense of the other (producing) country. Estimates for the period 1975-78 suggest that the landed value of U.S. interceptions of Canadian fish exceeds the landed value of Canadian interceptions of U.S. fish by some \$7.7 million annually. (Estimates for 1979 suggest this imbalance reached \$18 million.) (See Annex I)
4. At present, the primary cooperative salmon management arrangements with the USA are contained in the 1937 Convention between Canada and the USA for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries of the Fraser River System (amended in 1957 to include pink salmon). Under this agreement, sockeye and pink salmon of the Fraser River are jointly managed by the International Pacific Salmon Fisheries Commission (IPSFC) to achieve an equal division of the catch between Canadian and U.S. fishermen within Convention Waters. This agreement also provided for joint funding of sockeye and pink salmon enhancement. Fisheries for all salmon species originating elsewhere are presently subject to the domestic management system of each country and no formal consultative mechanisms exist.
5. In 1972, Canada announced that it would discontinue funding of enhancement projects under the purview of IPSFC, as Canada no longer wished to share the enhanced production or construct facilities that would include an obligation by Canada to repay the USA for its share of such expenditures.
6. Negotiations between the two countries on the question of salmon interception have been pursued over the past 15 years (for a history of the negotiations see Annex II), although not until late 1977 did the elements of a possible agreement begin to emerge. In the earlier part of the decade, negotiations focussed almost entirely on the question of limitation of interceptions of salmon, where the objective was to limit or reduce the number of

salmon of U.S. origin being caught by Canadian fishermen, and vice versa. Recent discussions have centered on a more positive approach, namely control of interceptions on an equitable basis in the context of cooperation regarding management and enhancement in order to maximize the production of salmon in both countries (see Agreed Record of October 1980 meeting - Annex III). This approach includes:

- (a) An initial limitation on interceptions to levels existing in a recent base period.
 - (b) The development of a new international organization through which consultation on the management of intercepting fisheries and coordination of national enhancement programs would be conducted.
 - (c) The development of a system for adjustment of intercepting fisheries in the future to bring about a sharing of the total available salmon harvest such that each country catches an amount of salmon equivalent to the production from its own rivers, with a balance in the value of interceptions (i.e. achievement of "equity").
 - (d) Canadian establishment of the management objectives for all species in the Fraser River watershed (the responsibilities are now shared with the IPSFC which has responsibility for sockeye and pink salmon management. (See paragraph 4)).
 - (e) Provision by the USA of benefits to Canadian fishermen to take account of fish produced in the Canadian sections of the "Panhandle" and Yukon Rivers from which Canada now receives virtually no benefit, but which are exploited by U.S. fishermen in Alaska.
7. The Salmonid Enhancement Program (SEP) announced in 1977 is a Federal/Provincial program directed toward restoration of Canada's stocks of salmon and anadromous trout to their former levels of abundance. The SEP has been designed in two phases. By the completion of Phase I in 1983-84, capacity to produce 19,900 tonnes of salmon above what was being produced in 1977 will be in place. The additional catch will be distributed 19,050 tonnes to Canadian fishermen and 860 tonnes to U.S. fishermen. Projections are that the net national income benefits of Phase I will be about \$120M (discounted to 1977 at 10% in 1980 dollars) at a benefit-cost ratio of 1.34:1 assuming restraint of unnecessary new investments in the commercial fishing industry. The program is also generating significant benefits to native Indians, and creating regional development, employment, resource and environmental benefits. Cabinet has decided that implementation of Phase II of the program is contingent upon the level of success attained in Phase I.
8. The location of activities in Phase I has been significantly affected by the present lack of agreement with the USA in that Canada has avoided building facilities that would produce fish for U.S. intercepting fisheries. However, this has not adversely affected the overall level of production in Phase I.

9. This program and similar programs in the USA introduced a new and compelling factor into consideration of the interception issue when it became clear that, under current arrangements, the country which invests in the enhancement of its salmon production does not have proper control over the interception of such production by the other country. For this reason in 1979-80, negotiations began to focus on an agreement that would permit maximization of all North American salmon catches, with each country to receive a share of the catch based on its own total salmon production.
10. The commercial and recreational fishing industry ranks 4th in importance behind logging, mining, and tourism to the economy of British Columbia. The salmon fishery is the most important fishery, prosecuted by a fleet of 5,308 vessels, and employing some 17,500 fishermen and 6,000 shore workers. The landed value of the catch to fishermen averages (1976-80) approximately \$140 million annually with a wholesale value of approximately \$280 million annually. In addition, approximately 350,000 sports fishermen, many of whom are tourists from the USA and other parts of Canada, participate in the salmon fishery. It is estimated they expend approximately \$55 million annually in the pursuit of this endeavour.

FACTORS

11. It is estimated that 20 percent of the landed value of Canadian salmon catches is derived from fish of U.S. origin.
12. The major Canadian intercepting fishery is the troll (hook and line) fishery off the west coast of Vancouver Island, which intercepts chinook and coho salmon bound for rivers in Puget Sound, the Columbia River, and other coastal rivers of Washington, Oregon and Northern California. In Northern British Columbia, Canadian interceptions of U.S. fish are limited mostly to pink and chum salmon originating in south east Alaska. Another Canadian fishery that intercepts U.S. fish, to a greater or lesser degree depending on area, is the sports fishery.
13. The USA has intercepting fisheries in both Washington and Alaska. The majority of all U.S. interceptions in Washington are of sockeye and pink salmon taken under the auspices of the current Fraser River Convention. U.S. fisheries in Alaska that intercept Canadian salmon may be classified under four headings:
 - a) Troll fisheries on the outer coast of the Alaskan archipelago, taking mostly chinook and coho salmon from B.C. streams.
 - b) Net fisheries in the southern part of the Alaskan Panhandle primarily intercepting pink, chum and sockeye salmon from Northern B.C. streams.
 - c) Troll and net fisheries operating throughout the inside passages, exploiting chinook and coho salmon bound for B.C. streams south of the international boundary, and salmon of all species originating in

the so-called transboundary rivers (i.e. rivers which rise in Canada and flow to the sea through the USA).

- d) Fisheries on the lower 700 miles of the Yukon river which intercept chinook and chum salmon bound for the Canadian section of the river.
14. The migratory patterns of salmon which result in the intermingling of Canadian and U.S. fish in their ocean environment make interceptions inevitable. In the absence of an agreement with the USA, fishing of such mixed stocks severely complicates domestic management objectives. The following examples illustrate this point:
- a) The troll fishery on the west coast of Vancouver Island which intercepts fish bound for the U.S. and thereby acts as an important factor in negotiations, also catches chinook and coho salmon bound for rivers in southern B.C. Thus, the USA is unable to fully manage its salmon production; likewise, in the troll fishery on the west coast of Vancouver Island, Canadian managers are reluctant to forego large catches of U.S. fish (for which Canada would presently receive no benefit) in order to preserve smaller numbers of Canadian salmon intermingled with the U.S. fish. Because the intercepted fish are in essence "free", the incentive to manage this fishery to conserve depressed southern B.C. chinook and coho salmon stocks is limited.
 - b) Similarly, catches by U.S. fishermen in south east Alaska of fish bound for the Canadian portion of the transboundary rivers makes Canadian management of these fish impossible, under present circumstances.
 - c) To conserve stocks of chinook and to some extent coho salmon in southern B.C., the Department of Fisheries and Oceans has been placing increasingly severe restrictions on the sports fishery and on a number of commercial fisheries. These restrictions are very unpopular. The situation is aggravated by the fact that U.S. fisheries which target on Canadian salmon in adjacent U.S. waters in the San Juan Islands and at Point Roberts are not being restricted to the same degree. Furthermore, since some U.S. fish are intermingled with Canadian fish in the Canadian sports fishery they have, therefore, been given added protection by the Canadian restrictions. This fact increases the resentment of Canadians over the restrictions now being put in place.
15. In total, salmon fisheries accounting for approximately one half of the total landed value of salmon in B.C. are currently managed primarily to take advantage of interceptions of U.S. fish or managed under terms of, or in conjunction with, regulations set under the Fraser River Salmon Convention or managed taking into account the desirability of catching Fraser-bound sockeye and pink salmon on the approaches to the Fraser Convention area (where they would be subject to 50:50 sharing with United States fishermen). Without an agreement, there is a premium for Canada to maintain its catches in these fisheries at as high a level as possible, despite the

fact that this results in overfishing of Canadian stocks intermingled with the target stocks bound for U.S. rivers or for the Fraser Convention area; gains from intercepting U.S. bound salmon (with the U.S. having to bear the major conservation burden in their own waters if the stocks become threatened) and gains from catching Fraser-bound sockeye and pinks outside the IPSFC sharing arrangement offset the losses from declines in Canadian salmon runs mixed with the other stocks. Thus, the present competitive interception situation results in less than optimal conservation of Canadian stocks and contributes to declines in a number of important local Canadian stocks. The efficacy of Canada's overall salmon management program (which is currently being strengthened through increased funding, provided in conjunction with the 1980/81 DFO omnibus submissions to MSED) is therefore being severely hampered by lack of an agreement with the U.S. which would provide for cooperative management and which would remove the premium on intercepting fish bound for the U.S. or for the Fraser Convention area. In this regard, a salmon agreement (and programs to implement such an agreement) must be considered as an integral part of the Canadian salmon management program if the program is to achieve fully the objectives of comprehensive husbandry and "best use" as identified in DFO's Strategic Overview for 1981/85.

16. Problems of fishing mixed stocks become more complicated when artificially enhanced and "natural" runs are involved. Since enhanced stocks are fished along with natural runs, the higher rates of exploitation required to ensure full utilization of enhanced stocks lead to declines in the natural runs. Under these circumstances, and despite increased production from enhancement, such fishing can result in the undesirable loss of natural stocks, as has been the experience for coho salmon in western Washington. The problem becomes uncontrollable when the enhanced stocks originate in one country and the natural runs originate in the other.
17. The lack of mechanisms for cooperation and coordination of management and enhancement projects, therefore, reduces the potential benefits from both natural and enhanced production to fishermen of both countries. Under the present circumstances, neither country is prepared to invest in enhancement projects from which a substantial part of the benefits accrue to fishermen of the other country. Because of this, a number of important prospects for enhancement on both sides have been left untouched, with the result that no one is benefitting and both sides are foregoing potential harvests. Thus, an agreement which would either limit U.S. interceptions or give Canada credit for such interceptions is extremely important to the SEP.
18. Under the terms of the present Fraser River Convention, Canada cannot invest unilaterally in enhancement of sockeye and pink stocks, and its terms have therefore constrained the enhancement of the other three species, because it is desirable from a biological point of view to enhance all runs in harmony.
19. Canada bears all the costs of maintaining the Fraser River watershed for salmon production; these costs include pollution control, and the costs of foregone opportunities of hydro power production and other

resource developments. The U.S. does not have to make such sacrifices despite its guaranteed 50 percent share of the sockeye and pink salmon catches in the Fraser Convention Area.

20. Canadian sections of rivers which rise in Canada and flow to the sea through Alaska (the so-called transboundary rivers) provide U.S. fishermen with substantial salmon catches in the estuaries and inside passages of south east Alaska. Most of the runs are depressed and Canada has only a limited opportunity to carry out fisheries in the rivers. For this reason, production from these rivers mainly benefits the U.S. It is not in Canada's interest, at present, to enhance these runs and as a result unless new international arrangements are made their potential production will never be realized. An agreement which would give Canada benefits for contributions provided to the U.S. would provide incentive for better management and for full enhancement of the runs which would benefit both countries.
21. The British Columbia Hydro and Power Authority has an active interest in developing the hydro potential of the Skeena River and several of the transboundary rivers in Northern British Columbia. Arguments for maintaining the salmon production of these rivers by asking Canadians to forego substantial economic benefits from hydro development are becoming increasingly difficult to support because a substantial portion of the benefits of keeping these rivers habitable for fish accrue to U.S. fishermen through their interceptions of fish bound for the Skeena and Nass Rivers and the Canadian portion of transboundary rivers.
22. An agreement with the U.S. along the lines described in Annex III and in paragraph 6 of this discussion paper would give benefits to Canada in several key areas:
 - i) compensation for U.S. interceptions of salmon bound for Canadian portions of transboundary rivers.
 - ii) compensation for U.S. interceptions of salmon produced by Canadian enhancement programs.
 - iii) coordinated management and enhancement of salmon stocks on a coastwide, all species basis.
23. The increased management and enhancement flexibility afforded by an agreement would enable Canada to rehabilitate salmon stocks and locate enhancement facilities in all areas. These actions will result in long term increases in catches for Canadian fishermen.
24. Within IPSFC, a certain amount of work is undertaken to ensure that each country receives the benefits provided for by the Convention. This type of work will have to be expanded to ensure that the benefits obtained in a new agreement will be forthcoming. In order to maintain a state of credibility with the USA, the proposed new Commission, and more importantly the citizens and government of Canada, and to demonstrate that the full benefits provided for in an agreement are obtained, it will be necessary to undertake a certain amount of scientific analysis. This analysis will include studies which ensure that enhanced and present Canadian production is credited to Canada and that the benefits obtained are properly allocated to Canadian user

groups. Due to the dynamic nature of the fisheries resource and the potential additional contributions from enhancement, it will be necessary to continue on-going monitoring of interception rates and levels.

25. With full implementation of the agreement, which would provide benefits from transboundary river credits, greater flexibility in implementation of Phase II of the Salmonid Enhancement Program and new management capabilities to rehabilitate stocks, it is estimated that by the year 2000 Canadian catches could be increased by about 69,500 tonnes annually.
26. These catch increases would increase the gross wholesale value of landings by about \$597 million per year (in 1980 constant dollars). Such revenue increases would result in a direct increase of \$505 million in income in the salmon industry, and a further indirect increase in income from secondary impacts of at least the same amount.
27. The income and employment generated would provide benefits to many coastal communities, particularly native Indian communities, which are located in remote areas of the B.C. coast and which are highly dependent on the fishing industry.
28. The costs to government of the proposed agreement include the biological research, the monitoring and administration costs necessary to comply with the agreement and increased fisheries management costs to take advantage of new opportunities afforded by the agreement. The costs to the fishing industry are the costs of catching and processing additional salmon generated by the agreement.
29. Preliminary benefit-cost assessment indicates that the agreement could provide significant net national income benefits. (Annex IV.)
30. Accordingly, the agreement has the potential for full cost recovery over time through the proposed system of salmon landings changes currently under construction.

ALTERNATIVES

31. There are four possible options for approaches to solving the international and domestic management problems in the Pacific coast salmon fishery:
 - A Suspension of negotiations and maintenance of the status quo, including Canadian participation in the IPSFC and informal consultations with the U.S. to attempt to resolve day to day management problems.

Advantages

Through joint development and sharing arrangements of Fraser sockeye and pink salmon runs through IPSFC, Canada could at least receive some incremental benefits from British Columbia's most productive salmon system (enhancement production in the Fraser accounts for over one-third of the total benefits expected from full development of the B.C. salmon potential under SEP).

Disadvantages

Canada would receive only about 60% of the benefits of Fraser enhancement compared to 100% of those that would be provided by the proposed agreement.

Present interception problems (aside from Fraser sockeye and pink salmon), which are resulting in steady declines in natural production, would continue and probably worsen.

Many potential enhancement projects would continue to be uneconomic to develop because U.S. interceptions would reduce benefits to Canada below the break even point. Such projects, therefore, would probably not be undertaken. (About one quarter of the enhancement potential of the Canadian salmon stocks would fall into this category.)

Present friction between management agencies in the two countries would continue with consequent unfavourable effects on overall Canada/U.S. relations.

Canada would receive minimal benefits from salmon produced in the Canadian sections of the transboundary rivers.

- B Suspension of negotiations, Canadian withdrawal from IPSFC with intensification of Canadian fishing on salmon bound for U.S. rivers. This option would be adopted in order to put pressure on the U.S. to take a position more responsive to Canadian concerns in a future round of negotiations.

Advantages

The aggressive escalation of Canada's intercepting fisheries would give great urgency to the need to resolve outstanding Canada/U.S. problems and put pressure on the U.S. to adopt negotiating positions more favourable to Canada.

