

CLASSIFIED

File No. Dossier 25-5-7-2-SALMON-1
Volume 8 From - De 78-02-01 To - À 31/12/79

CLASSIFIÉ

SEMIACTIVE

TITLE—TITRE:

BOUNDARIES, WATER -
HIGH SEAS -
INTERNATIONAL PACIFIC SALMON FISHERIES
COMMISSION - (CDA - USA)

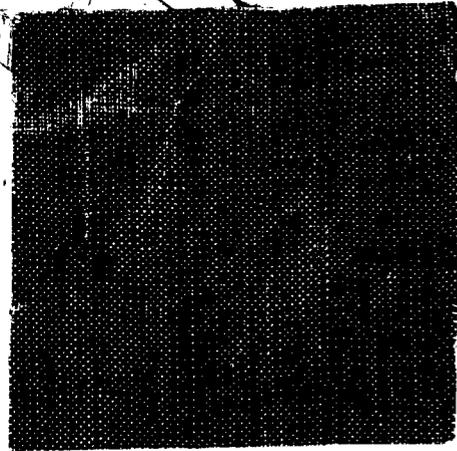
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DEPARTMENT
OF
EXTERNAL AFFAIRS

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DATED FROM
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78-02-01

TO
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79-12-31
~~*31/12/79*~~

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

9

File
Diary
Circ
Div

FLM
GNP

OTTAWA, K1A 0G2

December 19, 1979

| | |
|---------|--------------------|
| DATE | December 19, 1979 |
| ACC | 56344 |
| FILE | 25-5-7-2-SALMON-1 |
| BY HAND | PAR PORTEUR |
| ATTN: | Canada/USA Pacific |

Dear Gary,

I refer to the forthcoming salmon interception negotiations.

As suggested in Tony Campbell's memorandum of November 30, 1979, there is much preparatory work to be done for this very complex negotiation, involving as it does many different governmental and non-governmental interests. Of course the interception problem has already been the subject of much consideration and review over a rather lengthy period of time, but it seems that the next six months or so may very well offer the last chance for attaining a comprehensive agreement on the salmon question which would meet the concerns of both parties and would facilitate the resolution of other related problems with the USA. We must ensure a high degree of cooperation between our two departments so that the overall interests of the Government of Canada and the B.C. fisheries community are fully protected and promoted.

The Department of External Affairs attaches great political importance to finding a constructive and comprehensive solution to this matter. Just as its successful resolution would improve the atmosphere for the resolution of other West Coast issues, so too would failure sour the atmosphere and further complicate the already tangled thicket of Canada/USA West Coast maritime relations. Everything possible must be done to ensure that the Canadian side at least puts forward its best efforts to achieve an acceptable agreement, without closing our minds to possible fresh approaches.

.../2

Mr. G.C. Vernon
Assistant Deputy Minister
Fisheries Economic Development & Marketing
Department of Fisheries and Oceans
8th floor West, 240 Sparks Street
Ottawa, Ontario
K1A 0E6

- 2 -

As part of the necessary preparations, this department is anxious to assist in every way possible and would wish to participate fully and actively in the development of the Canadian position and in the preparation of the Cabinet memorandum seeking negotiating instructions. Any decisions reached would thus reflect the joint positions of our two departments. Indeed we consider that our two Ministers should submit a joint memorandum to Cabinet in this matter, as has been done in the past. There are of course further questions which need to be discussed, such as the composition of the Canadian delegation, but these could be kept for a later time when the requirements in this regard are clearer.

I would be grateful for any comments which you might have on the foregoing.

Yours sincerely,

L. H. LEGAULT

L. H. Legault
Director General
Bureau of Legal Affairs

Tom [Signature]

PACIFIC FISHERY MANAGEMENT COUNCIL

526 S. W. Mill Street

Portland, Oregon 97201

Phone: Commercial (503) 221-6352

FTS 8-423-6352

CHAIRMAN
E. C. Fullerton

EXECUTIVE DIRECTOR
Lorry M. Nakatsu

December 17, ^{DATE} 1979

| | |
|---------|-----------------|
| ACC | 57737 |
| FILE | 25-5-7-2-Salmon |
| BY HAND | PAR PORTEUR |
| ATTN: | |

*c.c. FHO (Harlick)
9 file
1/78*

TO: Interested Persons

FROM: Lorry M. Nakatsu *Jmn*

RE: Supplement to the Draft Fishery Management Plan (FMP) and Environmental Impact Statement (EIS) for the California, Oregon and Washington Groundfish Plan

The attached supplement was proposed by the Pacific Fishery Management Council during its December meeting in Seattle. Comments related to the supplement, the plan itself, or the environmental impact statement should be sent to either address below by January 14, 1980.

Mr. Lorry M. Nakatsu, Executive Director
Pacific Fishery Management Council
526 S. W. Mill Street
Portland, Oregon 97201

Mr. Donald R. Johnson
Northwest Regional Director
National Marine Fisheries Service
1700 Westlake Avenue North
Seattle, Washington 98109

The Council is expected to approve a final Groundfish Plan during its April meeting and send it to the Secretary of Commerce for approval and implementation in 1981.

Attachments

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Supplement to the Draft Fishery Management Plan (FMP)
and Environmental Impact Statement (EIS) for the
California, Oregon and Washington Groundfish Fishery

This supplement has been prepared and is being made available to solicit additional comments from the public on potential conservation and management measures needed for the groundfish fishery. This supplement should be considered in the context of sections of the draft FMP dealing with alternative conservation and management measures for the domestic fishery (sections 12.3.1 and 12.3.3), the joint venture fishery (section 12.3.4), and the foreign fishery (section 12.3.5); and with sections 2.2, 4.1, and 5.0 of the draft EIS. These sections will be revised if necessary to reflect the ultimate decisions of the Council in the final FMP and EIS.

An analysis (attached) by the Northwest and Alaska Fisheries Center, NMFS, concerning incidental catch of salmon by foreign trawlers and domestic joint venture trawlers fishing for hake indicates that salmon (mainly chinooks) are occasionally taken. It is likely, although data are not now available, that salmon also are taken incidental to domestic trawling for other species of groundfish. The Council is considering but has not at this time reached any conclusions on including in the Groundfish FMP measures which might be effective in reducing or minimizing the incidental take of salmon by domestic, joint venture, and/or foreign fishing operations. Among the measures which might be effective, which need to be evaluated, and on which the Council would appreciate public comment, are the following:

Buffer zones - areas in the FCZ which could be closed to specific types of fishing or types of gear in the interest of reducing or minimizing incidental catch of salmon.

Seasonal limitations - occasional or periodic closures of certain types of fishing to protect salmon while they are present in or passing through specific areas.

Gear restrictions - limitations on certain kinds of gear in order to minimize incidental harvest of salmon.

Other measures - there may be other measures which the Council would find to be useful in minimizing incidental capture of salmon by trawling.

These types of controls might be effective if used singly or in different combinations (e.g., time-area restrictions). Evaluation of the potential benefits and costs will require data on such matters as rates of incidental catch by types of gear (midwater or bottom trawl), by area of fishing (inshore, offshore, north or south), and by time of year (winter, summer, etc.).

The Council would appreciate the views of the public, either in oral testimony or in written statements concerning the need for such measures, the benefits and costs of alternative measures, and data which would contribute to evaluation of benefits and costs.

To the extent the Council ultimately chooses to recommend measures of this kind, if any, the final Environmental Impact Statement and Fishery Management Plan will be revised appropriately to indicate the proposed action and supporting rationale and data.

Preliminary estimate of incidental catch of salmon by foreign trawlers and joint-venture vessels, 1979. (Prepared by National Marine Fisheries Service, 12/3/79.)

Data from observers serving aboard vessels of the foreign hake fishing fleets were analysed to give the average incidence and estimated salmon catch for 1979, Table 1. These data are derived from the observer reports giving the number of salmon observed and the weight of catch that was sampled. As such the data represent preliminary figures pending computer analysis of the observer data in which the observers' samples are extrapolated to the day's catch. We believe these preliminary figures on average incidence (number of salmon per mt of catch) and estimated catches will be fairly close to final computer-generated figures. Data are not available for estimating the salmon catch by area, but most salmon are taken in the Columbia area.

For the season the average incidence of salmon on Soviet vessels was 0.0388 fish per mt of catch and ranged from about 0.02 to 0.08 by month. We multiplied the average incidence for the month times the estimated groundfish catch for that month to derive the estimated catch of salmon. This totaled 3,532 fish for the Soviet fleet.

The average incidence for the Polish fleet was 0.0325 or very similar to that of the Soviet fleet. The incidence range per month was from about 0.01 to 0.24 fish per mt of catch. The highest incidence occurred in October when 17 salmon were observed in a sample of 71.8 mt of the catch. We estimate the Polish fleet took 823 salmon over the season.

The joint-venture fishery was also observed for incidence of salmon and observers monitored the codends as they were delivered from U.S. fishing vessels to soviet processing vessels. The average incidence on U.S. vessels ranged from 0 (in June) to 0.2964 fish per mt in August. This relative high incidence of salmon in August resulted from salmon

being observed in most sampled tows. The observer counted 358 fish in 1208 mt sampled. Nearly half of the joint-venture groundfish catch by U.S. vessels was taken during August which, when multiplied by the average incidence, produced an estimated catch of nearly 1,500 fish or 93 percent of the total number of salmon taken in the season. The total estimated salmon catch for U.S. joint-venture vessels was 1,591 fish.

The total estimated incidental salmon catch for all fleets was 5,946 fish, which is very similar to the total of 5,905 fish estimated to have been taken by Soviet and Polish fleets in 1978. Preliminary data indicated the catch consisted of over 90 percent chinook salmon, the species which has predominated in incidental salmon catches in past years. The total taken by Soviet and Polish trawlers in 1979 (4,355 fish) is about 26 percent less than that estimated to have been taken by the fleets in 1978.

Table 1.--Average incidence (No. per mt of catch) and estimated catch of salmon by foreign and joint-venture trawlers off the Washington, Oregon, and California coast, 1979

| Month | <u>U.S.S.R.</u> | | <u>POLAND</u> | | <u>JOINT VENTURE^{1/}</u> | |
|-----------|--------------------------|----------------------------|--------------------------|----------------------------|-----------------------------------|----------------------------|
| | Average incidence No./mt | Estimated Number of salmon | Average incidence No./mt | Estimated number of salmon | Average incidence No./mt | Estimated number of salmon |
| June | 0.0196 | 613 | 0.0372 | 173 | 0 | - |
| July | 0.0444 | 1005 | 0.0061 | 23 | 0.0345 | 73 |
| August | 0.0202 | 398 | 0.0460 | 258 | 0.2964 | 1484 |
| September | 0.0571 | 1211 | 0.0263 | 91 | 0.0411 | 7 |
| October | 0.0782 | 305 | 0.2368 | 278 | 0.0844 | 27 |
| Season | 0.0388 | 3532 | 0.0325 | 823 | 0.1371 | 1591 |

Total estimated catch of salmon 5,946

^{1/} These are U.S. trawlers delivering their catch to Soviet processor-trawlers.

Government of Canada
Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

79120443

Mr. Harlick

TO
A

Minister of Fisheries
and Oceans

FROM
DE

Donald D. Tansley

| | | |
|---------|--------------------|-------------|
| DATE | December 18, 1979 | REF |
| ACC | 52122 | |
| FILE | 25-5-7-2-Salmon-1 | DOSSIER |
| BY HAND | | PAR PORTEUR |
| ATTN | <i>Jim Harlick</i> | |

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| SECURITY - CLASSIFICATION - DE SÉCURITÉ |
| OUR FILE / NOTRE RÉFÉRENCE |
| YOUR FILE / VOTRE RÉFÉRENCE |
| DATE |

DEC 10 1979

SUBJECT Canada/U.S. Pacific Salmon Negotiations
OBJET

Summary

The purpose of this memorandum is to report the outcome of the latest round of negotiations with the U.S. on Pacific Salmon interception limitations held in Vancouver on November 27 and 28, 1979.

In summary, the U.S. delegation, which was headed by a new negotiator, Mr. John Negroponete, was unprepared to enter into substantive discussions of the remaining issues and virtually no progress was made. The U.S. delegation did, however, indicate that it could proceed to work from previously agreed positions and agreed with the Canadian view that an early resolution of the issues and an agreement on an interception limitation scheme and coordinated development programs would result in maximum benefits to both countries.

Consultations at the level of officials will take place and position papers elaborating the issues will be prepared prior to the next negotiating sessions in May and June 1980 to aid in resolving outstanding issues.

Background

You will recall that, on the basis of the advice from the U.S. that they were conducting a thorough review of the subject following the death of former negotiator Don McKernan, it was our intention to treat the meeting as an exploratory round. After the opening statements and a review by the Canadian side of where the negotiations ended last February it became obvious that the U.S. delegation had not done their homework and were not prepared to discuss the specifics of any of the outstanding issues. As a face-saving device the U.S. delegation proposed that the Canadian side prepare papers outlining our views and objectives concerning Alaska/Northern B.C. interceptions and the

.../2..

concept of cooperative development. The U.S. proposed that they prepare similar papers concerning the Fraser River, troll fishery management, and cooperative research. It was suggested that the preparation of these papers would aid both sides in resolving the outstanding issues at the next negotiating session scheduled for May 1980. Mr. Negrofonte concurred with the Canadian view that unless agreement is reached soon, development options in both countries would be limited but that cooperation on development would result in maximum benefits to both countries. He further emphasized that the proposal that the above-noted papers be prepared in no way reflects a move away from the draft Agreement developed over the last few negotiating rounds. This statement was encouraging, since we had feared that the U.S. may shift from its previous positions on which agreement has already been reached.

Mr. Negrofonte also advised us that he would likely be posted to a different position effective January 1, 1980 and that D.L. Alverson would likely take over these negotiations for the U.S.

While the Canadian delegation was extremely disappointed with the evident lack of preparedness on the U.S. side it was decided, after consultation with our industry advisors, to accept the U.S. proposal provided that a firm schedule could be produced and provided that the U.S. was agreeable to consultation at the level of officials throughout the intervening period of negotiating sessions. The U.S. side agreed to this approach and further agreed that we would schedule back-to-back negotiating sessions in May and June of 1980 in an attempt to come to agreement on the remaining outstanding issues.

It is our intention to prepare the papers requested by the U.S. as well as a detailed memorandum for Cabinet Committee consideration in preparation for what we see as the final round of negotiations in May and June 1980. We are, in addition, preparing a contingency plan to be considered in the event that no agreement with the U.S. is forthcoming.

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
D. H. FAISLEY

Seen by James A. McGrath

ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
JAMES A. McGRATH DEC 13 1979

J.A. McGrath Date

C.C. Minister's office (3)
D.D. Tansley (2)
ADM's - G.C. Vernon
 A.W. May
 H.D. Johnston
 G.N. Ewing
A.E. Campbell
M. Hunter
M. Goldberg
J. Harlick - External (FLO)
W.E. Johnson - Vancouver
W.R. Hourston - Vancouver

OFFICE
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS

CABINET
DU
SECRÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES

TO/A: FLO

Date 17.12.79

FROM/DE: MIN 

REFERENCE/RÉFÉRENCE:



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

Seen by SSEA

J.E. Harlick/6-5407
Legal Operations Division

RESTRICTED

December 7, 1979

| | |
|---------|------------------|
| DATE | 7, 1979 |
| ACC | 56348 |
| REF | |
| FILE | 255-7-2-SALMON-1 |
| D. SIGN | |
| BY HAND | PAR PORTEUR |
| ATTN: | |

MEMORANDUM FOR THE MINISTER

SUBJECT: Canada-USA Pacific Salmon Talks
Vancouver, November 27-28, 1979

The purpose of this memorandum is to report on the results of the latest round of discussions with the USA on Pacific salmon interception limitations.

The USA delegation, which was headed by a new negotiator, Ambassador John Negroponte, (who himself will leave this position in January, 1980) confirmed that the USA is prepared to continue these negotiations on the basis of the 1977 Canadian initiative directed towards a comprehensive solution of Pacific salmon interception problems. Evidently the recent exhaustive U.S. review had not produced better approaches to the problems. Unfortunately the USA delegation was very poorly prepared for the Vancouver meeting and consequently no substantive discussions were held concerning the key outstanding issues.

It was agreed that respective position papers would be prepared on the remaining issues of importance to each side. We will prepare papers outlining Canadian views and objectives concerning the Alaska/Northern B.C. interceptions and the concept of cooperative enhancement and development of salmon. The U.S. will prepare similar papers concerning the Fraser River, troll fishery management and cooperative research. It is hoped that the preparation of this material will assist both sides in moving forward towards resolving the outstanding differences.

It is noteworthy that the U.S. agreed that officials should consult bilaterally throughout the period of preparation of the papers, and shared the Canadian view that unless an agreement is reached soon,

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the options of both sides will be narrowed to a point where a cooperative and comprehensive solution will be virtually impossible to achieve. This attitude on their part provides some hope that the negotiations might result in some substantive success. Salmon is an important factor in our overall West Coast fisheries relations with the USA, and progress on this front would likely give a new impetus to efforts to resolve other outstanding problems.

The Department of Fisheries and Oceans is working with our Department in developing a memorandum for Cabinet Committee detailing a proposed strategy for these negotiations. This document should be ready early in the spring.

*Seen
SM
Dec 15/79*

*RJ for
A.E.G.*

C to
W. H. H. H. H.

TO
À

Distribution

FROM
DE

Ac
A. Campbell
Director General,
International Directorate.

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| DATE | | SECURITY - CLASSIFICATION - DE SÉCURITÉ | |
| ACC <i>56338</i> | | CONFIDENTIAL | |
| FILE <i>25-5-7-2-SANMOL-1</i> | | OUR FILE / NOTRE RÉFÉRENCE | |
| BY HAND | | YOUR FILE / VOTRE RÉFÉRENCE | |
| ATTN: | | DATE | |
| | | November 30, 1979. | |

SUBJECT
OBJET

Pacific Salmon Interception Negotiations "Critical Path"

The following summarizes the decisions taken at a meeting of departmental officials on November 28 at the conclusion of the most recent round of Pacific salmon negotiations with the United States.

1. The next full rounds of negotiations with advisors will take place, back-to-back, in the weeks of May 5 (probably in Alaska) and June 2 (probably Vancouver).
2. M. Shepard will continue as Canadian negotiator for both these rounds (L. Alverson to represent US).
3. An informal meeting of Canada-U.S. officials will take place in the week of February 11. It will review progress on the 5 issue papers being prepared as a consequence of the most recent "negotiations" with the United States. The main objective of the meeting will be to ensure that the Americans are doing their homework.
4. On February 11 at 2 p.m., a senior level meeting will be held at 1090 West Pender of all interested departmental officials.

The agenda of the meeting (with responsible officials in parentheses) will be as follows:

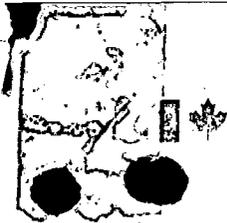
- (1) Review of progress and conclusions of PRUNES data system. (A. Wood)
- (2) Review of contingency plan
 - (a) Fraser River
 - (b) "all-out" (M. Hunter)

- 2 -

- (3) Review of draft memo to Cabinet
(M. Hunter)
- (4) Review of preparations for meeting
with L. Alverson (M. Shepard)
- (5) Final preparations for May/June
negotiating rounds
 - (a) regional technical
coordination (W. Johnson)
 - (b) communication/infor-
mation strategy (M. Hunter)
 - (c) final preparation of
enhancement and sharing
issues paper (M. Shepard)
 - (d) final preparation of
"northern" issues paper (M. Shepard)
- (6) Other Business.

5. In general, it was agreed that the May/June negotiation rounds will be "make or break" and all senior managers agreed to give work related to preparations a top-most priority. While some officials believe the negotiations will fail and unilateral action will necessarily follow, others consider a negotiated solution essential for Canada's salmon interests - all agreed that every effort will be made to achieve a cooperative agreement with the United States over the next eight months.

R. Hourston (for distribution in Vancouver)
J. McDonald
M. Shepard
M. Hunter
D. Goodman
G. Vernon
D. Johnston
R. MacLeod
J. Harlick (External - FLO) ✓
D. Martens (Consulate General - Seattle)



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

cc: T. Boehm/WSHDC
J.E. Harlick

79120143

Mr. Clark/Mr. Rochon to see
file

Your file • Votre référence

Our file • Notre référence

Ottawa, Ontario
December 6, 1979

Dr. D.L. Alverson,
Center Director,
Northwest and Alaska Fisheries
Center,
National Marine Fisheries Service,
2725 Montlake Blvd. East,
Seattle, Washington.
U.S.A. 98112

| | | |
|---------|-------------------|-----|
| DATE | Dec 7/79 | |
| ACC | 56334 | REF |
| FILE | 25-5-7-2-SALMON-1 | |
| DOSSIER | | |
| BY HAND | PAR PORTEUR | |
| ATTN: | | |

Dear Lee,

I would like to record the conclusions which we reached at our meeting of officials on the afternoon of November 28, 1979 in Vancouver. Hopefully, if you agree with this record, we will be able to commit ourselves to some firm schedules that will ensure progress when we meet in May and June 1980.

It was agreed that the United States delegation would prepare "issue papers" on the subjects of the share of Fraser River sockeye and pink salmon to be taken by the United States, the management of the chinook and coho fishery off Vancouver Island, and cooperation in research programs. The Canadian delegation agreed to prepare "issue papers" on the Northern B.C./South East Alaska problem as well as an elaboration of our concept of how the coordination of programs of salmon development might be carried out.

The Canadian delegation indicated that its papers would probably not be available before March 1980, but it was anticipated that the papers under preparation by the United States should be available, at least in draft form, by the time of the meeting of officials scheduled for Vancouver on February 14-15, 1980.

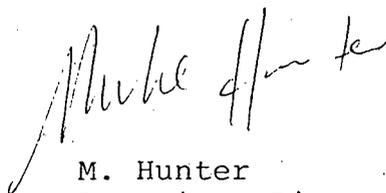
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- 2 -

Many of our advisors expressed discontent with the lack of progress in dealing with the remaining issues at the recent session in Vancouver. No doubt you share our wish to make rapid progress in the New Year. Indeed, I feel that the exercise we have embarked upon should facilitate the achievement of an agreement when we meet with our full delegations in May and June 1980. In this regard, we were pleased with the United States delegation's assurances that the proposal for preparation of the "issue papers" in no way suggested a move by the United States away from the draft text developed at our February 1979 session. For our part, we shall be examining the three column draft agreement during the preparation of the above noted papers and will draft new sections for your consideration if necessary or desirable. Similarly, I would hope that your people might give consideration to any remaining difficulties you may have with the language in the draft text.

I trust this record adequately reflects our agreement and I look forward to seeing you in February. Seasons Greetings.

Yours sincerely,



M. Hunter
Associate Director
International Fisheries
Relations Branch
International Directorate

c.c. D.D. Tansley
G.C. Vernon
H.D. Johnston
A.E. Campbell
B. Applebaum
D. Goodman
R. Roberts
M.P. Shepard (via Hourston)
W.R. Hourston (for dist. in Vancouver)
E.B. Wang - External FLM
J. Harlick - External FLO (for bag to
T. Boehm and copy to J.C. Price,
Dept. of State)

FILE

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

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s.23

s.15(1)

TO
À FLP

FROM
De FLO

REFERENCE
Référence

SUBJECT
Sujet Canada/USA West Coast Salmon Talks,
November 27-28, 1979

SECURITY CONFIDENTIAL
Sécurité

DATE December 3, 1979

| | | |
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| DATE | | |
| NUMBER | | |
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| FILE | 56330 | DOSSIER |
| FILE | OTTAWA | |
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| BY | MISSION | PAR PORTEUR |
| ATTN: | | |

ENCLOSURES
Annexes

DISTRIBUTION

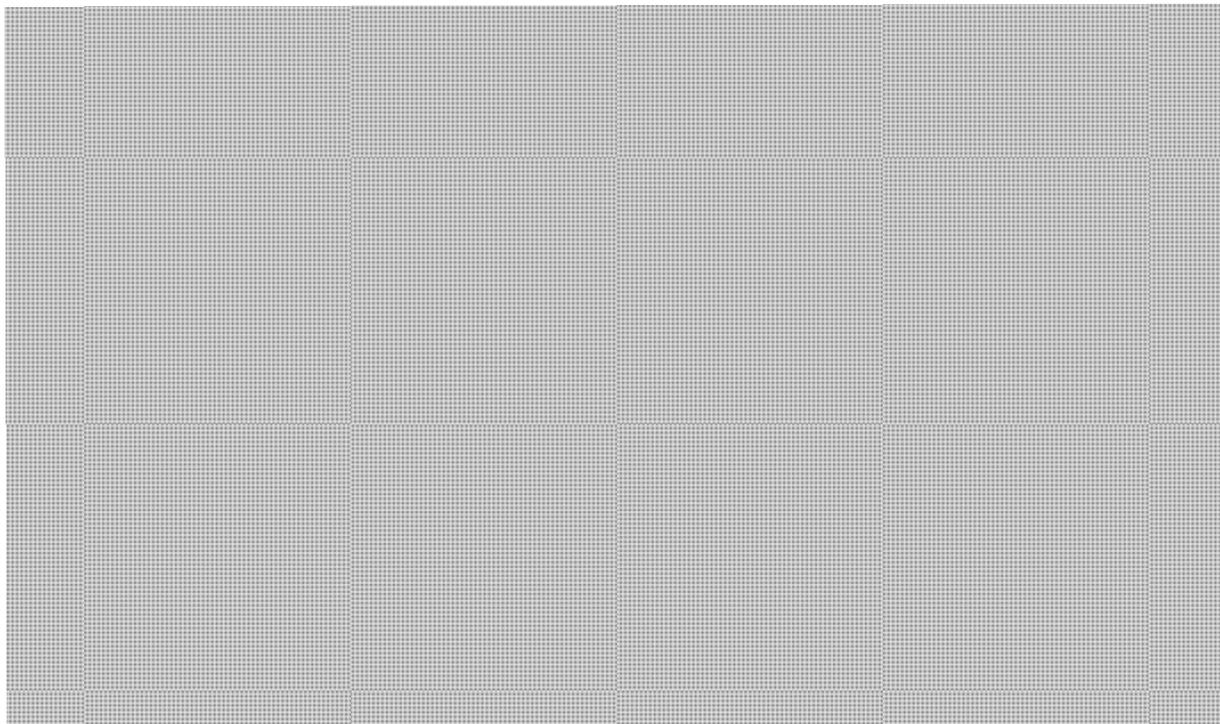
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The purpose of this round of negotiations was to permit the USA side to inform the Canadian side of the results of their recent in-depth review of this issue and following from this, to determine whether the approach initiated by the Canadian side in 1977 and reflected in the draft agreed language of the negotiating text of February 1979, would be followed in subsequent negotiations or whether the USA would press for a new direction to be taken.

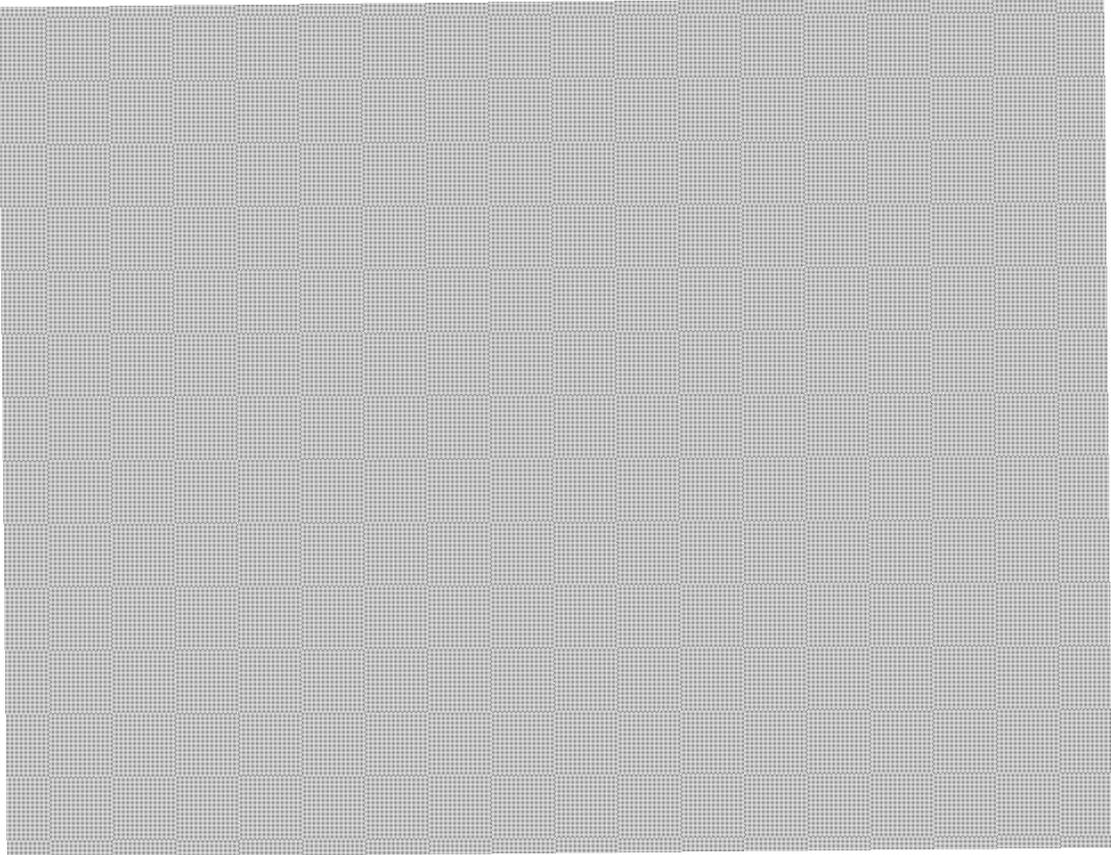


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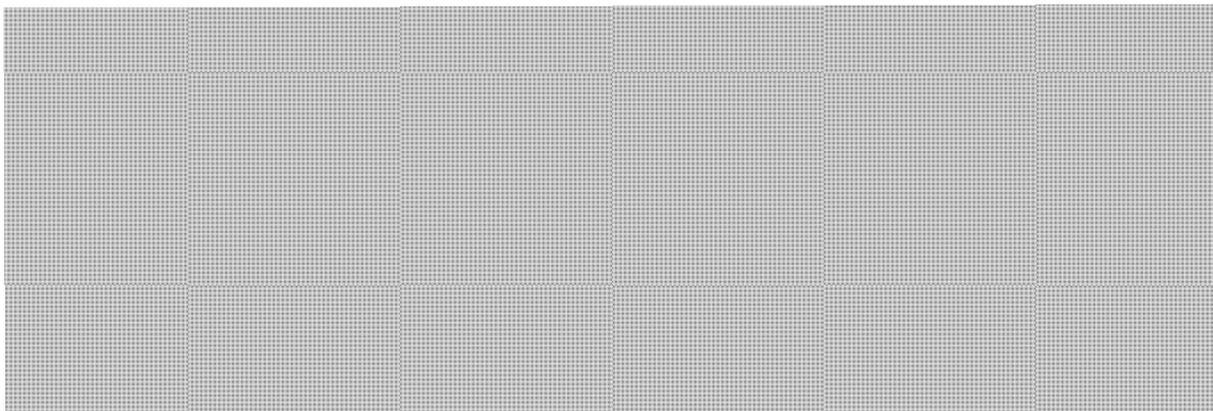
4. The Canadian delegation, on the other hand, showed a high degree of cohesiveness. The advisors (non-federal government members) articulated their interests and concerns in a forthright manner, but at the same time listened attentively to the opinions and reasoning put forward by the Canadian Chairman (Dr. Shepard) and other DFO officials and accepted their suggestions as regards strategy and tactics. Although the Canadian advisors were disappointed at the meager results of the meeting and the unpreparedness of the other side, they agreed with Canadian officials that a tougher approach vis-à-vis the Americans would not have been productive and that the best course of action was for the Canadian side to play a helpful and sympathetic role while indirectly assisting the USA side "to get its act together".

5. DFO will prepare the summary record of the meeting. However, for your information, the proposed course of action for the next six months, as agreed on by both sides, is as follows:

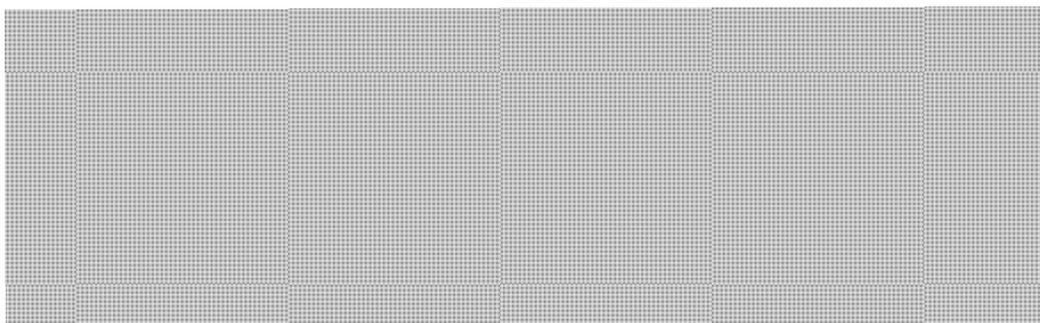
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 - (a)
 - (b)
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The papers, which would deal with what amounts to the remaining unresolved issues in the salmon negotiations, would be (to use the American jargon) an "issue definition process" which would "scope out" the objectives and problems

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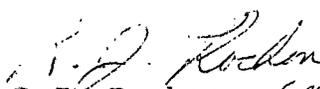


(c)



6. The Canadian side will use the first part of the week of February 11 to consult with its advisors on the preparation of these papers and other related matters.