Disadvantages

As Canada increased its fisheries on U.S. fish and, as would be expected, the U.S. retaliated by increasing its intercepting fisheries, present management problems would increase, thereby accelerating the decline of natural runs.

Without the present international controls on the fisheries for Fraser sockeye and pink salmon under IPSFC, competitive fishing, which could severely reduce the stocks, would occur.

Many potential non-Fraser enhancement possibilities would continue to be uneconomic to develop because U.S. interceptions would reduce Canadian benefits below the break even point. Such projects, therefore, would not be undertaken.

Present frictions between management agencies in the two countries would be greatly increased and unquestionably would spread to the broader field of overall Canada/USA relations.

- C Conclusion of an agreement with the U.S. along the lines proposed in Annex III, with full commitment of funds for research and monitoring required to achieve maximum long-term benefits from implementation of the agreement.

Advantages

Interceptions would be frozen at 1971-74 levels which are significantly lower than present levels.

Enhancement would be able to proceed without the restraints of lost production. This would allow SEP to select the best opportunities and get full credit for the production.

Canada would be able to improve management of the stocks and thereby obtain additional benefits from natural production (benefits which are presently not available) without giving up benefits to U.S. fisheries.

The increased benefits accruing to Canada would be derived in the shortest possible time frame, thus enriching the flow of revenue necessary to provide for full cost recovery of the expenditures proposed.

Canada would receive credit for salmon production occurring in the Canadian portions of the transboundary rivers.

Disadvantages

Highest cost option (refer to Financial Considerations).

- D Conclusion of an agreement with the U.S. along the lines proposed in Annex III but with funding commitments sufficient only to meet Canada's legal commitments under the agreement and to provide for Canadian assumption of the present functions of the IPSFC.

Advantages

Interceptions would be frozen at 1971-74 levels.

Enhancement would be able to proceed without the restraints of lost production.

Canada would receive credit for salmon production occurring in the Canadian portions of the transboundary rivers.

Disadvantages

The potential increases via natural production which the increased management flexibility would allow could not be achieved.

For example, under the terms of the present convention, sockeye and pink stocks caught in Johnstone Strait are considered bonus fish since they are caught outside IPSFC Convention Waters and thus are not shared 50/50 with US fishermen. However, the high exploitation rate in the Johnstone Strait area has decimated less productive

natural pink stocks tributary to Georgia Strait. A new agreement would provide the flexibility to move the fishery to new areas located more terminally and therefore allow these pink stocks to be rehabilitated to optimum levels. Unfortunately, without appropriate management studies, stock managers could not safely develop these new fisheries without risk of other management complications and therefore would be forced to continue with the present fisheries regime in Johnstone Strait.

Minimum funding would provide insufficient background data for cooperation with the USA in enhancement, particularly in areas such as the Alaskan Panhandle, with consequent delays in undertaking promising enhancement projects.

The potential for early and full cost recovery is significantly less than in Alternative C because the flow of benefits would be less and would accrue more slowly.

FINANCIAL CONSIDERATIONS

32. Alternative A

There are no new resources required for this option. Canada would continue to contribute \$900,000 annually (1980 constant dollars) to IPSFC.

Alternative B

This option would require additional funding to administer and manage Fraser River sockeye and pink salmon. An additional \$865,000 per year (1980 constant dollars) over and above Canada's current contribution of \$900,000 per year would be required to pick up costs currently met by the U.S. contribution to the IPSFC.

Alternative C

This option requires new resources to implement the Convention including operation of the new Commission (Canada's contribution would be about \$250,000 per year), and research and monitoring activities. In addition, the cost of research and reconnaissances actions in support of a new management regime to take advantage of the opportunities afforded by the agreement is included. An explanation of these activities is contained in Annex V.

The annual flow of funding beginning in the first year of an Agreement would be (in 1980 constant dollars):

AGREEMENT WITH RESEARCH AND MONITORING FOR LONG TERM BENEFITS

Year	New Commission Costs	New Research and Assessment Costs	Funding for Former US Portion IPSFC Budget	New Resources Sub-total	Canada's Current IPSFC Contribution	Total Yearly Costs
1	250.0	6,385.0	865.0	7,500.0	900.0	8,400.0
2	250.0	6,885.0	865.0	8,000.0	900.0	8,900.0
3	250.0	6,685.0	865.0	7,800.0	900.0	8,700.0
4	250.0	4,885.0	865.0	6,000.0	900.0	6,900.0
5	250.0	4,285.0	865.0	5,400.0	900.0	6,300.0
6	250.0	2,885.0	865.0	4,000.0	900.0	4,900.0
7	250.0	2,085.0	865.0	3,200.0	900.0	4,100.0
8	250.0	1,885.0	865.0	3,000.0	900.0	3,900.0
9	250.0	1,585.0	865.0	2,700.0	900.0	3,600.0
10	250.0	1,585.0	865.0	2,700.0	900.0	3,600.0
	2,500.0	39,150.0	8,650.0	50,300.0	9,000.0	59,300.0

Person-Year Requirements

1) For ex-IPSFC functions	48
2) For Research & Monitoring	25
Total	73 PY indeterminate (beyond 10 years)

Alternative D

This option requires new resources to implement the Convention including operation of the new Commission and research and monitoring activities. These activities are described in Annex V.

The annual flow of funding beginning in the first year of an Agreement would be (in 1980 constant dollars):

AGREEMENT ONLY

Year	New Commission Costs	Assessment and Monitoring Costs	Funding for Former US Portion IPSFC Budget	New Resources Sub-total	Current IPSFC Contribution	Total Yearly Costs
1	250.0	2,685.0	865.0	3,800.0	900.0	4,700.0
2	250.0	3,185.0	865.0	4,300.0	900.0	5,200.0
3	250.0	2,985.0	865.0	4,100.0	900.0	5,000.0
4	250.0	3,085.0	865.0	4,200.0	900.0	5,100.0
5	250.0	2,485.0	865.0	3,600.0	900.0	4,500.0
6	250.0	2,185.0	865.0	3,300.0	900.0	4,200.0
7	250.0	1,385.0	865.0	2,500.0	900.0	3,400.0
8	250.0	1,185.0	865.0	2,300.0	900.0	3,200.0
9	250.0	1,085.0	865.0	2,200.0	900.0	3,100.0
10	250.0	1,085.0	865.0	2,200.0	900.0	3,100.0
	2,500.0	21,350.0	8,650.0	32,500.0	9,000.0	41,500.0

Person-Year Requirements

1) For ex-IPSFC functions	48
2) For Assessment & Monitoring	25
Total	73 PY indeterminate (beyond 10 years)

PUBLIC INFORMATION CONSIDERATIONS

33. Throughout the course of the negotiations over the last 15 years, the various interest groups (16 in total); through their representatives, have actively participated in developing negotiating positions and strategies. The representatives in turn have reported back to their member organizations to keep them apprised of developments. This in itself provides coverage of a significant portion of the "public" as there is representation at negotiating sessions from all segments of the public that will be directly affected by an agreement. In addition, Departmental staff have attended a number of public meetings in the main interest centres of the Province to explain the nature of the understandings which emerged from the October 1980 negotiations, and to obtain indications of their support or rejection. Further, separate discussions have been held with all the principal "interest groups" to review in detail the Agreed Summary Record of the last round of negotiations.
34. With the exception of the United Fishermen and Allied Worker's Union (U.F.A.W.U.) there is general acceptance of the position as developed to date, and support for continuing negotiations as outlined. Any reservations held by individuals or organizations appear to centre on the matter of trusting the U.S. to follow through with their part of the bargain. A wait and see attitude has been adopted until such time as the 1981 U.S. fishing plans are finalized. Recent consultations with the USA suggest that the USA will curtail interceptions to some degree in 1981, to act within the spirit of the progress achieved in the negotiations to date.
35. The UFAWU opposes the present Canadian position and states that Canada should negotiate the U.S. entirely off the Fraser. This approach is not acceptable to the other segments of industry (nor is it negotiable) as it would involve a reciprocal removal of Canada's troll fishery off the West Coast of Vancouver Island. The UFAWU has on the other hand suggested Canada's present position is probably as good as can be obtained, without introducing other issues like energy, manufacturing, trade, etc. into the bargaining position as Canadian leverage. That particular approach has steadfastly been rejected by other industry advisors and the government alike. Another point of opposition raised by the UFAWU is that they argue that an agreement of the kind being proposed to date is, in fact, an arrangement for continental management of the resource and that the USA will have a say in management of the resources in Canadian waters. This will not be the case since each country will have exclusive authority in its own waters. The agreement will, however, provide a mechanism that will allow us to work out solutions to problems of mixed stock management and conservation issues of mutual concern.
36. Following completion of the next round of negotiations, assuming considerable progress is made, an expanded public information program would be required. This program would be accomplished through present communication channels like D.F.O.'s "Fishermen's Newsletter", open line radio and television programs and Departmental representation at public and special interest group meetings.

37. At present, the general public atmosphere favours reaching an agreement. Fishermen and the general public alike are becoming more aware of the conservation problems that exist with some salmonid stocks. They realize that the Department of Fisheries and Oceans has little chance of saving these stocks unilaterally, and that a salmon agreement with the USA would provide the vehicle for proper management and enhancement of the resource.

OTHER CONSIDERATIONS

38. As indicated in paragraph 6 above, negotiations over the last year have been considerably more successful than in the past. One of the reasons is a change in negotiating tactics. In earlier discussions, both sides tried to resolve every issue in its finest detail before moving to the next. Negotiators have now agreed to a framework of principles within which the individual issues can be resolved over time. The other primary reason is the change in negotiators on the American side. The previous negotiator worked in isolation from many of his key advisors from industry and various levels of the Administration. Hence, many of the advisers to the U.S. delegation approached the negotiations with considerable feelings of uncertainty and suspicion. Since becoming the chief U.S. negotiator in the Canada/U.S. Pacific Salmon negotiations, Dr. Lee Alverson has made a great effort to ensure that his constituents, both political and private, have been kept informed about the progress of the negotiations and he has sought their advice and guidance on the American position and strategy. Publicly, he has stated that he does not want an "East Coast fiasco". In fact, Washington State Congressman Bonker and Louisiana Congressman Breaux (both Democrats) attended one of the negotiating sessions where they publicly expressed their support for the development of an agreement.
39. The U.S. Federal elections in November significantly changed the composition of the Congress and Administration. Alverson has adjusted to these changes and through personal consultations he has endeavoured to inform the new incumbents, seeking their support and confidence in these negotiations. Although the Washington State Congressional delegation is more evenly split between Republican and Democrats than previously, it would seem that on the issue of negotiations there remains within the Washington State delegation and within the regional delegation a consensus and cohesiveness which has grass roots support. The salmon stocks on the West Coast are in difficulty and they will continue to decline unless some cooperative action between Canada and the U.S. occurs. This is recognized by fishermen, the fishing industry, fisheries managers, fisheries academics, the regional Fishery Management Councils and by regional Congressional delegates from Alaska, Washington, Oregon and Idaho. This should augur well for a successful conclusion of these negotiations.
40. Local U.S. fishing interests' support for an agreement is contingent on their receiving some assurances that tangible benefits will flow from the agreement. Many of these benefits may be obtained only through future enhancement of depleted stocks. If the necessary funds are not forthcoming, or perceived to be forthcoming from the U.S. federal government, the treaty could be jeopardized. The defeat of former Senator Magnuson (who

was a strong advocate of increased funding for fisheries development) and the restrictive fiscal policies of the Reagan Administration add an element of some uncertainty to this financial support. However, several key Congressional committees are chaired by Congressmen from the Pacific region and should be in a position to ensure that the resources required to implement the agreement are provided. A cohesive bipartisan regional Congressional delegation with strong support from State governments on this issue should be sufficient to reassure the various fishing interests that the benefits of an agreement will be realized.

41. Even though one interest group or another in the U.S. might have some objection to particular points in the agreement, the general respect which they have for Alverson's abilities, their knowledge of the condition of the fishery and Alverson's lobbying and public relations activities should ensure a broad general acceptance of the agreement. The time appears to be ripe to negotiate with the USA an agreement which has the best chance of Senate advice and consent.
42. The conclusion of an agreement will not be inhibited by the terms of reference of the Pearse Commission of Inquiry.

FEDERAL/PROVINCIAL CONSIDERATIONS

43. The Government of British Columbia has been involved in the Canada/U.S. salmon negotiations since 1971. During that time, B.C. officials have been involved as advisors at both the negotiating and government to government sessions. In addition to the advisory role, they have provided technical and policy support, as well as funding, when deemed necessary. Throughout the negotiations, the provincial government advisors have indicated support for the federal position. When indicating their support, they have elaborated on the costs to the Province of environmental protection, foregone hydro development in the major river systems, suggesting that unless a salmon agreement that provides benefits to Canadians is negotiated, there would be increased pressure to develop hydro dams, and forego salmon production that contributes to U.S. fisheries.

INTERDEPARTMENTAL CONSIDERATIONS

44. This discussion paper was prepared by the Department of Fisheries and Oceans, in consultation with the Department of External Affairs.

Consultations have been held on the Financial Considerations section of the paper with the Ministry of State for Economic Development and the Treasury Board.

RECAPITULATION

45. There is an urgent need to develop an agreement with the USA that will create a formal structure within which co-operation in the management, development and research of salmon stocks can be carried out.

46. The current limited treaty on Fraser River sockeye and pink salmon is inadequate. It does not recognize the conservation problems that exist with other species bound for the Fraser River or all salmon stocks destined for other river systems.
47. The interception imbalance is in favour of the USA and has been growing in the recent five year period. As a result, more and more Canadians feel this situation is inequitable, especially in light of the number of commercial restrictions that have been imposed on the Canadian industry while U.S. fisheries on the same stocks continue to be unrestricted.
48. Negotiations have been ongoing for several years, with considerable progress being achieved in recent discussions. It now appears that a framework agreement is within our grasp, as both parties are determined to address mutual conservation and management problems.
49. Considerable biological research and assessment work will be required in order to make the proposed agreement operative. In addition, if Canada is to receive the full benefits available from such an agreement, research and management studies that will provide the management flexibility to obtain the maximum benefits are necessary.
50. A number of important Canadian salmon fisheries cannot be regulated adequately without cooperation with the USA, and full benefits cannot be achieved from Canadian enhancement activities without catch-sharing arrangements with the USA. For these reasons, conclusion of a satisfactory agreement with the USA is essential to ensuring the full success of both the Canadian Pacific Salmon Management Program and the Salmonid Enhancement Program.

Minister of Fisheries
and Oceans

Secretary of State for
External Affairs

Canada/USA Pacific Salmon Negotiations
Négociations entre le Canada et les États-Unis
sur le Saumon du Pacifique

Minister of Fisheries and Oceans
Ministre des Pêches et des Océans

Secretary of State for External Affairs
Secrétaire d'État aux Affaires extérieures

Discussion Paper Attached
Document de travail affixé

CONFIDENTIEL

MÉMOIRE AU CABINET

NÉGOCIATIONS CANADO-AMÉRICAINES SUR LE SAUMON DU PACIFIQUE

OBJET

1. a) Obtenir du Cabinet l'approbation de principe des ressources financières et humaines nécessaires à la réalisation du programme qui permettra au Canada de respecter ses engagements relatifs à la convention canado-américaine dont on recommande la conclusion, en ce qui concerne la gestion et la mise en valeur des ressources de saumon du Pacifique.
- b) Demander l'avis et les instructions du Cabinet sur les modalités éventuelles de la convention qui est actuellement négociée avec les États-Unis.

DÉCISIONS REQUISES

2. Il est nécessaire d'obtenir l'approbation des éléments d'un accord à négocier ad referendum, prévoyant la coopération du Canada et des États-Unis pour la gestion et la mise en valeur des ressources de saumon du Pacifique, ainsi que l'approbation de principe des ressources humaines et financières nécessaires à la mise en oeuvre d'un tel accord.

CONSIDÉRATIONS

3. Les données de base de cette question sont exposées dans le document de travail ci-joint et dans ses annexes.
4. Une importante quantité de saumons provenant des cours d'eau canadiens de la côte du Pacifique est exploitée par les pêcheurs tant canadiens qu'américains. Les stocks provenant des cours d'eau américains sont la cible d'une concurrence similaire. Il s'ensuit de graves problèmes de gestion qui ont occasionné le déclin d'un certain nombre de stocks importants des deux pays. Les interceptions de saumons qui se dirigent vers l'autre pays entraînent une réduction des avantages économiques que peut tirer chaque pays de ses efforts de mise en valeur et découragent toute initiative en ce sens. Il faut conclure un accord refrénant la concurrence que se livrent les pêcheurs des deux pays et prévoyant un partage des prises de manière que chaque pays tire avantage de sa propre production et puisse assurer une gestion efficace de ses ressources de saumon et tirer pleinement avantage de ses programmes de mise en valeur. La conclusion d'un tel accord est donc indispensable pour assurer l'efficacité des programmes canadiens de gestion du saumon et de mise en valeur des salmonidés.
5. La pêche commerciale du saumon sur la côte du Pacifique a commencé il y a un siècle. Depuis lors, les prises, par les pêcheurs d'un pays, des saumons qui se dirigent vers les cours d'eau d'un autre pays, ont occasionné des problèmes que l'on peut décrire comme il suit:

- a) Les problèmes de gestion viennent de ce que certains stocks sont soumis à la concurrence que se livrent les pêcheurs des deux pays. À défaut de mesures de contrôle internationales, les deux pays refusent de réduire leurs activités de pêche, en dépit des problèmes de préservation qui se posent, par crainte d'être désavantagés par rapport à leurs concurrents. En conséquence, les saumons de remonte pêchés à l'échelle internationale sont généralement surexploités et leur nombre diminue. Dans les situations de crise, le pays d'origine a généralement dû imposer des restrictions sévères, alors que l'autre pays adoptait des mesures moins vigoureuses. Cette situation a, à maintes reprises, donné lieu à des frictions entre les organismes de gestion des deux pays et a suscité une grande amertume dans leurs collectivités halieutiques respectives.
- b) Souvent les stocks locaux canadiens sont mêlés aux stocks interceptés qui retournent vers les États-Unis ou aux stocks de saumon rose et rouge qui remontent le Fraser (dont la gestion est actuellement assurée sur une base internationale par la Commission internationale de la pêche du saumon dans le Pacifique - CIPSP, les prises dans les eaux visées par la Convention étant partagées également entre les deux pays). Comme il est plus avantageux de maintenir les interceptions que d'assurer la préservation des stocks locaux, ces derniers diminuent. Il est donc essentiel qu'un accord permettant d'éliminer les avantages de l'interception des stocks fasse partie intégrante du programme global canadien de gestion du saumon pour que ses objectifs soient réalisés au maximum.
- c) Selon les données canadiennes sur la quantité et la valeur des interceptions, la valeur des poissons canadiens interceptés par les États-Unis est supérieure à celle des interceptions canadiennes de poissons américains; il s'ensuit donc une iniquité économique fondamentale. D'après les évaluations pour la période de 1975 à 1978, les É.-U. ont recueilli annuellement quelque 7,7 millions de dollars de plus en termes de valeur au débarquement.
- d) Les deux parties ont renoncé à un certain nombre de possibilités attrayantes de mise en valeur de certains stocks qui peuvent être interceptés par les pêcheurs de l'autre pays; chaque partie a refusé de construire des installations qui peuvent apporter des avantages substantiels à l'autre partie. Jusqu'à maintenant, le Canada a limité la plupart de ses activités dans le cadre du Programme de mise en valeur des salmonidés à la production de poisson qui n'est pas susceptible d'être intercepté, laissant en plan bon nombre de projets prometteurs (par ex. projet concernant le saumon rouge et rose du Fraser). Au moins 60 pour cent des possibilités de mise en valeur des saumons de remonte de la C.-B. touchent des stocks pouvant faire l'objet d'interceptions substantielles par les pêcheurs américains. La plupart des projets nécessaires de mise en valeur des stocks interceptés ne

seront pas réalisés parce que les interceptions par les pêcheurs américains en réduisent le rapport de rentabilité en deçà des niveaux acceptables. Pour assurer la réalisation de ces projets, il faudrait un accord qui prévoie le contrôle des interceptions ou offre au Canada des compensations pour les interceptions américaines. Un tel accord améliorerait donc les perspectives dans le cadre du Programme canadien de mise en valeur des salmonidés.

- e) Le Canada tire peu d'avantages de la production de saumons dans des cours d'eau qui prennent naissance au Canada et se jettent dans la mer aux États-Unis (principalement en Alaska); les pêcheurs américains sont les principaux bénéficiaires de la production des saumons de remonte de ces cours d'eau. Le Canada ne peut tirer pleinement profit de ces projets que par la conclusion d'un accord prévoyant la rétribution du Canada pour son apport aux stocks exploités par les États-Unis.
6. Des pourparlers entre les deux pays sur des questions intrinsèquement liées, soit les interceptions, la gestion concertée et la mise en valeur, sont en cours depuis quelques années. Lors de récents pourparlers, on a proposé d'adopter les mesures suivantes pour résoudre les problèmes:
- a) Limitation de l'interception des saumons aux niveaux existants au cours d'une période de base récente (1971 à 1974).
 - b) Création d'un nouvel organisme international en remplacement de la CIPSP; ce nouvel organisme faciliterait la consultation en matière de gestion des prises interceptées, ainsi que la coordination de programmes nationaux de mise en valeur.
 - c) Élaboration d'un système prévoyant pour l'avenir un rajustement des interceptions de manière que, de l'ensemble des saumons exploitables, chaque pays reçoive une part équivalant à la production de ses propres cours d'eau, ainsi qu'un nombre d'interceptions d'une valeur équitable.
 - d) Établissement par le Canada des objectifs de gestion de toutes les espèces du bassin du Fraser, fonction qui, en vertu de la convention sur le fleuve Fraser, relève actuellement de la CIPSP en ce qui concerne le saumon rouge et rose. Nous admettons cependant qu'un organisme international de réglementation au sein de la nouvelle Commission serait indispensable pour élaborer les règlements régissant la pêche dans les eaux canadiennes et américaines aux abords du Fraser. La réglementation serait basée sur les objectifs de gestion du Canada et sur les dispositions de l'accord concernant la limitation des interceptions par les États-Unis.
 - e) Avantages conférés aux pêcheurs canadiens, tenant compte du poisson produit dans la partie canadienne des cours d'eau de l'enclave de l'Alaska et du Yukon, dont le Canada ne tire à toute fin pratique aucun avantage actuellement.

7. La convention actuelle sur le fleuve Fraser, en vertu de laquelle les stocks de saumon rouge et rose du Fraser sont administrés conjointement dans le cadre de la CIPSP, est entrée en vigueur en 1937. De plus en plus de Canadiens estiment que la convention est inéquitable, puisque le Canada, en plus de partager les dépenses de la Commission, paie tous les coûts relatifs à la protection de l'habitat, mais ne retire qu'une partie des avantages que représente le saumon de remonte. En outre, les dispositions de la convention empêchent le Canada de mettre en valeur unilatéralement les stocks de saumon rouge et rose, ce qui limite les possibilités de mise en valeur des trois autres espèces du fleuve, dans le cadre du Programme de mise en valeur des salmonidés, étant donné que, du point de vue biologique, il est souhaitable d'assurer une mise en valeur harmonieuse des cinq espèces.
8. Si les négociations se poursuivent dans un climat favorable, le Canada pourrait, dès le mois de mai, signifier par un avis conforme à l'esprit de l'accord, son intention de mettre un terme à la convention actuelle concernant le fleuve Fraser. À l'échéance de la convention (un an après que l'avis a été signifié), le Canada assumerait toute responsabilité en matière de gestion du saumon rouge et rose du fleuve Fraser, et ce, dès 1982-1983.

CONSIDÉRATIONS FINANCIÈRES

9. D'après les données canadiennes sur la valeur des prises interceptées par les pêcheurs des deux pays, il semble que, de 1975 à 1978, la valeur au débarquement du poisson canadien intercepté par les Américains dépassait d'environ 7,7 millions de dollars par année la valeur au débarquement du poisson américain intercepté par les Canadiens. Si l'on tient compte des avantages économiques secondaires, on constate une différence de l'ordre de 15 millions de dollars par année de la valeur sur le marché du gros. À noter que la valeur au débarquement du saumon rouge et rose du fleuve Fraser intercepté par les États-Unis en vertu du traité actuel représente 4 millions de dollars de cette différence annuelle.
10. La mise en oeuvre d'un accord réduirait l'écart entre la valeur des interceptions, permettrait d'améliorer la gestion des stocks, accélérerait la mise en valeur du saumon et accroîtrait de quelque 505 millions de dollars par année (taux constant de 1980) la valeur nette annuelle des prises canadiennes de saumon sur le marché du gros.
11. Pour le Canada, les coûts prévus d'un accord peuvent être divisés en trois catégories:
 - a) Les coûts prévus de gestion, par le Canada, des cinq espèces de saumon du Pacifique dans le bassin du fleuve Fraser s'élèveraient à environ 1,76 million de dollars par année (taux de 1980)¹. Cette somme, ainsi que quelque 48 années-personnes, devraient être accordées au

1 Ce total comprend la contribution canadienne actuelle de \$900,000 à la CIPSP, ainsi que la contribution américaine actuelle de \$865,000 que le Canada devait absorber.

ministère des Pêches et des Océans afin de lui permettre de remplir les fonctions gestionnelles et scientifiques nécessaires. (Ces coûts devront être assumés indépendamment du fait que la gestion canadienne soit assurée par l'entremise d'une entente avec les États-Unis ou par le retrait de la convention actuelle). Sur une période de dix ans, les coûts totaliseraient 17,6 millions de dollars.

- b) Il faut également des fonds de recherche d'environ 39,15 millions de dollars (taux de 1980) répartis sur 10 ans, ainsi que l'affectation annuelle de 25 années-personnes, pour poursuivre les évaluations sur l'étendue des interceptions et les endroits où elles sont pratiquées et pour recueillir des données qui permettront de modifier ultérieurement les habitudes de pêche, en vue de répartir équitablement la valeur des interceptions et d'assurer une gestion suffisamment souple pour permettre au Canada de tirer le maximum d'avantages d'un accord, ainsi que pour jeter les bases d'une coopération sur le plan des activités de mise en valeur.
- c) Le Canada paierait la moitié du budget annuel d'exploitation de la nouvelle Commission du saumon du Pacifique qui serait établie en vertu de l'accord. D'après les évaluations actuelles, le Canada devrait assumer des coûts annuels de \$250,000 (taux de 1980) pour une telle commission, soit 2,5 millions de dollars sur une période de dix ans.

- 12. Le document de travail ci-joint présente les détails des coûts et avantages, à l'appui de ces dépenses. Si le Cabinet accepte les recommandations contenues dans le présent document, le rapport avantages-coûts des investissements sera d'environ 3:1.

CONSIDÉRATIONS FÉDÉRALES-PROVINCIALES

- 13. Depuis 1971, des représentants de la province de la Colombie-Britannique ont participé activement aux pourparlers avec les délégations américaines et à l'élaboration de la position du Canada.
- 14. Jusqu'à maintenant, la Province a pleinement appuyé les objectifs canadiens dans le cadre des négociations.

AUTRES CONSIDÉRATIONS

- 15. En général, la controverse entourant les relations bilatérales de pêche sur la côte atlantique ne semble pas avoir influé sur l'atmosphère des négociations canado-américaines de la convention sur le saumon du Pacifique. L'accord canado-américain sur le germon ayant été paraphé dernièrement, la convention sur le saumon du Pacifique demeure le seul problème d'importance à résoudre en ce qui concerne les pêches de la côte du Pacifique. On n'a pas tenté de lier les problèmes des pêches de la côte atlantique et l'accord sur le saumon du Pacifique en retardant la signature jusqu'à ce que soient réglés ces problèmes. La conclusion d'un accord sur le saumon avec les États-Unis aurait un effet positif

sur nos relations bilatérales en matière de pêche, à condition que l'accord soit ratifié dans un délai raisonnable après sa signature.

16. Comme il est évident qu'il sera difficile d'obtenir la ratification par les États-Unis des traités de la côte atlantique, les représentants canadiens participant aux négociations sur le saumon du Pacifique ont régulièrement signalé aux représentants des États-Unis l'importance de s'assurer que les autorités américaines fédérales et des États concernés sont tenues au courant de l'évolution de la situation et sont généralement d'accord avec les démarches des deux négociateurs.
17. Au cours des pourparlers, le négociateur américain s'est en effet efforcé d'éviter les problèmes de ratification du genre de ceux qui se sont posés pour les traités de la côte atlantique. Au niveau fédéral, il a consulté les membres du Sénat afin de faciliter la ratification, ainsi que les membres de la Chambre des représentants dont l'appui est indispensable pour l'adoption de la législation appropriée. À cet effet, le Congrès américain a déjà adopté une loi concernant l'affectation de fonds à quelques programmes de mise en valeur du saumon qui seront probablement nécessaires aux termes de la convention proposée.
18. Les représentants canadiens ont avisé le négociateur américain et le Département d'État qu'avant de signer la convention, le Canada exigerait des assurances appropriées que le Sénat américain donnera rapidement ses recommandations et son approbation. Faisant part de cette préoccupation aux représentants américains, les représentants canadiens ont indiqué que la présentation acceptée pour l'accord sur le germon (c.-à-d. une lettre adressée par M. Haig, secrétaire d'État au SEAE, stipulant, entre autres, que le Sénat américain approuverait rapidement l'accord) serait probablement satisfaisante pour le Canada.

CONSULTATIONS INTERMINISTÉRIELLES

19. Le présent mémoire a été préparé par les représentants du ministère des Pêches et des Océans et du ministère des Affaires extérieures, en consultation avec le département d'État au Développement économique et le Conseil du Trésor.

INFORMATION DU PUBLIC

20. Durant les négociations des quinze dernières années, les divers groupes intéressés (16 au total) ont participé activement, par l'entremise de leurs représentants, à l'élaboration des positions et des plans de négociation. Les représentants ont par ailleurs informé les membres de leurs organisations de l'évolution de la situation. Une grande partie du public est ainsi informée, étant donné que des représentants des groupes directement touchés par l'accord sont présents lors des séances de négociation. En outre, le personnel du Ministère a participé à bon nombre d'assemblées publiques tenues dans les principaux centres concernés de la province, afin d'expliquer la nature de l'entente découlant des négociations et de savoir si elle avait ou non l'appui du public. En outre, on a organisé d'autres

rencontres avec les principaux groupes d'intérêt afin d'examiner en détail le compte rendu de la dernière étape de négociation.

21. Une fois la prochaine étape de négociation achevée, en supposant que la situation ait évolué considérablement, il faudra mettre en oeuvre un important programme d'information du public en utilisant les moyens de communication dont on dispose actuellement, soit le bulletin d'Information pour le pêcheur de Pêches et Océans, les tribunes téléphoniques radiodiffusées et télédiffusées, ainsi que les rencontres avec le public et des groupes d'intérêt spéciaux, auxquelles participeront des représentants du Ministère.
22. Le public est actuellement très favorable à la conclusion d'un accord. Les pêcheurs et le public sont de plus en plus sensibilisés aux problèmes de préservation de certains stocks de salmonidés. Ils sont conscients qu'il y a peu de chances que le ministère des Pêches et des Océans réussisse à sauver ces stocks unilatéralement, et savent qu'un accord sur le saumon avec les États-Unis constituerait un moyen d'assurer la gestion et la mise en valeur appropriées des ressources. Cependant, afin que le public continue d'appuyer un accord, tant actuellement que dans l'avenir, le Canada doit établir et mettre en oeuvre un programme efficace d'évaluation et de contrôle assurant la protection de tous les intérêts canadiens. À moins de mettre en oeuvre un programme de ce genre, le Canada perdra l'appui du public.