7. No maritime boundary matters were raised during the discussions.


R.J. Rochon (per RD)
Deputy Director
Legal Operations Division

**OFFICE
OF THE
SECRETARY OF STATE
FOR
EXTERNAL AFFAIRS**

**CABINET
DU
SECÉTAIRE D'ÉTAT
AUX
AFFAIRES EXTÉRIEURES**

TO/A: FLO

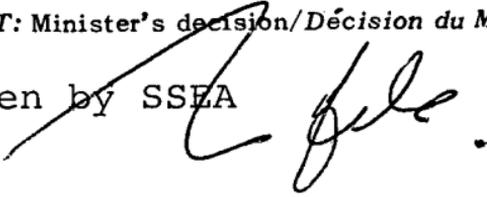
Date 21.11.79

FROM/DE: MIN

REFERENCE/RÉFÉRENCE:

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

Seen by SSEA



UNCLASSIFIED

November 16, 1979

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| BY HAND | PAR PORTEUR |

MEMORANDUM FOR THE MINISTER

SUBJECT: Canada-USA West Coast Salmon Talks:
Vancouver, November 27-30, 1979

The purpose of this memorandum is to inform you that, after considerable difficulty in arriving at mutually acceptable dates, Canadian and USA officials have agreed to hold these talks at the end of this month.

The object of the overall Canada-USA salmon interception limitation negotiations is to develop a regime for the management of the salmon stocks of both countries in order to reduce the number of interceptions by fishermen of one country in the West Coast waters of the other, and/or to compensate the state of origin for such interceptions.

The Vancouver session is part of a series of discussions which have been taking place between Canada and the USA on this subject, commencing in 1977 (although the general question of salmon interception has been under negotiation, on and off, since 1971). This latest round is being held to determine whether the USA, which has been extensively reviewing its policy options on this matter, is prepared to continue the negotiations on the basis of a Canadian initiative directed towards a comprehensive solution of the West Coast salmon interception problems, or whether a new approach will be put forward by the USA side.

The Canadian representatives, led by Dr. Michael Shepard, a Special Consultant to (and former official in) the Department of Fisheries and Oceans, will include Mr. Jim Harlick of the Legal Operations Division of this Department.

RJ
A.E.G.

*Seen
JM
Nov 20/79*

MEMORANDUM

Mr. Cadieux

E.B. Wang

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25-5-5-CDA-USA

CONFIDENTIAL

July 31, 1979

West Coast Salmon Interception Talks:
 Some Observations

25-5-7-2 Salmon-1

~~25-5-5-CDA/USA~~

The following are some preliminary and personal views on the prospects for resumption of Canada/USA talks on West Coast salmon, based on informal talks we had with Negroponte in Washington July 24-25.

2. The first thing that strikes one upon exposure to these problems is their complexity. It seems to me that there is useful work to be done in reviewing and defining with greater precision Canadian negotiating objectives. From my reading of the minutes of meetings over the past three years, and from the discussion in Washington, there would appear to be at least four objectives which Canada has been pursuing, with varying degrees of emphasis. They are (not necessarily in order of importance):

- (1) Limitation on U.S. interception of Fraser River salmon. I understand that by far the greater part of all U.S. interceptions of salmon bound to or from Canadian rivers - perhaps as high as 75% - have taken place in the Puget Sound/Juan de Fuca area, affecting all five salmon species from the Fraser River.
- (2) Management control of the Fraser River. Local sentiment appears to be increasingly opposed to a continuation of the present dual or shared management regime for a river which runs exclusively through Canadian territory.
- (3) An improved (or more "equitable") share of the benefits of salmon runs from "transboundary rivers" - those which rise and provide spawning grounds and hatcheries in Canada, but which flow into the sea through U.S. territory in the Alaskan Panhandle. Canadian fishermen have only very limited or nil access to these runs and in the absence of benefits for Canada it would be impossible to justify further Canadian investment for salmon enhancement in these areas. Pressures are likely to increase for alternative (e.g. hydro) development of these rivers.

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- 3 - CONFIDENTIAL

- (i) it will be impossible, in his view, to work out an agreed basis of valuation of various species of salmon caught at various times of the year on one side of the border or the other under varying market conditions. How does one compare the value even of the same fish from the viewpoint of the sports fishermen, say off Prince Rupert, and the New York restaurateur? In the absence of an agreed valuation mechanism it would be impossible to negotiate trade-offs between different species and waters along the lines proposed by Canada;
- (ii) local interests in one region are going to be most reluctant to accept a need to pay a price for benefits for fellow countrymen in another region (e.g. U.S. Columbia River fishermen vs. Alaska fishermen, or Fraser River vs. northern transboundary rivers).

7. If External is to become more actively involved, or lead these negotiations, I think it would be essential for us to consult directly with the various Canadian fishing interests and the B.C. authorities so as to be in a position to make a first-hand assessment as to where Canadian interests lie. We would have to work closely with our colleagues in DFO, but I think we would have to satisfy ourselves on the basis of direct contacts as to where the high priority problems lie, and as to what possible solutions might be acceptable or at least tolerable. It might be better at this stage to face the possibility that an ideal solution is beyond our grasp and that we should concentrate largely, if not exclusively, on problems which could become intolerable if allowed to fester. For the rest, we might have to hope for good sense and good luck to enable the two sides to muddle through, as we seem to have done for the last hundred years.

ORIGINAL SIGNED BY
E. B. WANG

Erik B. Wang
FLM

Salmon

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32 WASHINGTON 2. FISHING VESSEL ACT.

approval to those portions of the IPSFC regulations that affected Indian fishing rights. Those regulations have accordingly not gone into effect in the United States. The Indians' fishing rights and responsibilities have instead been the subject of separate regulations promulgated by the Interior Department, under its general Indian powers, 25 U. S. C. §§ 2, 9, see 42 Fed. Reg. 31450, 43 Fed. Reg. 26737, 27187, and enforced by the National Maritime Fisheries Service directly, rather than by delegation to the State. The District Court's order is fully consistent with those regulations.³¹ To the extent that any Washington State statute imposes any conflicting obligations, the statute is without effect under the Sockeye Act and must give way to the federal treaties, regulations and decrees. *E. g., Missouri v. Holland*, 252 U. S. 416, 432.

VII

In addition to their challenges to the District Court's basic construction of the treaties, and to the scope of its allocation of fish to treaty fishermen, the State and the commercial fishing associations have advanced two objections to various remedial orders entered by the District Court.³² It is claimed that

³¹ Although the IPSFC has refused to accede to the suggestions of the United States that special regulations be promulgated to cover the Indian fisheries, we are informed by the Solicitor General that the Canadian Government has no objection to those suggestions, has unilaterally implemented similar rules on behalf of its own Indians, and has expressed no dissatisfaction with the unilateral actions taken by the United States in this regard. Brief for the United States, at 40 n. 26.

Because the Department of Interior regulations assure that no disproportion will occur, the equitable adjustment ordered by the District Court to cover the possibility that IPSFC regulations would result in a disproportionate nontreaty take will not be effectuated. We accordingly have no issue before us concerning the validity of that adjustment.

³² The associations advance a third objection as well—that the District Court had no power to enjoin individual nontreaty fishermen, who were not parties to its decisions, from violating the allocations that it has ordered. The reason this issue has arisen is that state officials were

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32 WASHINGTON D. FISHING VESSEL AGENT.

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MESSAGE

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G.M. Hunter

FANDOTT/HUNTER
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REF.
SUB/SUJ. SALMON.

HAVE RECVD CALL 6JUL/9 FROM MRS. KEVA LAFAVOUR (907) 465-3580 (GOV. HAMMOND'S OFFICE, ALASKA) WHO PASSED FOLLOWING MESSAGE QUOTE THERE IS A SURPLUS OF SALMON ABOVE WHAT THE U.S. PROCESSORS CAN ACCOMMODATE WHICH EXISTS IN THE BRISTOL BAY AREA - NAKNEK, KVICHIK, ECICEK AND NUSHAGAK. THE COMMISSIONER OF FISH AND GAME HAS SIGNED AN EMERGENCY ORDER PERMITTING PROCESSORS FROM FOREIGN NATIONS INTO THESE AREAS EFFECTIVE TODAY. WE CAN HOWEVER OFFER NO ASSURANCES AS TO HOW MANY DAYS THE SURPLUS WILL EXIST AND THE DATE ON WHICH THE EMERGENCY ORDER WILL BE WITHDRAWN. WOULD YOU PLEASE FORWARD THIS INFO TO APPROPRIATE FISH PROCESSORS OF YOUR NATION. PERMITS AND ADDITIONAL INFO CAN BE OBTAINED AT THE ALASKA DEPT OF FISH AND GAME OFFICES IN JUNEAU (907) 465-4100. UNQUOTE

2. HAVE INFORMED THE OFFICE OF WR HOURSTON, DIRECTOR, INTERGOVT AFFAIRS FISHERIES SERVICE, PACIFIC REGION, VANCOUVER OF ABOVE MESSAGE. REQUEST YOU INFORM APPROPRIATE PERSONNEL OTT.

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| DRAFTER/RÉDACTEUR | DIVISION/DIRECTION | TELEPHONE | APPROVED/APPROUVÉ |
| SG. F.D. Martens/b | | | <i>F.D. Martens</i> F. D. MARTENS |

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SEATTLE

TO/A EXTOTT/CNT

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 COURTEL 0215 FEB 07

USA SUPREME COURT DECISION-BOLDT/FISHERIES DISPUTE
 ATTACHED ARE VARIOUS ARTICLES FROM THE SEATTLE POST INTELLIGENCE
 AND SEATTLE TIMES CONCERNING RECENT SUPREME COURT RULING IN
 INDIAN FISHING RIGHTS DISPUTE. AS MIGHT BE EXPECTED REACTION
 OF VARIOUS GROUPS TO RULING WAS MIXED DEPENDING ON PERCEIVED
 IMPACT THEIR SELF INTEREST. SOME COMMERCIAL FISHING GROUPS
 HAVE REFRAINED FROM SUBSTANTIVE COMMENT PENDING THEIR REVIEW
 OF WRITTEN DECISION. AT LEAST, DECISION WOULD SEEM TO REMOVE ONE
 ELEMENT OF UNCERTAINTY FROM WEST COAST FISHERIES BUT ITS IMPACT
 ON WIDER QUESTION OF NATIVE RIGHTS REMAINS TO BE ASSESSED.
 DECISION ALSO CLEARS WAY FOR CONGRESSIONAL ACTION.

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SG F.D. MARTENS/Edm

Signature

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Seattle Times
Monday July 2, 1979

Key events connected with 1974 Boldt ruling

Here is a chronology of events connected with the 1974 Boldt ruling:

August 27, 1973: Trial begins for "United States vs. Washington" in the court of United States District Judge George Boldt. The suit was heralded as "the one which will solve once and for all the long, bitter, complex Indian treaty-rights fishing controversy."

February 12, 1974: Judge Boldt issues his 203-page landmark decision backing Indian fishing rights.

March 5, 1974: More than 700 sportsmen march around the federal Courthouse in Tacoma to protest Judge Boldt's ruling, prompting The Times' Don Hannula to write that "the moccasin is on the other foot" in the fishing-rights dispute.

April 23, 1974: State Fisheries Director Thor Tollefson said his department has "no choice" but to cut back commercial and sport salmon fishing in view of the Boldt ruling.

September 30, 1974: Gillnetters and supporters stage a demonstration at the federal Courthouse in Tacoma to protest the most severe fishing cutback in the state's history — a direct result of the Boldt decision.

June 4, 1975: Judge Boldt's ruling is upheld by the Ninth Circuit Court of Appeals. The state will appeal to the Supreme Court.

August 5, 1975: Judge Boldt overrules a Thurston County Superior Court order preventing Indians from fishing on the Fraser River — the first of many clashes between federal and state jurisdictions over Indian fishing rights.

June 27, 1976: Commercial salmon trollers defy a federal court order (aimed at protecting Indian fishing) and fish for salmon off the Southern Washington coast, the first of several openly defiant fish-ins by protesting commercial fishermen.

October 21, 1976: "War at sea" is declared, with confrontations between state fisheries patrol boats and protesting gillnetters occurring almost nightly. Matters finally come to a head when a fisheries officer shoots and severely wounds a gillnetter in Hood Canal.

January 12, 1978: The state again asks the United States Supreme Court to review the Boldt decision. The court had turned down a similar request once before.

January 13, 1978: A federal task force issues a sweeping plan aimed at settling Boldt-related fishing disputes. The document, which calls for treaty Indians to accept less than the 50 per cent share granted by the Boldt decision, immediately is attacked by Indian tribes.

April 26, 1978: Judge Boldt withdraws from the second phase of Indian fishing-rights litigation involving questions of environmental management of fishing grounds. Ill health is cited. Later, a San Francisco federal judge is assigned to that phase.

October 16, 1978: The Supreme Court decides to review the 1974 Boldt decision.

February 7, 1979: Judge Boldt removes himself from further participation in Indian fishing-rights cases.

February 28, 1979: The Supreme Court hears oral arguments in the state's suit to overturn the Boldt decision.

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Seattle Times
Monday July 2, 1979

Indian fishing-rights case

Supreme Court backs Boldt

by DEAN KATZ
Times Washington Bureau

WASHINGTON — The United States Supreme Court today upheld virtually all of the controversial Boldt Indian fishing-rights case.

The 6-to-3 decision was a blow to non-Indian commercial fishermen and a victory for United States District Judge George T. Boldt. Judge Boldt in 1974 ruled that Indians are entitled to the opportunity to catch half the har-

vestable salmon returning to traditional, off-reservation grounds.

Judge Boldt, 75, who is retired from the federal bench, said he is delighted with the decision. "It's a great victory," he said.

Senator Warren G. Magnuson said soon after the decision was announced that Congress will seek a legislative remedy to the controversy over how the fish are divided.

Attorney General Slade Gorton in February had argued before the high court that the Indians were

not entitled to an equal division of the state's fishery. Reached at his summer cabin on Whidbey Island, Gorton said the ruling "is a disappointment. We did not believe that a fixed share was to be found in the treaties. The Supreme Court has found that there is."

Though unhappy with the outcome, Gorton said that at least "we have the advantage of a final and definitive decision by the United States Supreme Court."

The decision was written by Justice John Paul Stevens. Three

justices, Lewis F. Powell, Jr., Potter Stewart and William H. Rehnquist, dissented.

The court made one change in the Boldt decision. It ruled that fish caught by Indians on reservations and for subsistence and ceremonial uses should be counted as part of the Indians' share.

Gorton said that was the state's only "victory."

Mason Morisset, attorney for the Northwest Indian Fisheries Commission, who argued the Indians' case before the Supreme

Court, was ecstatic at the news.

As a reporter read him a summary of the Court's ruling, Morisset said: "Oh my God, I can't believe this." Cheers could be heard in the background of Morisset's office.

"This is obviously an overwhelming victory" for the Indians, Morisset said. "Basically the Court's ruling upholds the Judge Boldt decision with minor modifications of the on-reservation share."

"Other than that, it sounds like

a 100 per cent affirmation of everything Judge Boldt has done in the last five years."

Morisset said the Supreme Court's ruling is "a complete rejection of the state's theory."

A key point in the debate was the interpretation of language in the treaties giving Indians a "right of taking fish... in common with all citizens of the territory."

Gorton argued before the court that the phrase was intended only

(Continued on A 14)

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Seattle Times
Monday July 2, 1979

Boldt backed in fishing-rights case

(Continued from Page 1)

to guarantee Indians access to usual and accustomed fishing sites and an "equal opportunity" for individual Indians and non-Indians to try to catch fish.

But the Supreme Court said that key phrase "secures to the Indian tribes a right to harvest a share of each run of anadromous fish that passes through tribal fishing areas."

The court said its conclusion "is mandated by a fair appraisal of the purpose of the treaty negotiations, the language of the treaties, and, particularly, this court's

prior decisions construing the treaties."

The justices said an equitable measure of the common right to take fish "should initially divide the harvestable portion of each run that passes through a 'usual and accustomed' place into approximately equal treaty and non-treaty shares, and should then reduce the treaty share if tribal needs may be satisfied by a lesser amount."

The court then said that although Judge Boldt's ruling, which was slightly modified by the United States Court of Appeals, "is

in most respects unobjectionable, the District Court erred in excluding fish taken by the Indians on their reservations from their share of the runs, and in excluding fish caught for the Indians' ceremonial and subsistence needs."

Morisset said that change would have "very little" effect on the overall catch permitted Indians, since the amount caught by Indians that weren't previously counted in their share is very small.

Morisset said the court also rejected an argument by Gorton that a treaty between Canada and the United States signed in 1930 took precedence over the Indian

treaties and thus denied Indians an opportunity to catch half of the harvestable sockeye salmon running through certain "usual and accustomed" fishing grounds in the Cowlitz River.

Finally, the court knocked down a state Supreme Court ruling prohibiting the state Game and Fisheries Departments from setting guidelines to implement the Boldt decision.

The state Supreme Court issued the ruling in response to a suit filed by non-Indian commercial fishermen who asserted that the state had no authority to enforce the Boldt decision.

The high court has noted that Gorton told the justices a "definitive resolution of the basic federal question of construction of the treaties will allow state compliance with federal court orders."

If compliance "is not confirmed by the conduct of state officials, the District Court has the power to undertake the necessary remedial steps and to enlist the aid of appropriate federal law-enforcement agents in carrying out those steps," the court ruled.

Gorton said the issue of whether the state can enforce the Boldt decision "is now settled" as far as

he is concerned.

Said Morisset: "The significance (of the Supreme Court ruling) is that the Indians were right, the treaties are good law, Judge Boldt was right and the state had better start acting with some responsibility and maturity."

Asked what effect the ruling might have on Gorton's chances in a race next year against Senator Warren G. Magnuson, the attorney general said: "I don't think I should comment on that now. We've got to concentrate on what the law is today. The Supreme Court has now spoken and it is up to the people to follow the law."



Tuesday, July 3, 1979

The Times' opinion and comment:

Treaty rights are 'law of the land'

WHILE the issues bound up in the Indian-fishing-rights dispute are numerous and complex, the bedrock question is simple: Whether bargains struck with Native Americans more than a century ago can be undone unilaterally, to suit the preferences of modern-day whites.

That question was answered correctly, it seems to us, in yesterday's United States Supreme Court ruling generally affirming U.S. District Judge George Boldt's interpretation of the long-standing treaty rights granted Puget Sound Indian tribes in the 1850s.

In one important sense, the much-debated "Boldt decision" of 1974 turned on a civil-rights question — whether the rightful heritage belonging to Indians was to be eroded still further.

Judge Boldt, for whom yesterday's high-court ruling was the ultimate vindication of his legal scholarship, had held that the treaties between the United States government and a dozen or so tribes have modern-day relevance.

And those agreements mean, Judge Boldt found, that Indians are entitled to the opportunity to harvest up to half the fish returning to traditional off-reservation grounds.

Incidentally, the high court's modifications of Judge Boldt's original ruling may have softened its potential impact on non-Indian fishermen. Indian catches outside "usual and accustomed" stations, for example, now are to be charged against the Indian share of the fish. And the door seems to have been opened to future changes in allocations based on changing circumstances in tribal economies.

Upholding Judge Boldt in most respects, the high court held 6 to 3 that its conclusions were based on "a fair appraisal of the purpose of the treaty negotiations, the language of the treaties, and, particularly, this court's prior decisions construing the treaties."

The decision understandably is unpopular with various elements of the commercial and sports fishing industries. And it was a major setback for the state's position — argued by Attorney General Slade Gorton in February — that the treaties established only an "equal opportunity" fishery.

But if yesterday's ruling was a welcome re-ratification of treaty accords, it did not offer remedies for this region's enduring fisheries problems, which would persist even had the Supreme Court ruled the other way.

Complaints about the "Boldt decision" notwithstanding, a number of other factors also account for the salmon and steelhead depletion: The absence of a unified, authoritative management of fishery resources; the need for broader efforts to rebuild stocks; destructive environmental practices, and so on.

Steps to confront these difficulties will require something along the lines of a "political solution," like that recommended last year by a federally chartered task force representing various parties to the dispute.

Whatever is done next, though, will have to be accomplished within the framework of those ancient treaty agreements. For the "Boldt decision," now more than ever, has been affirmed as the "law of the land."

SEATTLE TIMES

JULY 3, 1979

6

Excerpts from fishing ruling — few issues were left untouched

by PAUL ANDREWS
Times staff reporter

In its historic affirmation of the Boldt decision, the Supreme Court left almost none of the touchstones of debate in the fishing-rights controversy untouched.

Issues such as the wording of the treaties, the meaning of key phrases such as "in common with" and "usual and accustomed grounds," and arguments about the needs and capabilities of Indians and non-Indian fishermen all were addressed.

Here are some excerpts of the 37-page majority opinion, written by Justice John Paul Stevens and endorsed by Chief Justice Warren Burger, and Justices William Brennan, Jr., Byron R. White, Thurgood Marshall and Harry A. Blackman:

— "There is no evidence of the precise understanding the Indians had of any of the specific English terms and phrases in the treaty. It is perfectly clear, however, that the Indians were vitally interested in protecting their right to take fish at usual and accustomed places, whether on or off the reservations, and that they were invited by the white negotiators to rely and in fact did rely heavily on the good faith of the United States to protect that right."

— "The Indians understood that non-Indians would also have the right to fish at their off-reservation fishing sites. But this was not understood as a significant limitation on their right to take fish. Because of the great abundance of fish and the limited population of the area, it simply was not contemplated that either party would interfere with the other's fishing rights."

— "Because the sparse contemporaneous written materials refer primarily to assuring access to fishing sites 'in common with citizens of the territory,' the State of

Washington and the commercial fishing associations . . . argue that it was merely access that the negotiators guaranteed. It is equally plausible to conclude, however, that the specific provision for access was intended to secure a greater right — a right to harvest a share of the runs of anadromous fish that at the time the treaties were signed were so plentiful that no one could question the Indians' capacity to take whatever quantity they needed."

— "A treaty, including one between the United States and an Indian tribe, is essentially a contract between two sovereign nations. When the signatory nations have not been at war and neither is vanquished, it is reasonable to assume that they negotiated as equals at arm's length. There is no reason to doubt that this assumption applies to the treaty at issue here.

"Accordingly, it is the intention of the parties, and not solely that of the superior side, that must control any attempt to interpret the treaties. When Indians are involved, this court has long given special meaning to this rule. It has held that the United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to avoid taking advantage of the other side."

— (In footnote) "The state characterizes its interpretation of the treaty language as assuring Indians and non-Indians 'equal opportunity' to take fish from the state's waters. This appellation is misleading . . . Whatever opportunities the treaty assures Indians with respect to fish are admittedly not 'equal' to, but are to some extent greater than, those afforded other citizens . . .

"Moreover, in light of the far superior numbers, capital resources and technology of the non-

Indians, the concept of the Indians' 'equal opportunity' to take advantage a scarce resource is likely in practice to mean that the Indians' 'right of taking fish' will net them virtually no catch at all."

— (In footnote) "The state argues that as common law, a 'common fishery' was merely a nonexclusive right of access, and that the right of a fishery was appurtenant to specific parcels of real property. The state does not suggest, however, that these concepts were understood by, or explained to, the Indians.

"Even more to the point, the United States had previously used the 'in common with' language in two treaties with Britain, including one signed in 1854, that dealt with fishing rights . . . As interpreted by the Department of State during the 19th Century, these treaties gave each signatory country an 'equal' and apportionable 'share' of the take of fish."

— "It bears repeating, however, that the 50 per cent figure imposes a maximum but not a minimum allocation . . . the (minimum) will, upon proper submissions to the district court, be modified in response to changing circumstances. If, for example, a tribe should dwindle to just a few members, or if it should find other sources of support that lead it to abandon its fisheries, a 45 or 50 per cent allocation of an entire run that passes through its customary fishing grounds would be manifestly inappropriate because the livelihood of the tribe under those circumstances could not reasonably require an allotment of large number of fish."

— (In footnote) "Because the 50 per cent figure is only a ceiling, it is not correct to characterize our holding 'as guaranteeing the Indians a specified percentage' of the fish."

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Seattle Times
Monday July 2, 1979

Magnuson for legislative changes in Indian treaties

by DEAN KATZ
Times Washington bureau

WASHINGTON — Senator Warren G. Magnuson favors congressional action to change Indian treaties to make the Northwest fishery more available to non-Indian fishermen, a spokesman said today.

And an aide to Senator Henry M. Jackson said Jackson also would favor legislation to modify the treaties "if that is necessary to accomplish effective and fair management" of the fishery.

Representative Don Bonker, 3rd District Democrat from Olympia, said: "My judgment is that we will need to renegotiate treaties, not only in terms of fishing rights in the Northwest but also land claims, water rights and hunting rights."

Comments from Bonker and the two senators' offices came hours after the United States Supreme Court upheld the controversial Boldt Indian fishing-rights case.

F. Duayne Trecker, spokesman for Magnuson, said that Magnuson probably would not go so far as to favor abrogating the 1850s Indian treaties. But asked if Magnuson would favor legislation to modify the treaties, Trecker said: "Yes, I think that is correct."

Trecker said congressional hearings are planned for the state in August and September to gather ideas how to resolve the Northwest fisheries issue.

Trecker said the Supreme Court decision indicated that Indians, while entitled to it, may not actually need half the harvestable catch.

A joint statement issued by the two senators said that "the Supreme Court's action today still leaves Congress with the job of enacting legislation to assure effective and fair management of our state's salmon and steelhead resources."

Bonker, who has a strong contingent of non-Indian commercial fishermen and charter-boat operators in his district, said he was "not at all happy with the decision."

Post Intelligencer
Tuesday July 3, 1979

Fishing Legislation to Be Pushed

By Gill Bailey

U.S. Sen. Warren Magnuson and Henry Jackson yesterday promised quick action on federal legislation to resolve fishing questions.

Washington's two senators released a joint state-

match that so there will be more fish for the treaty and non-treaty fisherman alike," he said.

Rep. Al Swift, D-Wash., agreed that the Supreme Court decision "did not solve the problem."

Swift felt there was little

chance for an "absolute buy-out" of Indian treaty rights to the fish, noting there was not enough money available for such a buy out.

Rep. Joel Pritchard, R-Wash., a member of the House Merchant Marine and Fisheries Committee, had a

different view.

"We have to set up the enforcement," he said. "It will have to be a federal-state enforcement plan and I think we will have to get into an allocation plan and that is very complicated."

Pritchard expressed the

hope that the legislation will be passed before the next fishing "in fairness to everybody."

Rep. Mike Lowry, D-Wash., supported the decision, saying, "We as a nation should uphold the treaties as interpreted by the

preme Court's action supporting the Boldt decision.

"The Supreme Court's action today still leaves Congress with the job of enacting legislation to assure effective and fair management of our state's salmon and steelhead resource," they said.

Both senators have indicated they would like to see the basic treaties between the Indian tribes and the United States modified to grant more access to the fish for non-Indian fishermen.

The senators pledged that legislation would be drafted after hearings tentatively scheduled for August in Seattle are held. In addition the House Merchant Marine and Fisheries Committee is also studying legislation.

But not all of the local members of Congress were certain much could be done in the halls of Congress.

"I am not happy with the Supreme Court decision today," said Rep. Don Bonker, D-Wash. "I had hoped the Supreme Court would give us some direction for legislation, but it has left little room for legislative action."

He added, "For everyone, except the treaty Indians, this is the worst possible decision."

Bonker, as did the rest of the congressional delegation, called for enhancement of the fish resource.

"Canada is spending \$200 million. We should at least

courts."

He agreed legislation should be developed, but added n.

Lowry concluded, "Now that we've got a court decision we know where we stand. I think we can be successful in working out the best possible fish management program for everybody."

"I know some people

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want to turn back the clock," said Rep. Norman Dicks, D-Wash., "but what we've got to do now is to work with the scientific and fisheries experts to find the best method of enhancing the resource."

He added, "The Supreme Court has spoken. I'm a

congressman sworn to uphold the law."

He too doubted that the Indian fishing rights could be bought.

"The Indians don't have a for sale sign out. The Indians do have a right here clearly delineated by the court," he concluded.

Most look to Congress for fishing-rights step

SEATTLE TIMES

JULY 3, 1979

by PAUL ANDREWS
Times staff reporter.

In the wake of yesterday's Supreme Court ruling upholding the Boldt decision, most parties looked to Congress for the next step in resolving the Indian fishing-rights controversy.

Surprisingly, nearly everyone found something to be happy about in the 37-page, 6-to-3 opinion.

Commercial fishermen even suggested that a close reading of the document left open the possibility of a less than 50 per cent allocation of harvestable fish to Indians — a view which tribal representatives called "grasping at straws."

"We're going to have to ask Congress for buy-back money (to purchase fishing vessels from commercial fishermen to reduce the fleet) and for enhancement money," noted Paul H. Anderson, executive manager of the Puget Sound Purse Seine Vessel Owners Association.

"If possible, too, Congress is going to have to establish some sort of guidelines to determine when an Indian has made enough money off fishing," Anderson added.

The 1974 Boldt decision gave treaty Indians the opportunity to catch half the harvestable salmon and steelhead returning to traditional off-reservation Indian fishing grounds.

Anderson noted that the Supreme Court ruling called the 50 per cent figure "a maximum but not

minimum allocation." The key to determining allocations, the ruling said, was whether the 50 per cent was needed to ensure "a moderate living."

"If, for example, a tribe should dwindle to just a few members, or if it should find other sources of support that lead it to abandon its fisheries, a 45 per cent or 50 per cent allocation of an entire run that passes through its customary fishing grounds would be manifestly inappropriate because the livelihood of the tribe under those circumstances could not reasonably require an allotment of a large number of fish," the ruling elaborated.

Anderson said his group interpreted the clause to mean that "treaties do not give a few Indian fishermen the ability to become wealthy by fishing."

Asked where one could draw the line between "moderate livelihood" and "wealthy," Anderson replied: "Well, that's the problem."

Also questioning the 50 per cent allocation authority was Phil Sutherland, president of the Puget Sound Gillnetters Association.

"The ruling says the government is responsible to provide Indians with 50 per cent, but only in terms of an 'adequate living' (moderate livelihood)," Sutherland noted. "What's adequate? Is that 2 per cent or 49 per cent?"

Until follow-up court rulings clarify the clause, "there's going to be confusion," Sutherland predicted.

Attorney General Slade Gorton said the com-

mmercial fishermen's interpretation of the 50 per cent clause "is correct, but the difficulty is that 'getting rich' is an imprecise term which the court left us with. The ruling does envisage circumstances where less than 50 per cent allocation would apply."

Gorton added that "it's fair to say that if Indians can demonstrate a need, they will get first shot at their 50 per cent."

But if Indians are making a living off other sources than fishing, their allocation could be reduced, Gorton said.

Mason Morisset, lead counsel for Indian tribes in the case, said the clause merely posed a "what-if" argument that was "insignificant when viewed in the context" of the entire decision.

"It's a theoretical problem that someone brought up, but as a matter of practicality, you're not going to find an instance where Indians don't need to fish for their livelihood," Morisset said.

"There's no question that some Indians have started to do pretty well on fishing, but overall, Indian fishermen are barely catching what they need to get by on," Morisset said.

Joe De La Cruz, Quinault tribal chairman, said that "we would hope Congress will write some laws to implement those agreements (treaties), signed in 1855. We don't see a big book being written to take our rights away."

Told that Senator Warren G. Magnuson, Representative Al Swift and other members of the state's

congressional delegation indicated a "legislative modification of treaties" may be needed to resolve the issue, Jim Heckman, executive director of the Northwest Indian Fisheries Commission said, "We don't read Maggie and the others that way."

Heckman said a telephone conversation with Magnuson's office left him with the impression that the senator "is interested in implementing the Supreme Court decision as it stands."

Magnuson repeated his intention to hold Senate Commerce Committee hearings in Seattle next month in preparation for developing legislation on the fishing-rights dispute.

Gordon Sandison, state Fisheries Department director, said he plans to work with tribal leaders and the congressional delegation to develop management guidelines for this year's commercial fishing.

The sockeye season begins July 15.

"If we can't agree, we'll be right back in court" Sandison predicted.