CONSIDÉRATIONS POLITIQUES

23. La conclusion d'un accord avec les États-Unis, conformément aux conditions recommandées dans le présent mémoire, serait accueillie avec grande satisfaction sur la côte du Pacifique par la plupart des 16 groupes consultés de l'industrie qui ont été représentés au sein de toutes les délégations canadiennes par le passé.
24. On peut s'attendre à une opposition ferme du Syndicat des pêcheurs et travailleurs assimilés (SPTA). Depuis des années, le SPTA accuse le Canada de battre en retraite face aux pressions américaines; il a mené une vaste campagne pour dénoncer la prétendue "concession" de saumons canadiens aux États-Unis. Le SPTA possède un avantage notable par rapport aux autres groupes consultatifs de ce secteur, puisqu'il a à sa disposition la publication intitulée The Fisherman. Le SPTA préconise la réduction des interceptions par les États-Unis et la pénalisation des pêcheurs américains pour les interceptions passées, bien que des représentants du Syndicat aient pourtant été présents lorsque le Canada a tenté, au début des années soixante-dix, de défendre cette position qui s'est révélée non négociable.

CONCLUSIONS

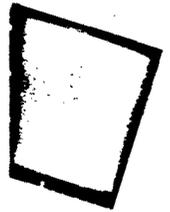
25. Un accord global avec les États-Unis sur la gestion concertée des ressources de saumon du Pacifique,

nt des éléments décrits dans le présent
et dans le document de travail qui
pagne, reste la meilleure solution pour régler
blèmes graves, dont la protection des
rces, la répartition inéquitable de la valeur
ises interceptées et le manque à gagner
lant des possibilités réduites de mise en
ur et du déclin des stocks naturels.

ONS

est recommandé que:

- a) le Cabinet autorise le négociateur canadien à poursuivre les consultations avec les conseillers et les négociations avec les États-Unis en vue de conclure un accord global ad referendum sur la gestion concertée du saumon du Pacifique, qui comprendrait les dispositions suivantes:
- i) limitation de l'interception des saumons par les deux pays, aux niveaux existants au cours d'une période de base convenue, ou à tout autre niveau mutuellement convenu et tenant compte des circonstances particulières;
 - ii) coopération dans le domaine de la mise en valeur future des ressources de saumon des deux pays;
 - iii) rajustement des activités futures de pêche dans les deux pays de façon que les prises de chaque pays soient équivalentes à la production de ses propres cours d'eau;
 - iv) dispositions relatives à la préservation et au partage des stocks de saumon des cours d'eau transfrontaliers;
 - v) rétrocession au Canada des fonctions de gestion du saumon rouge et rose du fleuve Fraser, qui sont actuellement assumées au nom du Canada et des États-Unis par la Commission internationale de la pêche du saumon dans le Pacifique;
 - vi) création d'un nouvel organisme international qui servira de tribune de consultation entre les deux pays et facilitera la coopération susmentionnée.
- b) le Cabinet approuve, en principe, les ressources nécessaires à la mise en oeuvre de l'accord, de manière que le Canada puisse obtenir tous les avantages décrits à la solution C du document de travail ci-joint, dès l'entrée en vigueur de l'accord;
- c) le Cabinet approuve en principe, les ressources qui seront nécessaires si le Canada assume la gestion du saumon rouge et rose du fleuve Fraser avant la signature d'un accord, dans l'hypothèse où le Canada se retirerait de la convention actuelle concernant le fleuve Fraser;



- d) le document de travail ci-joint ne soit pas rendu public en raison des questions de politique étrangère qui figurent aux paragraphes 38 à 43.

Ministre des Pêches
et des Océans

Secrétaire d'État aux
Affaires extérieures

Serial
No. EA-1-81-DP
Série

Confidential
Confidentiel

Discussion Paper
Document de travail

Canada/USA Pacific Salmon Negotiations
Négociations entre le Canada et les Etats-Unis
sur le Saumon du Pacifique

Minister of Fisheries and Oceans
Ministre des Pêches et des Océans

Secretary of State for External Affairs
Secrétaire d'Etat aux Affaires extérieures

OBJET

1. Définir l'état des pourparlers avec les États-Unis sur les modalités éventuelles d'un accord international concernant la coopération en matière de gestion et de mise en valeur des ressources de saumon et exposer les ressources financières et humaines nécessaires à la mise en oeuvre d'un tel accord.

DONNÉES DE BASE

2. Cinq espèces de saumon du Pacifique (saumon rouge ou sockeye, rose, kéta, coho, quinnat) naissent dans les cours d'eau de la Colombie-Britannique, de la côte nord-ouest des États-Unis, du Yukon et de l'Alaska. Ces saumons se mêlent librement dans l'océan, de sorte que les pêcheurs canadiens interceptent des saumons provenant des États-Unis, alors que les pêcheurs américains interceptent des saumons d'origine canadienne. Étant donné les endroits où se pratique la pêche, les types d'engins employés et les habitudes migratoires des stocks de poisson, il est impossible d'éliminer les interceptions, ce qui occasionne de nombreux problèmes de gestion des ressources de saumon.
3. L'inégalité de la valeur des interceptions et du nombre de poissons interceptés par chaque pays suscite des questions de partage équitable; ainsi, un pays peut tirer des avantages économiques des interceptions aux dépens de l'autre pays (producteur). Selon les estimations pour la période de 1975 à 1978, la valeur au débarquement du poisson canadien intercepté par les Américains dépasse chaque année de quelque 7,7 millions de dollars la valeur au débarquement du poisson américain intercepté par les pêcheurs canadiens. (D'après les évaluations, l'écart aurait atteint, en 1979, 18 millions de dollars). (Voir l'annexe I.)
4. Depuis 1937, la coopération avec les États-Unis pour la gestion du saumon s'est, en partie, limitée à la Convention entre le Canada et les États-Unis d'Amérique pour la protection, la conservation et l'expansion des pêcheries du saumon sockeye dans le fleuve Fraser et ses tributaires. (La convention a été modifiée en 1957 pour inclure le saumon rose.) En vertu de cet accord, la gestion du saumon rouge et rose du fleuve Fraser est assumée conjointement, dans le cadre de la Commission internationale de la pêche du saumon dans le Pacifique (CIPSP), afin de permettre un partage équitable des prises entre les pêcheurs canadiens et américains dans les eaux visées par la convention. L'accord prévoit également le financement conjoint de la mise en valeur du saumon rose et rouge. La pêche de toutes les espèces de saumon provenant d'ailleurs est actuellement administrée en vertu du système en vigueur dans chaque pays et il n'existe aucune procédure officielle de consultation.
5. En 1972, le Canada a annoncé son intention de mettre un terme au financement des projets de mise en valeur sous l'égide de la CIPSP, étant donné qu'il ne souhaite plus partager les ressources mises en valeur, ni construire de nouvelles installations tout

en ayant à payer à nouveau sa part de dépenses aux États-Unis.

6. Les négociations entre les deux pays, au sujet des interceptions de saumon, se poursuivent depuis les quinze dernières années (voir l'historique des négociations à l'annexe II), mais c'est seulement à la fin de 1977 qu'un accord a commencé à prendre forme. Au début de la décennie, les négociations portaient presque entièrement sur la limitation des interceptions de saumon, l'objectif étant de limiter ou de réduire le nombre de saumons d'origine américaine capturés par les pêcheurs canadiens et vice-versa. Les pourparlers récents ont porté sur une ligne de conduite plus positive, notamment la limitation des interceptions, suivant une base équitable, dans le contexte de la coopération en matière de gestion et de mise en valeur, en vue d'accroître au maximum la production de saumon dans les deux pays (voir le compte rendu de la réunion d'octobre 1980 à l'annexe III). Cette ligne de conduite prévoit:
 - a) La limitation de l'interception des saumons au niveau existant au cours d'une période de base récente.
 - b) La création d'un nouvel organisme international par l'entremise duquel les consultations sur la gestion des interceptions et la coordination des programmes nationaux de mise en valeur seront assurées.
 - c) L'élaboration d'un système prévoyant pour l'avenir un rajustement des interceptions de manière que, de l'ensemble des saumons exploitables, chaque pays reçoive une part équivalant à la production de ses propres cours d'eau et que la valeur des interceptions soit équilibrée (c.-à-d. réalisation d'un partage équitable).
 - d) L'établissement par le Canada des objectifs de gestion concernant toutes les espèces du bassin du Fraser (responsabilité assumée actuellement de concert avec la CIPSP qui est chargée de la gestion du saumon rouge et rose; voir le paragraphe 4.).
 - e) L'octroi par les États-Unis d'avantages aux pêcheurs canadiens en compensation du poisson produit dans la partie canadienne des cours d'eau de l'enclave de l'Alaska et du Yukon, qui est actuellement exploité par les pêcheurs américains de l'Alaska, mais dont le Canada ne retire, à toute fin pratique, aucun avantage actuellement.
7. Le Programme de mise en valeur des salmonidés a été annoncé en 1977; il s'agit d'un programme fédéral-provincial destiné à rétablir les stocks canadiens de saumon et de truite anadrome à leurs niveaux d'abondance antérieurs. Le Programme de mise en valeur des salmonidés (PMVS) sera réalisé en deux étapes. À l'achèvement de la première étape en 1983-1984, on pourra produire 19 900 tonnes de saumon de plus que la quantité produite en 1977. Du total des prises additionnelles, 19 050 tonnes seront

attribuées aux pêcheurs canadiens et 860 tonnes aux pêcheurs américains. D'après les prévisions, la première étape engendrera un revenu national net d'environ 120 millions de dollars (valeur de 1977 actualisée à 10 pour cent - taux de 1980) pour un rapport avantage-coût de 1,34:1, en supposant la limitation des nouveaux investissements inutiles dans l'industrie halieutique commerciale. Le Programme offrira également d'importants avantages aux Indiens autochtones et sur le plan de l'expansion régionale, de l'emploi, des ressources et de l'environnement. Le Cabinet a convenu que la mise en oeuvre de la deuxième étape du Programme dépendrait du succès de la première étape.

8. L'emplacement des activités durant la première étape a été sérieusement touché par le désaccord actuel avec les États-Unis, le Canada ayant refusé de construire des installations pour la production de poisson susceptible d'être intercepté par les Américains. Le niveau global de production de la première étape n'a cependant pas été touché.
9. Ce programme et d'autres programmes semblables mis en oeuvre aux États-Unis ont fait surgir dans la question des interceptions un nouveau facteur d'importance; en effet, il est devenu évident que, dans le cas présent, le pays qui investit dans la mise en valeur n'est pas en mesure de contrôler, de manière appropriée, la capture par l'autre pays des saumons qui sont le fruit de cette mise en valeur. C'est pour cette raison qu'en 1979-1980, les négociations se sont orientées vers un accord qui permettrait d'accroître au maximum toutes les prises de saumon de l'Amérique du Nord, chaque pays devant recevoir une part de prises proportionnelle à sa production totale de saumon.
10. L'industrie de la pêche commerciale et sportive vient au quatrième rang en termes d'apport à l'économie de la Colombie-Britannique, après l'exploitation forestière et minière et le tourisme. La pêche du saumon, c'est-à-dire la plus importante activité halieutique, est pratiquée par une flottille de 5 308 bateaux et emploie quelque 17 500 pêcheurs et 6 000 travailleurs à terre. Pour les pêcheurs, la valeur au débarquement des prises représentait en moyenne (1976 à 1980) environ 140 millions de dollars par année, alors que la valeur sur le marché du gros totalisait environ 280 millions de dollars par année. En outre, environ 350 000 pêcheurs sportifs, dont bon nombre sont des touristes des États-Unis et d'autres parties du Canada, participent à la pêche du saumon. On évalue à environ 55 millions de dollars les dépenses qu'ils engagent annuellement pour la poursuite de cette activité.

FACTEURS

11. D'après les évaluations, le poisson d'origine américaine représente environ 20 pour cent de la valeur au débarquement des prises canadiennes de saumon.
12. La principale activité au cours de laquelle les pêcheurs canadiens interceptent le saumon est la pêche à la traîne (ligne et hameçon) menée au large

de la côte ouest de l'île Vancouver; les pêcheurs interceptent les saumons quinnats et cohos se dirigeant vers les cours d'eau du Puget Sound, ainsi que vers le fleuve Columbia et d'autres cours d'eau de la côte des États de Washington, d'Oregon et de Californie du Nord. Dans le nord de la Colombie-Britannique, l'interception du poisson américain par les pêcheurs canadiens se limite principalement au saumon rose et au saumon keta provenant du sud-est de l'Alaska. Par ailleurs, les pêcheurs sportifs canadiens interceptent aussi le poisson provenant des États-Unis dans une plus ou moins grande mesure, selon le secteur de pêche.

13. Les pêcheurs américains de l'État de Washington et de l'Alaska interceptent le saumon canadien. La majorité des prises interceptées par les Américains dans l'État de Washington sont des saumons roses et roses pris en vertu de l'actuelle convention concernant le fleuve Fraser. On peut classer en quatre catégories les pêches pratiquées en Alaska par les Américains qui interceptent les saumons canadiens:
 - a) La pêche à la traîne menée sur la côte extérieure de l'archipel de l'Alaska, où sont capturés principalement des saumons quinnats et cohos provenant des cours d'eau de la C.-B.
 - b) La pêche au filet menée dans la partie méridionale de l'enclave de l'Alaska, où sont principalement interceptés des saumons roses, ketas et roses provenant des cours d'eau du nord de la C.-B.
 - c) La pêche à la traîne et au filet dans les passages intérieurs où sont interceptés des saumons quinnats et cohos retournant vers les cours d'eau de la C.-B., au sud de la frontière internationale, et des saumons de toutes les espèces provenant des cours d'eau transfrontaliers (cours d'eau qui prennent leur source au Canada et vont se jeter dans la mer aux États-Unis).
 - d) Les pêches menées sur les 700 milles du cours inférieur du fleuve Yukon, où sont interceptés les saumons quinnats et ketas se dirigeant vers la partie canadienne de ce fleuve.
14. Les habitudes migratoires des saumons, qui amènent les poissons d'origine canadienne et américaine à se mélanger dans le milieu océanique, rendent les interceptions inévitables. En l'absence d'un accord avec les États-Unis, l'exploitation de ces stocks mélangés complique notablement la gestion des populations par chacun des pays. Les exemples suivants en témoignent.
 - a) Dans le cadre de la pêche à la traîne menée sur la côte ouest de l'île Vancouver, des poissons se dirigeant vers les États-Unis sont interceptés; cette pêche constitue donc un facteur important dans les négociations. Par ailleurs, au cours de cette pêche, des saumons quinnats et cohos qui retournent vers les rivières du sud de la Colombie-Britannique sont également interceptés.

Les États-Unis ne sont donc pas en mesure de gérer totalement leur production de saumon; parallèlement, en ce qui concerne la pêche à la traîne sur la côte ouest de l'île Vancouver, les gestionnaires canadiens sont peu disposés à renoncer à d'importantes prises de poisson américain (dont le Canada n'obtiendrait actuellement aucun avantage) pour préserver un nombre inférieur de saumons canadiens mêlés aux poissons américains. Étant donné que les poissons interceptés sont libres de se déplacer, il est difficile d'encourager une gestion permettant de préserver les stocks de quinnats et de cohos du sud de la Colombie-Britannique, qui sont en péril.