As for steelhead — the salmon counterpart largely reserved for game fishing — Ralph Larson, state Game Department director, said the Supreme Court ruling should make available more steelhead for sports fishermen in coastal areas, where tribes have been taking up to 90 per cent of steelhead runs.

"This means that the Quinaults, Queets, Hoh, Quillayute and Nisqually Tribes will have to reduce their fishing," Larson commented.

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JULY 23, 1979

Supreme Court fishing decision rebukes, warns state officials

by DEAN KATZ
Times Washington Bureau

WASHINGTON — The United States Supreme Court ruling yesterday upholding the Boldt Indian fishing-rights decision contains several notably stiff rebukes and a stern warning to state officials.

The high court also laid to rest arguments on behalf of the state by Attorney General Slade Gorton that Indians are only entitled to an "equal opportunity" to fish with non-Indians and not a specified allocation of fish.

At one point, in what appeared to be a slap at the state, the Supreme Court noted that "because of the widespread defiance of the District Court's orders, this litigation has assumed unusual significance."

Elsewhere in its 6-to-3 majority ruling, the high court pointed to a United States Court of Appeals opinion that said except for some desegregation cases, United States District Judge George Boldt's efforts to give Indians a set allocation of fish has been met with "the most concerted official and private efforts (sic) to frustrate a decree of a federal court witnessed in this century."

It also referred to the state's "extraordinary machinations in resisting the (Boldt) decree," which has "forced the District Court to take over a large share of the management of the state's fishery in order to enforce its decree."

In its own opinion, the Supreme Court said that "often-discriminatory state regulations in the early decades of the 20th Century" helped establish a trend of non-Indian domination of the fisheries in the state. It was that domination which eventually led to Judge Boldt's decision as a way of protecting the Indian fishery.

The Supreme Court also said, in

a footnote, that "the impact of illegal regulations . . . and of illegal exclusionary tactics by non-Indians in large measure accounts for the decline of the Indian fisheries during this century . . ."

Following the Supreme Court's ruling, Attorney General Slade Gorton, who argued the state's case, agreed that essentially, the high court upheld Judge Boldt's actions.

Gorton said, however, that the state "won" in the sense that it now has the authority to manage the fisheries resource in Washington State.

But the Supreme Court explicitly qualified the passage in which it said the state has the authority to manage the fishery in accordance with the Boldt decision.

First, it said if there is any "recalcitrance" on the part of state officials to enforce the Boldt decision, the District Court may assume direct supervision of the fisheries.

It then noted that Gorton told the high court a "definitive resolution of the basic federal question of construction of the (Indian) treaties will allow state compliance with federal court orders."

The Supreme Court then warned, again, that if state compliance with federal court orders "is not confirmed by the conduct of state officials, the District Court has the power to undertake the necessary remedial steps and to enlist the aid of appropriate federal law enforcement agents in carrying out those steps."

The key point in the debate over Indian fishing rights was the interpretation of language in the treaties giving Indians a "right of taking fish . . . in common with all citizens of the territory."

Gorton argued before the court that the phrase was intended only to guarantee Indians access to

usual and accustomed fishing sites and an "equal opportunity" for Indians and non-Indians to try to catch fish.

But the Supreme Court said that key phrase "secures to the Indian tribes a right to harvest a share of each run of anadromous fish that passes through tribal fishing areas."

It then went on to say an equitable measure of the common right to take fish "should initially divide the harvestable portion of each run that passes through a 'usual and accustomed' place into approximately equal treaty and non-treaty shares, and should then reduce the treaty share if tribal needs may be satisfied by a lesser amount."

The court rejected Gorton's "equal opportunity" argument as "misleading" because, it said, even the state acknowledges that the treaties provide Indians with certain rights — such as fishing without a license and the authority to cross private lands to reach traditional fishing grounds — that non-Indians do not have.

Thus, whatever opportunities the treaty assures Indians with respect to fish are not just equal to, but to some extent greater than those afforded other citizens.

"It is therefore simply erroneous" to suggest that the treaty language confers upon non-Indians precisely the same right to fish as it confers upon Indians, the court said.

The court went on to say that in light of the greater numbers, capital resources, and technology of non-Indians, "the concept of the Indians' 'equal opportunity' to take advantage of a scarce resource is likely in practice to mean that the Indians' 'right of taking fish' will net them virtually no catch at all."

The Supreme Court said the purpose and language of the trea-

ties are "unambiguous" in guaranteeing to Indians a right to share of the fish that pass through tribal fishing areas.

The court also said that equal division of fish between Indians and non-Indians by Judge Boldt is "consistent with our prior decisions concerning Indian treaty rights to scarce net resources."

And yet, Gorton argued before the Supreme Court that the state position now was that Indians have no right to a set allocation of fish.

The high court also dismissed "without merit" a state Supreme Court decision that said the Fisheries Department could not comply with Judge Boldt's ruling.

The state court ruled that Boldt's decision could not be enforced by the state because treaties did not give Indians a right to a share of the fish and because a recognition of special rights for Indians would violate the equal-protection clause of the United States Constitution.

The United States Supreme Court said however that its previous opinions had held the treaties confer "enforce special benefits" on Indians.

The court said it is doubtful Indians, when they signed treaties, perceived their right one simply of "the chance, shared with millions of other citizens, occasionally to dip their nets into territorial waters."

Significantly, the high court referred to an appellate-court decision that said that the treaty "was not a grant of rights to Indians but a grant of rights to them . . ."

In a later passage that could be the basis for further litigation however, the court said that Indians are not entitled to more than is necessary to achieve moderate living."

SEATTLE TIMES

JULY 3, 1979

'Disappointed' Gorton sees partial victory

by SUSAN GILMORE

Times staff reporter

While he said he was "disappointed" that only three of the justices accepted the state's position on the fishing-rights issue, Attorney General Slade Gorton said the state can claim a partial victory in the ruling.

"I'm gratified the Supreme Court finally decided the question because it will make administration (of it) easier," Gorton told reporters yesterday.

"Now we can administer the program through the State Department of Fisheries . . . and this increases the state's right to regulate the fishery," Gorton said. "It was well worth our while to take it to the Supreme Court, even though we didn't get what we asked for."

GORTON admitted that there may be further litigation over the interpretation of the 50-50 clause, citing the wording of the ruling which sets the Indians' limit at a maximum of 50 per cent of the harvestable salmon. "But," he said, "it appears like a major part of the litigation is over."

Gorton said the Supreme Court ruling will not affect his campaign for a Senate seat "in any way."

"It seems to me at this point that as a legal issue, it's settled," Gorton said. "Senator Magnuson is certainly choosing to make it an issue, but whether or not he succeeds in that effort, I suspect people will look at it with some care."

Gorton in February had argued before the high court that the Indians were not entitled to an equal division of the state's fishery. The state contended that the 1854 fishing treaty gave equal rights to everyone.

The only avenue left for amending the Boldt ruling is for Congress to amend the treaty. But Gorton said the state has no immediate plans to carry the issue to Congress.

Tribes nowhere near 50 per cent fish catch

All the talk about 50 per cent allocations of salmon and steelhead to Indians leaves most people with the mistaken impression that Indians catch about half the fish in the state.

Not true. Although the 1974 Boldt decision upheld yesterday by the Supreme Court granted Indian tribes an "opportunity" to catch half the fish, the tribes have come nowhere near that.

Before the Boldt decision, Indians caught less than 10 per cent of the salmon in the state. In fact, the year the Boldt ruling was issued, Indians caught just 5.4 per cent of the salmon.

A footnote in the Supreme Court's ruling refers to the Indian-catch issue:

"The solicitor general estimates that over half of the anadromous fish in the case area (generally Western Washington) do not pass

through (recognized tribal fishing) grounds and are exempt from the order. This estimate is consistent with the state's figures on the number of salmon caught in 1977, which indicate that the Indians caught only about 18 per cent of the fish taken in the case area that year."

Two main factors stand in the way of Indians' catching a larger share of fish: first, ocean fishermen intercept vast numbers of salmon before they even reach Indian coastal and inner Sound fishing waters; second, Indian fishermen have lacked the vessels and gear to compete with non-Indian commercial fishermen.

Overall, the 19 treaty tribes of Western Washington have had a difficult time reaching 20 per cent of the salmon-steelhead catch, let alone the oft-mentioned 50 per cent allocation.

Court clears state role in fisheries, says legislator

Times Olympia bureau

OLYMPIA — The United States Supreme Court's fisheries decision "creates new opportunities for the state in fisheries management," Senator Lowell Peterson, chairman of the Senate Natural Resources Committee, said yesterday.

Peterson, Concrete Democrat, said first reports of the decision indicate "the state now will have a major part to play in managing the salmon and steelhead resources."

He said he will convene his committee as soon as possible to hear details of the court ruling from State Fisheries Director Gordon Sandison.

The high court general ruling, which limited state authority, was issued by Justice George Boldt, who ruled that Indians are entitled to half

the harvestable catch of salmon and steelhead returning to traditional Indian tribal waters.

Peterson said there are indications Congress might act on legislation to bar commercial sales of steelhead.

He added that his committee "will take the lead in the Legislature to provide whatever legislation is needed at the state level to support the federal fishery-law changes."

"Clarification of the state role in managing the salmon and steelhead resources is an important aspect of the Supreme Court ruling," the Democratic senator said.

"We cannot continue, as in the last season, with the state officers and the U.S. marshals all being involved, along with biologists from the state, federal and tribal agencies," he said.

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Indians Hail

Post Intelligencer
Tuesday July 3, 1979

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'Complete Vindication'

By Bruce Sherman

Yesterday's U.S. Supreme Court ruling on the controversial Boldt decision was a welcome victory for Northwest Indians, but tribal leaders said they hoped the salmon resource itself would be the ultimate victor.

"It's been a long struggle, but it's certainly not over," said Forrest Kinley, a Lummi Tribal Council member who has been in on the fishing controversy since its early days. Kinley also is a former chairman of the Northwest Indian Fisheries Commission.

"We've got to be happy, there's no two ways about it," he said. "But we've now got to protect the resource and get back into managing the fishing."

Others on the Indian side of the controversy held a press conference in Seattle, and the gathering turned out to be more of a victory celebration than a question-and-answer session.

"It's a complete vindication of everything the tribes have indicated for the last 15 years," said Mason D.



THE INDIAN SIDE: Expressing cautious pleasure at the Supreme Court ruling were spokesmen, left to right, Mason D. Morisset, Dale Johnson, Billy Frank Jr. and Forrest Kinley.

man, Dale Johnson, Billy Frank and Mason Morisset, an attorney. — AP Photo

Morisset, the lawyer who argued the Boldt case for the Indians before the Supreme Court.

Dale Johnson, present

chairman of the Northwest Indian Fisheries Commission, pointed out that state agencies, the Legislature and congressional representatives have "pushed vigorously for the Supreme Court review." He continued:

"We trust they will accept the ruling as a guideline for future action in the state court, the state Legislature and the United States Congress toward the exercise of treaty fishing rights and tribal fishery management authority for the benefit of all citizens of

Washington."

Billy Frank Jr., a Nisqually who is a veteran of the fishing struggle and a commission member, said that the Indians already have a management plan for fisheries. And he said the Indian people must now join with the state for continued planning.

"It can't be a one-sided plan like in the past," Frank said. "It's got to be a plan that people can deal with — everyone dealing with the resource. We've got to protect that resource."

If such a plan is deve-

loped, Frank said "four, five or 10 years from now you're going to see some good programs on these streams for everybody. These things don't happen overnight."

Frank and other Indian spokesmen expressed some fears that there will be efforts in Congress to rewrite the Supreme Court decision.

"We recognize that this is not the last battlefield," said commission chairman Johnson. "Legislation already has been proposed by certain members of our state's congressional delegation in an effort to undo by

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law what judicial authority has not seen fit to undo."

However, members of the Washington congressional delegation reached yesterday seemed more interested in management and enhancement efforts than in bills to overturn the court decision.

The Lummi's Kinley said that many banks in northwest Washington, uncertain about the upcoming Supreme Court ruling, had been withholding loans to some tribal members that wanted to join the Lummi gillnet fleet.

Those with established credit have been able to obtain loans anyway, he said, but 30 or 40 Lummis with marginal credit will now be able to obtain loans where they could not before.

Andy Fernando, vice chairman of the Upper Skagit Tribe and spokesman for the Skagit System Cooperative, said there was a consensus among tribal members in his area that the 6-3 Supreme Court vote was "decisive."

"A closer vote could have done more harm than good," Fernando said. "It would have meant that the court did not want to be decisive and open the door for confusion and potential misuse of the decision."

Fernando said tribal fishermen had been calling his office all morning. And when contacted several hours after the decision was issued, Fernando said for his own part

"I haven't stopped dancing yet."

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Seattle Times
Monday July 2, 1979

Indians pleased by ruling on Boldt

by PAUL ANDREWS
Times staff reporter

Treaty tribes of Western Washington are "very much pleased" with the Supreme Court's affirmation of the Boldt decision, said Jim Heckman, executive director of the Northwest Indian Fisheries Commission.

"This is, of course, what all our tribes wanted, and we hope it will mean some law enforcement and protection of fish this year," Heckman said. "We also hope it will settle people down some on this whole issue."

Asked if Indians expect Congress to legislate alternatives to the Boldt ruling, Heckman replied: "I guess Congress can write any kind of law it wants. But the way I hear Senator (Warren G.) Magnuson and others, they're saying we need some legislation to try to implement the provisions of the decision, not go around them."

Robert S. Johnson, representing the Small Tribes Organization of Western Washington, called the decision "an historic victory."

"The question that still remains is whether Congress will take away a legal and moral victory for the tribes by enacting tendentious and racist legislation to favor competing use groups," Johnson noted.

He added that Indian tribes should play a strong role in building up and allocating fish runs. "Time has shown that the tribes are better managers of the fisheries than the state of Washington has been."

But Ed Mackie, assistant state attorney general, said the ruling

makes it clear that the onus is on the state to enforce and uphold the Boldt ruling. "If the state does not manage the resource by allocation, then the District Court is ordered to take over management of fisheries. It's obviously our hope that the state will take over proper management," Mackie said.

The Supreme Court, which had turned down a chance to review the Boldt decision, agreed last fall to hear the case. It heard oral arguments on February 28.

The court, which waited till its final day before summer recess to issue its ruling, took so long in its consideration that most observers felt sure it would reject much of the Boldt ruling.

Other reactions from public officials included:

Gordon Sandison, Fisheries Department director, said that although "we halfway expected something like this." It will mean "getting together with a lot of people, 19 tribes and commercial fishermen." He predicted the size of the fishing fleet, which the state has attempted to reduce through boat buy-back programs and licensing limitations, will expand rapidly.

He said the state will ask for "in the neighborhood of \$200 million" to enforce and carry out the decision.

Representative Norm Dicks said Congress' primary emphasis "should be on upgrading and enhancing the fish runs of the state. The Boldt ruling clarifies a lot of things, and clearly what we have to do is make sure we have an adequate supply of fish for all parties involved."

Supreme Court Rules

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Post Intelligencer
July 3, 1979

Indians Win Fishing Case

By Neil Modie

The U.S. Supreme Court upheld nearly all of the Boldt decision on Indian fishing rights yesterday, and in doing so probably sent the long-raging controversy toward Congress.

With modifications that will mean a slightly smaller allocation to Indians, the court affirmed the 1974 decision of U.S. District Court Judge George H. Boldt, giving 50 percent of Western Washington salmon and steelhead fisheries to treaty Indian tribes.

Indian fishing leaders were jubilant; commercial fishermen bitterly disappointed, because they had hoped

More Boldt-related pictures and stories, Pages A-4, 5, 6 and 7.

the Supreme Court would disavow the Boldt decision or slash the percentage of catch it gave Indian tribes.

Rep. Don Bonker, D-Wash., said that "for everyone, except the treaty Indians, this is the worst possible decision."

Senators Henry M. Jackson and Warren G. Magnuson of Washington said that Congress now has the job of "enacting legislation to assure effective and fair management of our state's salmon and steelhead resource."

And Gov. Dtry Lee Kay called for Congress to investigate Indian claims that she believes are an economic threat nationally.

About the only aspect of the decision that seemed to produce no unhappiness was the probability that enforcement of the decision would revert from federal to state authority.

Boldt, now retired, had turned over enforcement of his historic 1974 decision to federal agencies.

Spokesmen for commercial fishermen's organizations yesterday said they would seek congressional action providing economic help for non-Indian fishermen and possibly modifying the 1854 and 1855 treaties that accord special fishing rights to Indians.

Members of the state's congressional delegation said they would push for legislation emphasizing money to "enhance" the salmon and steelhead fisheries rather than trying to reduce the tribes' share.

"There's no way that we can characterize this as a win," conceded Attorney General Slade Gorton, who four months ago had helped present the state's position when the high court heard arguments in the Boldt case.

"But the appeal was certainly well worthwhile," Gorton added, "because both the management and the allocation (of the salmon fishery) are more fair and easier to administer (under the Supreme Court decision) than they were under the Boldt decision."

Gordon Sandison, director of the state Department of Fisheries, concurred.

the decision and idea that the state of Washington will manage the fishery," he said. "It will cause us some problems but will give us a chance to go ahead and start rule-making."

Federal fisheries enforcement officials indicated they would be happy to give the job back to the state. Commented Wayne Lewis, special

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Indians Win In Supreme Court Fish Decision

From Page A-1

agent in charge of law enforcement for the National Marine Fisheries Service in Seattle.

"If the state assumes management, they will also assume the enforcement role. But if they run into widespread violations (of the fisheries regulations) and they don't have enough people and enough equipment, I am sure the federal government, if requested by the state government, will lend its resources."

The Supreme Court, in a 6-3 decision written by Justice John Paul Stevens, made these changes in the Boldt ruling.

• Boldt's "50 percent figure imposes a maximum but not a minimum allocation" for treaty Indians, the court said. Thus, its ruling doesn't guarantee the Indians a minimum catch opportunity, as the Boldt decision did.

• Moreover, said the justices, the 50 percent ceiling "will, upon proper submissions to the District Court, be modified (downward) in response to changing circumstances," such as if a tribe should dwindle to only a few members or no longer rely heavily on its fishery.

• The Indians' 50 percent maximum must include all fish taken on reservation and all those taken for ceremonial and subsistence use — categories Boldt had exempted in determining the Indians' share. (These fish are a relatively small share of the total catch.)

The court said that under the treaties, the tribes must be guaranteed "so much as, but not more than, is necessary to provide the Indians with a livelihood — that is to say, a moderate living."

The justices said that to continue to give a tribe 50 percent of the catch when its need for that allocation has diminished "would be manifestly in-

appropriate because the livelihood of the tribe under those circumstances could not reasonably require an allotment of large numbers of fish."

The Supreme Court's modifications of the Boldt decision were praised by Gorton and criticized, in part, by an attorney for a commercial fishermen's organization.

Scott Stafne, attorney for the Washington Trollers Association, said allowing the District Court in Tacoma to modify the allocation percentages according to changing circumstances "sounds pretty unworkable."

"What it looks like is that the court has told the District Court to stay in this forever," the lawyer said.

"It looks to me like if somebody decides the allocation is inappropriate, they can march back into court . . . It sounds like it'll make the lawyers rich and nobody else."

However, Gorton said the effect of the Supreme Court's limiting of the Boldt decision "does significantly reduce the Indian entitlement, which under Boldt was closer to 60 percent than 50 percent."

Boldt's exclusion of on-reservation, ceremonial and subsistence catches had boosted the Indian entitlement beyond 50 percent, he explained, although "the Indians have never caught their entire entitlement."

Boldt had taken control of management of the Indian entitlement after the state Supreme Court in 1977 ordered the state Fisheries Department not to allocate fish between user groups. The agency thereby was forbidden to act to implement the Boldt decision.

Yesterday's U.S. Supreme Court decision, Gorton commented, "says the state Supreme Court was wrong, that the Department of Fisheries can and must enforce the fishery."

"Having a single state agency able to enforce all aspects of the fisheries law is infinitely better management," Gorton said, than having the enforce-



GILNETTER Tom Galbraith mended his net and saw in the Boldt case ruling the creation of a "two-class society." — P-I Photo by Tom Barlet

ment power in the hands of several federal agencies.

The Supreme Court opinion said it trusted that state officials would carry out the ruling. But if not, the justices warned, "the (U.S.) District

Court has the power to undertake the necessary remedial steps and to enlist the aid of the appropriate federal law enforcement agencies in carrying out those steps."

Phil Sutherland, president of the 700-member Puget Sound Gilnetters Association, the largest non-Indian fishermen's organization, said he didn't expect commercial fishermen to greet the Supreme Court decision with the open defiance that met the Boldt case.

In U.S. District Court in Tacoma, 241 contempt-of-court cases for illegal fishing are pending before Judge Jack Tanner, who replaced Boldt on the fishing case after the latter retired. Those cases had been held in abeyance until after the Supreme Court decision.

Lewis, the National Marine Fisheries Service enforcement officer, said the outcomes of those cases could affect whether acts of defiance continue in the future.

Although yesterday's decision is a milestone in the long-fought Indian fishing litigation, it probably won't be the last the Supreme Court will hear of the case.

Yet to make its way through the federal courts is the so-called "Phase II" of the Boldt case, dealing with Indians having veto power over developments or projects that could threaten fisheries. Boldt withdrew from that phase last April, prior to his retirement.

In writing yesterday's opinion, Justice Stevens was joined by Chief Justice Warren Burger and Justices William Brennan Jr., Byron White, Thurgood Marshall and Harry Blackmun.

In a dissent joined by two other justices, Justice Lewis F. Powell said "nothing in the language of the treaties indicates . . . that the Indians would be guaranteed a percentage of the catch."

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Post Intelligencer
Tuesday July 3, 1979

Fishermen Expected

By Jon Hahn

"The Supreme Court might just as well come in and take the engine out of your boat," said the gray-haired boat owner. "Today they took the heart out of the fishermen."

It didn't come like a bombshell. Yesterday's high court ruling upholding the 1974 Boldt decision on Indian fishing rights hit the Fishermen's Terminal in Ballard like a slow rising tide bringing in crud to foul the gear.

There was the slow realization that the high court hadn't done justice as it was expected on the Ballard docks. "What they've done is create a two-class society," said Tom Galbraith, 51-year old skipper of the Santa Maria. "All non-Indian fishermen now are formally second-class citizens. We

used to make a good living at fishing . . . not much, but good. Hell, if any fisherman here today had the same (fishing) time the Indians are being given, he'd be a millionaire in a year."

Sam Zorich, 66, was the gray-haired boat owner who talked of the government taking the fishermen's hearts out. "We all expected a little better deal, some justice. But what can we do now . . . nothing. Our investments are down the drain.

"If I were younger, I'd have everyone go out and tie a chain around the boats and let the government take 'em."

"When the government has got enough guts to put a man out of business, it should at least offer to buy them out. When they did have a buy

'Better Deal'

back, the only boats they bought were so bad that I wouldn't set foot on any of them. And yet, the government can turn around and pay for boats for some Indians who've let them rot."

Sam's brand new gillnetter, still not completely outfitted, is waiting at the dock. "I'm partners with my brother, Martin, who actually works the boat," he said. "But I don't know if we can afford to take her out on the few days they give us. Two years ago, they give us 2½ days in the fall season. A fall (fishing) net costs \$5,000, maybe \$6,000 alone."

Further down the dock, Dan Severson doesn't even pretend to look busy, but he's short on words — and they're not all nice. "It's a (bleep)'n shame that the Indians can go into the creeks, even, and take what fish they want. I thought the ruling would be different, something fair to everyone, like, when the Indians fish, we fish. Everyone fishes equal."

Behind him, Severson's two gillnetters display "For Sale" signs.

On shore, L. K. Korneliusen mends his stretched gillnets because he doesn't know what else he can do. "I don't know if I can afford to go out, but I put my nets on and wait and see. They tell you when you can fish, but they can change that at the last minute. So, I put my nets on and wait."

The Supreme Court's ruling yesterday "will make several of my Indian fishermen friends millionaires," said gillnetter Ron Anderson. "And the big canneries probably will buy boats and gear for other Indians, while small guys like me get squashed out of business."

"I'm as much 'native American' as they (Indians) are. I was born and raised in Seattle; I served in Vietnam and got wounded there. I've been fishing for 14 years, and it's all I really know, and it's what I'm good at and what I like best. I don't want the government to give me any advantage over the other guy and I don't want to get bought out. I just want to be able

Page A-4, Column 1

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'Better Deal' Expected

From Page A-1

to fish whenever anyone else can fish."

Across a cold cup of coffee, another fisherman reminds Anderson: "Yeah, but no one out there cares about you or me, and we can't do anything about it. Truckers can blockade and farmers can drive their tractors

to Washington, D.C., and get some attention, but who the hell knows we're even here?"

Their boats are there, of course, like se great big calendar art scene. And they might all stay there until the banks that hold the loans come to get them. Or, until the fishermen chart a new course.

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Post Intelligencer
Tuesday July 3, 1979

A6 5 Tues., July 3, 1979 Seattle Post-Intelligencer

Far Less Than Half Of Salmon Went to Indians

In 1977, three years after U.S. District Judge George Boldt ruled that Indians were entitled to 50 percent of the salmon catch, treaty Indians caught 17 percent of the salmon, according to state Fisheries Department statistics.

This compares with a 5.4 percent share of the catch for Indian fishermen in 1974, the first year of the treaty. Indian fishermen have been improving their catch gradually as they build up their fleets.

Non-Indian commercial fishermen took 69 percent of the catch, according to the 1977 statistics, the latest available, and sports fishermen took the remaining 14 percent. The U.S. Supreme Court yesterday largely upheld Boldt's ruling.

The total 1977 salmon catch was more than 8 million fish worth an estimated \$190 million.

Overall commercial salmon fishing and processing that year provided 68,440 jobs in the state.

The 5.7 million salmon caught by non-Indian commercial fishermen were sold to some 150 processors for a total commercial fishing and shoreside employment of 81,000 persons. The cash income to those workers plus

the wholesale value of the salmon was \$82.4 million.

The 620,000 sport fishermen caught just less than an average of two salmon each for the year, or 1.2 million fish. They went on 1.9 million fishing trips.

At \$28 per fishing trip, the recreational salmon fishery was valued by the state at \$52.7 million.

Treaty Indian fishing provided 5,440 fishing and processing jobs, and an income of \$14.4 million to Indians and tribal organizations.

A recent Whatcom County study by the North Sound Sea Grant office shows the small but increasing share taken by treaty Indians since the Boldt decision.

In 1974, treaty Indians were catching about 9 percent of the commercially harvested salmon in Whatcom County, almost entirely by gillnet. By 1977, the Indian gillnetters were catching 17 percent of the salmon, and Indian purse seiners were catching another 7 percent.

The share of non-Indian seiners fell from 63 percent to 38 percent, and non-Indian gillnetters' share fell slightly, from 32 percent to 30 percent.

Of the Whatcom County gillnetters, 150 were treaty Indians and 350 were not; of the seiners, 7 were Indians, 64 were not.

Seattle Times
Monday July 2, 1979

Fishermen upset by high-court decision

by SUSAN GILMORE
and WARREN KING
Times staff reporters

Hours after the Supreme Court's ruling on the Boldt decision was issued this morning, Larry Dontos was making plans to remove the drum from his purse seiner so he could head to Alaska next week.

He had hoped to fish Puget Sound this summer, "but now I'll just go to Alaska and forget it."

Dontos, 32, who has fished since he was 15, was just one in a fleet of seiners and gillnetters at the Fishermen's Terminal in Ballard who expressed shock and anger at the ruling.

The court upheld the controversial 1974 Indian fishing-rights decision of United States District Judge George Boldt, who ruled that the Indians are entitled to half of the harvestable salmon in traditional off-reservation fishing grounds.

Dontos said he had attached the drum to his 58-foot seiner so he could fish at home this summer. The drum, used to wind up fishing nets as they are pulled from the water, is illegal in Alaska.

He had been waiting for the Supreme Court's decision before pulling anchor. Now he said he has no choice but to head for Ketchikan. Many fishermen already have left.

"You know, before Boldt we had one of the best fishing seasons down here," Dontos said as he worked with his crew repairing his nets. "Alaska has good predictions, but I'd hoped to stay and fish here."

Dontos figures the Boldt decision costs him between \$30,000 and \$50,000 in fish each year.

Fishermen say the decision should spur the exodus to the north from Puget Sound of non-Indian boats that have entry permits to fish in Alaska.

Gene Gilbertson, 42, a purse seiner, said he expects the Boldt ruling will have a serious effect on the Alaskan fishery because it will force more Washington fishermen to compete with each other in Alaskan waters.

Like many of the fishermen, he is angry at the high-court ruling. "I think it stinks . . . when the Indians accepted citizenship, they accepted the responsibilities that go along with it, that everyone is created equal," Gilbertson said. "The Indians were made citizens. And I don't think we should have treaties with citizens of our own country."

Gilbertson said he doesn't think the fishermen will accept the ruling without a fight.

"I don't think it's gonna work," he said. "The guys won't just sit by. There's going to be more illegal fishing going on. I think the protests will continue . . . until we

get something through Congress on it."

More than 300 cases involving illegal fishing are pending before United States District Judge Jack Tanner, who replaced Judge Boldt on the fishing case after he retired. Those cases had been deferred while the Supreme Court reviewed the Boldt decision.

"I'd sure hate to be the first one to go before Judge Tanner," said Tony Vitalich, 64, a purse seiner who has been fishing since 1931. "He'll crucify us."

He said he expected a decision in which the state would regulate the fish.

"I didn't expect them to uphold Boldt," he added, "but that's the supreme law — we can't go any higher unless Congress acts."

Vitalich said he just spent \$25,000 getting his boat ready for this season "and I'm not about to hang her up. I'm getting old so I can retire pretty soon . . . and if things get bad the state is going to

have to buy me out or put me in the poorhouse."

Phil Sutherland, president of the Puget Sound Gillnetters Association, called the ruling "a decision that isn't a decision. It more or less remands the basic issues right back to the lower court," he said. "How long can this crazy game go on?"

Said Louis Bozanich, 50, a gillnetter who has fished for 35 years: "The fishing decision is only a drop in the bucket (with regard to Indian rights) . . . They want half the State of Maine. They sold their land and now they want it back for nothing. I think all men are created equal."

The gillnetting season for sockeye opens July 15. Charles Yeats, Seattle lawyer for the association, said, "It's too early to answer the question of what impact this will have on the gillnetting season, but it doesn't look good."

"We may all line up on the Aurora Bridge."

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Seattle Times
Monday July 2, 1979

Judge Boldt calls high-court ruling on fishing rights 'victory for justice'

by PAUL ANDREWS

Times staff reporter

Judge George H. Boldt, in "good spirits" despite recent health problems, said today the United States Supreme Court's affirmation of his fishing-rights ruling "is a victory for justice."

Speaking in a telephone interview from his Tacoma home, the jurist said he "was not surprised by the ruling. I knew the court had some modest reservations about it (his 1974 ruling), but in the whole main structure of Indian rights, I felt the court would see that it was the correct ruling."

The 8-to-3 majority in the ruling "was about as good as you could expect" from a Supreme Court which has had few unanimous decisions, Judge Boldt noted. "I'm just very happy to know that those things most important in the case are now vindicated."

Asked if he thought the Supreme Court ruling would quiet the fishing-rights controversy, Judge Boldt laughed and said: "I'm not going to say anything about that."

The judge, who has said before he was "shocked and amazed" at the acrimony his ruling caused, added: "There's just no way to predict what will be controversial."

In its 37-page opinion, the Supreme Court

essentially endorsed the 50-50 allocation of harvestable fish — the most notorious element of Judge Boldt's ruling. The Supreme Court also reinforced the district court's broad powers to adjudicate and enforce the Boldt decision, which Judge Boldt had invoked on several occasions when state courts and fisheries officials had balked at carrying out his ruling.

While nuances of the carefully worded decision will take time to ferret out, it appeared that the major exception taken to Boldt's ruling was that he should have included on-reservation fishing in his allocation formula.

Judge Boldt's ruling had given treaty Indian tribes the opportunity to catch half the harvestable salmon and steelhead returning to traditional off-reservation Indian fishing grounds. His decision did not apply to on-reservation waters, where Indians could catch as many fish as they wanted and not have that amount included in their share.

Judge Boldt said today that the on-reservation fishery "does not amount to very many fish" and will not "affect very much" the formula his decision established.

For the mild-mannered, grandfatherly, but stubborn judge, the Supreme Court ruling marked perhaps the last and most significant victory in a long and illustrious career. During 20-plus years on the bench, he gained a reputa-

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tion for fairness and brilliance which brought him the respect of jurists throughout the country.

In 1938, he sentenced former Teamsters President Dave Beck to five years in prison for income-tax evasion. Two years later, as a visiting judge in Los Angeles, he sentenced an underworld boxing boss, Frankie Carbo, to 25 years in jail for extortion.

By the early 1960s, his reputation was such that Chief Justice Earl Warren named him to a panel of federal judges in charge of handling hundreds of price-fixing cases against major electrical companies. In 1970, Judge Boldt handled the notorious Seattle Seven conspiracy trial.

A year later, he was named by President Richard Nixon to head a special Pay Board charged with enforcing anti-inflationary wage guidelines.

But the fishing-rights decision in 1974 which came to bear his name was his most controversial and, he later admitted, most taxing. When he retired from the bench two months ago, many observers speculated it was because he could see "handwriting on the wall" that his ruling would be overturned by the Supreme Court.

As it turned out, Judge Boldt had the last laugh.

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---SEIZURE CANADIAN TRAWLER

CDN TRAWLER QUOTE PAT T2 UNQUOTE OUT OF VICTORIA WAS SEIZED BY
US COAST GUARD MAY21 TEN MILES NW OF CAPE FLATTERY FOR FISHING
USA WATERS.TWO HUNDRED SALMON WERE FOUND ON BOARD AND OTHERS ON
LINES.TWO CDNS ON BOARD WERE HAODLEY DONALD MARCUS CAPTAIN AND
RICH REBITT CREWMAN WHO WILL FACE ARRAIGNMENT IN FEDERAL MAGISTRATE
COURT PORT ANGELES.COAST GUARD WAS IN COMMUNICATION WITH STATE DEPT
PRIOR TO SEIZURE.

2.TRAWLER CURRENTLY PROCEEDING PORT ANGELES WITH COAST GUARD CREW
AND WILL ARRIVE APPROX NOON MAY22.

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25-5-7-2-Salmon

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

TO
À

USSEA - FLO

Ottawa

NO.

DATE 15/05/79

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WITHOUT ATTACHMENT(S) / SANS ANNEXE(S)
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| QUANTITY QUANTITÉ | DESCRIPTION - DESCRIPTION | REFERENCE - RÉFÉRENCE | | | | | | | | | | | | | | | |
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| 1 | <p>Original Russian and Embassy translation of letter from the Soviet Minister of Fisheries to the Canadian Minister of Fisheries, R. LeBlanc, dated May 7, 1979 and concerning North Pacific salmon.</p> <p><i>CC: (English copy only) Pethick - D#0 G.E.A. 22/5/79</i></p> | <table border="1"> <tr> <td>DATE</td> <td>May 18, 1979</td> <td></td> </tr> <tr> <td>ACC</td> <td>26473</td> <td>REF</td> </tr> <tr> <td>FILE</td> <td>25-5-7-2-Salmon</td> <td>DOSSIER</td> </tr> <tr> <td>BY HAND</td> <td></td> <td>PAR PORTEUR</td> </tr> <tr> <td>ATTN:</td> <td>FLO / Rouleau</td> <td></td> </tr> </table> <p><i>file away, etc 22/5/79</i></p> | DATE | May 18, 1979 | | ACC | 26473 | REF | FILE | 25-5-7-2-Salmon | DOSSIER | BY HAND | | PAR PORTEUR | ATTN: | FLO / Rouleau | |
| DATE | May 18, 1979 | | | | | | | | | | | | | | | | |
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| BY HAND | | PAR PORTEUR | | | | | | | | | | | | | | | |
| ATTN: | FLO / Rouleau | | | | | | | | | | | | | | | | |

RECEIPT ACKNOWLEDGED / ACCUSER RÉCEPTION

RETURN TO / RETOURNER À

Canadian Embassy

MOSCOW

12/5/79
DATE

SIGNATURE

Moscow, May 7, 1979

Dear Mr. Minister,

I want to confirm our agreement concerning the meetings in Moscow of the Ministers responsible for the fishing problems of Canada, Japan, the USA and the USSR, to discuss issues pertaining to the increase of productivity of salmon in the northern part of the Pacific and the rational utilization of resources of this valuable fish, which is of interest to all four states.

As you know, for various reasons we failed to hold the conference in 1978, but I hope that with your consent, we will hold it during the third quarter of 1979.

Taking into consideration your suggestions concerning the necessity of the preparation of the agenda of such meetings and also the preliminary discussions on the project's content of corresponding documents which can be proposed for consideration and agreement by the Ministers, I would like to ask you to send to Moscow the representatives responsible for seven days beginning August 15, 1979 or any other convenient time. The agenda for the representatives is enclosed.

I would like to suggest for the forthcoming discussions at the Ministerial level the following agenda:

1. The mutual exchange of information concerning the condition and perspectives of the development of the salmon industry.
2. The forms and content of scientific and technical cooperation on research and the increase of productivity of the Pacific salmon.
3. The holding of the second conference for scientists of the four countries on the biology of the Pacific salmon.

.../2

4. The mutual responsibility and concern of the four countries in respect to the reproduction and the rational utilization of resources of the Pacific salmon.
5. Other questions.

The probable content of each point of the draft agenda could be the following:

On Item 1:

The main purpose of the Ministers' Conference is to coordinate efforts aimed at the increase of salmon in the Pacific, thus increasing the quantity of fishing; to start an exchange of information on new research and to regulate the fishery.

Perhaps it would be desirable if each side prepared and submitted a short document, describing the present state and perspectives for the next five to ten years of the salmon fishery.

On Item 2:

Discussion of the possible content of an Intergovernmental (or other) four-sided agreement on scientific and technical cooperation, including the exchange of information on research and fishing activities, the exchange of specialists, the planning and the carrying out of mutual large-scale projects for studying the salmon, and the increase of their stocks' productivity.

On Item 3:

Appreciating the results of the first Conference of scientists from the four countries on the biology of salmon (October 1978), to confirm the desirability of such meetings (of scientists and specialists) periodically (every two years) and to accept Alaska University's proposal to have the

.../3

second conference in the USA in the second half of 1980. To determine the main subject of the Conference, the number of members, whether various voyages in the country are possible, and other issues. To exchange opinions concerning the place and time of the third conference on the biology of salmon.

On Item 4:

To exchange opinions on the possibility of preparing a joint statement (or Governmental Declaration) stipulating that the sides consider themselves mutually responsible for the reproduction of salmon in the Pacific and are interested in fishing salmon in reasonable quantities; the document would point out that the sides agree to act in accordance with each other in order to preserve most effectively the salmon in the Pacific.

On Item 5:

To discuss possible opinions on the problem of diadromous fish (and other issues) at the forthcoming session of the UN Conference on the Law of the Sea. To discuss the suggestion by Canada and the USA to found an International Council on the North Pacific (this issue was discussed by experts in Seattle on January 15, 1979); if the idea is accepted in general, we do not think this Council should be in charge of salmon.

To discuss and agree on the content of the final document (communique or other document) of the four Ministers' Conference. I am sure you realize that everything stated above is only a very preliminary draft of the agenda of the forthcoming conference of Ministers. I hope our suggestions will help the Canadian representatives in their preparation for their work in Moscow. Naturally, we would immediately consider all your recommendations.

Mr. Minister, I have already sent the written invitations for the experts of the USA and Japan to the conference to their respective Ministers of Fisheries.

Sincerely yours,
Vladimir M. Kamentsev

000284

A G E N D A

for the meetings of specialists

of Canada, Japan, USA and USSR

1. Preparation, discussion and coordination of the agenda of the Conference of Ministers of Fishery of Canada, Japan, the USA and the USSR on the problems of Pacific salmon.

The agenda is to include the following items:

- ways and forms of preservation and the increase of resources of the Pacific salmon;
 - the cooperation of the four states in carrying out large-scale projects on the research of salmon and the increase of productivity of their stocks;
 - the mutual responsibility and mutual concern of the four states in respect of reproduction and the rational utilization of resources of the Pacific salmon;
 - the definitive coordination and signing of a final document of the Conference of Ministers.
2. Elaboration and coordination of the program for the Conference of Ministers.
 3. Preparation of a final document for the Conference of Ministers.

г, Москва, " 7 " мая 1979 года

Уважаемый господин Министр,

Подтверждаю нашу договоренность о желательности встречи в Москве Министров, ведающих проблемами рыбного хозяйства Канады, Японии, США и СССР, для обсуждения проблем, связанных с повышением продуктивности лососевых северной части Тихого океана и рациональным использованием ресурсов этих ценных рыб, в чем весьма заинтересованы все четыре страны.

Как Вам известно, по разным причинам нам не удалось провести это совещание в 1978 году, но я надеюсь, в случае Вашего согласия, провести его в III квартале 1979 года.

Учитывая Ваше пожелание о необходимости подготовки повестки дня такой встречи, а также предварительного обсуждения содержания проектов соответствующих документов, которые могут быть предложены для рассмотрения и согласования Министрами, я желал бы просить Вас направить в Москву с 15 августа 1979 года /или в иное удобное время/ сроком до 7 дней Ваших ответственных представителей /повестка дня работы представителей прилагается/.

Нахожу возможным предложить для предстоящего обсуждения на уровне Министров нижеследующую повестку дня:

1. Взаимный обмен информацией о состоянии и перспективах развития лососевого хозяйства.
2. Формы и содержание научно-технического сотрудничества по изучению и повышению продуктивности тихоокеанских лососевых.
3. О проведении второго совещания ученых четырех стран по биологии тихоокеанских лососевых.
4. О взаимной ответственности и заинтересованности четырех стран в отношении воспроизводства и рационального использования ресурсов тихоокеанских лососевых.
5. Прочие вопросы.

Вероятное содержание каждого из разделов проекта повестки дня могло бы быть следующим:

по пункту 1

Основная цель встречи министров - совместными усилиями спо-

Достопочтенному Р.Леблану
Министру рыболовства Канады

способствовать повышению численности тихоокеанских лососевых, а тем самым и увеличению их вылова, за счет согласованных действий и взаимного обмена информацией о проводимых исследованиях и упорядочению промысла.

Возможно было бы целесообразным договориться о том, что каждая сторона подготовит и представит краткий документ, характеризующий состояние и перспективы /на ближайшие 5-10 лет/ развития лососевого хозяйства.

По пункту 2

Согласование рекомендации по содержанию возможного Межправительственного /или иного/ Соглашения четырех стран по научно-техническому сотрудничеству, включающему в себя обмен информацией о проведенных исследованиях и промысловой деятельности, осуществление обмена специалистами, планирование и проведение совместных и координированных исследований на ближайший год и на перспективу и т.д. Столь же целесообразно обменяться мнениями о возможности осуществления совместных крупномасштабных проектов по изучению лососевых и повышению продуктивности их стад.

По пункту 3

Положительно оценивая результаты первого совещания ученых четырех стран по биологии тихоокеанских лососевых /октябрь 1978г/, подтвердить желательность периодических /каждые 2 года/ такого рода встреч ученых и специалистов и согласиться с предложением Университета на Аляске провести второе совещание во второй половине 1980 года в США. Определить: тематическую направленность совещания, число участников, возможность ознакомительной поездки и организационные вопросы. Выслушать мнения о времени и месте третьего совещания по биологии лососевых.

По пункту 4

Обменяться мнениями о целесообразности выступления с совместной правительственной декларацией /заявлением/, объявляющей о том, что четыре страны рассматривают себя взаимно ответственными за воспроизводство тихоокеанских лососевых и взаимно заинтересованными в рациональной их эксплуатации, заявив о согласии предпринимать координированные усилия в этих целях, полагая,

что такая совместная акция обеспечила бы наиболее эффективное сохранение и эксплуатацию тихоокеанских лососевых.

По пункту 5

Заслушать мнения о возможных позициях сторон по проблеме проходных рыб /и по другим вопросам/ на предстоящей сессии Конференции ООН по морскому праву.

Обсудить предложение Канады и США о создании Международного Совета по северной части Тихого океана /этот вопрос обсуждался экспертами четырех стран в Сиэтле 15 января 1979 года/, при чем, при положительном отношении к идее создания такого Совета, проблемы лососевых не следовало бы включать в его задачи.

Осуществить согласование содержания заключительного документа встречи Министров четырех стран /Коммюнике или другой документ/.

Уверен, что Вы прекрасно понимаете, что все изложенное выше является только весьма предварительными соображениями по повестке дня предстоящей встречи Министров и ее содержания.

Надеюсь, что эти соображения могут облегчить подготовку представителей Канады к их работе в Москве и совершенно естественно, что мы с готовностью рассмотрим все Ваши пожелания и рекомендации.

Господин Министр, письма с приглашением провести встречу экспертов я направил Министрам, ведающим вопросами рыболовства США и Японии.

С совершенным уважением,



Владимир М. Каменцев

Проект

ПОВЕСТКА ДНЯ

встречи экспертов Канады, Японии, США и СССР

1. Подготовка, обсуждение и согласование Повестки дня Совещания Министров Канады, Японии, США и СССР, ведающих вопросами рыболовства по проблемам тихоокеанских лососей.

Имеется в виду, что Повестка дня будет включать в себя следующие основные вопросы:

- пути и формы сохранения и увеличения запасов тихоокеанских лососей;

- о сотрудничестве четырех стран в осуществлении крупномасштабных проектов по изучению лососей и повышению продуктивности их стад;

- о взаимной ответственности и взаимной заинтересованности четырех стран в отношении воспроизводства и рационального использования ресурсов лососей;

- окончательное согласование и подписание заключительного документа совещания Министров.

2. Разработка и согласование программы совещания Министров.

3. Подготовка заключительного документа совещания Министров.

FLO/E.FELDMAN/6-5407/ct

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| BY HAND | | | | PAR PORTEUR |
| ATTN: | 25-5-72-Salmon | | | |

Note FLO-1618

The Department of External Affairs presents its compliments to the Embassy of the United States and has the honour to refer to a proposal from the Commissioner, Department of Fish and Game, State of Alaska, to the Director-General, Pacific Region, Department of Fisheries and Oceans, Government of Canada, concerning a proposed cooperative pink salmon tagging and research project in waters off ... Southeast Alaska and Northern British Columbia. Copies of the letters between officials on this subject are attached.

The Department of External Affairs takes this opportunity to draw to the attention of the United States authorities its concern about the procedure followed in making this request with respect to research in Canadian waters. Such requests should be forwarded via a diplomatic Note to the Department of External Affairs in Ottawa. The Canadian authorities would appreciate the Embassy drawing this procedure to the attention of the appropriate State Governments.

The Department of External Affairs wishes to assure the Embassy that the Canadian authorities fully support the principle of cooperative research on salmon migration, particularly in the Northern British Columbia-Southeastern Alaska area and look forward to the development of jointly planned cooperative work in

.../2

- 2 -

the future. While it is not possible to participate in this proposed project, the Canadian authorities propose that the subject of an early start on such work be discussed at the next meeting of officials on salmon interception problems.

The Department of External Affairs avails itself of this opportunity to renew to the Embassy of the United States the assurances of its highest consideration.

B.M. MAWHINNEY

OTTAWA, May 14, 1979.

Dispute Settlement
Trade Access + Coordinated Regs
Industrial Disputes

clear up Annexes
file

CANADA-US SALMON AGREEMENT

CANADIAN DRAFT (11/5/79)

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| DATE | 28051 |
| FILE | 25-5-7-2-salmon-1 |
| BY HAND | PAR PORTEUR |

25-5-7-2
Salmon 1

PREAMBLE

The Government of the U.S.A. and the Government of Canada,

1. Considering the overriding interests of both Parties in the conservation and rational management of Pacific salmon stocks, and in promoting the objective of optimum utilization of such stocks;
2. Recognizing that Pacific salmon originating in the rivers of each Party are intercepted in substantial numbers by the nationals and vessels of the other Party, and that the management of stocks subject to such interceptions is a matter of common concern;
3. Recognizing that States in whose rivers salmon stocks originate have the primary interest in and responsibility for such stocks;
4. Convinced that it is in the interest of both Parties to realize the potential of salmon produced in their respective rivers;
5. Considering that coordinated research and the exchange of scientific information are required in order to improve the basis for the management and enhancement of stocks of common concern for the benefit of each Party;
6. Desiring to cooperate in the management of their Pacific salmon resources for the purpose of achieving the optimum utilization of those resources;

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7. Desiring to provide to each Party benefits of production of salmon originating in their respective rivers;

Have agreed as follows:

ARTICLE I

COOPERATION AND CONSULTATION IN MANAGEMENT - old art v

The parties agree to consult annually and cooperate with respect to the management of salmon stocks which are subject to capture in intercepting fisheries and such consultation and cooperation shall be facilitated through the following procedure:

(a) Each Party shall, with respect to any stock or complex of stocks originating in its rivers which is subject to capture in a fishery listed in Annex I, submit annually to the appropriate Panel as established under Article 1 and the other Party preliminary determinations of the following matters for the subsequent year:

- (i) the estimated size of the run;
- (ii) the escapement required, taking into account the objective of optimum utilization, the estimated size of the run and the interrelationships between stocks;
- (iii) the total allowable catch;
- (iv) any other matter whose determination may be necessary in order to develop regulations for that fishery; and

.../3..

- (v) the intentions of the state of origin with respect to the regulation of fisheries in its own waters on that stock or complex of stocks.

These preliminary determinations shall be submitted before January 31 of each year, or by such other date as may be agreed upon by the Parties.

- (b) No later than 30 days following receipt of such preliminary determinations, each Party shall submit to the appropriate Panel proposed regulations for the subsequent year with respect to fisheries listed in Annex I which are conducted in its waters and for which preliminary determination on stocks or complexes of stocks contributing to that fishery have been submitted pursuant to paragraph (a), taking into account the provisions of this Agreement and the effect of such regulations on other stocks affected by the fishery.
- (c) The Panel shall examine the preliminary determinations and proposed regulations and report its findings to the Commission within 15 days.
- (d) The Commission shall review these findings and report its views to both Parties within 15 days.
- (e) The Parties shall take account of the views of the Commission as to the matters referred to earlier in this Article.

- (f) Each Party shall promptly notify the Commission and the other Party of the final determinations and regulations and shall enforce such regulations within its waters. Such final determinations and regulations may be modified by the appropriate Party during the fishing season where modifications are necessary in the light of variations from anticipated conditions, in which case such modifications shall be transmitted immediately to the other Party and to the Commission.

ARTICLE II

LIMIT INTERCEPTIONS - Art III

1. Subject to the provisions of Article III the Parties agree to avoid increases in interception and the initiation of new intercepting fisheries, taking into account the desirability of avoiding undue dislocation in traditional fishing patterns, and the allocation objectives of each Party. Art I
2. For those fisheries listed in Group A of Annex I the Parties agree that interceptions shall be limited as that Annex may provide.
3. In order to determine the most appropriate treatment for those fisheries listed in Group B of Annex I it is recognized that the acquisition of further data as to the nature and extent of any interceptions in these fisheries may assist the Parties.
4. The Commission established pursuant to Article I shall study the fisheries listed in Group B of Annex I and shall, not later than six years after the entry into force of this Agreement

and annually thereafter recommend to the Parties, with respect to each such fishery, either:

- (a) That it be transferred to Group A and made subject to a specific scheme of interception limitation to be recommended by the Commission for incorporation into the Annex;
- (b) that it be deleted from the Annex; or
- (c) that it be the subject of further research and consideration within a time frame to be specified by the Commission.

5. Recommendations referred to in paragraph 4 shall be considered by the Parties who shall inform the Commission of their acceptance, including any agreed modifications, or rejection thereof, within 180 days of its transmittal by the Commission. Where any such recommendation is accepted, with or without agreed modifications, Annex I shall be amended in accordance with Article XVI.

6. The Commission shall review the provisions of Annex I respecting Group A stocks annually and shall, where appropriate, make recommendations to the Parties for the amendment of interception limitation schemes set out in Annex I in order to improve the effectiveness of those schemes and to fulfill the principles set out in this Agreement. The Commission shall also provide to the Parties a general assessment of the effectiveness of the provisions of Annex I respecting Group A fisheries after the fourth year of operation of this Agreement.

7. The Commission shall review the implementation of the interception limitation program each year, and shall report to the

Parties on any case where a limitation binding on the Parties has been exceeded or on any other factor which should be taken into account in formulating management policies or regulations for the purposes of this Agreement. The Parties shall furnish to the Commission such information as it may require for the purposes of this Article.

ARTICLE III
COORDINATION OF SALMON DEVELOPMENT

Art III

1. The Parties shall coordinate their respective programs for the development of their Pacific salmon resources to be achieved as follows:

(a) The Parties shall notify the Commission as far in advance as possible of plans for development of their salmon resources which may lead to the initiation of, or have an impact upon, an intercepting fishery.

(b) The Commission shall promptly review the plans and shall conduct an annual review of all such plans. The Commission shall advise the Parties of expected impacts.

2. The Commission shall recommend to the Parties such adjustments in regulations, modifications to development plans of either Party, changes to the interception limitations set out in Annex I, including compensatory adjustments in interception limits, or other measures to ensure that each country receives benefits

.../7..

commensurate with its own salmon production, and to insure that the other principles and objectives of this Agreement are fulfilled.

3. The Parties shall review such recommendation and at the request of either Party shall consult, taking into account the obligations undertaken in Article I. The Parties shall inform the Commission of their acceptance, including any agreed modifications, or their rejection of the recommendation, within 180 days of its transmittal by the Commission. If the recommendation is accepted by the Parties it shall be binding upon them. When the Parties accept a recommendation which proposes changes to the interception limitation schemes in Annex I, with or without agreed modifications, the Annex shall be amended in accordance with Article XVI.

4. Where a Party rejects such recommendation, or the Commission is unable to agree on a proposed recommendation (dispute settlement procedure).

ARTICLE IV

The Parties agree to have in place within five years after the entry into force of this Agreement an agreed system for comparing the catches of the various fisheries and salmon species within the scope of this Agreement. To this end, the Parties shall within one year after entry into force of this Agreement establish terms of reference for a joint study to be conducted in this respect.

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ARTICLE V
RESEARCH

1. The Parties shall conduct coordinated research and shall exchange scientific information in order to broaden the scientific basis for salmon management, in particular with respect to the migratory patterns and productivity of stocks of common concern and with respect to the extent of interceptions by the fishermen of each country. The Parties shall make available to the Commission all relevant scientific data and other information in their possession.

2. The Commission shall coordinate the collection of statistics pertaining to Pacific salmon management and may make proposals to the Parties for coordinated research programs.

3. Subject to normal permit requirements, the Parties agree to allow vessels conducting research with respect to Pacific salmon to have access to their marine waters for the purpose of carrying out such research.

4. (Each Party shall, in consultation with the other Party, and as appropriate in cooperation with the other Party, finance research related to the operations of the Commission.)

5. Possible provision for conduct of research by the Commission.

ARTICLE VI

The Parties agree to establish and maintain a Pacific Salmon Commission (hereinafter referred to as "the Commission").

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1. The Commission shall consist of up to ____ Commissioners, of whom up to ____ shall be appointed by each Party to serve as the national section of that Party. Each Party may, in its discretion, appoint up to ____ alternate Commissioners to serve in the absence of any Commissioner appointed by that Party.

2. Each Commissioner and alternate Commissioner shall serve at the pleasure of the Party which appointed that person. Each Party shall fill vacancies in its national section, and may fill vacancies in its slate of alternate Commissioners, as they occur.

3. The Commission shall select a Chairman and a Vice-Chairman annually from among the Commissioners to serve for terms of 12 months, except that the first Chairman and Vice-Chairman shall serve for the calendar year in which the Convention enters into force and for a portion of the subsequent calendar year to be determined by the Commission. The Chairmanship and Vice-Chairmanship shall alternate between the two national sections, with the national section from which the first Chairman is selected to be determined by lot; and the Vice-Chairman shall be a Commissioner of the other national section. If the position of Chairman or Vice-Chairman becomes vacant before the end of a term, the Commission shall select a replacement from the national section of which the previous Chairman or Vice-Chairman was member for the remainder of the term.

4. Decisions and recommendations of the Commission shall be adopted by affirmative votes of both national sections. Each national section shall have one vote in the Commission, which shall be cast by the Commissioner of that national section designated for the purpose of voting by the appointing Party.

5. Subject to the approval of the Parties, the Commission may decide upon and amend, as occasion may require, by-laws or rules for the conduct of its meetings and the exercise of its function as well as for the conduct of the meetings of the Panels referred to in Article ~~IV~~ and the exercise of their functions.

6. Unless otherwise agreed between the Parties, the seat of the Commission shall be at

7. Meetings of the Commission shall be called by the Chairman or at the request of either national section. The Chairman shall notify all the Commissioners of such meetings which may be held at the seat of the Commission or at such other place as may be determined in accordance with the by-laws or rules of the Commission.

8. Each Party shall pay the expenses of its own national section.

9. All expenses of the Commission, other than those referred to in paragraph 8, shall be borne in equal shares by the Parties, unless otherwise agreed between them. An annual budget of joint expenses shall be prepared by the Commission and submitted to the Parties for approval. After the budget has been approved, the contributions owing by each Party shall be paid as promptly as possible.

10. The Commission shall authorize the disbursement of funds contributed by the Parties pursuant to paragraph 9 for its joint expenses, and may enter into contracts and acquire property necessary for the performance of its functions.

11. The Commission shall submit to the Parties an annual report of its activities and an annual financial statement.

12. The Commission shall have an Executive Secretary who shall be appointed and dismissed with the concurrence of the Parties and who shall be charged under supervision by the Commission with the general administration of the Commission.

13. The Commission may engage staff, whose composition and terms and conditions of employment shall be included in the annual budget submitted to the Parties pursuant to paragraph 9 of this Article. The Executive Secretary shall have full authority over the staff, subject to any general directives established by the Commission.

14. The Commission shall establish procedures whereby the views of advisory committees which may be established by the Parties, can be brought to its attention.

15. The following Panels of the Commission shall be established and maintained:

- (a) a Northern Panel for salmon originating in rivers with mouths situated north of (Cape Caution);
- (b) a Southern Panel for salmon originating in rivers with mouths situated south of (Cape Caution) other than those stocks for which the Fraser River Panel is responsible;
- (c) a Fraser River Panel, responsible for pink salmon and sockeye salmon originating in the Fraser River and its tributaries;
- (d) a Transboundary River Panel for salmon originating in rivers referred to in Article X. 5

16. The Panels shall provide information and make recommendations to the Commission with respect to the functions of the Commission and carry out such other functions as may be specified in this Agreement.

17. In cases where fisheries intercept stocks for which more than one Panel is responsible, the appropriate Panel~~s~~ shall meet jointly to carry out the functions specified in paragraph 16. If the Panels cannot agree, each may make an independent report to the Commission.

18. Each Panel shall consist of up to ____ members from each country, of whom at least ____ shall be a Commissioner or alternate Commissioner.

19. Except as otherwise provided in this Agreement, paragraphs 2, 3, 4, 7, and 8 apply, mutatis mutandis, to the proceedings of each Panel.

ARTICLE VII Part. X
COORDINATION OF TROLL SALMON REGULATIONS - Transboundary Rivers

1. This Article applies to salmon originating in rivers which rise in Canada and flow to the sea through the United States, hereinafter referred to as "transboundary rivers".

2. The provisions of Articles I shall apply with respect to the formulation of annual management policies and regulations for stocks originating in the Canadian portion of transboundary rivers.

3. If Canada initiates or expands a fishery in its own portion of a transboundary river or waters adjacent thereto, in order to harvest either existing salmon production from the Canadian portion of the river or salmon production generated by future develop-

ment projects undertaken by Canada, the United States shall adjust its fisheries to the extent necessary to allow Canada to harvest such production without affecting escapement levels set pursuant to this Agreement.

4. If the United States develops or enhances a stock originating in its portion of a transboundary river, and the harvesting of the increased production results in increased interceptions of salmon originating in the Canadian portion of the river, the Parties shall consult through the Commission in order to reach agreement based on the following provisions:

- (a) Canada shall be offered compensatory entitlements equivalent to the increased interceptions; and
- (b) if Canada decides to increase the production of the intercepted stock, it shall be granted access to United States waters to harvest an amount equivalent to that increased production.

The consultations shall take place in accordance with the procedures set out in Article III with respect to coordination in salmon development, and if an agreement is not reached within one year of the commencement of a project, the matter shall be referred to (dispute settlement procedure) to determine the amount of the compensatory entitlement to be awarded to Canada and the terms and conditions of any access to be granted to Canada in order to harvest that entitlement.

5. Any entitlements and access conditions established pursuant to paragraph 4 shall be listed in Annex 2.

ARTICLE IX

1. This Article applies to pink salmon and sockeye salmon originating within the Fraser River and its tributaries.
2. In the first year after entry into force of this Agreement the Fraser River Panel shall operate in accordance with the practices established by the International Pacific Salmon Fisheries Commission under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries in the Fraser River System, as amended, with respect to the conduct of such activities as will permit the Panel to make the preliminary and final determinations referred to in Article ~~V~~^I for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 4 of this Article.
3. In the second year after the entry into force of this Agreement, Canada will assume responsibility for all upriver work, such as the improvement of spawning grounds, the construction and maintenance of hatcheries, rearing ponds and fish passage facilities, the collection of escapement and outmigration data outside the area referred to in Annex II, and similar work in the Fraser River. Canada will work jointly with the Fraser River Panel to permit the Panel to make the determinations referred to in Article ~~V~~^I for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 4 of this Article.
4. In the third year after the entry into force of this Agreement and thereafter, Canada shall permit to the Fraser River Panel preliminary determinations referred to in paragraph (a) of Article ~~V~~^I for the management of the stocks governed by this Article, taking into account:

- (a) the objective of optimum production, having regard to the interests of both Parties;
- (b) the need to set escapement goals in such a way as to permit the United States to achieve the entitlements set out in Annex I;
- (c) the need to avoid disruptive changes in patterns of exploitation; and
- (d) the best scientific evidence available.

5. The Fraser River Panel shall examine the preliminary determinations submitted under paragraph 4 and report its view to both Parties (within 30 days). Canada shall take these views into account before the determinations are made final and shall notify the Fraser River Panel of its final determinations not later than (30) days after the Panel has reported its views.

6. The United States may refer to the Commission any final determination by Canada made under paragraph 5 which the United States considers inconsistent with the provisions of this Agreement. The Commission shall within (30) days report its views and any recommendations to the Parties. If modifications are indicated, Canada shall within (10) days notify the Commission of its response. If the United States objects to the response, it may refer the matter to the Parties (who shall decide the matter) (possibility of dispute settlement under general provisions of Agreement).

7. The Fraser River Panel shall propose measures for the harvest of the stocks governed by this Article within the area referred to in Annex II which take account of the following objectives:

- (a) the entitlements of the United States provided for in Annex I;
- (b) the determinations referred to in paragraphs 4 through 6 of this Article;
- (c) the domestic allocation objectives of the Parties; and
- (d) the management objectives of the Parties with respect to salmon other than Fraser River sockeye and pink salmon.

8. In carrying out the provisions of paragraph 7, the Fraser River Panel is empowered to:

- (a) propose annual regulations and adopt emergency orders to control sockeye and pink salmon fishing seasons, times, and areas, including the provision for fishing by each type of gear authorized by the Parties to participate in the fishery;
- (b) recommend minimum mesh sizes and times and areas for chinook salmon fishing in the area described in Annex II, upon a finding that such regulations are necessary in order to accomplish the objectives set out in paragraph 7;
- (c) consult and exchange information with the Parties in order to insure that its regulations take account of the management objectives of the Parties with respect to salmon other than Fraser River sockeye and pink salmon. In this respect, the Fraser River Panel:

- 17 -

- (i) may take account of incidental catches of the stocks governed by this Article during the harvest of chinook salmon within the area referred to in Annex II;
 - (ii) shall postpone assumption of or relinquish control by area at a time when the management objectives for stocks other than Fraser River sockeye and pink salmon are deemed to take precedence, in accordance with by-laws made under paragraph 5 of Article III.*
- (d) conduct such studies as are necessary to achieve the objectives of paragraph 7, including:
- (i) monitoring of the runs of the stocks governed by this Article, ~~including~~ the collection of catch statistics, test fishing, sampling, and racial analyses in the area described in Annex II, and beyond that area with the consent of the Party in whose waters or territory the activity is to be carried out; and
 - (ii) securing from Canada, for areas outside the area described in Annex II, escapement, out-migration, and other required data.

9. In order to facilitate the work of the Fraser River Panel Canada shall submit to that Panel an annual report of its management plans and activities respecting the stocks governed by this Article.

* Can acceptance dependent upon development of a satisfactory by-law.
Canada would authorize monitoring at Hells Gate by an exchange of understandings at the time of ratification.

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10. The Commission shall, at the request of the Fraser River Panel or of either Party, consider and provide advice upon any question which may arise respecting the coordination of the activities of the Fraser River Panel with those of the other Panels or of either Party with respect to stocks not governed by this Article.

11. Annual regulations proposed by the Fraser River Panel shall be submitted in a timely manner to the Parties for approval and shall be effective upon approval by the Party in whose waters such regulations are applicable.

12. During the fishing season, the Fraser River Panel may make emergency orders for the adjustment of fishing times and areas provided by the annual regulations, and other modifications resulting from variations in anticipated conditions, taking into account the objectives referred to in paragraph 7. Such orders shall be effective when issued, but shall not remain in effect beyond the time that the Party in whose waters they are applicable sends a notice of objection to the Commission. (This sentence will be given further consideration).