- b) De même, la capture par les pêcheurs américains au sud-est de l'Alaska, de poissons retournant vers la partie canadienne des cours d'eau transfrontaliers rend actuellement impossible la gestion de ces stocks par le Canada.
 - c) Afin de préserver les stocks de quinnats et, dans une certaine mesure, les stocks de cohos, au sud de la Colombie-Britannique, le ministère des Pêches et des Océans limite de plus en plus la pêche sportive et certaines pêches commerciales. Ces restrictions sont très impopulaires. La situation s'aggrave du fait que la pêche du saumon canadien par les Américains, dans les eaux américaines adjacentes aux îles San Juan et à la pointe Roberts, ne fait pas l'objet de restrictions aussi vigoureuses. Par ailleurs, comme les stocks de poisson américain sont mêlés aux poissons canadiens exploités dans le cadre de la pêche sportive canadienne, ils sont, de surcroît, protégés par les restrictions canadiennes. Cette situation accroît le ressentiment des Canadiens à l'égard des restrictions imposées.
15. Actuellement, on administre une partie de la pêche du saumon, qui compte pour environ la moitié de la valeur au débarquement de toutes les prises de saumon de la C.-B., de manière à profiter des interceptions de poisson américain, ou en vertu de la réglementation stipulée dans la convention concernant le saumon du fleuve Fraser ou parallèlement à celle-ci, ou en tenant compte de l'opportunité de capturer le saumon rouge et rose se dirigeant vers le Fraser, aux abords de la zone de la convention du Fraser (où le saumon serait partagé également avec les pêcheurs américains). À défaut d'un accord, le Canada a avantage à maintenir ses prises au niveau le plus élevé possible, en dépit du fait qu'il s'ensuit une surexploitation des stocks canadiens mêlés aux stocks se dirigeant vers les États-Unis ou la zone de la convention; les avantages tirés de l'interception du saumon se dirigeant vers les États-Unis (les États-Unis devant assurer en partie la préservation des stocks dans leurs eaux, s'ils sont menacés) et des prises de saumon rouge et rose qui se dirigent vers le Fraser et ne sont pas visés par l'accord de la CIPSP, compensent le déclin des saumons de remonte canadiens mêlés aux autres stocks. La concurrence actuelle sur le plan des interceptions engendre un maintien des stocks canadiens à un niveau inférieur

au niveau optimal et contribue au déclin de certains stocks canadiens importants. A défaut de conclure un accord avec les États-Unis pour assurer une gestion concertée et supprimer les avantages des interceptions de poisson se rendant aux États-Unis ou dans la zone visée par la convention, l'efficacité du programme global canadien de gestion du saumon (auquel on a affecté des fonds supplémentaires, notamment grâce aux présentations globales pour 1980-1981 que le MPO a remises au DEDE) est dangereusement entravée. Pour assurer la réalisation totale des objectifs du programme qui sont mentionnés dans l'Approche stratégique du MPO pour 1981 à 1985, soit la gestion globale et l'utilisation efficace des ressources, il faut considérer un accord sur le saumon (et des programmes pour sa mise en oeuvre) comme partie intégrante du programme canadien de gestion du saumon.

16. Les problèmes que pose l'exploitation des stocks mélangés sont encore plus complexes lorsqu'il s'agit de populations naturelles et de stocks artificiellement mis en valeur. Étant donné qu'on pêche en même temps ces deux types de poisson, les taux d'exploitation plus élevés qui sont nécessaires pour assurer une pleine utilisation des stocks mis en valeur artificiellement, causent un déclin des populations naturelles. Dans de telles circonstances, et malgré l'augmentation de la production découlant de la mise en valeur, cette pêche peut causer des dommages regrettables aux remontes naturelles, comme cela a été le cas pour le saumon coho dans l'ouest de l'État de Washington. Le problème devient insoluble lorsque les stocks mis en valeur proviennent d'un pays et que les populations naturelles proviennent d'un autre.
17. L'absence de mesures de coopération et de coordination sur le plan de la gestion et des projets de mise en valeur, réduit les avantages qui pourraient découler pour les pêcheurs des deux pays de l'augmentation de la production des stocks naturels et mis en valeur. Actuellement, aucun pays n'est prêt à investir dans des programmes de mise en valeur si une partie substantielle des avantages revient aux pêcheurs de l'autre pays. C'est pourquoi un certain nombre de projets importants de mise en valeur ont été laissés en plan de part et d'autre, de sorte que personne n'en tire avantage et que les deux parties se privent d'un potentiel de prises appréciable. En conséquence, pour le PMVS, il est très important de conclure un accord prévoyant la limitation des interceptions par les États-Unis ou l'indemnisation du Canada pour ces interceptions.
18. En vertu de la présente convention concernant le fleuve Fraser, le Canada ne peut investir unilatéralement dans des projets de mise en valeur des stocks de saumon rouge et rose; les dispositions de la convention ont donc entravé la mise en valeur des trois autres espèces, car sur le plan biologique, il est souhaitable d'assurer une mise en valeur harmonieuse de tous les stocks de remonte.
19. Le Canada assume toutes les dépenses engagées pour que le bassin du Fraser soit propice à la production de saumon, c'est-à-dire le coût de la lutte contre la

pollution, le coût de la perte de production d'énergie hydro-électrique et de la mise en valeur d'autres ressources. Les États-Unis n'ont pas à faire de tels sacrifices et obtiennent néanmoins 50 pour cent des prises de saumon rose et rouge de la zone visée par la convention concernant le Fraser.

20. Dans les estuaires et les passages intérieurs du sud-est de l'Alaska, les pêcheurs américains capturent d'importantes quantités de saumon qui proviennent de la partie canadienne de cours d'eau prenant leur source au Canada et se jetant dans la mer en Alaska (cours d'eau transfrontaliers). La plupart des stocks de remonte connaissent un déclin, et le Canada ne peut pratiquer qu'une pêche limitée dans ces cours d'eau. En conséquence, la production de ces cours d'eau est principalement avantageuse pour les États-Unis. Actuellement, le Canada n'a pas intérêt à mettre en valeur ces stocks de remonte et, à moins qu'un accord international ne soit conclu, le potentiel de production ne sera jamais atteint. Un accord indemnisant le Canada pour un apport dont les États-Unis tirent avantage encouragerait une meilleure gestion et la mise en valeur de stocks de remonte dont les deux pays profiteraient.
21. La British Columbia Hydro and Power Authority a un intérêt manifeste à exploiter l'énergie hydro-électrique de la rivière Skeena et de plusieurs cours d'eau transfrontaliers du nord de la Colombie-Britannique. Les arguments en faveur du maintien de la production de saumon dans ces cours d'eau, pour laquelle les Canadiens doivent renoncer à d'importants avantages économiques découlant de l'exploitation hydro-électrique, se compliquent du fait qu'une partie substantielle des avantages résultant du maintien de l'habitat du poisson revient aux pêcheurs américains qui interceptent du poisson qui se dirigerait normalement vers les rivières Skeena et Nass et la partie canadienne des cours d'eau transfrontaliers.
22. La conclusion d'un accord avec les États-Unis, conformément aux points mentionnés à l'annexe III et au paragraphe 6 du présent document de travail, serait avantageuse pour le Canada à plusieurs égards:
 - i) compensation pour les interceptions américaines du saumon qui se rendrait normalement dans la partie canadienne des cours d'eau transfrontaliers;
 - ii) compensation pour le saumon intercepté par les Américains et produit dans le cadre des programmes canadiens de mise en valeur;
 - iii) gestion et mise en valeur concertées de tous les stocks de saumon de la côte.
23. Un accord assouplirait la gestion et la mise en valeur des stocks et permettrait au Canada de rétablir les stocks de saumon et de construire les installations nécessaires à la mise en valeur. Il s'ensuivrait une augmentation à long terme des prises des pêcheurs canadiens.

24. Dans le cadre de la CIPSP, on réalise certains travaux pour s'assurer que chaque pays obtient les avantages prévus par la convention. Il faudra étendre la portée de ces travaux pour s'assurer qu'on obtiendra des avantages d'un nouvel accord. Pour maintenir une certaine crédibilité auprès des États-Unis, auprès de la Commission dont on recommande la création et surtout, auprès de la population canadienne et du Gouvernement du Canada, et afin de prouver que tous les avantages attendus de l'accord seront obtenus, il faudra entreprendre certaines analyses scientifiques. Ces analyses comprendront des études visant à démontrer que la production canadienne actuelle et accrue profitera au Canada et que les avantages obtenus seront répartis parmi les utilisateurs canadiens, de manière appropriée. Étant donné la nature dynamique des ressources halieutiques et la production supplémentaire pouvant découler de la mise en valeur, il faudra poursuivre le contrôle des niveaux et taux d'interception.
25. La mise en oeuvre d'un accord, qui offrirait des avantages dont une indemnisation relative aux cours d'eau transfrontaliers, une plus grande souplesse dans la réalisation de la deuxième étape du Programme de mise en valeur des salmonidés et de nouvelles possibilités de gestion en vue de rétablir les stocks, permettrait, d'après les évaluations, d'accroître les prises canadiennes d'environ 69 500 tonnes par année d'ici l'an 2000.
26. Suite à l'accroissement des prises, la valeur brute des débarquements au niveau du gros augmenterait d'environ 597 millions de dollars par année (au taux constant de 1980). Cet accroissement des recettes entraînerait une augmentation directe des revenus d'environ 505 millions de dollars au sein de l'industrie du saumon, et une augmentation indirecte au moins équivalente.
27. De nombreuses collectivités côtières profiteraient des revenus et emplois engendrés, notamment les collectivités d'Indiens autochtones qui sont situées dans des régions éloignées de la côte de la Colombie-Britannique et dépendent grandement de l'industrie de la pêche.
28. Dans le cadre de l'accord proposé, le Gouvernement devrait assumer les coûts de la recherche biologique, du contrôle et de l'administration nécessaires à l'application de l'accord et des coûts accrus relatifs à la gestion des pêches, afin de mettre à profit les nouvelles possibilités offertes par l'accord. L'industrie halieutique devrait pour sa part assumer les coûts de la capture et du traitement des quantités supplémentaires de saumon produites grâce à l'accord.
29. D'après les évaluations préliminaires de rentabilité, l'accord pourrait offrir d'importants avantages au chapitre du revenu national net. (Annexe IV)
30. En conséquence, on pourrait à long terme, récupérer les coûts de l'accord, par l'entremise du système d'imposition de droits sur les débarquements qui est proposé et actuellement à l'étude.

SOLUTIONS POSSIBLES

31. Il existe quatre solutions pour résoudre les problèmes liés à la gestion internationale et nationale du saumon sur la côte du Pacifique:

A Suspension des négociations et maintien du statu quo, y compris la participation canadienne au sein de la CIPSP et des consultations officieuses avec les États-Unis en vue de résoudre les problèmes quotidiens de gestion.

Avantages

Grâce à des accords concernant le partage et la mise en valeur conjointe des stocks de remonte des saumons rouges et roses du Fraser, par l'entremise de la CIPSP, le Canada recevrait au moins quelques avantages du plus important bassin producteur de saumon de la Colombie-Britannique (les avantages à tirer de la mise en valeur dans le Fraser représentent plus d'un tiers de tous les avantages prévus par la mise en valeur des stocks de saumon de la C.-B. dans le cadre du PMVS).

Désavantages

Le Canada ne recevrait environ que 60 pour cent des avantages à tirer de la mise en valeur du Fraser, comparativement à 100 pour cent dans le cas de l'accord proposé.

Les problèmes actuels d'interception (exception faite des stocks de saumon rouge et rose du Fraser) qui découlent de la baisse constante de la production naturelle, se poursuivraient et s'aggraveraient probablement.

Sur le plan économique, la mise en oeuvre de nombreux projets demeurerait non rentable, car les interceptions américaines réduiraient en deçà du seuil de rentabilité les avantages pour le Canada. En conséquence, ces projets ne seraient probablement pas mis en oeuvre. (Environ un quart du potentiel de mise en valeur des stocks canadiens de saumon entrerait dans cette catégorie.)

Les frictions actuelles entre les organismes de gestion des deux pays se poursuivraient et, par conséquent, nuiraient à l'ensemble des relations canado-américaines.

Le Canada ne tirerait qu'un minimum d'avantages de la production de saumon dans la partie canadienne des cours d'eau transfrontaliers.

B Suspension des négociations, retrait du Canada de la CIPSP et intensification de la pêche canadienne du saumon se rendant vers les cours d'eau américains. L'adoption de cette solution viserait à exercer des pressions sur les États-Unis afin qu'ils répondent mieux aux attentes du Canada lors des négociations ultérieures.

Avantages

L'intensification des interceptions canadiennes rendrait prioritaire le règlement des problèmes qui persistent entre le Canada et les États-Unis et forceraient les États-Unis à adopter des positions de négociation plus favorables au Canada.

Désavantages

Si le Canada augmentait son effort de pêche du poisson américain, les États-Unis riposteraient probablement en intensifiant leurs interceptions; les problèmes actuels de gestion s'aggravaient, accélérant le déclin des stocks naturels de remonte.

Si le contrôle international actuel qu'exerce la CIPSP sur la pêche du saumon rouge et rose du Fraser était supprimé, il s'ensuivrait une concurrence qui pourrait entraîner une diminution dangereuse des stocks.

La mise en oeuvre de nombreux projets de mise en valeur dans les cours d'eau autres que le Fraser demeurerait non rentable parce que les interceptions américaines réduiraient en deçà du seuil de rentabilité les avantages pour le Canada. En conséquence, ces projets ne seraient pas mis en oeuvre.

Les frictions qui existent actuellement entre les organismes de gestion des deux pays s'envenimeraient grandement et s'étendraient inévitablement à l'ensemble des relations canado-américaines.

- C. La conclusion d'un accord avec les États-Unis, conformément aux recommandations de l'annexe III, et l'engagement de tous les fonds nécessaires pour la recherche et le contrôle, en vue d'obtenir le maximum d'avantages à long terme de la mise en oeuvre de l'accord.

Avantages

Les interceptions seraient limitées aux niveaux de 1971 à 1974, soit une quantité passablement inférieure aux niveaux actuels.

On pourrait procéder à la mise en valeur sans avoir à subir des pertes de production. On pourrait, dans le cadre du PMVS, choisir les meilleures possibilités et tirer pleinement profit de la production.

Le Canada pourrait améliorer la gestion des stocks et obtenir, en conséquence, des avantages supplémentaires de la production naturelle (avantages qu'il n'obtient pas actuellement) sans avoir à céder certains avantages aux États-Unis.

Le Canada pourrait profiter de ces avantages accrus dans les plus brefs délais possibles, et ainsi augmenter les revenus nécessaires au

recouvrement total des dépenses proposées.

Le Canada tirerait avantage de la production de saumon dans la partie canadienne des cours d'eau transfrontaliers.

Désavantages

Il s'agit de la solution la plus coûteuse (voir les Considérations financières).

- D Conclusion d'un accord avec les États-Unis, conformément aux recommandations de l'annexe III, engagement des fonds nécessaires pour répondre uniquement aux obligations légales du Canada aux termes de l'accord et disposition prévoyant l'exécution par le Canada des fonctions actuelles de la CIPSP.

Avantages

Les interceptions seraient limitées aux niveaux de 1971 à 1974.

On pourrait procéder à la mise en valeur sans avoir à subir des pertes de production.

Le Canada tirerait avantage de la production de saumon dans la partie canadienne des cours d'eau transfrontaliers.

Désavantages

Les possibilités d'accroissement de la production naturelle, qui découleraient de l'assouplissement de la gestion, ne pourraient être réalisées.

Par exemple, aux termes de la présente convention, les prises de saumon rouge et rose du détroit de Johnstone sont considérées comme des primes puisqu'elles sont capturées à l'extérieur des eaux visées par la convention de la CIPSP et qu'elles ne sont pas partagées également avec les pêcheurs américains. Cependant, le taux élevé d'exploitation dans le détroit de Johnstone a décimé les stocks naturels de saumon rose moins producteurs des tributaires du détroit de Géorgie. Un nouvel accord nous permettrait de déplacer la pêche vers des secteurs plus près des cours d'eau d'origine et, en conséquence, de rétablir les stocks de saumon rose à leur niveau optimal. Malheureusement, à défaut des études de gestion appropriées, nos gestionnaires ne pourront mettre en oeuvre ces mesures sans risquer d'autres complications sur le plan de la gestion et devront, en conséquence, poursuivre le mode de pêche actuel dans le détroit de Johnstone.

Des fonds insuffisants ne permettraient pas de recueillir les données nécessaires à la coopération avec les États-Unis en matière de mise en valeur, notamment dans des régions comme l'enclave de l'Alaska; il s'en suivrait

des retards dans la réalisation de projets de mise en valeur prometteurs.

Il y aurait beaucoup moins de chances de récupérer tous les coûts dans les plus brefs délais en choisissant cette solution qu'en adoptant la solution C, parce que les revenus seraient engendrés plus lentement et seraient moins élevés.

CONSIDÉRATIONS FINANCIÈRES

32. Solution A

Cette solution ne nécessite aucune nouvelle ressource. Le Canada continuera de contribuer à la CIPSP pour une somme de \$900,000 par année (taux constant de 1980).

Solution B

Cette solution nécessiterait l'affectation de fonds supplémentaires destinés à l'administration et à la gestion du saumon rouge et rose du fleuve Fraser. Cette solution nécessiterait un investissement de \$865,000 par année (taux constant de 1980), en plus de la contribution actuelle du Canada à la CIPSP, de \$900,000 par année, pour couvrir les coûts présentement assumés par les États-Unis dans le cadre de leur contribution à la CIPSP.