ARTICLE X

(Reciprocal Troll Access.)

ARTICLE XI

Each Party may allocate that Party's share of the salmon stocks covered by this Convention among persons fishing under its jurisdiction. In achieving the objectives of the Convention, the

Commission and its Panels shall take into account the domestic allocation objectives of the Parties.

ARTICLE XII

1. Each Party shall take all necessary measures, including the enactment and enforcement of legislation or regulations to make effective the provisions of this Agreement, and to ensure that its nationals and vessels do not exceed any entitlement or interception limitation established pursuant to this Agreement and to ensure compliance with all regulations adopted pursuant to this Agreement.

2. Each Party shall require of its nationals and vessels reports of catch and related data for all stocks and fisheries covered by this Agreement. Each Party may also require nationals and vessels of the other Party to make reports of such data while fishing within waters under its fisheries jurisdiction.

3. Each Party shall make available to the Commission the data obtained pursuant to paragraph 2.

4. The Parties agree to exchange fisheries statistics on a timely and regular basis in order to facilitate the enforcement and implementation of this Agreement.

ARTICLE XIII

1. The Annexes to this Agreement, either in their present terms or as amended in accordance with the provisions of this Agreement, form an integral part of this Agreement and all references to this Agreement shall be understood as including the said Annexes.

2. The Commission shall review the Annexes each year and may make recommendations to the Parties for their amendment. If both Parties accept a recommendation to amend an Annex, that Annex shall be considered amended in accordance with the recommendation, with effect from the date on which the Commission receives the last of the two notices of acceptance or from such other date as may be agreed by the Parties. The Parties may also agree to amend an Annex without a recommendation from the Commission, in which case the amendment shall enter into force with effect from the date specified by the Parties.

3. The Commission shall from time to time cause to be published a consolidated text of the Annexes showing all amendments currently in force.

ARTICLE XIV

1. This Agreement shall enter into force on the date of the exchange of instruments of ratification and shall remain in force for an initial period of six years, and thereafter for successive six year periods subject to the termination provisions of paragraph

2. The instruments of ratification shall be exchanged at _____ as soon as possible.

2. Either Party may terminate this Agreement at the end of any six year period referred to in paragraph 1 by giving notice of termination to the other Party not later than one year before the end of that period.

3. The Parties shall review the provisions of this Agreement during the fourth year of each six year period referred to in paragraph 1.

4. Upon the entry into force of this Agreement, the Convention between Canada and the United States of America for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries in the Fraser River System, signed at Washington on the 26th day of May 1930, as amended, shall be terminated.

SEA 002/11 MESSAGE

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Mr Manning

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DISTR. FLM UNP GNT

REF YRTEL FLO1590 MAY10

SUB/SUJ ---DEATH OF DONALD MCKERNAN

ATTACHED ARE COPIES OF ARTICLES FROM THE SEATTLE TIMES AND SEATTLE POST INTELLIGENCER CONCERNING DEATH OF DONALD MCKERNAN. YOU MIGHT LIKE TO FORWARD COPIES TO INTERESTED OTT ADDRESSES REFTEL. POST IS FORWARDING COPIES NON OTT ADDRESSES.

2. MEMORIAL SERVICE WILL BE HELD MON MAY14 AT 1400 HRS UNIVERSITY CONGREGATIONAL CHURCH, FORTY FIFTH AND FIFTEENTH, SEATTLE.

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

SEA 002/11

SEATTLE POST-INTELLIGENCER

MAY 11, 1979

Donald McKernan, Fisheries Expert, Dies in Peking

Donald L. McKernan, 61, director of the University of Washington's Institute for Marine Studies and a world figure in fisheries and marine science, died of a heart attack Wednesday in Peking, China.

He was in Peking as a member of the Washington Council on International Trade delegation which is touring the Far East.

Mr. McKernan, a UW professor of marine studies and fisheries, was chairman of the National Advisory Committee on Oceans and Atmosphere, and an alternate U.S. representative to the Law of the Sea Conference.

From 1966 until 1974 when he came to the UW, Mr. McKernan was coordinator of ocean affairs and special assistant to the U.S. secretary of state with the rank of ambassador.

He represented the United States in international negotiations on fisheries and oceanography.

He was a member of the North Pacific Fisheries Council and a consultant to the marine board of the National Academy of Sciences. He also was a Seattle Aquarium consultant.

During his career, he published many scientific papers on fisheries biology and the international aspects of ocean science.

Mr. McKernan was head of the state's study of salmon hatcheries.

In a statement, James L. Heckman, executive director of the Northwest Indian Fisheries Commission, said the commission and its member tribes "feel a great loss at the death of Ambassador McKernan. Representatives of the commission and tribes were well acquainted with Don through his participation on the United States delegation to the U.S. and Canada fish-



DONALD MCKERNAN

ery negotiations, to which Don devoted an important part of his career.

Mr. McKernan was the first director of the federal Bureau of Commercial Fisheries, a former administrator of commercial fisheries in Alaska and assistant director of the Pacific Oceanic Fisheries Research Laboratory in Hawaii.

Born in Eugene, Ore., and reared in Seattle, Prof. McKernan was graduated from the UW in 1940.

Survivors include his wife, Patricia, and five daughters, Mrs. Barbara Rintamaa of Adrian, Mich.; Mrs. Rebecca Frederic of Cincinnati; Mrs. Cathy Osborne of Cleveland; Mrs. Debra Ragan of Virginia Beach, Va.; and Cynthia McKernan of Tacoma, two brothers and nine grandchildren.

Memorial services were scheduled for 2 p.m. Monday at University Congregational Church. Remembrances may be made to Children's Orthopedic Hospital and Medical Center or the American Heart Association.

SEA 00211

THE SEATTLE TIMES

MAY 10, 1979

Prof. Donald McKernan, fisheries authority, dies

Prof. Donald L. McKernan, 61, international fisheries authority and director of the University of Washington's Institute of Marine Studies, died yesterday in Peking.

Professor McKernan was in China as part of a 32-member delegation sent by the Washington Council on International Trade. The delegation left May 1.

Dr. Douglas Chapman, dean of the College of Fisheries, said Professor McKernan's death is "a tremendous loss to the university and to the profession."

A fisheries biologist with extensive experience in scientific administration and negotiations, Professor McKernan formerly was coordinator of ocean affairs and special assistant to the secretary of state. He represented the United States in negotiations on international fisheries and oceanography.

The post was created in 1966 to give American negotiators more stature at the bargaining table. Professor McKernan helped the United States reach agreements with Russia, Japan and other nations.

He was serving a second term of a presidential appointment to the National Advisory Committee on Oceans and Atmosphere. He was the committee's chairman.

He also was serving as the alternate representative in the United States delegation to the Law of the Sea Conference. He was active in lengthy United States-Canada negotiations over salmon.

Professor McKernan also was a consultant to the Marine Board of the National Academy of Sciences

and was a member of the North Pacific Fisheries Management Council.

He joined the U.W. faculty in 1974 after serving in the State Department post. He was appointed professor of fisheries and the first director of the university's Institute of Marine Studies.

A native of Eugene, Ore., Professor McKernan was reared in Seattle. He received a bachelor's degree in fisheries from the U.W. in 1940 and later did graduate work in fisheries there and at the University of Oregon.

Professor McKernan was the first director of the federal Bureau of Commercial Fisheries, the forerunner of the National Marine Fisheries Service, and was administrator for commercial fisheries in Alaska before its statehood.

He also had been director of research for the Oregon Fish Commission, assistant director of the Pacific Oceanic Fishery Research Laboratory in Hawaii and a marine biologist for the Washington State Department of Fisheries.

Survivors include his wife, Patricia; five daughters, Cynthia A. McKernan, Tacoma; Barbara L. Rintamaa, Adrian, Mich.; Rebecca J. Fredere, Cincinnati; Kathy M. Osborn, Cleveland, and Debra K. Ragan, Virginia Beach, Va., and two brothers, Clyde McKernan, Seattle, and Ralph McKernan, Eugene.

A memorial service is pending. The family suggests remembrances to the Children's Orthopedic Hospital or the American Heart Association.

rec'd
MAY 10 1979

FISHERIES SERVICE

Attention: David Bollivar,
Int. Directorate,
Ottawa.

May 4, 1979

MAY 10 11 05 AM '79

Mr. Ronald O. Skoog,
Commissioner,
State of Alaska,
Dept. of Fish & Game,
Support Building,
JUNEAU, Alaska.

DEPT OF THE ENVIRONMENT

| | |
|-------------|-----------------|
| DATE | |
| ACC | 27043 |
| REF | |
| FILE | 25-5-5-00a-USA |
| DOSSIER | |
| BY HAND | |
| PAR PORTEUR | |
| ATTN: | 25-5-7-2-Salmon |

I apologize for the delay in replying to your letter of March 1 proposing cooperative pink tagging project S.E. Alaska/Northern British Columbia. Matter had been referred to Ottawa Headquarters for consideration. Have now been advised that an official note detailing Canadian response has been sent to U.S. State Department. Basically Canadian authorities have given the proposed research project careful consideration and have regretfully concluded that Canada will be unable to participate in the project. The Canadian decision has been reached on the following basis. In view of the short period of time available, Canada considers it is not possible to adequately plan for and develop the project in a way that would ensure optimum results were achieved, and prior to receipt of the proposal the Department of Fisheries and Oceans had already committed all its salmon research resources in 1979 to other projects.

The note also assures U.S. that Canada fully supports the principle of cooperative research on salmon migration, particularly in the northern British Columbia-Southeastern Alaska area and would look forward to development of jointly planned cooperative work in the future.

The Canadian authorities would propose that the subject of an early start be discussed at the meeting of officials on salmon interception problems scheduled for Vancouver May 23-25, 1979.

May 7/79 - 7:45 AM
Sent via CP-CN
communications
M. Holbrook

Dr. W. E. Johnson
Director-General
Fisheries Management - Pacific Region

79050004



Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

Bico-need
this be filed?

April 30/79

TO
A

M.P. Shepard
D.R. Bollivar
L.A. Willis

E. Feldman ✓
M. Goldberg

FROM
DE

M. Hunter

SUBJECT
OBJET

Canada/USA Pacific Salmon Negotiations

| |
|---------------------------------------|
| SECURITY CLASSIFICATION - DE SÉCURITÉ |
| OUR FILE - N/RÉFÉRENCE |

| | |
|----------------|------------------|
| DATE | May 1, 1979 |
| YOUR REFERENCE | |
| ACC | 24358 |
| REF | |
| FILE DATE | 25-5-7-2-Salmon |
| DOSSIER | |
| BY HAND | |
| PAR PORTEUR | |
| ATTN: | FLO / E. Feldman |

In order to prepare for the forthcoming meeting of Canadian and U.S. officials on this subject in Victoria, May 23-25, 1979, I would like to convene an interdepartmental meeting at 10 a.m., Monday May 7. The meeting will be held in the "Greenroom", 8th floor west, 240 Sparks Street.

At that time, I would hope that we could review that Draft Treaty, dated February 2, 1979 which was produced at the last round of negotiations in Seattle, as well as formulate some ideas for presentation to the US side in Victoria. It should also be possible to review progress towards the development of a memorandum to Cabinet seeking new negotiating instructions prior to resumption of full negotiations in the fall.

Please confirm your ability to attend the meeting to me, or to Elisabeth Lalonde at 5-2193.

M. Hunter

File

25-5-7-2

Salmon 1

COPY

9
MARS1 OTT

NATIVE BC VCR

26 APRIL 1979
M4:45 PM PACIFIC TIME

| | |
|-------------------|--|
| 25-5-7-2-Salmon-1 | |
| (12) | |

ROMEO LEBLANC
MINISTER OF FISHERIES AND OCEANS
OTTAWA ONTARIO

RE: 1979 SALMON FISHING REGULATIONS

OUR OFFICE RECEIVED A TELEX FROM YOUR VANCOUVER REGION OPERATIONS ROOM OUTLINING THIS YEARS REGULATIONS FOR 1979 SALMON FISHERY. AT THE LAST PACIFIC REGION MANAGEMENT ADVISORY COUNCIL MEETING IT WAS PROMISED BY DR WALLY JOHNSON THAT ANY PROPOSED REGULATIONS WOULD FIRST BE DISCUSSED AT THE MAY 14, 1979 ADVISORY COUNCIL MEETING. DR JOHNSON HAS GONE AGAINST THE ADVICE OF THE COUNCIL AND FURTHER MORE HAS NOT KEPT HIS WORK THAT THE REGULATIONS WOULD FIRST BE DISCUSSED AT THE MAY 14, 1979 MEETING. WE ARE TOTALLY OPPOSED TO THE REGULATIONS OUTLINED IN HIS TELEX AND FURTHERMORE BECAUSE OF HIS TOTAL LACK OF CONSIDERATION OF THE ADVICE GIVEN BY THE COUNCIL MEMBERS WE HAVE NO ALTERNATIVE BUT TO CALL FOR HIS IMMEDIATE RESIGNATION. WE REQUEST AN IMMEDIATE RESPONSE FROM YOUR MINISTRY.

SINCERELY

EDWIN NEWMAN, PRESIDENT
ON BEHALF OF THE
NATIVE BROTHERHOOD OF BRITISH COLUMBIA.

NOTE CORRECTION IN BODY OF TELEX:

READS: 'WORK' ----- SHOULD READ: '294/111' 'WORD'

ON 7TH LINE - 6TH WORD

MARS1 OTT

NATIVE BC VCR

STATE

| | |
|---------|---------------------------|
| DATE | |
| ACC | 27044 |
| REF | |
| FILE | 25-5-5 Colo-USA |
| DOSSIER | |
| BY | PAUL S. HAMILTON GOVERNOR |
| ATTN: | 25-5-7-2-Salmon-1 |

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER
SUPPORT BUILDING
JUNEAU, ALASKA 99801

March 1, 1979

| | | | |
|--------------|-------------------------------------|-----------|--------------------------|
| DIR. GEN. | <input checked="" type="checkbox"/> | DIR. M.P. | <input type="checkbox"/> |
| DIR. F.S. | <input type="checkbox"/> | DIR. S.S. | <input type="checkbox"/> |
| DIR. ENV. | <input type="checkbox"/> | CHANCE | <input type="checkbox"/> |
| DIR. IN. | <input type="checkbox"/> | | <input type="checkbox"/> |
| DIR. INT. S. | <input checked="" type="checkbox"/> | | <input type="checkbox"/> |

Dr. W. E. Johnson
Director-General, Pacific Region
Fisheries and Marine Service
Fisheries Management
1090 West Pender St.
Vancouver, B.C. V6E 2P1

| | |
|---------------|--------------------------|
| FRASER S. | <input type="checkbox"/> |
| G.C. & J. | <input type="checkbox"/> |
| N. & C. COAST | <input type="checkbox"/> |
| N.B.C. & Y. | <input type="checkbox"/> |
| REG. & INT. | <input type="checkbox"/> |
| MAINE S. | <input type="checkbox"/> |

1031-1

MAR 13 1979

Dear Dr. Johnson:

03211

Following the U.S.-Canada salmon interception talks in Seattle in January, 1979, members of the U.S. delegation from Alaska indicated to me that additional information on the composition of the pink stocks passing through Canadian Area 3 in 1979 might be obtained. The delegation felt that existing return per spawner information in recent years strongly indicates a major contribution by Alaska pink salmon stocks to net fisheries in Area 3 in odd years. Some concrete tagging data on this odd year cycle would be highly beneficial in clarifying the stock composition question in this area. The 1979 season may possibly be the last opportunity to resolve the question before an overall settlement is reached.

Fortunately, the Division of Commercial Fisheries already has a pink salmon tagging project operating in northern Southeastern Alaska. It has been determined that this project could feasibly be moved into Area 3 to tag adult pink salmon and possibly other salmon species during the 1979 season. The following questions require resolution prior to proceeding with plans for development of the program jointly between our agencies.

1. Can a permit be obtained for U. S. personnel to conduct a tagging research program in Canadian waters in 1979? We propose using a U.S. purse seine vessel to conduct the tagging with a biologist from the Canada Department of Fisheries.
2. Can a proper tag recovery effort be conducted in Canadian spawning streams and fisheries south of Area 3? With some financial assistance from the National Marine Fisheries Service probable, we feel the Division of Commercial Fisheries will be able to organize an adequate recovery effort in Alaskan streams and fisheries.

Dr. W. E. Johnson

-2-

March 1, 1979

Should the decision to carry out the tagging be reached, a program planning session with Canadian biologists would be essential. The major question of obtaining permission to tag in Area 3 needs to be resolved as time is short and vessel charters have to be arranged for and a project design drawn up. If a decision by your government can be reached by mid-March, there should still be sufficient time to make the necessary plans and arrangements. ...

I view this reasearch project as the first in a series of cooperative efforts that need to be undertaken in order to resolve some of the questions we all have concerning migration routes and interception rates on our various salmon stocks.

Thank you for your consideration of this proposal. I look forward to your response at an early date.

Sincerely,



Ronald O. Skoog
Commissioner

cc: D. C. McKernan, Director, Institute for Marine Studies, University of Washington
Harry Rietze, Director Alaska Region, National Marine Fisheries Service
Jack McDonald, Biologist, Pacific Biological Station, British Columbia
E. J. Huizer, Consultant, Office of the Governor
Steven Pennoyer, Acting Director, Division of Commercial Fisheries
Ken Henry, Fisheries Biologist, Northwest Fisheries Center
Gary Gunstrom, Research Supervisor, Division of Commercial Fisheries

9/21/79
cc. to W.R. Houston for info.
- contact J. McDonald for comments on this proposal before reply.



Native Brotherhood of British Columbia

(CANADA'S SENIOR INDIAN ORGANIZATION)

Telephone (604) 685-2255
Telex: 04-51439

517 Ford Building,
193 East Hastings Street,
Vancouver, B.C.
V6A 1N7

Feb

26 February 1979

Honourable Romeo LeBlanc,
Minister of Fisheries & Oceans,
Parliament Buildings,
Ottawa, Ontario
K1A 0E6

Dear Mr. Minister:

Re: Salmon 'B' Licences

| | |
|---------|-------------------|
| DATE | |
| ACC | 19264 |
| FILE | 25-5-7-2-Salmon-1 |
| BY HAND | PAR PORTEUR |
| ATTN: | |

Further to our letter of February 15, 1979. Captioned above the Board of Directors has appointed Mr. Delbert Guerin, Chief of Musqueam, as well as our long time life member, Mr. Clarence Joe, as our chief spokesman to negotiate the upgrading of any Indian 'B' Licence to 'A-1'. We ask that you give Messrs. Joe and Guerin every consideration in their combined efforts to keep Indian people in their rightful place in the British Columbia fisheries.

A copy of our letter of February 15, 1979 is enclosed for your ready reference.

Sincerely,

Native Brotherhood of B.C.

Edwin Newman

Mr. Edwin Newman,
President.

EN:jl

c.c. see attach. page

NORTHERN OFFICE:
Prince Rupert Branch
Telephone: 624-4445
Telex: 047-89147



CENTRAL OFFICE:
Alert Bay Branch
Telephone: 974-5797

000322

NATIVE BROTHERHOOD OF BRITISH COLUMBIA 26 February 1979
letter to Romeo LeBlanc Re: Salmon 'B' Licence

c.c. Prime Minister Trudeau
Joe Clark
Ed Broadbent
Hugh Faulkner
Iona Campagnola
Len Marchand
Allan Williams
Rafe Mair
Bill Bennett
Don Jamieson ✓
Sen. Guy Williams
Jack Pearsall
Hugh Anderson
Robert Holmes
Art Lee
Fred Walchli, DIA
Wally Johnson, DFO
National Indian Brotherhood
Union of BC Indian Chiefs



INCORPORATED

Native Brotherhood of British Columbia

(CANADA'S SENIOR INDIAN ORGANIZATION)

Telephone (604) 685-2255
Telex: 04-51439

COPY

517 Ford Building,
193 East Hastings Street,
Vancouver, B.C.
V6A 1N7

15 February 1979

Honourable Romeo LeBlanc,
Minister of Fisheries & Oceans,
Parliament Buildings,
Ottawa, Ontario

Dear Mr. Minister:

Re: Salmon B Licences

As you are aware the Native Brotherhood of British Columbia stand is one of unrestricted entry into B.C. Fisheries for Indian people in this Province.

There are a number of Indian fishermen who are still fishing salmon under a "B" Licence which will expire sometime in the near future, hence putting them out of work in an industry that they have a traditional right. This industry has represented employment for Indian people since time immemorial in the province of British Columbia.

You will no doubt appreciate our deep concern over the fact that our people will be again subjected to being pushed out of the fishing industry because of the expiration of the B Licences. Therefore, we have appointed our long time life member, Clarence Joe, of the Native Brotherhood of British Columbia as our Chief Spokesman to negotiate the upgrading of any Indian "B" Licence to an A-I Licence. We ask that you give Mr. Joe every consideration in his efforts to keep Indian people in their rightful place in the B.C. fisheries.

The Board of Directors of the Native Brotherhood of British Columbia are looking for Mr. Joe to bring back positive responses from your department on this matter.

Sincerely,

Mr. Edwin Newman,
President.

EN:jl

NORTHERN OFFICE:
Prince Rupert Branch
Telephone: 624-4445
Telex: 047-89147



CENTRAL OFFICE:
Alert Bay Branch
Telephone: 974-5797

000324

23 FEB 1979

HONOURABLE ROMEO LEBLANC
MINISTER OF FISHERIES AND OCEANS

REFER TO OUR TELEX FEBRUARY 12, 1979 . IN ABSENCE OF A REPLY TO OUR
TELEX WE ARE TAKING THIS OPPORTUNITY TO REAFFIRM OUR POSITION IN
THIS MATTER BY YOUR FAILURE TO RESPOND TO OUR TELEX. WE CAN ASSUME
THAT YOU SUPPORT THE POSITION OF BROKEN PROMISES PUT FORWARD BY
LES EDGEWORTH. AT THIS TIME WE ARE REQUESTING THAT YOU PUT THE
CO-OPERATIVE EFFORTS OF INDIAN PEOPLE AND S.E.P. BACK ON GOOD ORDER.
WE WANT YOU TO REAFFIRM YOUR ORIGINAL PROMISES TO INDIAN PEOPLE BY
DEALING WITH THE SUBSTANCE OF OUR RESOLUTION. THE AMOUNT OF MONEY
IT WILL TAKE TO OPERATE THE NINE (9) EXECUTIVE PROGRAMS AND TO START
THE ADDITIONAL SIX (6) IS NOT TOO GREAT, ABOUT 750,000 DOLLARS WILL
FULFILL THIS PART OF OUR AGREEMENTS WITH YOU IN LIGHT OF THE TOTAL
AMOUNT BEING SPENT S.E.P. WORK AND THE SMALL PERCENTAGE OF THIS BEING
ALLOCATED TO SPECIAL PROJECTS. WE DO NOT VIEW THIS AS A LARGE
SUM OF MONEY. THE FUNDING AND REALLOCATION OF THESE FUNDS TO SPECIAL
PROJECTS IS THE ESSENTIAL FIRST STEP TO RESTABLISHING A GOOD RELATION
BETWEEN S.E.P. AND THE BANDS INVOLVED IN RESTORATIVE WORK. WE
CANNOT STRESS ENOUGH THAT OUR WORK IS OF AN ONGOING NATURE. WE MUST
HAVE FISCAL STABILITY IN ORDER TO MAINTAIN A HIGH LEVEL OF MORAL IN
OUR CREWS AND IN ORDER THAT WE CAN MEET THE DEADLINES IMPOSED ON US
IN THE LIFE CYCLES OF THE SALMON. YOUR IMMEDIATE ATTENTION TO THESE
MATTERS IS ESSENTIAL. WE ARE AVAILABLE ON SHORT NOTICE TO MEET WITH
YOU TO FURTHER DISCUSS THESE MATTERS.

SINCERELY

NATIVE BROTHERHOOD OF BC
B
BELLA BELLA BAND
CHEHALIS BAND
COWICHAN BAND
KINCOLITH BAND
KISPIOX BAND
MASSET BAND
NANAIMO BAND
NIMPKISH BAND
SLIAMMON BAND
KLEMTU BAND
OWEEKENO BAND
BELLA COOLA BAND
AHOUSAT BAND
SEABIRD ISLAND BAND
PRINCE RUPERT COMMUNITY PROJECT

CC PRIME MINISTER TRUDEAU
JOE CLARK
ED BROADBENT NDP
HUGH FAULKNER
IONA CAMPAGNOLA
HUGH ANDERSON
JACK PEARSALL
DON JAMIESON ✓
LEN MARCHAND
PREMIER BENNETT
SENATOR G R WILLIAMS
ART LEE MP
DR J R HOLMES MP
MR WALCHLI DIA BC REGION
DR W JOHNSON // /// JOHNSON PACIF IC REGION DEPT FISHERIES
NATIONAL INDIAN BROTHERHOOD.
UNION OF BC INDIAN CHIEFS
RAFE MAIR
ALLAN WILLIAMS
JOHN FRASER MP

NATIVE BC VCR

RECEIVED / REÇU
2 MAR 1979
HOUSE OF COMMONS
CHAMBRE DES COMMUNES

Wood, Field and Stream

Protection Is Planned for Atlantic Salmon

By NELSON BRYANT

The beleaguered Atlantic salmon, perhaps the world's most highly-prized food and game fish, may soon enjoy the protection of an international treaty, if plans to that end being put forth by the United States come to fruition.

At a meeting a few days ago in Boston, Larry Snead, the deputy director of the Office Fishery Affairs for the State Department, revealed that the United States planned to initiate negotiations aimed at establishing a new international commission for the purpose of conserving and managing Atlantic salmon stocks in the North Atlantic.

All nations with Atlantic salmon spawning waters, as well as those without such streams but which wanted to fish for the species, could be involved.

'Exciting News'

Richard Buck, the chairman of Restoration of Atlantic Salmon in America (R.A.S.A.), the organization that sponsored the meeting — also attended by United States representatives of the International Atlantic Salmon Foundation as well as officers of Trout Unlimited — called the announcement "exciting news." He said that sentiment for such a move had been growing on both sides of the Atlantic.

"We have such international commissions for two other highly migratory species, the tunas and the whales," Buck said. "Why not for the salmon?"

Last September at the International Atlantic Salmon Symposium in Edinburgh, Donald L. McErnan, a professor at the University of Washington and formerly the special assistant to the

Secretary of State for Fish and Wildlife, proposed the concept of an international treaty and was given a vote of approval by the delegates.

The highly migratory habits of the Atlantic salmon make it an ideal subject for such a pact. Many, if not all, young salmon leaving rivers in the United States and in Canada, England, Ireland and Scotland swim to an area west of Greenland to feed on shrimp, capelin and other forage fishes. They stay one or more years before returning to their home streams to spawn.

Harvesting the Salmon

It has long been recognized that the ideal way to harvest salmon would be in the various salmon rivers and their estuaries. Over the years, fisheries biologists and river keepers have gained a good idea of how many fish must be allowed upstream to spawn in order to achieve an optimum yield.

One problem in managing and protecting the species is that the fish are now being intercepted along their migratory routes. Salmon returning to Maine and New Brunswick, for example, are being caught in nets along Labrador, Newfoundland and Nova Scotia.

A prime example was spotlighted a few years ago when the Danes, who have no salmon-producing rivers of their own, were netting the fish in the "high seas" gathering place of salmon off Greenland. That practice was eliminated under an agreement put forth by the International Commission for Northwest Atlantic Fisheries (I.C.N.A.F.), an 18-nation organization.

The I.C.N.A.F., however, will dissolve at the end of this year. Its death

knell was sounded in 1976 when by the United States enacted of Fishery Conservation and Management Act — the so-called 200-mile limit law. The United States withdrew from I.C.N.A.F. in December 1976, and several other nations followed suit. The organization will be replaced by the North Atlantic Fisheries Organization (N.A.F.O.).

Greenland Take: 1,191 Tons

Under the I.C.N.A.F. agreement with the Danes, native Greenlanders — Greenland is a province of Denmark — were allowed an inshore annual catch of 1,191 metric tons, or about 325,000 salmon. In terms of numbers, the catch is about six times the total annual rod-and-reel take of the species in Canada in recent years.

Ineffectual as some may have felt the organization to be, the demise of the I.C.N.A.F. will leave the salmon virtually unprotected on the international level.

The N.A.F.O. will not be in a position to embrace the salmon problem, because it will not have regulatory powers within the various 200-mile fishing limits of the nations involved. Also, the N.A.F.O. will be limited to the western North Atlantic. An Atlantic salmon treaty would ideally cover the entire North Atlantic.

Many salmon conservationists feel that a separate treaty for that species would enhance its chances for survival. But because most salmon are harvested within three miles of shore — within state or provincial territorial waters — the various states and provinces involved will clearly have to be persuaded to go along with the intent of the treaty. For example, they may

have to give up some of their territorial prerogatives with respect to the salmon.

12-Mile Limit Proposed

As presently conceived, the proposed treaty would prohibit the fishing for salmon in all waters of the North Atlantic beyond 12 miles from shore. Inshore, it would require the various states or provinces to limit their annual take to the three-year average of 1976, 1977 and 1978 — the choice of those years apparently indicating that the backers of the treaty would like to have it ratified in 1979.

There would also be a provision allowing for the increase or decrease of the quota if conditions warranted.

A commission would be formed under the treaty to provide a scientific forum for Atlantic salmon studies. Among the issues that would be discussed include whether there should be a size limit on the salmon caught. A study would also be started to determine the country of origin of all the salmon that congregate off Greenland.

New Brunswick, currently under the leadership of J. W. Bird, its Minister of the Department of Natural Resources, has pledged to eliminate a four-fold abuse of salmon stocks. The Miramichi River system in New Brunswick leads the world in numbers of rod-caught salmon.

Last year the angler catch of 13,000 bright salmon — fish just in from the sea — was only a little more than a third of the 1976 Miramichi catch. Poaching, the so-called "incidental" catch of salmon by cod fishermen and the interception of the province's salmon by Newfoundland netters were among the causes of the depletion.



The last time Mrs. Jessica Ranshousen competed in Olympics was in 1964

Prospects Grow Dim for Aqueduct Accord

By STEVE CADY

"You're nothing but garbage," a picketing parimutuel clerk screamed at a horseplayer yesterday outside the main entrance to Aqueduct.

"Go to work, you jerks," the horseplayer yelled back, rolling down the window of his car. "A lot of people want those jobs."

While pickets and horseplayers exchanged obscenities, Aqueduct limped through another Saturday of racing yesterday with no progress reported in the labor dispute that has curtailed services for 10 days. Despite the inconveniences, a crowd of 16,046 attended the free-admission program. But the prospect of an early labor settlement appeared dim.

"I was more encouraged a week ago than I am now," said James P. Heffernan, president of the New York Racing Association. "There has been a retrenchment on the part of the union."

"A very bad situation is developing here," said Louis Bianco, chairman of the parimutuel unit of Local 3, International Brotherhood of Electrical Workers. "We've been locked out by management. They're employing scabs, and they mean to keep us out until they browbeat us into a contract that would cause a severe loss of jobs."

Hinges on Job Security

The key issue in the dispute is job security.

ting system scheduled to be introduced at Belmont Park in May. Another meeting between the two sides, the 30th since negotiations began last November, has been set for tomorrow at 2:30 P.M. in the International Hotel at Kennedy Airport.

Progress on the one-mile inner racing surface was not much smoother than it was on the labor front, with Albert Fried Jr.'s Special Tiger requiring 1:53 3/5 to win the \$82,350 Grey Lag Handicap on a sloppy track as deep as a swamp. The time for the mile and an eighth was more than five seconds slower than the stakes record.

Special Tiger, a 4-year-old colt ridden by Mike Venezia, paid \$19.60 for \$2 after scoring by 1 1/4 lengths over favored a Vencedor. Party Surprise was third, a nose farther back and a nose ahead of fourth-place Glorious Sheik.

Mounted policemen kept the main entrance to the Big A open yesterday by riding their horses over union clerks who had stretched themselves out on the wet pavement.

The incident occurred shortly after noon when about a dozen of the 125 pickets at the Rockaway Boulevard gate-locked hands and lay down on their backs in an effort to block traffic from entering the track. Earlier, Pinkerton guards employed by the N.Y.R.A. had arrested a part-time mutuel worker and established a 23-year-old Robin Fox

studded sheet of cardboard on the roadway.

At the main gate, arriving customers driving or walking past a burned-out Pinkerton guardhouse were subjected to a steady barrage of four-letter words. But few of the bettors appeared to be bothered by the abuse.

As one of the Pinkertons pointed out, "Some of the fans have been yelling those things at jockeys for years. Now they know how it feels."

The union represents 650 regular parimutuel clerks. In addition, approximately 300 nonunion clerks are attached to the unit as extras. So far, support for the clerks has come only from other units in the I.B.E.W. — 75 electricians and 200 maintenance workers, including the men who operate the harrows that keep the racing surface in shape. Those jobs, as well as the selling and cashing of tickets, are being handled by administrative personnel and nonunion help.

Members of the other 30 unions with representation at N.Y.R.A. tracks have not walked off the job in support of the mutuel clerks, who triggered the present dispute on Feb. 14 by refusing to sell quinella tickets. They had been working without a contract since Dec. 31. Nineteen sellers were suspended as a result of the Feb. 14 defiance, but union officials insist their members are

"It's a lockout," said Bianco. "Money is not the issue here at all. It's job security, and seniority rights."

"It's a strike," said Heffernan. "It was a concerted refusal to sell quinellas. And if money is not an issue, then they should get their demand for a 15 percent pay increase off the table."

According to Heffernan, the N.Y.R.A. parimutuel clerks make 45 percent more than clerks at the next-highest-paying track, in California, and 100 percent more than ticket sellers and cashiers at New York City's off-track betting shops.

"They average \$90 a day," he said. "A clerk who works Saturday and Sunday at time and a half, plus three weekdays, would make \$28,000 a year."

Bianco, disputing those figures, said only a few clerks at the top level made \$28,000 a year, and that daily pay ranged from \$40 for extras and \$47 for the lower fifth of the union members to \$80 for most of the top regulars.

Large Force on Hand

Yesterday's attendance, the largest since the labor trouble began, was serviced by the largest force of temporary parimutuel help assembled during the dispute — 260 sellers and 110 cashiers. The so-called "temps," guaranteed a minimum of \$25 a day even if they don't work, report to the track every day at 10 A.M. and wait for their

Mother of 2 Renews An Olympic Quest

By ED CORRIGAN

In 1959, Jessica Newberry helped the United States win the team silver medal in dressage at the Pan-American Games in Chicago.

In the 1960 Olympic Games in Rome, she rode Forstrat to 12th place. In the 1964 Tokyo Olympics, she finished 14th on the same horse.

Then she disappeared from the dressage scene. She was married, and as Mrs. Jessica Ranshousen she concentrated since her last competition on everything except horses. Now Mrs. Ranshousen is back in training and hopes to make the 1980 Olympic team.

She is living in West Germany and getting her new mount, Fair Lad, ready for the major shows this year. She does not plan to try out for the Pan-American Games because she feels it would interrupt Fair Lad's training schedule to make the trip back to the

mother had warned me not to take him into the woods behind the house because of poachers. But one day I decided to ride him for just a few minutes. I was hardly into the woods when he was shot."

She said the shot hit Fair Lad just about an inch from a bone and that his knee was bleeding.

"My mother and a couple of fellows who worked on the farm came out and helped me get him back," she said. "I took us three hours to return him to the stable. A dog or a cat can walk on three legs, but not a horse. When I look back I don't know how we did it."

Mrs. Ranshousen, who keeps Fair Lad near the property of Reiner Kleimke, the former Olympic gold medal winner, said the horse still must put some weight on.

"You know," she said, "it's supposed

"A very bad situation is developing here," said Louis Bianco, chairman of the parimutuel unit of Local 3, International Brotherhood of Electrical Workers. "We've been locked out by management. They're employing scabs, and they mean to keep us out until they browbeat us into a contract that would cause a severe loss of jobs."

Hinges on Job Security

The key issue in the dispute is job security, involving a new automated bet-

by riding their horses over union clerks who had stretched themselves out on the wet pavement.

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ed by administrative personnel and nonunion help.

Members of the other 30 unions with representation at N.Y.R.A. tracks have not walked off the job in support of the mutuel clerks, who triggered the present dispute on Feb. 14 by refusing to sell quinella tickets. They had been working without a contract since Dec. 31. Nineteen sellers were suspended as a result of the Feb. 14 defiance, but union officials insist their members are not on strike.

M.O.R.C. Dulls Edge for Ultralight Boats

By JOANNE A. FISHMAN

The Midget Ocean Racing Club has adopted a major change in its handicap rule in order to end the advantage given to the many ultralight displacement boats that have been built in the last two years. It also means that older boats in M.O.R.C. competition will not become obsolete.

M.O.R.C. traditionally has attracted sailors with a limited budget who aspire to handicap racing, says Dick Beurmann, M.O.R.C. executive director. With stations primarily on the East Coast and in the Great Lakes region, M.O.R.C. racing is open to boats under 30 feet in length. Larger yachts generally compete under the International Offshore Rule.

800-Mile M.O.R.C. Event

The turmoil that the arrival of the bigger ultralight boats caused in the I.O.R. fleet extended to M.O.R.C. last year. That's when M.O.R.C. racing became more expensive — to win, one needed a new, ultralight boat.

A new boat, "an ultralight, 25-foot sloop is likely to weigh about 3,200 pounds, nearly a ton less than an older boat of the same size. But both would have the same sail area," says Beurmann.

As a result, the lighter boats, such as the J-24's, Harmony 22's and Creekmore 22's, sailed faster than they were supposed to under their handicaps.

"Technology in the last two years has changed the manufacturing of boats to such a degree," said Beurmann, "particularly in the areas of hull and rigging, that heavy displacement boats are no longer necessary."

M.O.R.C. sailors also are increasingly pushing their boats longer distances. At 360 miles, the Great Ocean Race in Chesapeake Bay and the Atlantic Ocean used to be the longest M.O.R.C. competition. This year, an 800-mile race scheduled to begin June 9 will go from Annapolis, Md., to Bermuda.

The Great Ocean Race starts May 24. Both are sponsored by M.O.R.C.'s Annapolis station. Information is available from Roger Bartholomee, 1000 Wooddale Rd., Baltimore, Md. 21228.

The Roton Point Sailing Association of Rowayton, Conn., has announced challenges it has received for the Little America's Cup from Italy, England and Australia.

The selection trials and match-race series will be held in 1980 on Long Island Sound.

Tony DiMauro, owner of the defender, Patient Lady IV, says he intends to build another Patient Lady for the defender's trials.

The Italian challenge was issued by the group of Tornado Class sailors headed by Beppe Croce of Milan that lost in to Patient Lady in four straight races last fall. Reg White, the 1976 Olympic gold-medal winner in Tornados, leads the English challenge. The Australian syndicate is headed by Norman Latchford, who managed the unsuccessful 1976 Australian defender, Miss Nylex.

Piotr Burczynski of Poland captured the DN Class Iceboat International Gold Cup and the United States championships in races held recently on Lake Champlain. Polish sailors dominated the regattas, finishing in three of the top four places in both.

In the Gold Cup, Burczynski was followed by Harold Stuert of West Germany and Stanislaw Macur of Poland. Macur also took second in the nationals with Ed Craft of New Baltimore, Mich., placing third.

The 38-boat fleet also included sailors from Austria and the Netherlands.

The State University of New York's

\$80 for most of the top regulars.

Large Force on Hand

Yesterday's attendance, the largest since the labor trouble began, was serviced by the largest force of temporary parimutuel help assembled during the dispute — 260 sellers and 110 cashiers. The so-called "temps," guaranteed a minimum of \$25 a day even if they don't work, report to the track every day at 10 A.M. and wait for their names to be called in a shape-up.

Maritime College Sailing Squadron will launch its 1979 season March 3 with the WARM Regatta — less commonly known as the Winter All-Class Regatta at Maritime.

Racing is open to Laser, Force 5, Sunfish and Super Sunfish sailors. Additional classes will be admitted if there is sufficient attendance. Entry information is available from the regatta committee, SUNY Sailing Squadron, Maritime College, Ft. Schuyler, Bronx, N.Y. 10465.

The International Sail Training Association wanted to arrange an Operation Sail in the Baltic Sea in conjunction with the 1980 Olympic yachting events. But the Soviet Union Olympic Organizing Committee thought otherwise, and has sent its regrets, according to Barclay Warburton 3d of the American Sail Training Association. As a result, the series of 1980 international races for sail training ships will begin in Boston and end in the Netherlands.

Harold E. Spolestra of Bozeman, Mont., a sailor who has logged more than 10,000 miles in offshore cruising, has been re-elected chief commander of the United States Power Squadrons.

helped me get him back," she said. "I took us three hours to return him to the stable. A dog or a cat can walk on three legs, but not a horse. When I look back I don't know how we did it."

Mrs. Ranshausen, who keeps Fair Lad near the property of Reiner Kleimke, the former Olympic gold medal winner, said the horse still must put some weight on.

"You know," she said, "it's supposed to require at least six years to develop a good Olympic dressage horse. We shall see what happens to Fair Lad."

"I had him at a big show in Hamburg last weekend," Mrs. Ranshausen said by telephone the other day, "and he came through better than I dared to expect. He won the S-2 division, which is just above the Prix-St. Georges."

"It was tough going because Germany, like the rest of Europe, has been having a brutal winter. In order to get to Hamburg from my home in Munster, I had to get a number from the police so I could use the autobahn."

"The snow was fierce. Many of the small towns along the way were running out of food and the police permitted only trucks and essential vehicles to move. They let me get in a convoy of more than 100 tractor-trailers."

"Almost all of the 400 horses scheduled to compete in the show showed up."

Children Came First

Mrs. Ranshausen said she bowed out of the horse show world for such a long time because she wanted to devote her time to her children — an 11-year-old son and an 8-year-old daughter — until they were old enough to know what riding was all about.

"They both are in Germany now and they speak German better than they speak English," she said with a laugh. "I'm always surprised when one of them says to me: 'Mother, how do you say that in English?'"

Fair Lad almost didn't make the show ring. He was shot by a poacher on Mrs. Ranshausen's mother's farm in Ausable Forks, N.Y., two years ago. Her mother, Mrs. Ruth Newberry, runs the big Lake Placid horse show every summer.

"Fair Lad is unusual in that he is an American-trained dressage horse," Mrs. Ranshausen said. "Most American dressage riders prefer to get a horse that has been well-trained ahead of time. The horses usually come from Germany."

"Fair Lad was raised right in Ausable Forks and the fact that we kept him there almost was his undoing. My

Horse Show Calendar

Today — The Hill, Route 124, North Salem, N.Y. Novice and local working hunters, open jumpers, adult horsemanship. 8 A.M.

Today — Four Seasons, Hillcrest Road, Readington, N.J. Amateur-owner, pre-green, junior and children's working hunters; novice-open jumpers, adult horsemanship, equitation. 8:30 A.M.

Saturday — Boulder Brook, Mamaroneck Avenue, Scarsdale, N.Y. Regular, local and children's working hunters; pleasure horses, equitation. 8 A.M.

Saturday — Kent School, Skiff Mountain Road, Kent, Conn. Pre-green, local, junior and children's working hunters, junior jumpers, equitation. 8:30 A.M.

Saturday and Sunday — Snowbird Spring, Four Seasons Farm, Hillcrest Road, Readington, N.J. Junior, children's, novice-limit, non-thoroughbred and regular working hunters; open jumpers, ponies, equitation. 8:30 A.M. daily.

Sunday — Coach House Stables, Kenilworth Road, Rye, N.Y. Regular, limit and children's working hunters; equitation. 8:30 A.M.

Sunday — Thomas School, Round Swamp Road, Melville, L.I. Special working hunters, special jumpers, equitation. 8:30 A.M.

N.C.A.A. Delves Into Ruses of Recruiting

Continued From Page 1

ing. The seven investigators also wanted to learn about any illegal offers that athletes might have received before signing their letters of intent.

"We would get to a boy's home and find a coach from one college talking to the mother in one room while another college coach was trying to convince the father in some other room," Berst said. "The boy would be undecided. And outside there would be a lineup at the front door of recruiters waiting their turn to talk to the boy and his parents."

"We got to understand the pressures these recruiting coaches are under to get an athlete," Berst went on. "You can see it on their faces. It was an experience."

Berst said his staff members "concentrated heavily on Florida, St. Louis, Texas, Arizona, California, Atlanta, Ohio and Pennsylvania."

Gerry Faust, the head football coach at Moehler High School in Cincinnati for the last 19 years, may have sent more athletes to college on football scholarships than another coach in the last decade. Fourteen of his 1978 senior players will receive part or full scholarships.

He and his athletes were visited by Michael Mesh of the N.C.A.A. staff during the last two months.

'I'm All for This'

"I'm all for this action by the N.C.A.A.," Faust said. "We never have any problems, but it is good to have the N.C.A.A. tell our young men what we have been telling them all along. I even have made two major suggestions to the N.C.A.A. First, I think a college coach should be required to read the recruiting rules to a boy before he even starts his recruiting talk — sort of like a policeman has to read a person's rights to someone being arrested."

"Second, I think there should be only one letter of intent day. The conferences have other days for signing these contracts before the national day. This puts extra pressure on a boy that should not be there."

"I feel a letter of intent is equal to a contract," Faust continued. "We want to teach the kids their responsibilities when they sign something, and if they can go back on a conference letter of intent and sign a national letter with a school outside of that conference they feel they are not honoring their word."

Conference letters of intent, usually signed before national letters, are designed by leagues to protect the signing

college from losing a player to any of the other colleges in that league — the most important rivals for any conference team.

Two of Faust's best players last fall were Tony Hunter, a wide receiver who signed with Notre Dame, and Joe Lukins, an offensive tackle who signed with Ohio State.

Hayes Keeps Recruiting

"Woody Hayes visited here twice before the Gator Bowl game," said Faust, "and then even called once after he was fired." Hayes, the Ohio State coach for 28 years, was dismissed after he punched a Clemson player late in the Gator Bowl game last Dec. 30 in which Clemson upset Ohio State.

Faust said Joe Paterno, Penn State's head coach, had been at his school last Monday in an effort to recruit Hunter. But Penn State did not win over any of the Moehler High athletes as Purdue got the quarterback, Gates Larry; Indiana got two players; Miami of Ohio got the top running back, Rick Neal; and North Carolina, Virginia, Western Kentucky and the United States Merchant Marine Academy each landed a player. Even Brown (Paterno's alma mater) got a Moehler player for the Ivy League.

None of these players were involved

in such bizarre recruiting as "athle-napping" nor did any drive around in a new car recently, according to Faust.

Berst said his enforcement staff would continue its pre-signing investigations in the basketball recruiting wars that will be bitterly fought during the next couple of months. Basketball also has its National Letter of Intent day, in April. When the regular college seasons end the next week or two, the basketball coaches get down to the serious business of winning over athletes.

'Must Be Getting Tough'

Brian Boulac, the Notre Dame assistant football coach responsible for recruiting Hunter, said: "I've heard of hiding players in basketball recruiting. It goes on a lot. But this is the first time I've heard of that sort of thing in football recruiting. It must be getting tough for some out there."

Said Berst: "Going around to learn of violations or preventing them before they happen may dilute the criticism that we sit here in our office and only react to reports of violations. It also puts our pulse on the scene."

The N.C.A.A. investigators are obviously learning.

"We also want high school athletes to learn about recruiting before they get hurt," Berst said.

A.S.L., With 11 Teams, Opens Season March 31

The 1979 American Soccer League season will begin March 31 with the Las Vegas Seagulls, a new team, visiting the Los Angeles Skyhawks, Commissioner Bob Cousy announced yesterday.

The league, the oldest professional soccer league in the United States, will operate with 11 teams — six in the Eastern Division and five in the Western. Each team will play 14 games at home and 14 on the road.

The Eastern Division teams will be the New York Apollo, league champion last season, New Jersey Americans, Albany Eagles, Cleveland Cobras and two expansion teams — the Philadelphia Stoners, who will play in Allentown, Pa., and the Columbus Magic.

The Western Division will have the Skyhawks, Seagulls, California Sunshine, Sacramento Gold and Indianapolis Daredevils.

The regular season will end Aug. 26. The league's first all-star game will be played June 23 in New York.

Colombia Picks Team

Ivan Molina and Jairo Velasco will head the Colombian Davis Cup tennis team that will face the United States team March 16-18 at Cleveland. The other Colombian players are Alvaro Betancur and Orlando Agudelo.

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Winner of the War Between the Maras

Now that the Giants have hired George Young and Ray Perkins to plot their future, a truce exists in the War Between the Maras, although a truce does not assure a lasting peace. But maybe the war was worth it. Out of the verbal disagreements between Wellington Mara, the 62-year-old uncle, and Tim Mara, the 43-year-old nephew, has emerged a written agreement by which George Young will command the football operation. Several weeks ago the feuding Maras, each representing 50 percent of the stock, considered creating new club bylaws that would govern each's authority. Those bylaws have been scrapped but George Young now has the authority that a National Football League general manager needs; the authority that Andy Robustelli did not have, at least not in writing. As it turned out, neither of the Maras won their war — George Young did.

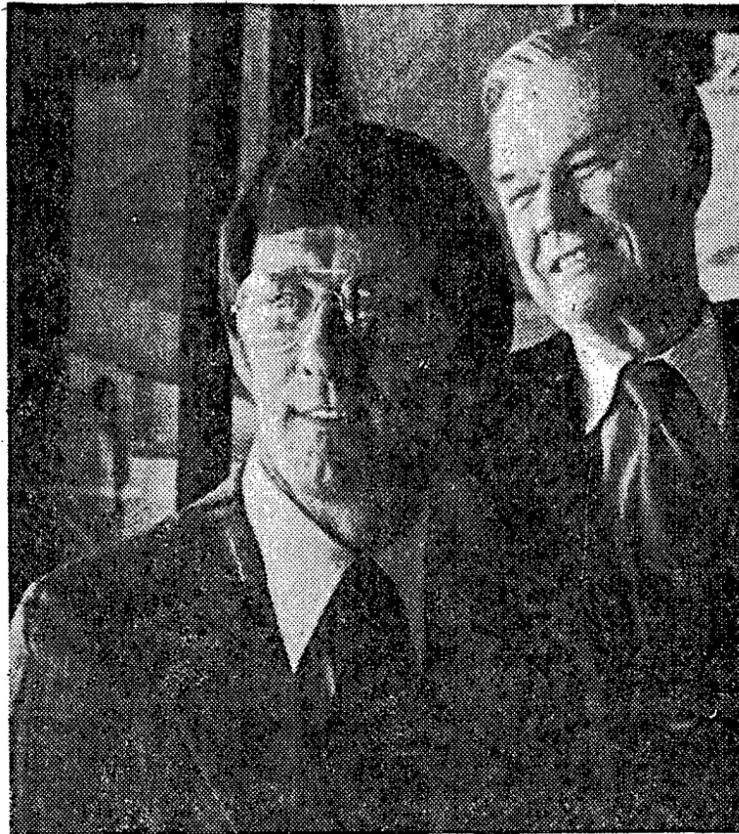
“George’s powers,” says Wellington Mara, “are spelled out in his contract.”

What is spelled out is that George Young is required to consult with the Maras in only two major areas — the selection of the coach (as he did before hiring Ray Perkins) and the making of a major trade involving premier players or No. 1 draft choices. Consultation in those areas is understandable. For all their sniping lately, the Maras still own the Giants; it’s their franchise and their money.

But in other areas, George Young has complete freedom to select the assistant coaches (in concert with Ray Perkins); to dismiss the head coach or any assistant coaches; to choose the pro and college scouts (Jack Butler, the respected boss of the Blesto V combine, is under consideration as the Giants’ new scouting coordinator) and to determine the equipment men, trainers and team physicians.

Ability, Not Family

Not that George Young is about to purge all the old-line Giant personnel in the front office and in the locker room. But he has the authority to decide whom to retain and whom to discharge. In the past, it often seemed



Wellington Mara, right, with Ray Perkins: Maybe the war was worth it

that the capable and the incapable were retained as long as they had a Giant heritage. Now they will remain or depart on George Young’s evaluation, rather than on their tenure with the franchise.

At last, the Giants have installed an “ability” concept and abandoned the “family” concept.

All this, of course, is the result of the War Between the Maras that has Wellington, his wife, Ann, and their 11 children on one side with Tim, his mother, Helen, his sister, Maura, and her husband, Richard Concannon, the Giants’ attorney, on the other side.

“My mother and sister,” Tim Mara says, “go along with what I tell them about how the club is doing.”

His mother, the widow of the late Jack Mara, who was Wellington’s brother, is 71 years old now.

“I remember when I told my mother that Bill Arnsparger was fired,” Tim Mara says. “My mother said, ‘Oh, that nice man.’ I guess she didn’t realize that we had lost seven straight games with him as coach.”

At the time of Maura’s marriage, the family joke was that she had married “the wrong Concannon”; around then Jack Concannon was a promising quarterback out of Boston College.

The Maras do not joke much anymore. And now the question is — will their war break out again in the future.

“I don’t think anything will occur that will affect the operation of the team,” Wellington Mara says. “But as a family, that’s another matter.”

“I think the family can come together again,” Tim Mara says. “As the president, Well had always been

taking the heat. He and his family felt the pressure more.”

The Bledsoe Move

If the Giants do not respond to the leadership of George Young and Ray Perkins, the heat will be on Tim Mara as well as on his uncle. Until recently Tim Mara was virtually invisible to the unhappy fans. But now he is highly visible. In speaking up on behalf of his 50 percent, Tim Mara can take a bow if George Young and Ray Perkins turn the Giants into a playoff contender. If not, Tim Mara will have to take the rap along with his uncle.

“Now that the general manager and the coach have been chosen,” Tim Mara says, “I’ll go back into my end of the club — the business end. I don’t think Well and I will have any serious disagreements in the future. We’ve had very few anyway.”

Very few perhaps, but those few were very critical, beginning with the signing of Larry Csonka to a three-year \$1 million contract prior to the 1976 season. Tim Mara and Dick Concannon strongly objected to that investment. But the War Between the Maras broke out when Terry Bledsoe was hired by Wellington last May as the assistant to Andy Robustelli, then the director of operations. Terry Bledsoe was Wellington’s choice to succeed Andy Robustelli, who had informed the club president that he would leave after the recent season.

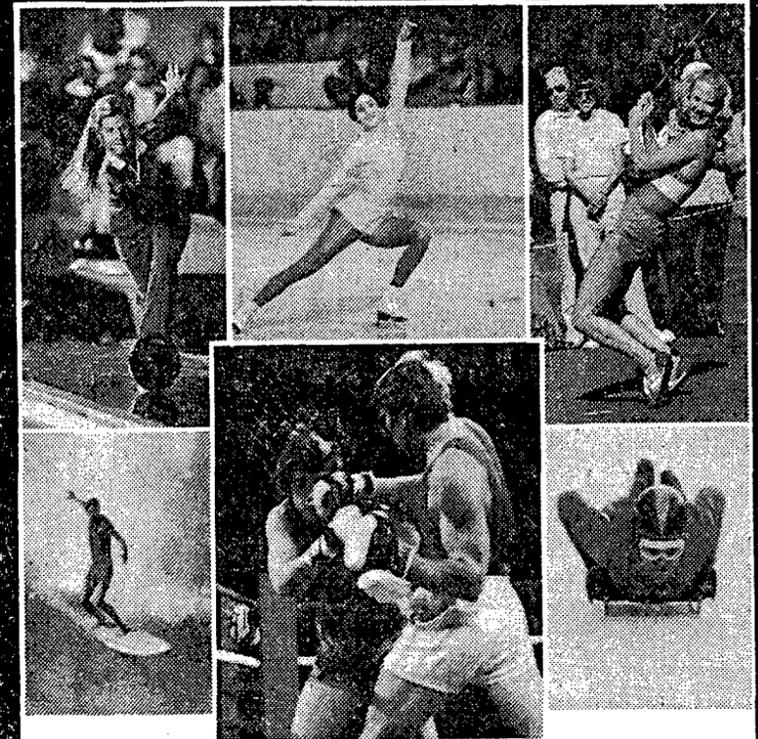
Tim Mara considered Terry Bledsoe to be an extension of his uncle’s authority over the football operation.

Tim Mara went to war with his uncle, a war that snarled the Giants’ search for a general manager and a coach for more than two months. Without the war, Wellington Mara might have been able to convince either Joe Paterno or Bill Walsh to take command as a combination general manager-coach, with Terry Bledsoe as the chief aide.

But when the war broke out, Joe Paterno did not want to risk the crossfire and Bill Walsh joined the San Francisco 49ers.

Nobody will ever know what might have been for the Giants without the War Between the Maras, but all is quiet now. Maybe that’s because all that’s important is spelled out in George Young’s contract.

FOUR SIZZLING HOURS OF EXCITEMENT AND THRILLS!



2:00PM FINAL! THE WOMEN SUPERSTARS

- | | | |
|------------------------------|-------------------------------|------------------------|
| Jane Blalock Golf | Linda Fernandez Volleyball | Suzy Chaffee Skiing |
| Carol Mann Golf | Diana Nyad Swimming | Katy Morning Skiing |
| Marlene Floyd Golf | Linda Jefferson Football | Joan Joyce Softball |
| Joan Lind Rowing | Kathy Williams Racquetball | Patty Costello Bowling |
| Carol Blazejowski Basketball | Dianne deLeeuw Figure Skating | |

3:30PM ABC'S INTERNATIONAL CHAMPIONSHIP BOXING USA vs POLAND in Amateur Boxing

A tough American squad seeks to avenge last year's loss to the hard-hitting Poles.

4:30PM ABC'S WIDE WORLD OF SPORTS

U.S. NATIONAL FIGURE SKATING CHAMPIONS
Linda Fratianne, Charles Tickner, Tai Babilonia and Randy Gardner
America's top World Championship hopefuls in special performances!

HAWAIIAN MASTERS SURFING CHAMPIONSHIP
Some of the world's best take on Oahu's awesome Banzai Pipeline!

INTERNATIONAL TOBOGGAN (CRESTA) CHAMPIONSHIP
Daredevil racers challenge the treacherous Cresta run at St. Moritz!



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Quarterback Is Major Problem for Perkins

By MICHAEL KATZ

The day last week that Ray Perkins was named head coach of the Giants, Joe Pisarcik was having a party, Randy Dean was thinking about Stanford Business School and Jerry Golsteyn was putting up fences.

Those are the three quarterbacks Perkins inherits. And even if the new coach has not completed grading their 1978 films, he must wonder why the first question asked at his Thursday news conference was whether he would trade for an established quarterback.



delayed until after his playing career, or have an offseason schedule of classes.

He said he didn't know much about Perkins (“the Milwaukee papers do not seem that interested in the Giants”), but he agreed with Golsteyn’s belief that with a new coach “everybody’s going to start off even.”

Golsteyn was relegated to anonymity by McVay after having started the 10th game of last season with five straight incompletions, and worse, having often forgotten the right formations to call. By nature, he is as tight as Pisarcik is

GABE KAPLAN'S HAVING A BALL!

His dream team's got a preacher, a jailbird, a pool shark, a muscleman,

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Those are the three quarterbacks Perkins inherits. And even if the new coach has not completed grading their 1978 films, he must wonder why the first question asked at his Thursday news conference was whether he would trade for an established quarterback.

Quarterback, every Giant fan knows, is a problem. According to Giant scouts, it cannot be solved in the college draft. Jack Thompson, the Throwin' Samoan from Washington State, is the consensus No. 1 college passer eligible this year. Though one scouting report calls him "the finest quarterback in the draft since Richard Todd," whom the Jets took in 1976, none say he will be ready to start in the National Football League this season.

Trading for an established quarterback will not be easy, although for the first time in perhaps a decade, the Giants have surplus goods, mainly defensive linemen and linebackers. But few established quarterbacks are

Sports Analysis

available. The Jets are unlikely to be willing to part with Todd or Matt Robinson. The only well-regarded quarterbacks who may be considered expendable, at a high price, by their teams are Danny White of the Dallas Cowboys, Don Strock of the Miami Dolphins and Tom Owen of the New England Patriots.

The question then becomes whether anyone the Giants can obtain is better than whom they already have. According to last season's statistics, the answer is yes. The Giants completed only 48.8 percent of their passes, threw for only 13 touchdowns, were intercepted 27 times and had their quarterbacks sacked 38 times in 16 games.

But all three Giant quarterbacks expect improvement under Perkins, whom Dan Fouts gave so much credit for his best season last year with the San Diego Chargers.

"He sounds a good choice," said Pisarcik from his Fort Lauderdale, Fla., party. "Let's get started now."

"Maybe he can help me a little the way he helped Fouts," said Golsteyn, after returning from his job with a fencing company northeast of Orlando, Fla.

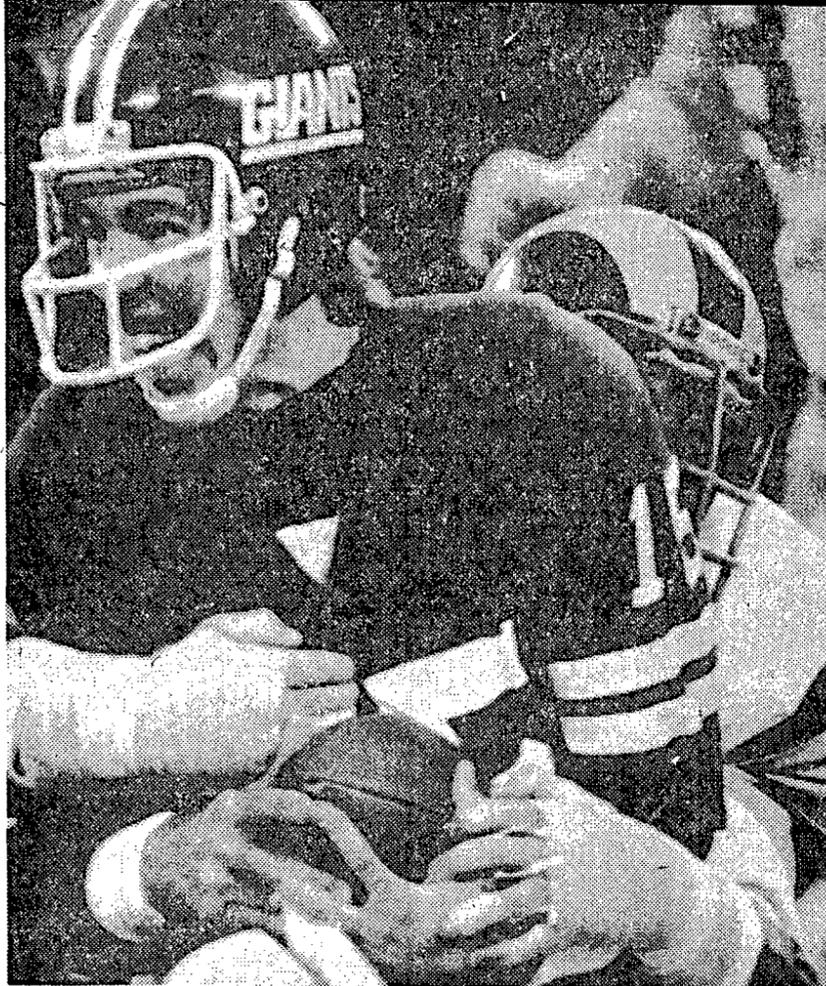
"I'm looking forward to getting with him," said Dean from his Whitefish Bay, Wis., home.

Pisarcik, the Giants No. 1 quarterback, did not even mind hearing that Perkins called all the plays last season as the offensive coordinator for the Chargers, the best passing team in the league. The rugged quarterback had bristled under the direction of Bob Gibson, John McVay's offensive coordinator, but knows that Fouts has called Perkins a "phenomenal play-caller."

"Dan changed only two plays on me last year," said Perkins. "One was for a touchdown. I can't remember the other, but one out of two ain't bad."

Showed Flashes of Skill

Despite having completed only 47.5 percent of his passes, Pisarcik showed flashes last season of being a major leaguer. Those flashes seemed to coincide with the times the play-calling was more adventurous. Perkins, who is



Randy Dean suffered rude introduction to quarterbacking in pros last season

willing to gamble on offense, might be able to keep Pisarcik at the emotional high necessary to get him to perform at his best.

"If he was so good at play-calling, then let him do it," said Pisarcik. "That's great. It's fantastic. All I've ever wanted was what's best for the team."

"I wouldn't give up on Pisarcik," said Dan Reeves, the Cowboy assistant beaten out by Perkins for the Giants job. "Anyone that tough with that strong an arm has to be considered."

Nor might Perkins be that willing to give up on Dean, who did not get to start until the 15th game of his second season. The new coach said it was

"mind over arm" in evaluating quarterbacks.

"Intelligence is what I look for first," said Perkins.

Dean's right arm may not be the strongest, but no one questions his intelligence. The Northwestern University honors student applied to Stanford Business School in his senior year at college and was recently notified that he could begin classes next fall, when his twin brother, Rob, also enters.

But though Dean could go to Stanford and be graduated into the vice presidency of some corporation, he would prefer being an N.F.L. quarterback and will pass up school this year. He plans to go to California this week to see if he can have his acceptance

classes. He said he didn't know much about Perkins ("the Milwaukee papers do not seem that interested in the Giants"), but he agreed with Golsteyn's belief that with a new coach "everybody's going to start off even."

Golsteyn was relegated to anonymity by McVay after having started the 10th game of last season with five straight incompletions, and worse, having often forgotten the right formations to call. By nature, he is as tight as Pisarcik is loose.