Solution C

Il faudrait affecter de nouvelles ressources pour assurer l'application de la convention, y compris le fonctionnement de la nouvelle Commission (la contribution canadienne serait d'environ \$250,000 par année) et les activités de recherche et de contrôle. En outre, le coût de la recherche et du contrôle, activités qui, dans le cadre du nouveau mode de gestion, sont indispensables si l'on veut mettre à profit les possibilités offertes par l'accord, est inclus. Ces activités sont exposées en détail à l'annexe V.

La ventilation annuelle des fonds, à compter de la première année de l'accord, serait la suivante (taux constant de 1980):

ACCORD INCLUANT LA RECHERCHE ET LE CONTRÔLE, POUR AVANTAGES
A LONG TERME

<u>Année</u>	<u>Coût de la nouvelle Commission</u>	<u>Nouveaux coûts de recherche et d'évaluation</u>	<u>Fonds couvrant l'ancienne contribution des E.-U. à la CIPSP</u>	<u>Nouvelles ressources Total partiel</u>	<u>Contribution actuelle du Canada à la CIPSP</u>	<u>Total des coûts annuels</u>
1	250.0	6,385.0	865.0	7,500.0	900.0	8,400.0
2	250.0	6,885.0	865.0	8,000.0	900.0	8,900.0
3	250.0	6,685.0	865.0	7,800.0	900.0	8,700.0
4	250.0	4,885.0	865.0	6,000.0	900.0	6,900.0
5	250.0	4,285.0	865.0	5,400.0	900.0	6,300.0
6	250.0	2,885.0	865.0	4,000.0	900.0	4,900.0
7	250.0	2,085.0	865.0	3,200.0	900.0	4,100.0
8	250.0	1,885.0	865.0	3,000.0	900.0	3,900.0
9	250.0	1,585.0	865.0	2,700.0	900.0	3,600.0
10	250.0	1,585.0	865.0	2,700.0	900.0	3,600.0
	<u>2,500.0</u>	<u>39,150.0</u>	<u>8,650.0</u>	<u>50,300.0</u>	<u>9,000.0</u>	<u>59,300.0</u>

Années-personnes requises

1) Pour remplir les fonctions auparavant assumées par la CIPSP	48	
2) Pour la recherche et le contrôle	25	
Total	<u>73</u>	a.-p. pour une période indéterminée (au-delà de 10 ans).

Solution D

Cette solution nécessite l'affectation de nouvelles ressources pour la mise en oeuvre de la Convention, y compris le fonctionnement de la nouvelle Commission et les activités de recherche et de surveillance. Ces activités sont décrites à l'annexe V.

La ventilation annuelle des fonds à affecter pour ces activités serait la suivante (taux constant de 1980):

ACCORD SEULEMENT

<u>Année</u>	<u>Coût de la nouvelle Commission</u>	<u>Coût de contrôle et d'évaluation</u>	<u>Fonds couvrant l'ancienne contribution des E.-U. à la CIPSP</u>	<u>Nouvelles ressources Total partiel</u>	<u>Contribution actuelle du Canada à la CIPSP</u>	<u>Total des coûts annuels</u>
1	250.0	2,685.0	865.0	3,800.0	900.0	4,700.0
2	250.0	3,185.0	865.0	4,300.0	900.0	5,200.0
3	250.0	2,985.0	865.0	4,100.0	900.0	5,000.0
4	250.0	3,085.0	865.0	4,200.0	900.0	5,100.0
5	250.0	2,485.0	865.0	3,600.0	900.0	4,500.0
6	250.0	2,185.0	865.0	3,300.0	900.0	4,200.0
7	250.0	1,385.0	865.0	2,500.0	900.0	3,400.0
8	250.0	1,185.0	865.0	2,300.0	900.0	3,200.0
9	250.0	1,085.0	865.0	2,200.0	900.0	3,100.0
10	250.0	1,085.0	865.0	2,200.0	900.0	3,100.0
	<u>2,500.0</u>	<u>21,350.0</u>	<u>8,650.0</u>	<u>32,500.0</u>	<u>9,000.0</u>	<u>41,500.0</u>

Années-personnes requises

1) Pour remplir les fonctions auparavant assumées par la CIPSP	48	
2) Pour la recherche et le contrôle	25	
Total	<u>73</u>	a.-p. pour une période indéterminée (au-delà de 10 ans).

INFORMATION DU PUBLIC

33. Durant les négociations des quinze dernières années, les divers groupes intéressés (16 au total) ont participé activement, par l'entremise de leurs représentants, à l'élaboration des positions et des plans de négociation. Les représentants ont par ailleurs informé les membres de leurs organisations de l'évolution de la situation. Une grande partie du public est ainsi informée, étant donné que des représentants des groupes directement touchés par l'accord sont présents lors des séances de négociation. En outre, le personnel du Ministère a participé à bon nombre d'assemblées publiques tenues dans les principaux centres concernés de la province, afin d'expliquer la nature de l'entente découlant des négociations d'octobre 1980 et de savoir si elle avait ou non l'appui du public. En outre, on a organisé d'autres rencontres avec les principaux groupes d'intérêt afin d'examiner en détail le compte rendu de la dernière étape de négociation.
34. En général, le public, exception faite du Syndicat des pêcheurs et travailleurs assimilés, semble accepter la position défendue jusqu'à maintenant et être en faveur de la poursuite des négociations. Les quelques réserves manifestées par le public ou les organisations semblent porter principalement sur la loyauté des Américains à respecter leurs engagements. L'attitude adoptée consiste à attendre jusqu'à ce que les plans de pêche de 1981 soient parachevés. D'après les dernières consultations avec les États-Unis, il semble que les pêcheurs américains réduiront, dans une certaine mesure, leurs interceptions en 1981, afin de respecter les progrès réalisés jusqu'à maintenant dans le cadre des négociations.
35. Le SPTA s'oppose à la position actuellement adoptée par le Canada; ses représentants estiment que le Canada devrait négocier la cessation de la pêche de toutes les espèces du Fraser par les États-Unis. Cette ligne de conduite ne paraît pas acceptable aux autres secteurs de l'industrie (ni négociable), car elle suppose réciproquement le retrait de la flottille de pêche à la traîne du Canada au large de la côte ouest de l'île Vancouver. Par contre, le SPTA signale que notre position actuelle est probablement le meilleur arrangement que nous puissions obtenir, si le Canada ne tient pas à faire intervenir des concessions dans les secteurs énergétique, manufacturier, commercial, etc. Les conseillers de l'industrie et le Gouvernement ont d'ailleurs rejeté catégoriquement cette ligne de conduite. Par ailleurs, le SPTA s'oppose au type d'accord proposé jusqu'à maintenant parce que, selon lui, il s'agit d'un accord prévoyant la gestion continentale des ressources et que, de ce fait, les États-Unis pourront intervenir dans la gestion des ressources des eaux canadiennes. Or, ceci ne se produira pas, puisque chaque pays aura compétence exclusive sur ses propres eaux. L'accord comportera cependant des dispositions qui nous permettront de résoudre les problèmes liés à la gestion des stocks mélangés et les questions de préservation d'intérêt mutuel.

36. Une fois la prochaine étape de négociation achevée, en supposant que la situation ait évolué considérablement, il faudra mettre en oeuvre un important programme d'information du public en utilisant les moyens de communication dont on dispose actuellement, soit le bulletin d'Information pour le pêcheur, les tribunes téléphoniques radiodiffusées et télédiffusées, ainsi que les rencontres avec le public et des groupes d'intérêt spéciaux, auxquelles participeront des représentants du Ministère.
37. Le public est actuellement très favorable à la conclusion d'un accord. Les pêcheurs et le public sont de plus en plus sensibilisés aux problèmes de préservation de certains stocks de salmonidés. Ils sont conscients qu'il y a peu de chances que le ministère des Pêches et des Océans réussisse à sauver ces stocks unilatéralement, et savent qu'un accord sur le saumon avec les États-Unis constituerait un moyen d'assurer la gestion et la mise en valeur appropriées des ressources.

AUTRES CONSIDÉRATIONS

38. Comme il est mentionné au paragraphe 6, les négociations de la dernière année ont été beaucoup plus fructueuses que dans le passé. Les progrès réalisés sont attribuables à un changement des tactiques de négociation. Lors des pourparlers antérieurs, les parties essayaient de résoudre chaque question dans ses moindres détails avant de passer à la suivante. Les négociateurs ont maintenant adopté certains principes prévoyant que chaque question peut être résolue avec le temps. L'évolution des négociations est également attribuable au remplacement du négociateur américain. Le négociateur précédent travaillait en s'isolant de bon nombre des conseillers clés de l'industrie et des divers paliers de l'Administration. En conséquence, bon nombre des conseillers de la délégation américaine envisageaient les négociations dans une atmosphère chargée d'incertitude et de soupçons. Depuis qu'il a été nommé chef négociateur américain dans le cadre des négociations canado-américaines sur le saumon du Pacifique, Dr Lee Alverson a déployé d'immenses efforts pour s'assurer que les membres du secteur politique et privé sont tenus au courant de la situation et il leur a demandé leur avis et leurs instructions sur la ligne de conduite et la position adoptées par les États-Unis. Il a déclaré publiquement qu'il ne souhaitait pas répéter le fiasco de la côte est. MM. Bonker et Breaux (tous deux démocrates), respectivement membres du Congrès de l'État de Washington et de la Louisiane, ont assisté à l'une des séances de négociation et ont publiquement manifesté leur appui à la conclusion d'un accord.
39. Les élections fédérales américaines de novembre dernier ont entraîné d'importants changements dans la composition du Congrès et de l'Administration. M. Alverson s'est adapté à ces changements et, par des consultations personnelles, a tenté d'informer les nouveaux titulaires et d'obtenir leur appui et leur confiance à l'égard des négociations. Bien que l'écart entre le nombre de représentants républicains

et démocrates au sein du Congrès de l'État de Washington soit moins grand que par le passé, il semble que la question des négociations fasse l'unanimité parmi les délégations régionales et de l'État de Washington et qu'elles reçoivent l'appui populaire. La situation des stocks de saumon de la côte ouest est critique et le déclin se poursuivra jusqu'à ce que des mesures concertées entre le Canada et les États-Unis soient prises. Les pêcheurs, l'industrie halieutique, les gestionnaires et spécialistes des pêches, les conseils régionaux de gestion des pêches et les délégués régionaux du Congrès de l'Alaska, des États de Washington, d'Oregon et d'Idaho en conviennent. Cela est de bon augure pour la conclusion des négociations.

40. Les intérêts halieutiques locaux appuieront un accord à condition d'être assurés que des avantages tangibles en découleront. Bon nombre de ces avantages dépendent de la mise en valeur ultérieure des stocks décimés. Si le Gouvernement fédéral américain n'engage pas les fonds nécessaires ou ne semble pas disposé à le faire, le traité pourrait être compromis. La défaite de l'ancien sénateur Magnuson (qui était un fervent défenseur de l'augmentation du budget affecté à l'expansion des pêches) et la politique de restrictions financières de l'Administration Reagan rendent un peu plus incertain cet appui financier. Cependant, comme plusieurs comités clés du Congrès sont présidés par des membres de la région du Pacifique, l'octroi des ressources nécessaires à la mise en oeuvre de l'accord devrait être garanti. Si les membres bipartites des délégations régionales du Congrès adoptent une position unanime et que les Gouvernements des États accordent leur appui sur cette question, les divers intérêts halieutiques devraient être rassurés quant aux avantages de l'accord.
41. Même si un groupe éprouve quelques réserves concernant certains points de l'accord, le respect qu'inspire M. Alverson, la situation connue des pêches, le lobbying de M. Alverson et ses relations publiques devraient favoriser une acceptation générale de l'accord. Le moment semble bien choisi pour négocier avec les États-Unis un accord qui a les meilleures chances d'être accepté par le Sénat.
42. Le mandat de la commission d'enquête Pearse n'entravera nullement la conclusion d'un accord.

CONSIDÉRATIONS FÉDÉRALES-PROVINCIALES

43. Le Gouvernement de la Colombie-Britannique participe aux négociations canado-américaines sur le saumon depuis 1971. Les représentants de la C.-B. font, depuis lors, fonction de conseillers lors des négociations et des séances entre les gouvernements. En plus d'assumer le rôle de conseillers, ils fournissent de l'aide sur le plan technique et politique et, au besoin, les fonds nécessaires. Tout au long des négociations, les conseillers du Gouvernement provincial ont appuyé la position fédérale. Lorsqu'ils ont manifesté leur appui, ils ont établis les coûts que devrait assumer la province pour la protection de l'environnement, les avantages

perdus des projets hydro-électriques dans les principaux bassins, et ont indiqué que, à moins d'un accord sur le saumon qui soit avantageux pour les Canadiens, les pressions relatives à la construction de barrages hydro-électriques s'intensifieraient et qu'on mettrait un terme à la production de saumon dont profitent les pêcheurs américains.

CONSIDÉRATIONS INTERMINISTÉRIELLES

44. Le présent document de travail a été préparé par le ministère des Pêches et des Océans, après consultation du ministère des Affaires extérieures.

Le département d'Etat au Développement économique et le Conseil du Trésor ont été consultés en ce qui concerne la section des Considérations financières du présent document.

RÉCAPITULATION

45. Il est urgent de conclure un accord avec les États-Unis qui créera une structure officielle dans le cadre de laquelle on pourra mettre en oeuvre la coopération en matière de gestion, d'expansion et de recherche concernant les stocks de saumon.
46. Le traité actuel concernant le saumon rouge et rose du fleuve Fraser est limité et inapproprié. Il ne tient pas compte des problèmes de préservation concernant les autres espèces qui se dirigent vers le fleuve Fraser ou des stocks de saumon qui se dirigent vers d'autres bassins.
47. La quantité d'interceptions par les pêcheurs américains est plus élevée et a augmenté au cours des cinq dernières années. En conséquence, de plus en plus de Canadiens estiment que la situation est inévitable, notamment si l'on tient compte des restrictions commerciales qui ont été imposées à l'industrie canadienne, alors que les pêcheurs américains continuent d'exploiter les stocks à leur guise.
48. Les négociations qui sont en cours depuis plusieurs années ont considérablement progressé lors des pourparlers récents. Il semble que le cadre d'un accord soit en voie d'être établi, étant donné que les deux parties ont résolu de se pencher sur les problèmes mutuels de préservation et de gestion.
49. Il faudra effectuer un travail de recherche et d'évaluation biologiques énorme afin d'assurer l'application de l'accord proposé. En outre, pour s'assurer que le Canada obtiendra tous les avantages qu'offre un tel accord, il faudra effectuer des recherches et des études de gestion qui permettront d'adapter les mesures gestionnelles afin d'obtenir le maximum d'avantages.
50. Un certain nombre de pêches canadiennes du saumon ne peuvent être réglementées de façon appropriée sans la collaboration des États-Unis, et le Canada ne pourra tirer pleinement avantage de ses activités de mise en valeur sans accord du partage des prises avec les États-Unis. Pour ces raisons, la conclusion d'un accord satisfaisant avec les États-Unis est

primordial pour le succès du Programme canadien de gestion du saumon du Pacifique et du Programme de mise en valeur des salmonidés.