In 1976, as a 12th-round-draft choice from Northern Illinois, Golsteyn impressed Bill Arnsparger, then the coach, with his poise, quick release, mobility, arm and intelligence. But though he opened the 1977 and 1978 seasons as the regular quarterback, he quickly was back on the bench because of his fragility and lack of aggressiveness.

"I don't understand what their quarterback problem is," said Arnsparger, who is now again an assistant to Don Shula at Miami. "I thought I left behind a pretty good one."

When he was with the Dolphins, George Young, the Giants new general manager, probably had heard Arnsparger talk about Golsteyn many times. As a result, Golsteyn could be given another look by Perkins or be traded to Miami, which has Guy Benjamin and Strock backing up Bob Griese.

"I would like to stay in New York," said Golsteyn. "New York is really a place that if it ever had a winner, the fans would go crazy."

It Depends on the Quarterback

A winner depends on the quarterback. The chances are that even if Perkins and Young do not trade for an established one, they will not use a No. 1 draft choice for Thompson, preferring instead to get a big, fast running back like Charles Alexander of Louisiana State. It is possible, however, that they will draft a quarterback later, with the second or fourth-round pick, someone like Jeff Rutledge of Alabama. Perkins has respect for Alabama quarterbacks, having played there as a receiver for Joe Namath, Ken Stabler and Steve Sloan.

"I don't care what they do," said Pisarcik. "I'll still be the starting quarterback. Remember, I came here as a fifth-string quarterback. I have to prove myself every year. I'm going to do it again."

That's what worries some Giant fans.

Sports Today

BASKETBALL

New Jersey Gems vs. New York Stars, Women's Professional League, at Thomas Dunn Gymnasium, Elizabeth, N.J., 2 P.M.

Nets vs. Knicks, at Rutgers Athletic Center, Piscataway, N.J., 1:45 P.M. (Television — Channel 2, 1:45 P.M.)

Soviet National Team at Louisville and Wichita State at Indiana State. (Television — Channel 4, 1 and 3 P.M., respectively.)

Boys and Girls High vs. Alexander Hamilton, P.S.A.L. quarterfinals, at Pratt Institute, Willoughby and Hall Streets, Brooklyn, 4 P.M.

BOXING

United States vs. Polish National Team, at Lafayette, La. (Television — Channel 7, 3:30 P.M.)

FIGURE SKATING

National championships, at Cincinnati. (Television — Channel 7, 4:30 P.M., tape)

GYMNASTICS

Rumanian and Soviet national champion-

ships. The San Jose (Calif.) Flats motorcycle race will also be shown. (Television — Channel 4, 5 P.M.)

GOLF

Los Angeles open, final round, at Riviera Country Club, Pacific Palisades, Calif. (Television — Channel 2, 4 P.M.)

HOCKEY

Rangers vs. Islanders, at Madison Square Garden, Eighth Avenue and 33d Street, 7:30 P.M. (Television — Channel E (Cable), 7:30 P.M. Radio — WNEW, WMCA, 7:30 P.M.)

New York Police Department P.B.A. team vs. New York Fire Department, at Madison Square Garden, 1 P.M.

PLATFORM TENNIS

Men's Grand Prix professional tournament, at Field Club of Greenwich, Conn., semifinals, 10:30 A.M.; final, 1:30 P.M. Admission free.

SKIING

Eastern Mountain cross-country races at

Eisenhower Park, East Meadow, L.I., 10 A.M.

Women's professional championship, at Waterville Valley, N.H., qualifying round, 11 A.M.; final, 1 P.M.

SLED DOG RACING

Siberian Husky Club of Greater New York, Inc., at Firemen's Park, Route 25, Ridge, L.I., 10 A.M.

SOCCER

New York Arrows vs. Cincinnati, at Nassau Coliseum, Uniondale, L.I., 2 P.M. (Radio — WGLI, 2 P.M.)

Pescara vs. Palermo, Italian Major League, at Pescara, Italy. (Television — Channel 47, 5 P.M., via satellite.)

THOROUGHBRED RACING

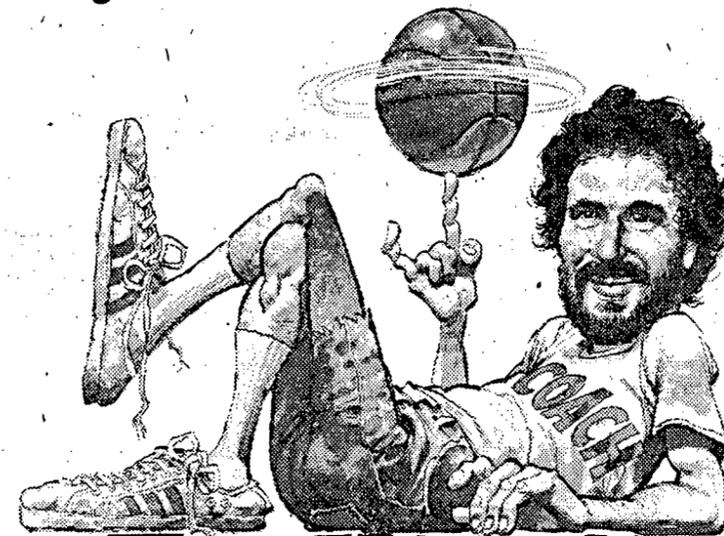
Aqueduct (Queens) Race Track, 1:05 P.M.

TRACK AND FIELD

Mike Hannon Memorial run, at Central Park, Fifth Avenue and 90th Street, 11 A.M. Metropolitan Road Runners Athletic Club six-mile run, at Eisenhower Park, 11 A.M.

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Feb. 23/79

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| 25-5-355 Salmon | |
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AM-SALMON
BY ALEX BINKLEY

OTTAWA (CP) - TALKS ON A TREATY TO LIMIT THE INTERCEPTION OF WEST COAST SALMON BY CANADIAN AND U.S. FISHERMEN WILL RESUME IN EARLY APRIL; A FISHERIES DEPARTMENT OFFICIAL SAID FRIDAY.

DAVID BOLLIVAR TOLD THE COMMONS FISHERIES COMMITTEE THAT GOVERNMENT OFFICIALS WILL RESUME EFFORTS TO SETTLE THE ISSUE; WHICH WAS NOT COVERED BY A TENTATIVE FISHERIES AGREEMENT WORKED OUT BY CANADIAN AND U.S. NEGOTIATORS LAST WEEK.

SALMON BOUND FOR CANADIAN AND AMERICAN RIVERS PASS THROUGH THE OTHER COUNTRY'S FISHING ZONE AND BOTH SIDES WOULD LIKE TO SEE THEIR SALMON SAVED FOR THEIR OWN FISHERMEN. TALKS HAVE GONE ON FOR AT LEAST 10 YEARS FOR A TREATY TO LIMIT SALMON INTERCEPTIONS.

HE ALSO SAID THE INTERNATIONAL NORTH PACIFIC HALIBUT COMMISSION COULD CONTINUE FOR ANOTHER TWO YEARS INSTEAD OF EXPIRING IN APRIL. IT MIGHT EVOLVE INTO A SCIENTIFIC BODY IN A FEW YEARS AFTER 50 YEARS AS THE REGULATOR OF HALIBUT FISHING ON THE HIGH SEAS OFF ALASKA.

THE FISHERIES AGREEMENT PROVIDES FOR A TWO-YEAR WITHDRAWAL OF CANADIAN AND U.S. FISHERMEN FROM FISHERIES IN THE OTHER'S ZONE.

BRITISH COLUMBIA HALIBUT FISHERMEN WILL GET TWO MILLION POUNDS OF ALASKAN HALIBUT THIS YEAR AND ONE MILLION POUNDS IN 1980. IN RETURN WASHINGTON STATE FISHERMEN WILL GET 3,250 TONNES OF GROUND FISH FROM THE B.C. ZONE.

THOSE FISHERIES WILL BE TERMINATED AFTER 1980.

NO REDUCTION

BOLLIVAR SAID THE U.S. ALLOCATIONS WILL NOT REQUIRE A REDUCTION IN THE AMOUNT OF GROUND FISH B.C. FISHERMEN WILL BE ALLOWED.

BENNO FRIESEN (PC-SURREY-WHITE ROCK) SAID MOST B.C. FISHERIES GROUPS ARE OPPOSED TO THE FISHERIES AGREEMENT BECAUSE THEY WANT A ONE-YEAR WITHDRAWAL AND MORE HALIBUT.

THE AMERICANS WERE DEMANDING 30,000 TONNES OF GROUND FISH IN EXCHANGE FOR A ONE-YEAR AGREEMENT; BOLLIVAR SAID. THAT LEVEL WOULD BE TOO HIGH FOR THE B.C. STOCKS.

FISHERIES MINISTER ROMEO LEBLANC SAID THE TWO YEARS ARE NEEDED TO CUSHION THE FISHERMEN WHILE B.C. FISH STOCKS ARE RE-ALLOCATED. "WE DON'T WANT FISHERMEN TO RETIRE FROM THE FISHERY AND WE DON'T WANT TO PLUNGE THEM INTO A FISHERY THEY'RE NOT FAMILIAR WITH."

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LEBLANC ALSO SAID THE GOVERNMENT IS TRYING TO FIND ALTERNATE EMPLOYMENT FOR STAFF LAID OFF AT THE FISHERIES LABORATORIES IN HALIFAX AND VANCOUVER BECAUSE OF FEDERAL SPENDING CUTS.

THE LAYOFFS CAME IN SECTORS WORKING ON TECHNOLOGY FOR THE PROCESSING INDUSTRY; LEBLANC SAID. "WE ARE RE-ARRANGING OUR PRIORITIES. WE'RE IMPROVING OUR STOCK ASSESSMENT AND OUR TECHNOLOGICAL RESEARCH TO BENEFIT FISHERMEN."

THE DEPARTMENT CAN'T PROTECT THE JOBS OF ALL ITS EMPLOYEES BUT IT HAD DECIDED TO KEEP PARTS OF THE LABORATORIES OPEN; HE SAID.

TOM SIDDON (PC-BURNABY-RICHMOND-DELTA; B.C.) SAID THE LAYOFFS DO NOT MAKE SENSE BECAUSE MANY SMALL FIRMS CAN'T AFFORD TO DO RESEARCH. THE FATE OF THE LABS WAS IN DOUBT "BECAUSE THE MIDDLE LEVEL OF SCIENTISTS HAS BEEN CARVED OUT OF THEM."

23-02-79 17.34E5

Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

File -
25-5-7-2
Salmon 1

TO
À

The Minister of Fisheries and Oceans

FROM
DE

Donald D. Tansley

| | | | |
|---------|-------------------|---------------------------------------|-------------|
| DATE | | SECURITY CLASSIFICATION - DE SÉCURITÉ | |
| ACC | 19116 | OUR FILE - N/RÉFÉRENCE | |
| FILE | 25-5-7-2-Salmon-1 | REF | |
| BY HAND | PAR PORTEUR | FOUR FILE - V/RÉFÉRENCE | |
| ATTN: | | DATE | FEB 22 1979 |

SUBJECT
OBJET

Salmon Interception Limitation Talks

The purpose of this memorandum is to report upon the salmon interception negotiations held in Seattle from January 31-February 2, 1979.

Further progress towards an agreement was achieved at the session, which was held to try to consolidate the progress made in Vancouver in December 1978. The negotiations are now at the stage where a framework has been established for future co-operation, and where two major problems remain, i.e. the U.S. share of Fraser sockeye and pink salmon, and the overall sharing formula (equity). Despite the difficult negotiations yet to be undertaken, we believe the prospects for agreement are better than at any time in the past.

Purpose of Meeting

At the conclusion of the meeting held in Vancouver in December, lack of time had prevented the two sides from preparing written formulations of a number of points which had been tentatively agreed. The purpose of the Seattle session, which was characterized as a continuation of the Vancouver meeting, was to reach agreement on such points and to consolidate progress.

In order to expedite matters, a small "drafting group" met in Seattle on January 29 and 30, and developed agreed language with respect to the application of schemes of interception limitation (Article VII), coordination of salmon development programs (Article VIII), and the takeover of management of Fraser River sockeye and pink salmon by Canada (Article XI). The attached document shows draft agreed language as well as proposals made by one side or the other and represents a summary of the negotiations to date.

Specific Issues Addressed

- Lists of Fisheries

In the meeting of full delegations, most attention was focused on the development of a list of fisheries to be specified for inclusion either in a clearly defined scheme of limitation for interceptions (so-called Group A fisheries) or for the application of a general commitment not to increase interceptions (Group B fisheries).

In Vancouver, preliminary lists of fisheries had been put forward by both sides. These lists were relatively short, with both countries focusing attention on the most important intercepting fisheries. In Seattle, the United States began to add more and more Canadian intercepting fisheries to the list. All these additions were to the Group B list. The two sides have tentatively agreed that the proposed new Commission would study Group B fisheries and would, within the first six years of the agreement, recommend that such fisheries become subject to specific interception limitation, or be removed from the list, or be subject to further study.

The Canadian side was, therefore, disappointed by the U.S. moves. From the point of view of the operation of the new Commission, a long list of fisheries to be studied would create an impossible workload (particularly in view of the fact that studies would be undertaken by national sections under the Commission's guidance and not by an independent research agency). However, the U.S. actions are revealing; the U.S. delegation has obviously realized that both countries are serious about developing an agreement, and has worked to try to ensure that every Canadian intercepting fishery is listed somewhere in the agreement.

Canada's response to the U.S. proposals on the list of fisheries was to note the proposals. We did not wish to become embroiled in a futile exercise of listing every U.S. intercepting fishery in the knowledge that, by doing so, we would be creating an unworkable agreement. The subject remains open for further negotiations, but is a subject of a technical nature on which agreement should be relatively easily achieved.

Transboundary Rivers

We are working to develop a treaty Article which will clarify Canada's right to exploit fish in the Canadian sections of these rivers, and will specify the need for appropriate conservation action by the USA in the event that Canadian fisheries develop in these rivers. We are also proposing that the Article

deal specifically with the question of special coordination of enhancement programs for these rivers, with provisions for Canada to ensure that it can harvest returns to its own projects.

More important, however, is the relationship between the treatment of salmon bred in transboundary rivers and the question of equitable sharing of resources. We are adamant that U.S. interceptions of fish bound for the Canadian sections of these rivers be credited to some extent in the interception balance sheet. The USA, on the other hand, considers its interceptions of such fish to be different in nature from other interceptions. The U.S. response in Seattle was, however, much softer than at previous sessions, and considering that the issue had never before been given a full airing, we are hopeful that a resolution of the issue is a possibility.

Fraser River

The institutional framework, and phase-in of Canadian management of sockeye and pink salmon is tentatively agreed, subject to a U.S. reservation that final agreement depends on agreement on special compensation to the USA for unrealized benefits from past joint expenditures on the river through IPSFC.

We have indicated in the past that we are prepared to contemplate special compensation, but the details of such compensation remain to be discussed.

Equity

With the advent of serious planned salmon development programs in recent years in both countries, it has been agreed that each country should benefit from its increased production. Canada has argued, and continues to do so, that each side should be enabled to harvest an amount of salmon commensurate with its own total production, a position with which the USA does not agree. It is our view, however, that the differences in principle ought to be easier to bridge in a world of more abundant resources, where no fisherman need be penalized.

Both sides have recognized that it is necessary to develop an agreed system of salmon valuation so that future trades can be made in the harvest of each other's salmon to provide and maintain an equitable balance of interceptions.

The resolution of this issue will be, without doubt, the hardest to achieve. However, having reached broad agreement on the framework for cooperation in salmon management, the

isolation of the issue will focus attention on it. Our present thoughts are that the solution might lie in being prepared to accept less than full credit for the contribution of Canadian fish from transboundary rivers, added to which is the special compensation for the United States on the Fraser River, which taken together may represent a position somewhere between the different principles presently held by each side.

Summary

The negotiations have arrived at a stage where the key issues have been isolated. It is worth noting that progress has been made in an atmosphere of confrontation that existed prior to 1977. We are encouraged by progress in the last six months, and while not wishing to underestimate the remaining difficulties, are hopeful that a draft agreement could be finalized by the end of 1979.

Next Steps

It is anticipated that two or three meetings of officials will take place over the summer, with full negotiations resuming in the fall. In the meantime we are proceeding with the domestic preparations which I outlined in my memorandum of January 11, 1979 on this subject.

Original Signed by
DONALD D. TANSLEY

cc: Min.'s Office (3)
D.D. Tansley (2)
G.C. Vernon (2)
A. Campbell
B. Applebaum
D.J. McEachran
W.E. Johnson
W.R. Hourston
M.P. Shepard
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J. McDonald (Nanaimo)
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G. Jones (Vancouver)
R.N. Palmer (Vancouver)

File
25-5-7-2
Salmon 1

COMPARATIVE DRAFT

DISCUSSION DRAFT AGREEMENT

February 2, 1979

CANADIAN PROPOSED LANGUAGE

DRAFT AGREED LANGUAGE

U.S. PROPOSED LANGUAGE

PREAMBLE*

The Government of the U.S.A. and the Government of Canada,
Considering the overriding interests of both Parties in the
conservation and rational management of Pacific salmon stocks,
and in promoting the objective of optimum utilization of such
stocks;

Recognizing that Pacific salmon originating in the rivers of
each Party are intercepted in substantial numbers by the nationals
and vessels of the other Party, and that the management of stocks
subject to such interceptions is a matter of common concern;

Recognizing that States in whose rivers salmon stocks
originate have the primary interest in and responsibility for
such stocks;

* The U.S. reserves its position on the unbracketed language
pending resolution of the bracketed language.

Recognizing that both Parties have
existing fisheries that must be
to continue so as to avoid
disruption of the participants,

Recognizing the special interest. 000337

CANADIAN PROPOSED LANGUAGE

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U.S. PROPOSED LANGUAGE

the Parties in the salmon stocks of
the Fraser River and Transboundary
Rivers;

Convinced that it is in the interest of both Parties to
realize the potential of salmon produced in their
respective rivers;

Considering that coordinated research and the exchange
of scientific information are required in order to improve the
basis for the management and enhancement of stocks of common
concern for the benefit of each Party;

Have agreed as follows:

ARTICLE I *

The Parties undertake through the provisions of this
Agreement to cooperate in the management of their Pacific
salmon resources for the purposes of assuring to the Parties
the benefits of production of salmon originating in their
respective rivers and of achieving the optimum utilization
of these salmon resources.

The Parties recognize that the salmon
stocks of the Fraser River and Trans-
boundary Rivers are special case 000338

CANADIAN PROPOSED LANGUAGE

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and responsibility for

require the special consideration
provided for in this Agreement.

The following principles shall be taken into account and, subject to the specific provisions of this Agreement, shall be applied by the Parties in their cooperation under this Agreement:

(a) States in whose rivers anadromous stocks originate have the primary interest in _____ such stocks;

(b) Each Party should be enabled to realize the potential of its salmon resources and to receive benefits commensurate with the salmon production of its rivers;

(c) The Parties should work together in order to ensure the conservation and rational management of their Pacific salmon resources, taking into account the objective of optimum utilization:

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(d) In view of the intermingling of salmon stocks at sea and the migration of stocks originating in the rivers of each Party into waters under the fisheries jurisdiction of the other Party, the implementation of these principles will require and the Parties commit themselves to:

(i) coordination in the management of intercepting fisheries;

(ii) the avoidance of both increases in interception and the initiation of new intercepting fisheries, and the development of specific plans for the limitation of interceptions, taking into account the desirability of avoiding undue dislocation in traditional fishing patterns, and the allocation objectives of each Party.

(iii) cooperation and coordination in the development of certain salmon stocks subject to interception;

(iv) coordinated research and the exchange of scientific information in order to broaden the scientific basis for salmon management, in particular with respect to the migration patterns and productivity of stocks of common concern, the extent of interceptions by the nationals and vessels of each Party, and artificial

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ARTICLE II

The Parties agree to establish and maintain a Pacific Salmon Commission (hereinafter referred to as "the Commission") whose functions shall be:

- (a) to provide a forum for consultation between the Parties with respect to annual management objectives and regulations for Pacific salmon fisheries of common concern;
- (b) to provide a forum for consultation between the Parties with respect to cooperation and coordination in the development of salmon stocks subject to interception;
- (c) to facilitate the conduct of coordinated research programs and exchange of scientific information between the Parties, and
- (d) to review the implementation by the Parties of the program of interception limitation;

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(e) to review the Annexes to the Agreement and to make recommendations respecting their amendment where appropriate;

(f) generally to provide a forum for consultation between the Parties with respect to problems of mutual concern respecting Pacific salmon and to carry out such other functions as are assigned to it by this Agreement.

CANADIAN PROPOSED LANGUAGEDRAFT AGREED LANGUAGEU.S. PROPOSED LANGUAGEARTICLE III

1. The Commission shall consist of up to _____ Commissioners, of whom up to _____ shall be appointed by each Party to serve as the national section of that Party. Each Party may, in its discretion, appoint up to _____ alternate Commissioners to serve in the absence of any Commissioner appointed by that Party.

2. Each Commissioner and alternate Commissioner shall serve at the pleasure of the Party which appointed that person. Each Party shall fill vacancies in its national section, and may fill vacancies in its slate of alternate Commissioners, as they occur.

3. The Commission shall select a Chairman and a Vice-Chairman annually from among the Commissioners to serve for terms of 12 months, except that the first Chairman and Vice-Chairman shall serve for the calendar year in which the Convention enters into force and for a portion of the subsequent calendar year to be determined by the Commission. The Chairmanship and Vice-Chairmanship shall

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alternate between the two national sections, with the national section from which the first Chairman is selected to be determined by lot; and the Vice-Chairman shall be a Commissioner of the other national section.

If the position of Chairman or Vice-Chairman becomes vacant before the end of a term, the Commission shall select a replacement from the national section of which the previous Chairman or Vice-Chairman was member for the remainder of the term.

4. Decisions and recommendations of the Commission shall be adopted by affirmative votes of both national sections. Each national section shall have one vote in the Commission, which shall be cast by the Commissioner of that national section designated for the purpose of voting by the appointing Party.

5. Subject to the approval of the Parties, the Commission may decide upon and amend, as occasion may require, by-laws or rules for the conduct of its meetings and the exercise of its function as well as for the conduct

CANADIAN PROPOSED LANGUAGEDRAFT AGREED LANGUAGEU.S. PROPOSED LANGUAGE

of the meetings of the Panels referred to in Article IV and the exercise of their functions.

6. Unless otherwise agreed between the Parties, the seat of the Commission shall be at _____.

7. Meetings of the Commission shall be called by the Chairman or at the request of either national section. The Chairman shall notify all the Commissioners of such meetings which may be held at the seat of the Commission or at such other place as may be determined in accordance with the by-laws or rules of the Commission.

8. Each Party shall pay the expenses of its own national section.

9. All expenses of the Commission, other than those referred to in paragraph 8, shall be borne in equal shares by the Parties, unless otherwise agreed between them. An annual budget of joint expenses shall be prepared by the Commission and submitted to the Parties for approval. After the budget has been

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approved, the contributions owing by each Party shall be paid as promptly as possible.

10. The Commission shall authorize the disbursement of funds contributed by the Parties pursuant to paragraph 9 for its joint expenses, and may enter into contracts and acquire property necessary for the performance of its functions.

11. The Commission shall submit to the Parties an annual report of its activities and an annual financial statement.

12. The Commission shall, with the concurrence of the Parties, appoint an Executive Secretary, who shall be charged with the general administration of the Commission under the supervision of the Commission.

13. The Commission may engage staff, whose composition and terms and conditions of employment shall be included in the annual budget submitted to the Parties pursuant to paragraph 9 of this Article. The Executive Secretary shall have full authority over the staff, subject to any general directives established by the Commission.

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14. The Commission shall establish procedures to take into account the views of advisory committees which may be established by the Parties.

ARTICLE IV

1. The Parties agree to establish and maintain the following Panels of the Commission:

(a) a Northern Panel for salmon originating in rivers whose mouths are situated north of (Cape Caution);

(b) a Southern Panel for salmon originating in rivers whose mouths are situated south of (Cape Caution) other than those stocks for which the Fraser River Panel is responsible;

(c) a Fraser River Panel; and

(d) a Transboundary River Panel for salmon originating in rivers referred to in Article X.]

2. The Panels shall provide information and make recommendations to the Commission with respect to the functions of the Commission as specified in Article II, and carry out such other functions as may be specified in this Agreement.

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3. In cases where fisheries intercept stocks for which more than one Panel is responsible, the appropriate Panels shall meet jointly to carry out the functions specified in paragraph 2. If the Panels cannot agree, each may make an independent report to the Commission.

4. Each Panel shall consist of up to ____ members, of whom at least ____ shall be a Commissioner or alternate Commissioner appointed under the provisions of Article III.

5. Except as otherwise provided in this Agreement, paragraphs 2, 3, 4, 7, and 8 of Article III apply, mutatis mutandis, to the proceedings of each Panel.

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ARTICLE V

Cooperation and consultation between the Parties regarding the management of salmon stocks which contribute to intercepting fisheries shall be facilitated through the following procedure:

(a) Each Party shall, with respect to any stock or complex of stocks originating in its rivers which contributes to a fishery listed in Annex I, submit annually to the appropriate Panel and the other Party preliminary determinations of the following matters for the subsequent year:

- (i) the estimated size of the run;
- (ii) the escapement required, taking into account the objective of optimum utilization, the estimated size of the run and the interrelationships between stocks;
- (iii) the total allowable catch;
- (iv) any other matter whose determination may be necessary in order to develop regulations for that fishery; and

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(v) the intentions of the state of origin with respect to the regulation of fisheries in its own waters on that stock or complex of stocks.

These preliminary determinations shall be submitted before January 31 of each year, or by such other date as may be agreed upon by the Parties.

(b) No later than 30 days following receipt of such preliminary determinations, each Party shall submit to the appropriate Panel proposed regulations for the subsequent year with respect to fisheries listed in Annex I which are conducted in its waters and for which preliminary determination on stocks or complexes of stocks contributing to that fishery have been submitted pursuant to paragraph (a), taking into account the provisions of this Agreement and the effect of such regulations on other stocks affected by the fishery.

The Parties recognize that some or all of these determinations not be available for the Group II Fisheries listed in Annex I.

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(c) The Panel shall examine the preliminary determinations and proposed regulations and report its findings to the Commission within 15 days.

(d) The Commission shall review these findings and report its views to both Parties within 15 days.

(e) The Parties shall take account of the views of the Commission as to the matters referred to earlier in this Article.

(f) Each Party shall promptly notify the Commission and the other Party of the final determinations and regulations and shall enforce such regulations within its waters. Such final determinations and regulations may be modified by the appropriate Party during the fishing season where modifications are necessary in the light of variations from anticipated conditions, in which case such modifications shall be transmitted immediately to the other Party and to the Commission.

CANADIAN PROPOSED LANGUAGEDRAFT AGREED LANGUAGEU.S. PROPOSED LANGUAGE

ARTICLE VI

In carrying out the objectives of this Agreement and in coordinating their activities with respect to the management of fisheries listed in Annex I, the Parties shall encourage and provide their domestic authorities the opportunity to work closely with the Commission and the Panels.

ARTICLE VII

1. The Parties agree to limit interceptions in fisheries listed in Group A of Annex I in accordance with the provisions of that Annex.

*2. The Parties recognize that further consideration must be given to the fisheries listed in Group B of Annex I in order to determine the most appropriate treatment of these fisheries for the purposes of this Agreement, and that the acquisition of further data as to the nature and extent of any interceptions in these fisheries may assist the Parties in this regard. The Parties, therefore, agree that in developing annual regulations for such fisheries, they shall take into account and attempt to minimize the effects of any changes in fishing

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patterns that might increase interceptions.

3. The Commission shall study the fisheries listed in Group B of Annex I and shall, not later than six years after the entry into force of this Agreement and annually thereafter recommend to the Parties, with respect to each such fishery, either:

- (a) That it be transferred to Group A and made subject to a specific scheme of interception limitation to be recommended by the Commission for incorporation into the Annex;
- (b) that it be deleted from the Annex; or
- (c) that it be the subject of further research and consideration within a time frame to be specified by the Commission.

4. Recommendations referred to in paragraph 3 shall be considered by the Parties who shall inform the Commission of their acceptance, including any agreed modifications, or rejection thereof, within 180 days of its transmittal by the

* Acceptance of this language by Canada is contingent on satisfactory resolution of the language of Articles I and VIII.

Commission. Where any such recommendation is accepted, with or without agreed modifications, Annex I shall be amended in accordance with Article XVI.

5. The Commission shall review the provisions of Annex I respecting Group A stocks annually and shall, where appropriate, make recommendations to the Parties for the amendment of interception limitation schemes set out in Annex I in order to improve the effectiveness of those schemes and to fulfill the principles set out in this Agreement. The Commission shall also provide to the Parties a general assessment of the effectiveness of the provisions of Annex I respecting Group A fisheries after the fourth year of operation of this Agreement.

6. The Commission shall review the implementation of the interception limitation program each year, and shall report to the Parties on any case where a limitation binding on the Parties has been exceeded or on any other factor which should be taken into account in formulating management policies or regulations for the purposes of this Agreement. The Parties shall furnish to the Commission such information as it may require for the purposes of this Article.

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ARTICLE VIII

1. The Parties agree to coordinate their respective programs for the development of their Pacific salmon resources, recognizing that the benefits of this Agreement cannot be achieved unless the program of interception limitations set out in Article VII and Annex I is responsive to the complex problems associated with salmon development programs.

*2. In coordinating their respective salmon development programs the Parties shall be guided by the principles of Article I and the other provisions of this Agreement and by the following objectives:

(a) that each Party should be enabled to fully develop the salmon stocks of its rivers;

* The U.S. reserves its position pending resolution of the bracketed language in the Preamble and Article I.

(b) that by 1990 and thereafter each Party receives benefits commensurate with its own salmon production;

(b) that by 1990 and thereafter each Party should receive the benefits of its salmon enhancement;

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CANADIAN PROPOSED LANGUAGE

U.S. PROPOSED LANGUAGE

- (c) that to the extent practicable development projects should not result in situations where the harvesting of the added production would necessarily cause serious injury to the salmon resources originating in the rivers of the other Party.
3. The Parties shall notify the Commission as far in advance as possible of plans for development of their salmon resources which may lead to the initiation of, or have an impact upon, an intercepting fishery.
4. The Commission shall promptly review the plans [and shall conduct an annual review of all such plans.] The Commission shall advise the Parties of expected impacts with respect to the provisions of this Agreement. In cases where adverse impacts are expected to be significant, the Commission shall recommend to the Parties such adjustments in regulations, modifications to development programs of either Party, changes to the interception limitations set out in Annex I, including compensatory adjustments in interception limits, or other measures to insure that the principles and objectives of this Agreement are fulfilled.

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5. The Parties shall review such recommendation and at the request of either Party shall consult, taking into account^{the} obligations undertaken in Article I. The Parties shall inform the Commission of their acceptance, including any agreed modifications, or their rejection of the recommendation, within 180 days of its transmittal by the Commission. If the recommendation is accepted by the Parties it shall be binding upon them. When the Parties accept a recommendation which proposes changes to the interception limitation schemes in Annex I, with or without agreed modifications, the Annex shall be amended in accordance with Article XVI.
6. If a Party rejects such recommendation, or if the Commission is unable to agree on a proposed recommendation, the Parties shall seek to agree on measures that will be regarded as equitable to minimize significant adverse impacts, recognizing that fully coordinated development projects are essential to the attainment of the principles of this Agreement. (Further consideration will be given to this paragraph.)

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8. Possible paragraph relating provisions of this Article to Articles X and XI.

7. (Phrase relating this paragraph to remainder of the Agreement may be necessary.)
The Parties agree to have in place within five years after the entry into force of this Agreement an agreed system for comparing the catches of the various fisheries and salmon species within the scope of this Agreement. To this end, the Parties shall within one year after entry into force of this Agreement establish terms of reference for a joint study to be conducted in this respect.

9. (Dispute settlement with respect to adjustments in regulations or entitlements pursuant to this Article.)

8. Salmon development projects transboundary river stocks shall be considered under Article X and not under this Article. The salmon development projects of the Fraser River shall be considered under Annex I and not under this Article.]

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ARTICLE IX

[Coordination of troll salmon regulations.]

CANADIAN PROPOSED LANGUAGE

ARTICLE X

1. This Article applies to salmon originating in rivers which rise in Canada and flow to the sea through the United States, hereinafter referred to as "transboundary rivers."

2. The provisions of Articles V shall apply with respect to the formulation of annual management policies and regulations for stocks originating in the Canadian portion of transboundary rivers.

3. If Canada initiates or expands a fishery in its own portion of a transboundary river in order to harvest either existing salmon production from that portion of the river or salmon production generated by future development projects undertaken by Canada, the United States shall adjust its fisheries to the extent necessary to allow Canada to harvest such production without affecting escapement levels set pursuant to this Agreement.