Ministre des Pêches
et des Océans

Secrétaire d'Etat aux
Affaires extérieures

FLO/R.B. Fadden/6-2643/JT

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

s.23

*Many thanks.
I have passed (as
to foreign policy
aspects)*

*file
14/4*

TO
À FLP

FROM
De FLO

REFERENCE
Référence

SUBJECT Cda-USA Pacific Salmon Cabinet Memorandum
Sujet

SECURITY CONFIDENTIAL
Sécurité

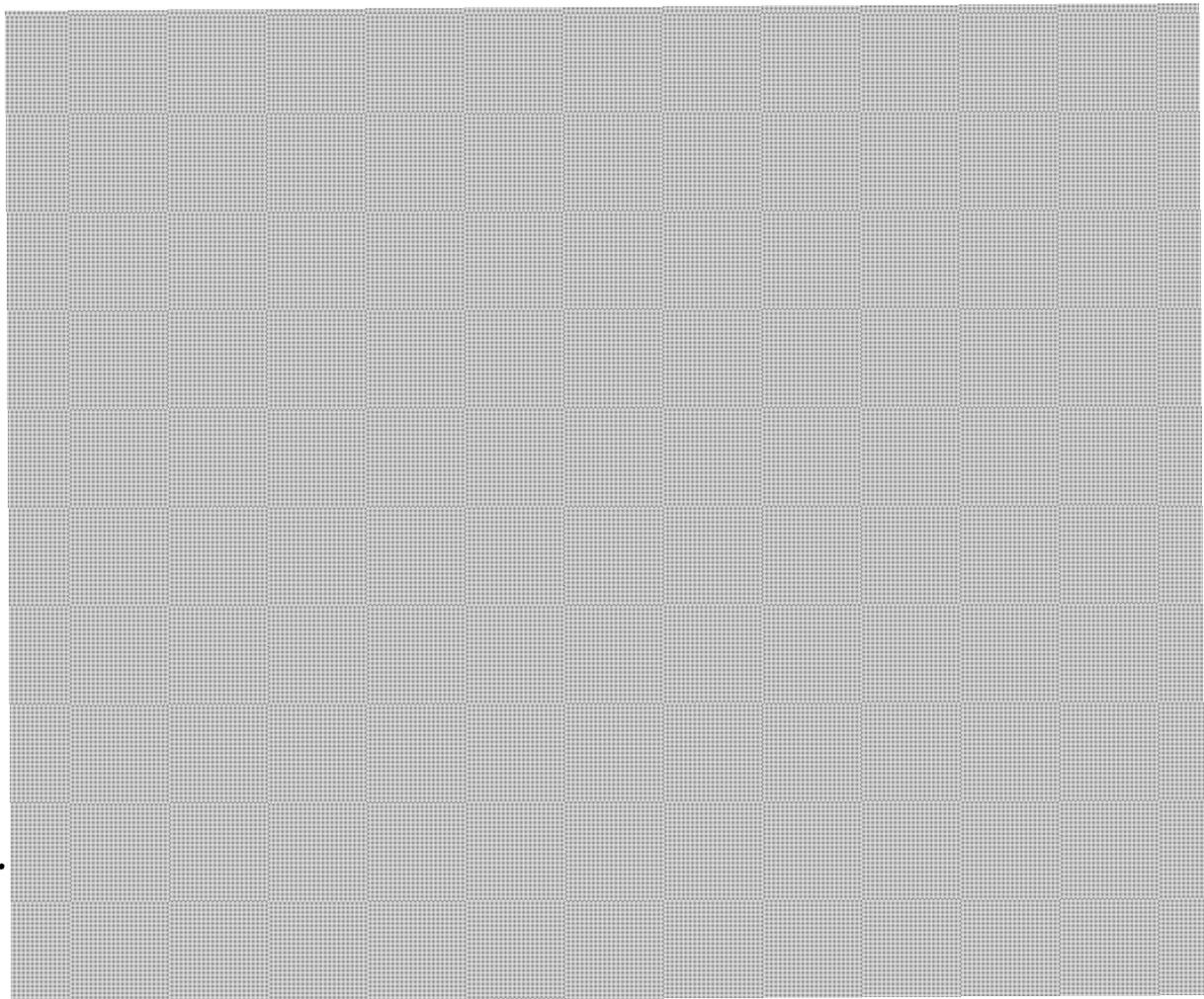
DATE April 13, 1981

NUMBER DATE Numero	FLO-544
ACC FILE	REF DOSSIER
OTTAWA FILE	DOSSIER 25-5-7-2-SALMON-1
MISSION BY HAND	PAR PORTEUR
ATTN:	

ENCLOSURES
Annexes

DISTRIBUTION

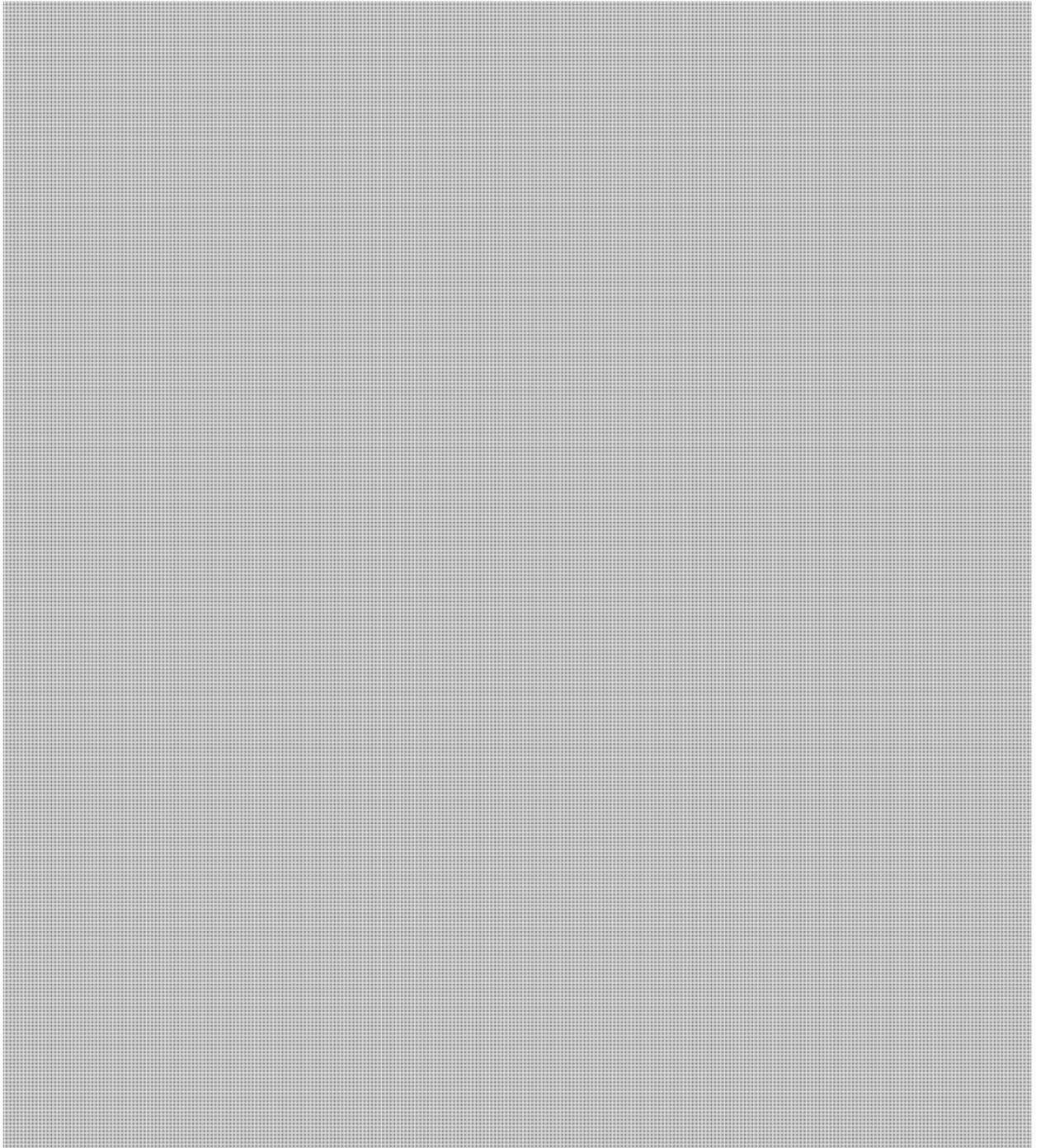
GNG



.../2

s.23

- 2 - CONFIDENTIAL



A handwritten signature in black ink, appearing to read "L.S. Clark", is written over the typed name.

L.S. Clark
Director
Legal Operations Division

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO JRM MCC ESI ESS ISC FLO

SECURITY SÉCURITÉ SECRET

s.23

DATE April 9, 1981

FROM WJJ

NUMBER Numéro

REFERENCE Référence

SUBJECT Committee of Economic Development Deputy Ministers, Meeting on April 9, 1981

FILE	DOSSIER
OTTAWA	
MISSION	

ENCLOSURES Annexes

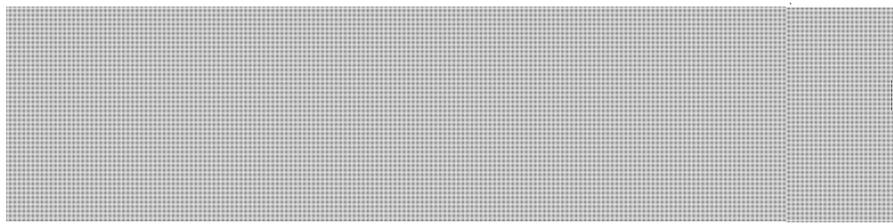
DISTRIBUTION

The Committee took the following action on agenda items:

1. Canada/USA Pacific Salmon Negotiations

The Committee endorsed the proposal but with obvious scepticism about the need for \$12 million to implement the program. The Chairman said the proposal should be a candidate for the May 6 Auction of economic development funds. Tansley said he could not wait until May 6. Fisheries and MSED are to try to resolve this difference before item goes to Cabinet Committee on April 14.

(For FLO:



Review answer needed through 15/4

2. Dept. of Labour's Proposals to Encourage Responsible Labour-Management Relations

Obviously very major differences remain to be resolved between Labour and Transport. PCO is being drawn in to resolve a mandate question, which has the prospect of being messy.

3. Tourism Sector Strategy

Endorsed as a candidate for the Auction but is expected to have a rough ride in Cabinet Committee and at the Auction. Considerable doubt expressed that this was a new program.

...2

4. Marine Cost Recovery

Kroeger was testing the water trying to get some reading on whether or not there was any support for proceeding with a program that would obviously be very unpopular politically. Agreed some interdepartmental discussion was required to clarify some confusion, and to add to the content of the memorandum. Agreed Kroeger should recommend to Pépin that he only proceed with his proposal if he is assured of public support from his Cabinet colleagues.

(For ESS: I did not have your note in time for the meeting. However I asked about existence of any international conventions and the possibility of it being an irritation inviting reciprocal treatment from trading partners. Suggest you contact Transport to say you wish to be involved in interdepartmental discussions.)

5. Metric Conversion of Scales in Retail Food Stores

Endorsed.

6. Foreign Operations Resources

Endorsed with considerable scepticism. A rough ride can be expected. (I am speaking shortly to DMO and ISC).

W.J. Jenkins
Deputy Under-Secretary

OFFICE
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

CABINET
DU
SECRETAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

TO/A: FLO

Date 7.4.81

FROM/DE: MIN

REFERENCE/RÉFÉRENCE:

SUBJECT/SUJET: Minister's decision/Décision du Ministre

Signed by SSEA

NO UNIQUE

CONFIDENTIAL

April 7, 1981

DATE	
AC 981	REF
FILE	DOSSIER
25-5-7-2-SALMON-1	
BY HAND	PAR PORTEUR
ATTN:	

MEMORANDUM FOR THE MINISTER

Canada/USA Pacific Salmon Negotiations

Attached for your signature, if you agree, is a Memorandum to the Cabinet and Discussion Paper on the above subject which have already been signed by your colleague, Mr. LeBlanc. This item is on the agenda for the April 14 meeting of the Cabinet Committee on Foreign and Defence Policy.


A.E.G.

MEMORANDUM

s.23

TO
A

R. Green
Director
Legal Services

F+D RECEIVED

FROM
DE

A. Campbell
Director-General
International Directorate

APR 9 1981
FLP

SECURITY - CLASSIFICATION - DE SECURITE		REF
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OUR FILE / NOTRE REFERENCE	DOSSIER	
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April 6, 1981		

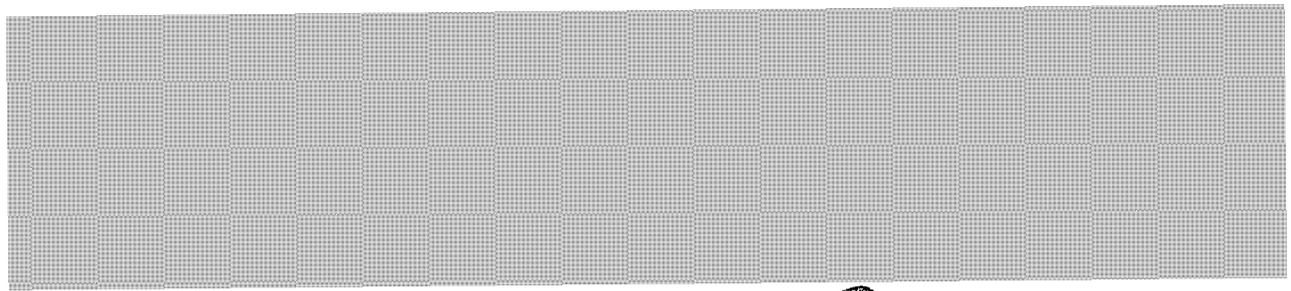
SUBJECT
OBJET

Aboriginal Rights and the
Pacific Salmon Negotiations

Mr. Herman
To review and discuss ASAP

It has been brought to our attention by the attached memorandum that the proposed Constitution Act, by entrenching aboriginal and treaty rights of the aboriginal People of Canada, could result in the inability of the Canadian Government to carry out international treaty obligations in fisheries matters.

This is of particular concern to us at the moment since the Canada-USA Pacific Salmon negotiations are in their final stages with the next round scheduled for 27 April 1981.



AC
A. Campbell

c.c. L. Legault - FLP ✓
J.R. MacLeod

Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO: Mr. C.W. Shinnars
Director-General

FROM: G.E. Jones
Advisor International and
Intergovernmental Affairs

SECURITY CLASSIFICATION / DE SÉCURITÉ
OUR FILE / NOTRE RÉFÉRENCE
YOUR FILE / VOTRE RÉFÉRENCE
DATE March 26, 1981

SUBJECT / OBJET

I recently had occasion to talk to Mr. W. Phelps, Chief Negotiator for the Yukon Territorial Government presently negotiating Indian land claim issues. I contacted Mr. Phelps to bring him up to date on the U.S./Canada negotiations and our present negotiating position on the Yukon River and what the implications are for the Yukon Territories and its citizens. During our discussions Mr. Phelps raised an issue I feel may have tremendous bearing on our international negotiations as well as domestic management responsibilities.

My concern centers around changes to the Proposed Constitution Act and more specifically Section 33 which reads:

- 33 1) the aboriginal and treaty rights of the aboriginal people of Canada are hereby recognized and affirmed.
- 2) in this Act, "aboriginal people of Canada" includes the Indian, Inuit and Metis people of Canada.

On the surface the above change does not appear to be too significant, however, on closer examination the possible implications become rather disturbing. As Section 33 entrenches aboriginal rights in the Constitution they become unalterable without constitution amendment. If Section 33 enshrines aboriginal rights then legislation that interferes with these rights becomes ultra vires. Sections of the Fisheries Act, which definitely deals with aboriginal fishing rights, would fall in this category. This could mean that amendments to the Fisheries Act, ~~supporting regulations can possibly change in Departmental policy would~~ *be impossible.*

For day to day fisheries management this might prevent Departmental access across Indian lands or tie our hands in adopting certain fisheries management strategies. We might very well end up like Washington State where there are two completely separate management agencies, which do not always agree on the strategy for obtaining optimum yields.

-2-

In the international arena the changes might suggest that we may not be able to live up to our commitments made in the proposed salmon agreement. The agreement may call for a certain management regime that could provide benefits to both countries, however, if the Indians decided to operate outside of this regime we may not be able to fulfil our obligations defined in the agreement. Two systems that come to mind immediately in which I can foresee numerous problems are the Fraser and Yukon Rivers.

At the very least I believe the changes to the Constitution Act will result in a great deal of litigation, which with the Canadian judicial system would result in long delays before management actions could take place.

The Yukon Territorial Government are concerned to the degree that they have prepared a short note on the matter (attached) and have contacted the provincial Premiers and several Federal Cabinet Ministers, including the Hon. Romes LeBlanc, to make them aware of their concerns. I am also lead to believe that members of the Department of Justice and D.I.N.A. are concerned about the way Section 33 has been written.

It is my understanding that this particular section has not as yet had full discussion in the House. I therefore recommend that we raise our concerns with our Minister to make him aware of the situation. I also recommend we formally ask the Department of Justice for an interpretation of Section 33 and its implications. This question should also be raised with the "legal treaty people" in External Affairs. By alerting our Minister of our concerns and following the Department of Justice review, it might be possible to have Section 33 reworded, or another Section added that more clearly defines the intent of the Section. The Yukon Territorial Government paper has some suggestions in this regard.

As time is rather limited I request your direction as to how this matter should be put through the system.

cc.: D. Wilson
A. Gibson
M. Hunter
M. Shepard

G.E. Jones

GEJ/je
Attachment

MEMORANDUM RE: SECTION 33
PROPOSED CONSTITUTION ACT 1981

OBJECT

The object of this Memorandum is to identify certain problems raised by Section 33 of the Proposed Constitution Act 1981, and to propose a possible solution.

BACKGROUND

Following extensive lobbying by native people for the entrenchment of aboriginal and treaty rights in the Constitution, the Government inserted the following Section:

- 33.(1) The aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
- (2) In this Act, "aboriginal peoples of Canada" includes the Indian, Inuit and Metis peoples of Canada.

At present, aboriginal rights may be extinguished or diminished by competent legislation.

Section 33 may change this. One possible construction is that it entrenches aboriginal rights and makes them immutable except by Constitutional amendment.

This view is held by some Indian organizations and the national press, and is supported by certain members of the legal community. It gains support from the wording of Section 58(1) which appears to contemplate

.../2

- 2 -

immutable rights throughout the Constitution. It also appears to be the assumption underlying the proposed amendment of February 2, 1981, which was subsequently withdrawn (see attachment "A"). Our view is that this construction is a distinct and dangerous possibility should the issue be decided in court.

IMPLICATIONS

1. Settlement of Aboriginal Claims

If Section 33 entrenches aboriginal rights then a Land Claims Settlement would require amendment of the Constitution. It is unlikely that the Provinces would support the type of Comprehensive Land Claims Settlement envisaged for parts of Northern Canada and without that support settlement may never be achieved.

2. Laws of General Application

If Section 33 makes aboriginal rights immutable then legislation which conflicts with aboriginal rights will be ultra vires to the extent of the conflict (Section 58(1)). This would render development in large areas of Northern Canada virtually impossible if imposed by aboriginal people. It would also make parts of federal legislation such as the Fisheries Act, the Migratory Birds Convention Act, the National Parks Act and the Northern Pipeline Act constitutionally invalid.

.../3

- 3 -

3. Expectations of Aboriginal People

The view that Section 33 entrenches aboriginal rights is bound to result in extensive litigation. If that view is wrongly held then the Federal Government will be blamed by natives for falsely raising expectations when the matter should have been clarified at the outset.

ALTERNATIVES

1. Take no action on the basis that the courts will not construe Section 33 as entrenching aboriginal rights.
2. Amend Section 33 so as to make it clear that aboriginal rights are not entrenched thereby.

RECOMMENDATIONS

1. Alternative 2 be adopted. Section 33 be amended by adding the following Subsection:

33.(3) The aboriginal rights referred to in subsection (1) shall be construed as having the legal status of rights cognizable at common law.
2. Government justify this amendment on the basis that it was necessary in order to remove possible impediments to the settlement of aboriginal land claims.

SUBMITTED BY GOVERNMENT OF YUKON

9 MARCH 1981

ATTACHMENT "A"

Proposed Amendment - February 2, 1981

"The rights recognized and affirmed by Section 31 may be modified
(a) in the case of rights of aboriginal peoples of Canada within
one or more provinces, in accordance with the appropriate procedure
for amending the Constitution of Canada; and (b) in the case of
rights of aboriginal peoples of Canada in areas of Canada outside
the provinces, by Parliament".

This proposed amendment assures that Section 33 entrenches aboriginal
rights. Otherwise it would be unnecessary to confer constitutional
power on Parliament to modify aboriginal rights in Northern Canada.

(i) it is in the form in which it exists upon its recovery, or severance from its natural state, or

(ii) it is a product resulting from processing or refining the resource, and is not a manufactured product or a product resulting from refining crude oil, refining upgraded heavy crude oil, refining gases or liquids derived from coal or refining a synthetic equivalent of crude oil; and

(b) production from a forestry resource is primary production therefrom if it consists of sawlogs, poles, lumber, wood chips, sawdust or any other primary wood product, or wood pulp, and is not a product manufactured from wood."

(i) soit le produit qui se présente sous la même forme que lors de son extraction du milieu naturel,

(ii) soit le produit non manufacturé de la transformation, du raffinage ou de l'affinage d'une ressource, à l'exception du produit du raffinage du pétrole brut, du raffinage du pétrole brut lourd amélioré, du raffinage des gaz ou des liquides dérivés du charbon ou du raffinage d'un équivalent synthétique du pétrole brut;

b) on entend par production primaire tirée d'une ressource forestière la production constituée de billes, de poteaux, de bois d'œuvre, de copeaux, de sciure ou d'autre produit primaire du bois, ou de pâte de bois, à l'exception d'un produit manufacturé en bois.

PART VIII

GENERAL

PARTIE VIII

DISPOSITIONS GÉNÉRALES

Prime of Constitution of Canada.

58. (1) The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.

58. (1) La Constitution du Canada est la loi suprême du Canada, elle rend inopérantes les dispositions incompatibles de toute autre règle de droit.

Prime of Constitution of Canada.

Constitution of Canada

(2) The Constitution of Canada includes

(a) the *Canada Act*;

(b) the Acts and orders referred to in Schedule I; and

(c) any amendment to any Act or order referred to in paragraph (a) or (b).

(2) La Constitution du Canada comprend :

a) la *Loi sur le Canada*;

b) les textes législatifs et les décrets figurant à l'annexe I;

c) les modifications aux textes législatifs et aux décrets mentionnés aux alinéas a) ou b).

Constitution of Canada.

Amendments to Constitution of Canada

(3) Amendments to the Constitution of Canada shall be made only in accordance with the authority contained in the Constitution of Canada

(3) La Constitution du Canada ne peut être modifiée que conformément aux pouvoirs conférés par elle

Amendments to Constitution of Canada

Repeals and new names

59. (1) The enactments referred to in Column I of Schedule I are hereby repealed or amended to the extent indicated in Column II thereof and, unless repealed, shall continue as law in Canada under the names set out in Column III thereof.

59. (1) Les textes législatifs énumérés à la colonne I de l'annexe I sont abrogés ou modifiés dans la mesure indiquée à la colonne II. Sauf abrogation, ils restent en vigueur en tant que lois du Canada sous les titres mentionnés à la colonne III

Abrogation et nouveaux titres

Consequential amendments

(2) Every enactment, except the *Canada Act*, that refers to an enactment referred to in Schedule I by the name in Column I thereof is hereby amended by substituting

(2) Toute loi, sauf la *Loi sur le Canada*, qui fait mention d'une loi figurant à l'annexe I par le titre indiqué à la colonne I est modifiée par substitution à ce titre du titre

Modifications corrélatives

BACKGROUND

I Sec. 33 - two different Constructions

1. s.33 merely removes any existing uncertainty as to the legal existence of aboriginal and treaty rights and asserts their importance. It directs the courts to take cognizance of aboriginal rights at common law.
2. s.33 renders aboriginal rights immune to change by ordinary statute. It requires that any modification of aboriginal rights be effected by an amendment to the Constitution Act, 1981.

II Some Arguments for the Construction #1 Position

1. The language of s.33 is essentially declaratory and confirmatory. The language - "recognized and affirmed" - is consistent with the objective of merely removing doubt and asserting importance. Compare s.1 of the Charter which states that the Charter "guarantees" the rights and freedoms set out in it.
2. A provision merely removing uncertainty regarding the status of aboriginal and treaty rights, and emphasizing their importance would not be meaningless. In decisions such as La Société de Développement de Baie James et al. v. Robert Kanatawat et al., (1975) C.A. 166 (Q.C.A.), for example, there have been doubts cast on the legal status of aboriginal rights. Although those rights were recognized as having a status cognizable at law in the recent Delgamuë et al. v. The Queen case of Canada has yet to pronounce conclusively on the question. Although there is currently no doubt regarding the legal status of treaty rights, a constitutional affirmation of

these rights could certainly encourage a more liberal judicial approach to construing the rights contained in them.

3. Construction # 1 could avoid some of the drastic practical implications of Construction # 2, and might commend itself to the courts for those reasons as well.

III Some Arguments for the Construction # 2 Position

1. Some members of the federal government were apparently of this view earlier. On February 2, the federal government attempted to introduce the following amendment:

"The rights recognized and affirmed by section 31 may be modified (a) in the case of rights of aboriginal peoples of Canada within one or more provinces, in accordance with the appropriate procedure for amending the Constitution of Canada; and (b) in the case of rights of aboriginal peoples of Canada in areas of Canada outside the provinces, by Parliament".

The amendment was later withdrawn, although not because the federal government deemed it unnecessary. The fact that the federal government considered it necessary to introduce an amendment providing for the modification of the rights in s.33 indicates that the federal government considered that these rights could not be modified otherwise, short of the amendment procedures specified in the constitution.

2. What, it might be asked by those favouring this construction, would be the point of enshrining aboriginal rights in the constitution if they were not to be given constitutional status

vis à vis ordinary laws? In this context, what would be the use of recognizing and affirming aboriginal rights if the day after the passing of the Constitution Act they could be extinguished or otherwise modified by ordinary legislation?

IV Implications of the Number Two Construction

1. Settlement of Aboriginal Claims

Settlement of aboriginal land claims in northern Canada and possibly within the provinces would require constitutional amendment by a procedure such as the Victoria formula or a national referendum. The resulting possibilities for delays, political lobbying, and vetoes by parties unaffected by the claims in question could delay, hinder and even prevent the successful conclusion of land claims settlements.

2. Laws of General Application

The application of federal and territorial (and possibly provincial) legislation of general application could be drastically curtailed. Instead of prevailing over aboriginal rights, as is presently the case, federal legislation which conflicted with aboriginal rights would be of no effect to the extent of the conflict.

There could be large areas of Canada, particularly northern Canada, in which parts of federal legislation such as the Fisheries Act, the Migratory Birds Convention Act, the National Parks Act, the Northern Pipeline Act, the Territorial Lands Act and the proposed Canada Oil and Gas Act could be constitutionally invalid. Attempts to rectify gaps in legislation as a result of inconsistency with aboriginal rights would require - in northern Canada

and possibly within the provinces as well - constitutional amendment by a procedure such as the Victoria formula or a national referendum. There would be no guarantee that such efforts would meet with the prescribed level of constitutional support to enable them to succeed.

3. Expectations of Aboriginal Peoples

The national press and at least some native groups appear to believe that s.33 entrenches aboriginal rights. As indicated above, there is some basis for a legal interpretation to this effect. Native people who take this view can be expected to resort to litigation to attempt to use the immutable status of their rights to their advantage. If the ultimate result of this litigation is a judicial opinion that aboriginal rights are not entrenched, native groups will blame the Federal Government for falsely raising expectations. The resulting bitterness and deterioration in relations between aboriginal and other peoples in Canada could far outweigh any short term adverse reaction which could result from clarifying the situation at the outset.

V. Arguments in Favour of Recommended Amendment to s.33

The proposed amendment to s.33 would remove any existing uncertainty regarding the legal status of aboriginal rights by giving them the status of rights cognizable at common law. At the same time the amendment would make it clear that aboriginal rights, like all other common law rights, are subordinate to competent legislation rather than prevailing over it. In so doing, the amendment would remove the impediments to the settlement of aboriginal claims, the

- 5 -

threat to the integrity laws of general application, and the problems generated by the expectations of the native people, which would all result if s.33 could be construed as entrenching aboriginal rights.

ONE 02/2-06

CONCENTRE/FILE/DIARY/CIRC/DIV

MESSAGE

PLACE LIEU	DEPARTMENT MINISTÈRE	ORIG. NO. N° D'ORIG.	DATE	FILE/DOSSIER	SECURITY SÉCURITÉ
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PRECEDENCE

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INFO BH FANDOTT/HUNTER/SWAN/GOODMAN

APR 1 22 30 '81

DATE	ACC 127094	REF
FILE 35-5-7-2-PACIFIC	DOSSIER	
BY HAND	PAR PORTEUR	
ATTN: 35-5-7-2-SALMON-1		

DISTR. GPO CNG

200. 10000 TON 1979 1000 2 1/2
 --JAPANESE HIGH SEAS SALMON GILLNET FISHERY
 AND THE DALL PORPOISE PROBLEM

GRATEFUL FOR ^{BY} INFO ON JPNSE PLANS FOR FISHING BERING
 SEA AND ATTITUDE TOWARDS INPFC IN VIEW OF POSSIBILITY OF U.S.
 BAN ON DALL PORPOISE BYCATCH.

2. BERING SEA ISSUE IMPORTANT *AS* JPNSE CAUGHT MORE THAN
 700,000 CHINOOKS IN 1980 HIGH SEAS SALMON GILLNET FISHERY, AN
 INCREASE OF 460 PERCENT OVER 1979 LEVELS AND LARGEST TOTAL
 CHINOOK CATCH SINCE INITIATION OF INPFC. AS A RESULT, JPNSE
 FISHERMEN HAVE NOTIFIED U.S. NORTH PACIFIC FISHERIES
 MANAGEMENT COUNCIL THAT THEY PLAN TO REDUCE VOLUNTARILY THEIR

1981
 CATCH OF ~~KING~~ ^{CHINOOK} SALMON IN BERING SEA. WE UNDERSTAND
 EXACT NUMBERS TO BE DECIDED WHEN JAPAN SENDS DELEGATION TO
 MEET ALASKA FISHERY REPRESENTATIVES, BUT IT IS EXPECTED THAT
 JPNSE WILL RESTRICT CATCH TO 1977-79 AVERAGE OF ROUGHLY
 100,000 ~~W~~ FISH. WE WLD OF COURSE BE PLEASED TO
 OF ~~FOR~~ ANY SUCH REDUCTIONS AND ARE INTERESTED IN
 KNOWING HOW REDUCTION TO BE ACHIEVED .../2..

DRAFTER/RÉDACTEUR	DIVISION/DIRECTION	TELEPHONE	APPROVED/APPROUVÉ
SIG..... <i>Swan</i> J. Swan/es	International Directorate	5-2186	SIG..... <i>Swan</i> J. Swan/es

FOO 0495 CONF

3. DALL PORPOISE ISSUE SIGNIFICANT SINCE THREE YEAR JPNSE EXEMPTION FROM INCIDENTAL TAKE PERMIT REQUIREMENTS OF SEA MARINE MAMMAL PROTECTION ACT EXPIRES 9 JUNE 1981. ALTHOUGH NORTH PACIFIC FISHERY MANAGEMENT COUNCIL HAS DECIDED TO RECOMMEND TO NMFS TO ALLOW JAPAN BYCATCH OF DALL PORPOISE INCIDENTAL TO THEIR SALMON FISHERY IN U.S. FCZ, FINAL DECISION UNCERTAIN. IF USA DOES NOT ALLOW BYCATCH JPNSE COULD PRESUMABLY WITHDRAW FROM INPFC AND ALTER FISHING PATTERNS IN CENTRAL BERING SEA AND SOUTH OF ALEUTIANS OUTSIDE U.S. FCZ.

4. IN SPEAKING TO JPNSE, GRATEFUL YOU INDICATE CDN CONCERNS ON THIS ISSUE. WHILE PORPOISE QUESTION IS BILATERAL JPN-USA CONCERN, TREATY IS TRILATERAL AND OF GREAT IMPORTANCE TO CDA. YOU SHOULD THEREFORE AVOID ANY HINT OF SUPPORT FOR JPNSE WITHDRAWAL.

5. FOR WSHDC WHILE WE REMAIN CONFIDENT THAT PORPOISE ISSUE WILL BE SATISFACTORILY RESOLVED, WE ARE NOT PLEASED THAT THERE HAS BEEN NO CONSULTATION WITH CDA ON IMPACT OF PORPOISE ISSUE IN SITN WHERE OUR INTERESTS CLEARLY INVOLVED. * GRATEFUL YOU ADVISE U.S. AUTHS OF THESE VIEWS.

AS REQUESTED IN SWAN/HARLICK TELCON

~~*CONFIRMING DFO TELEPHONE REQUEST.~~