4. If the United States develops or enhances a stock originating in its portion of a transboundary river, and the harvest of the increased production results in increased interceptions of salmon originating in the Canadian portion of the river, the Parties shall consult through the Commission in order to reach agreement based on the following provisions:

DRAFT AGREED LANGUAGE

U.S. PROPOSED LANGUAGE

ARTICLE X

1. This Article applies to salmon originating in those rivers listed in Part ___ of Annex II, hereinafter referred to as "transboundary rivers".

2. Both Parties recognize their joint interest in transboundary rivers and each Party's right to harvest salmon from these stocks and to maintain long-standing, traditional fisheries.

3. The Parties agree to prepare and discuss, within the appropriate panel, the management and conservation plans for terminal and river fisheries, taking into account stock requirements of each Party. In this regard, the Parties shall be guided by appropriate provisions of Article V, recognizing that cooperative development and utilization of transboundary river stocks requires a flexible approach to the management of these stocks, and that the management requirements and procedures will be different for each transboundary river.

4. Upon the recommendation of the appropriate Panel, the Commission shall consider the cooperative development and utilization of transboundary river stocks, and in this regard shall make recommendations to the Parties on the means by which cooperative development should proceed and by

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- (a) Canada shall be offered compensatory entitlements equivalent to the increased interceptions; and
- (b) If Canada decides to increase the production of the intercepted stock, it shall be granted access to United States waters to harvest an amount equivalent to that increased production.

The consultations shall take place in accordance with the procedures set out in Article VIII with respect to coordination in salmon development, and if an agreement is not reached within one year of the commencement of a project, the matter shall be referred to (dispute settlement procedure) to determine the amount of the compensatory entitlement to be awarded to Canada and the terms and conditions of any access to be granted to Canada in order to harvest that entitlement.

5. Any entitlements and access conditions established pursuant to paragraph 4 shall be listed in Annex 2.

DRAFT AGREED LANGUAGE

U.S. PROPOSED LANGUAGE

which benefits can be realized from cooperative development

5. The Parties agree that the salmon enhancement projects proposed by either Party within their respective portions of the transboundary rivers shall be subject to review by the appropriate Panel and the Commission. The Parties shall consider recommendations of the Commission made pursuant to paragraph 4 of this Article, and other means by which development viewed as equitable by both Parties may proceed.

CANADIAN PROPOSED LANGUAGE

DRAFT AGREED LANGUAGE

U.S. PROPOSED LANGUAGE

ARTICLE XI*

DRAFT AGREED LANGUAGE

1. This Article applies to pink salmon and sockeye salmon originating within the Fraser River and its tributaries.

2. In the first year after entry into force of this Agreement the Fraser River Panel shall operate in accordance with the practices established by the International Pacific Salmon Fisheries Commission under the Convention for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries in the Fraser River System, as amended, with respect to the conduct of such activities as will permit the Panel to make the preliminary and final determinations referred to in Article V for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 4 of this Article.

3. In the second year after the entry into force of this Agreement, Canada will assume responsibility for all upriver work, such as the improvement of spawning grounds, the construction and maintenance of hatcheries, rearing ponds and fish passage facilities, the collection of escapement and outmigration

*U.S. Agreement to this Article is expressly conditioned on agreement to U.S. entitlements to Fraser sockeye and pink salmon.

CANADIAN PROPOSED LANGUAGE

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data outside the area referred to in Annex II, and similar work in the Fraser River. Canada will work jointly with the Fraser River Panel to permit the Panel to make the determinations referred to in Article V for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 4 of this Article.

4. In the third year after the entry into force of this Agreement and thereafter, Canada shall submit to the Fraser River Panel preliminary determinations referred to in paragraph (a) of Article V for the management of the stocks governed by this Article, taking into account:

- (a) the objective of optimum production, having regard to the interests of both Parties;
- (b) the need to set escapement goals in such a way as to permit the United States to achieve the entitlements set out in Annex I;

(c) the need to avoid ^{disruptive} changes in patterns of exploitation, and

(d) the best scientific evidence available.

(c) the need to avoid disruptive changes in traditional fishing patterns; and

CANADIAN PROPOSED LANGUAGE

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5. The Fraser River Panel shall examine the preliminary determinations submitted under paragraph 4 and report its view to both Parties [within 30 days]. Canada shall take these views into account before the determinations are made final and shall notify the Fraser River Panel of its final determinations not later than [30] days after the Panel has reported its views.

6. The United States may refer to the Commission any final determination by Canada made under paragraph 5 which the United States considers inconsistent with the provisions of this Agreement. The Commission shall within [30] days report its views and any recommendations to the Parties. If modifications are indicated, Canada shall within [10] days notify the Commission of its response. If the United States objects to the response, it may refer the matter to the Parties [who shall decide the matter] [possibility of dispute settlement under general provisions of Agreement].

7. The Fraser River Panel shall propose measures for the harvest of the stocks governed by this Article within the area referred to in Annex II which take account of the following objectives:

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- (a) the entitlements of the United States provided for in Annex I;
 - (b) the determinations referred to in paragraphs 4 through 6 of this Article;
 - (c) the domestic allocation objectives of the Parties;
- and
- (d) the management objectives of the Parties with respect to salmon other than Fraser River sockeye and pink salmon.

8. In carrying out the provisions of paragraph 7, the Fraser River Panel is empowered to:

- (a) propose annual regulations and adopt emergency orders to control sockeye and pink salmon fishing seasons, times, and areas, including the provision for fishing by each type of gear authorized by the Parties to participate in the fishery;
- (b) recommend minimum mesh sizes and times and areas for chinook salmon fishing in the area described in Annex II, upon a finding that such regulations are necessary in order to accomplish the objectives set out in paragraph 7;

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(c) consult and exchange information with the Parties in order to insure that its regulations take account of the management objectives of the Parties with respect to salmon other than Fraser River sockeye and pink salmon. In this respect, the Fraser River Panel:

(i) may take account of incidental catches of the stocks governed by this Article during the harvest of chinook salmon within the area referred to in Annex II;

(ii) shall postpone assumption of or relinquish control by area at a time when the management objectives for stocks other than Fraser River sockeye and pink salmon are deemed to take precedence, in accordance with by-laws made under paragraph 5 of Article III.*

(d) conduct such studies as are necessary to achieve the objectives of paragraph 7, including:

(i) monitoring of the runs of the stocks governed by this Article, including the collection of catch statistics, test fishing, sampling, and racial analyses

*Canadian acceptance dependent upon development of a satisfactory by-law.

CANADIAN PROPOSED LANGUAGE

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U.S. PROPOSED LANGUAGE

in the area described in Annex II, and beyond that area with the consent of the Party in whose waters or territory the activity is to be carried out*; and

(ii) securing from Canada, for areas outside the area described in Annex II, escapement, outmigration, and other required data.

9. In order to facilitate the work of the Fraser River Panel, Canada shall submit to that Panel an annual report of its management plans and activities respecting the stocks governed by this Article.

10. The Commission shall, at the request of the Fraser River Panel or of either Party, consider and provide advice upon any question which may arise respecting the coordination of the activities of the Fraser River Panel with those of the other Panels or of either Party with respect to stocks not governed by this Article.

11. Annual regulations proposed by the Fraser River Panel shall be submitted in a timely manner to the Parties for approval and shall be effective upon approval by the Party in whose waters such regulations are applicable.

*Canada would authorize monitoring at Hells Gate by an exchange of understandings at the time of ratification.

CANADIAN PROPOSED LANGUAGE

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12. During the fishing season, the Fraser River Panel may make emergency orders for the adjustment of fishing times and areas provided by the annual regulations, and other modifications resulting from variations in anticipated conditions, taking into account the objectives referred to in paragraph 7. Such orders shall be effective when issued, but shall not remain in effect beyond the time that the Party in whose waters they are applicable sends a notice of objection to the Commission.

[This sentence will be given further consideration.]

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SUGGESTED FOR INCLUSION IN ANNEX I

Despite the objectives of paragraph 7 of this Article but subject to practical limitations of management the Fraser River Panel may, in order to minimize escapement, increase participation in the fishery for fishers of one Party if fishers of the other Party are precluded for whatever reason from participating in the fishery to the extent anticipated by the Fraser River Panel; provided, however, that the Fraser River Panel shall, as soon as possible following the resumption of anticipated fishing, issue regulations to increase participation by the fishers of the disadvantaged Party while not decreasing scheduled participation by fishermen of the Party favored during the unanticipated fishing situation.

ARTICLE XII

1. Reciprocal Troll Access
2. Access for Compensatory Entitlements as specified in Article IX

ARTICLE XIII

Each Party may allocate that Party's share of the salmon stocks covered by this Convention among persons fishing under its jurisdiction. In achieving the objectives of the Convention, the Commission and its Panels shall take into account the domestic allocation objectives of the Parties.

ARTICLE XIV

Trolling for salmon by nationals of one Party in the fishery of the other Party may be authorized under this Agreement upon the recommendation of the Commission and approval of the Parties. Such trolling shall be conducted under the regulations of the Coastal State which shall not be obliged to adopt regulations that are less restrictive than those that it imposes upon its own nationals and vessels in the same fishery.

CANADIAN PROPOSED LANGUAGEDRAFT AGREED LANGUAGE

U.S. PROPOSED LANGUAGE

ARTICLE XIII Bis

1. The Parties shall conduct coordinated research and shall exchange scientific information in order to broaden the scientific basis for salmon management, in particular with respect to the migratory patterns and productivity of stocks of common concern and with respect to the extent of interceptions by the fishermen of each country. The Parties shall make available to the Commission all relevant scientific data and other information in their possession.

2. The Commission shall coordinate the collection of statistics pertaining to Pacific salmon management and may make proposals to the Parties for coordinated research programs.

3. Subject to normal permit requirements, the Parties agree to allow vessels conducting research with respect to Pacific salmon to have access to their marine waters for the purpose of carrying out such research.

(4. Each Party shall, in consultation with the other Party, and as appropriate in cooperation with the other Party, finance research related to the operations of the Commission.)

[5. Possible provision for conduct of research by the Commission.]

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U.S. PROPOSED LANGUAGE

ARTICLE XIII

(First Alternate Draft)

The Parties recognize that an insufficient data base exists for many intercepting fisheries and that the improvement of this base is important to the fulfillment of the intent of this Agreement. Natural and artificial production of numerous races of the five species of Pacific salmon originate in hundreds of rivers and dozens of enhancement facilities of both Parties. Many of the salmon, during migration and rearing, intermingle in very complex time-area patterns with salmon originating in the waters of the other Party. As a result they are susceptible to interception by the fishermen of the other Party in conjunction with the harvest of their own salmon. The areas and extent of such interception in many instances are imperfectly understood, which has resulted in confusion and misunderstanding between the Parties and has the potential of creating severe biological and economic stress.

The key to the successful resolution of interception problems is cooperation between the Parties regarding the identification of interception problems, the priority listing of such problems; the development and conduct of research programs; and the exchange of research and management data concerning the status of inter

CANADIAN PROPOSED LANGUAGE

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To enable the Parties, the Commission and the Panels to comply with the principles and intent of this Agreement, it is agreed that the Commission, with the assistance of the Panels, shall:

1. Identify intercepting fisheries in accord with the provisions of the Agreement;
2. Determine, consistent with available data, the extent of the problems concerning each intercepting fishery;
3. Formulate, and annually review and revise as appropriate, research programs designed to further the objectives of Article XI of this Convention.
4. Make proposals to the Parties for cooperative research programs and formulate a Schedule of Research Priorities relating to research other than that noted in paragraph . The Commission shall assist the Parties in the development and conduct of such programs and shall fund such programs on an equal basis to each Party consistent with available Commission funds.
5. In the performance of its duties, insofar as feasible, use of the official agencies of the Contracting Parties and of their Provinces or States and may make use of private or public organizations or any person.

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- 6. Make an annual report to the two Governments as to the investigations which it has made and other actions which it has taken in execution of the provisions of this Article.

The Parties agree that they will attempt to implement, insofar as feasible, research programs on the Schedule of Research Priorities which are not conducted by the Commission, or by other entities pursuant to paragraph (5) of this Article.

The cost of all work funded by the Commission, or conducted by other entities or persons in accordance with paragraph (5) of this Article, shall be borne equally by the two Governments.

ARTICLE XIII bis

(Second Alternate Draft)

- 1. The Parties agree to conduct coordinated research and to exchange scientific information with respect to the scientific foundation for Pacific salmon management, recognizing that improvement of existing information is essential to the attainment of the principles and benefits of this Agreement and to the reduction of the present potential for stress destructive to the North

Pacific Oceanic Pinnacles

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2. In furtherance of these goals the Commission shall:
- (a) Determine the nature and extent of interceptions by the fishermen of each Party and the problems of mutual concern associated with such interceptions.
 - (b) Coordinate the collection of scientific information pertaining to the mixed migratory patterns and the productivity of Pacific salmon resources.
 - (c) Propose cooperative research plans designed to produce an enlightened information base for conservation and rational management of Pacific salmon resources, and assist the Parties in the development and conduct of such programs.

The Commission and the Parties shall fund such programs on an equal basis, consistent with available Commission funds.
 - (d) Conduct an annual review of and formulate a schedule of priorities for the research plans of the Parties and of the Commission, and recommend to the Parties such adjustments in

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research plans as will assure the best use of available funds and personnel by promoting efficiency and avoiding duplication in these undertakings.

(e) make an annual report to the Parties as to its activities under this Article.

3. In the conduct of its activities under this Article, the Commission shall insofar as is feasible utilize the available resources of the Parties and of the domestic management authorities of the Parties.
4. The Parties agree to implement to the best of their abilities the research programs on the approved Schedule of Research Priorities.
5. The cost of research programs funded by the Commission or otherwise conducted in accordance with this Article shall be borne equally by the Parties.

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ARTICLE XIV

(Dispute Settlement Mechanism)

ARTICLE XV

1. Each Party shall take all necessary measures, including the enactment and enforcement of legislation or regulations to make effective the provisions of this Agreement, and to ensure that its nationals and vessels do not exceed any entitlement or interception limitation established pursuant to this Agreement and to ensure compliance with all regulations adopted pursuant to this Agreement.

2. Each Party shall require of its nationals and vessels reports of catch and related data for all stocks and fisheries covered by this Agreement. Each Party may also require nationals and vessels of the other Party to make reports of such data while fishing within waters under its fisheries jurisdiction.

3. Each Party shall make available to the Commission the data obtained pursuant to paragraph 2.

4. The Parties agree to exchange fisheries statistics on a timely and regular basis in order to facilitate the enforcement and implementation of this Agreement.

ARTICLE XVI

1. The Annexes to this Agreement, either in their present terms or as amended in accordance with the provisions of this Agreement, form an integral part of this Agreement and all references to this Agreement shall be understood as including the said Annexes.

2. The Commission shall review the Annexes each year and may make recommendations to the Parties for their amendment. If both Parties accept a recommendation to amend an Annex, that Annex shall be considered amended in accordance with the recommendation, with effect from the date on which the Commission receives the last of the two notices of acceptance. or from such other date as may be agreed by the Parties. The Parties may also agree to amend an Annex without a recommendation from the Commission, in which case the amendment shall enter into force with effect from the date specified by the Parties.

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3. The Commission shall from time to time cause to be published a consolidated text of the Annexes showing all amendments currently in force.

ARTICLE XVII

1. This Agreement shall enter into force on the date of the exchange of instruments of ratification and shall remain in force for an initial period of six years, and thereafter for successive six year periods subject to the termination provisions of paragraph 2. The instruments of ratification shall be exchanged at _____ as soon as possible.

2. Either Party may terminate this Agreement at the end of any six year period referred to in paragraph 1 by giving notice of termination to the other Party not later than one year before the end of that period.

CANADIAN PROPOSED LANGUAGE

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3. The Parties shall review the provisions of this Agreement during the fourth year of each six year period referred to in paragraph 1.

4. Upon the entry into force of this Agreement, the Convention between Canada and the United States of America for the Protection, Preservation, and Extension of the Sockeye Salmon Fisheries in the Fraser River System, signed at Washington on the 26th day of May 1930, as amended, shall be terminated.

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ANNEX I

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The following should be considered a non-legal description of the mechanics of the interception program.

Each Party will regulate each of its fisheries listed in Group A of this Annex so that the average number of fish intercepted annually, by fishing area(s), species and gear, does not exceed a specified interception limit. A specified interception limit is calculated by multiplying the average annual catch in each fishery for the years 1971-1974 by the agreed proportion of fish bound for the country of origin.

To apply the interception limit a four-year accounting period beginning in _____ is established. During each successive four-year accounting period, the total number of fish intercepted shall not be permitted to exceed four times the specified interception limit. (In the case of fisheries for pink salmon listed in Group A of this Annex, the total number of fish intercepted shall not exceed twice the specified interception limit.)

ANNEX I

(INTERCEPTION LIMITATION SCHEME;
LISTS OF GROUP A AND GROUP B FISHERIES)

1. Each Party will regulate its fisheries listed in Group A below so that during each accounting period the average annual catch of intercepted fish of each species of salmon intercepted in a particular fishery does not exceed the annual interception limitation for that species in that intercepting fishery. The annual interception limitation for each intercepted species is enumerated below following the listing of the fishery in which the interception of the species occurs.
2. The annual interception limitation represents the average annual catch of intercepted fish of each intercepted species in the specified intercepting fishery during the agreed period years of 1971 through 1974. For each fishery, the average annual catch of intercepted fish of a species is derived by multiplying the total average annual base catch of that species by the agreed percentage of such catch which originates in the waters of the nonintercepting

ANNEX I

CANADIAN PROPOSED LANGUAGE

In cases where, at the conclusion of any four-year accounting period, the aggregate specified interception limit in a fishery has not been achieved because of the application of regulations in response to an unusual conservation problem for the species in question, the aggregate specified interception limit during the next accounting period will be raised by a number of fish equivalent to the foregone catch.

Remaining positive deviations from the aggregate specified interception limit after any accounting period, shall be reduced to zero during the following four-year accounting period.

In the event that an intercepted stock in a fishery listed in Group A of this Annex remains at levels significantly below the base period average for four consecutive years, the Commission shall recommend to the Parties any modifications to this Annex which may be required.

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(adjusted as necessary to allow a total catch at the level of the base period when application of the interception limitation would cause the total catch of a specified fishery to fall below the average annual catch level of the base period.)

3. An accounting period for each specified fishery is the first four years after the entry into force of this agreement in which that fishery is conducted subject to an agreed interception limitation, and each four-year period thereafter.
4. The interception limitation for a fishery shall be revised by the Commission, as provided under Article VIII, to mitigate the adverse impacts on either Party resulting from salmon development projects contributing to the fishery.
5. If an intercepted stock is forecast to return at a level significantly lower than during the base period, the Parties shall consult through the Commission. If the Commission agrees that interceptions at the level of the base period average will result in substantial conservation and management problems, the Commission shall recommend to the Parties a specified alteration in the annual interception limit.

CANADIAN PROPOSED LANGUAGE

ANNEX I

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6. The Commission shall conduct an annual review of the performance of fisheries listed in this Annex, and shall, with respect to fisheries listed in Group A determine any deviations, positive or negative, from the interception limitation for each fishery. The Commission shall report its findings to the Parties who shall take any deviations into account in the domestic management planning for such intercepting fisheries for the remaining years of each accounting period.

[Provision for adjustment in interception limit taking into account changes in troll regulations.]

6. In the event a salmon species contributing to an intercepting fishery remains at levels significantly below the base population average for four consecutive years, the Commission shall recommend to the Parties any modifications of this Annex that may be required.

7. When modification by a Party of the regulations for a fishery affects the size and age composition of the stock, the Commission shall recommend the revision of the interception limitation for such fishery to take account of the effect of such modification of the regulations on the numbers of salmon in the affected runs returning to the waters of the Party of origin (and on the weight of salmon in the catch of the intercepting Party). The revision should attempt to match the impact of the annual interception limitation.

ANNEX I

8. The Commission shall conduct an annual review immediately following the major fisheries, taking into account the best information available, to determine any deviations, positive or negative, from the interception limitation for each fishery. The Commission shall report its findings to the Parties, which shall take any deviations into account in the domestic management planning for such intercepting fisheries for the remaining years in each four-year period.
9. Remaining deviations after a four-year period, either positive or negative, shall be carried forward into the following four-year accounting period, in which paragraph 8 above shall be applied.

CANADIAN PROPOSED LANGUAGE

CANADIAN FISHERIES ON SALMON ORIGINATING
IN ALASKAN RIVERS

| <u>Species</u> | <u>Area</u> | <u>CANADA</u> | | <u>U.S.A.</u> | |
|----------------|------------------------|---------------|-------------|---------------|-------------|
| | | <u>Group</u> | <u>Gear</u> | <u>Group</u> | <u>Gear</u> |
| Even Pink | 3X,3Y | A | All | A | All |
| | Portland-Pearse | * | * | A | All |
| | Canal of 3Z | A | Net | A | Net |
| | 5-1 | B | Troll | B | Troll |
| | 1 | B | Troll | B | All |
| | Outside 4 and 5 | -- | -- | B | All |
| Odd Pink | 3X,3Y, Portland-Pearse | B | All | A | All |
| | Canal of 3Z | - | -- | B | All |
| | Outside 4 and 5 | | | | |
| Chum | Portland-Pearse | A | Net | A | Net |
| | Canal of 3Z | * | Net | A | Net |
| | 3X,3Y | - | -- | B | Net |
| | 1,2,4,5,6 | | | | |
| Coho | 1,2 | B | Troll | A | Troll |

* Subject to further study.

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CANADIAN FISHERIES on Salmon
Originating in ALASKAN Rivers

GROUP A

| <u>SPECIES</u> | <u>AREA</u> | <u>GEAR</u> |
|----------------|--------------------------------|-------------|
| Even Pink | 3x3y | All |
| Even Pink | 5-1 | Net |
| Chum | Portland-Pearse Canal of 3z | Net |

GROUP B

| | | |
|-----------|---|-------|
| Even Pink | 5 | Troll |
|-----------|---|-------|

UNRESOLVED

| | | | <u>U.S.</u> | <u>Canada</u> |
|-----------|------------------------------------|-------|-------------|---------------|
| Even Pink | 1 | -- | B-All | B-Troll |
| Even Pink | Portland-Pearse Canal of 3z | -- | A-All | ? |
| Even Pink | Outside 4&5 | All | B | ? |
| Odd Pink | 3x,3y,Portland- Pearse Canal 3z | All | A | B |
| Odd Pink | Outside 4&5 | All | B | ? |
| Chum | 1,2,4,5,6 | -- | B-Net | Off lists |
| Chum | 3x,3y | -- | A-Net | ? |
| Coho | 1,2 | Troll | A | B |

CANADIAN PROPOSED LANGUAGECANADIAN FISHERIES ON SALMON ORIGINATING
IN WASHINGTON-OREGON RIVERS

| <u>Species</u> | <u>Area</u> | <u>CANADA</u> | | <u>U.S.A.</u> | |
|----------------|-----------------|---------------|------------------|---------------|-------------|
| | | <u>Group</u> | <u>Gear</u> | <u>Group</u> | <u>Gear</u> |
| Sockeye | 20 | B | Net | B | Net |
| Odd Pink | 20 | B | Net | B | Net |
| Chum | 20 | B | Net | A | Net |
| | 12-19 | * | Net | B | Net |
| Coho | 18,19,20 | A | All | A | All |
| | 21-27,C | A | Troll | A | Troll |
| | 14-17 | B | Troll & Sport | B | All |
| Chinook | 18,19,20 | A | All | A | All |
| | 21-27,C, Alaska | A | Troll | A | Troll |
| | 1,2,5,6-11,30 | A | Troll | A | Troll |
| | 14-17 | B | Troll & Sport | B | All |
| | 4,12,13 | - | -- | B | All |

* Subject to further study

U.S. PROPOSED LANGUAGECANADIAN FISHERIES on Salmon
Originating in Washington-Oregon RiversGROUP A

| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
|----------------|----------------|-------------|
| Coho | 18,19,20 | All |
| Coho | 21-27,C | Troll |
| Chinook | 18,19,20 | All |
| Chinook | 21-27,C,Alaska | Troll |
| Chinook | 1,2,5,6-11,30 | Troll |

GROUP B

| | | |
|----------|----|-----|
| Sockeye | 20 | Net |
| Odd Pink | 20 | Net |

UNRESOLVED

| | | | <u>U.S.</u> | <u>Canada</u> |
|---------|---------|-----|-------------|---------------|
| Chum | 20 | Net | A | B |
| Chum | 12-19 | -- | B-Net | ? |
| Coho | 14-17 | -- | B-All | B-Troll/Sport |
| Chinook | 14-17 | -- | B-All | B-Troll/Sport |
| Chinook | 4,12,13 | -- | B-All | ? |

CANADIAN PROPOSED LANGUAGE

U.S. PROPOSED LANGUAGE

WASHINGTON, OREGON AND CALIFORNIA FISHERIES
ON SALMON ORIGINATING IN CANADA

WASHINGTON-OREGON, CALIFORNIA FISHERIES
on Salmon Originating in Canada

| <u>Species</u> | <u>Area</u> | <u>CANADA</u> | | <u>U.S.A.</u> | |
|---------------------|--|---------------|-------------|---------------|-------------|
| | | <u>Group</u> | <u>Gear</u> | <u>Group</u> | <u>Gear</u> |
| Sockeye Odd Pink | Arrangements yet to be developed but will apply to U.S. catches of Fraser sockeye and pink wherever taken. | | | | |
| Chum | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} | A | All | A | All |
| Coho | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} 3, 4, off Canada | A | All | A | All |
| | | A | All | A | All |
| | | B | All | B | All |
| Chinook | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} 4, off Canada | A | All | A | All |
| | | A | All | A | All |

| <u>GROUP A</u> | | |
|------------------------|--|-------------|
| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
| Sockeye) Odd Pink) | Arrangements yet to be developed but will apply to U.S. catch of Fraser River sockeye and pinks wherever taken | |
| Chum | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} | All |
| Coho | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} | All |
| | 3, 4, Off Canada | All |
| Chinook | 4B, 5, 6, 6A, 6C, 7, 7A ^{1/} | All |
| | 4, Off Canada | All |

^{1/} Subject to study of other Convention areas not included.

| <u>GROUP B</u> | | |
|----------------|-------------|-------------|
| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
| Coho | 2 | All |

^{1/} Subject to study of other Convention Areas not included



INCORPORATED

Native Brotherhood of British Columbia

(CANADA'S SENIOR INDIAN ORGANIZATION)

517 Ford Building.
193 East Hastings Street.
Vancouver, B.C.
V6A 1N7

Telephone (604) 685-2255
Telex: 04-51439

COPY

15 February 1979

Honourable Romeo LeBlanc,
Minister of Fisheries & Oceans,
Parliament Buildings,
Ottawa, Ontario

Dear Mr. Minister:

| | |
|---------|-------------------|
| DATE | |
| ACC | 17587 |
| FILE | 25-5-7-2-Salmon-1 |
| BY HAND | PAR PORTEUR |
| ATTN. | |

Re: Salmon B Licences

As you are aware the Native Brotherhood of British Columbia stand is one of unrestricted entry into B.C. Fisheries for Indian people in this Province.

There are a number of Indian fishermen who are still fishing salmon under a "B" Licence which will expire sometime in the near future, hence putting them out of work in an industry that they have a traditional right. This industry has represented employment for Indian people since time immemorial in the province of British Columbia.

You will no doubt appreciate our deep concern over the fact that our people will be again subjected to being pushed out of the fishing industry because of the expiration of the B Licences. Therefore, we have appointed our long time life member, Clarence Joe, of the Native Brotherhood of British Columbia as our Chief Spokesman to negotiate the upgrading of any Indian "B" Licence to an A-I Licence. We ask that you give Mr. Joe every consideration in his efforts to keep Indian people in their rightful place in the B.C. fisheries.

The Board of Directors of the Native Brotherhood of British Columbia are looking for Mr. Joe to bring back positive responses from your department on this matter.

SECRETARY

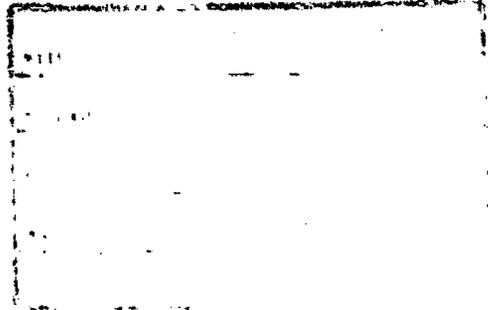
Sincerely,
Edwin Newman

Mr. Edwin Newman,
President.

EN:jl

RECEIVED / REÇU
127 FEB 1979
HOUSE OF COMMONS
CHAMBRE DES COMMUNES

D/SSEA
FEB 27 1979
REGISTRY



COPY / COPIE

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

| | | | |
|---------|-----------------|-------------|----|
| DATE | Feb 22 1979 | REF | |
| ACC | 15434 | DOSSIER | |
| FILE | 25-5-7-2-Salmon | PAR PORTEUR | -1 |
| BY HAND | | | |
| ATTN | FLO. Johnson | | |

TO The Under-Secretary of State
A for External Affairs (GNT)

J.P. Esu

SECURITY / Sécurité: Unclassified
 DATE: February 12, 1979
 NUMBER / Numéro: 45

FROM Consulate General, Seattle
De

REFERENCE Our telegram UAGR0215 of February 7, 1979
Référence

SUBJECT Resignation of U. S. District Court
Sujet Judge George H. Boldt

| | |
|---------|---------|
| FILE | DOSSIER |
| OTTAWA | |
| MISSION | 35-11 |

ENCLOSURES / Annexes: 3
 DISTRIBUTION

Attached are news articles from the February 8, 1979, issue of The Seattle Times concerning Judge Boldt's recent decision to resign from future handling of Indian fishing-rights litigations.

BY OTT: (w/attach)

GNG
FLM
FCO

FLO

FANDO/
Hunter

BY POST: (w/attach)

WSHDC

2. Indian tribes and non-Indian commercial fishing groups alike have expressed surprise and concern over Judge Boldt's resignation. Indian groups have looked upon Boldt as a "special friend" since he ruled five years ago February 12, that they were entitled to fifty percent of all harvestable salmon and steelhead. Although in spite of this ruling, they have only been able to harvest about twenty percent of available fish due to their inadequate fishing equipment and poor access to the fishing areas. From demonstrations, countless arrests for off-shore interception, illegal fishing and countless lawsuits to the current hearing by the U. S. Supreme Court, non-Indian commercial fishermen have expressed their anger over Judge Boldt's decision in favour of the Indian fishermen.

3. Judge Boldt feels that the U. S. Supreme Court will uphold his decision as do the Indian tribe's representatives. The non-Indian commercial fishermen feel that his resignation will be a benefit to their position, that the fifty percent allocation is too much and unfair. The Supreme Court is scheduled to hear arguments in an appeal of the decision on February 28, 1979, but a ruling is not expected for at least two months after that.

4. Whatever the U. S. Supreme Court decides, Judge Boldt's interpretation of the Indian treaties of 1854 and 55, will continue to have a political and economic impact on the Pacific Northwest.

R.D. Martins
for Consulate General

THE SEATTLE TIMES

FEBRUARY 8, 1979

Boldt out, but his legacy will linger

by PAUL ANDREWS
Times staff reporter

When future historians document the fishing-rights issue in the State of Washington, they are likely to divide the past into two eras: pre-Boldt and post-Boldt.

In the course of history, five years is not a long time. It has been almost five years to the day since United States District Judge George H. Boldt handed down his famous fishing-rights decision; but it seems more like 50 years to those close to the issue.

Since the decision, there have been hundreds of hearings, countless lawsuits and scores of suggested legislative remedies — all seeking to overturn or modify Judge Boldt's ruling, mitigate its impact or control those affected by it.

Judge Boldt ruled that treaty Indian tribes in Washington are entitled to the opportunity to catch half the harvestable salmon and steelhead returning to traditional off-reservation Indian fishing waters.

In the process, the thin, bald, grandfatherly but stubborn judge from Tacoma became a symbol of the state's fishing ills. Problems caused by years of overfishing, environmental damage, dams, disease and mismanagement all were laid at the doorstep of "the Boldt decision."

The key to Judge Boldt's ruling was his interpretation of the phrase "in common with," written

in treaties negotiated between the tribes and the federal government in 1854 and 1855.

Judge Boldt decided the phrase meant Indians were entitled to the chance to catch 50 per cent of the harvestable salmon and steelhead, not counting those fish taken on reservations or for Indian ceremonial and subsistence purposes.

The judge ruled that the treaties granted non-Indians only a privilege to fish, while for the Indians fishing remained a right. His decision meant that non-Indian commercial and sport fishing had to be cut back so more fish would be left for the Indians to catch.

Commercial fishermen, state regulatory authorities and sport fishermen were aghast. "In common with," they argued, obviously meant only that Indians were entitled to fish in the same places and at the same times as non-Indians. To give the Indians a 50 per cent quota was extending the phrase far beyond its original scope, they contended.

Before the decision, fewer than 1,500 Indian fishermen and about 6,000 non-Indian fishermen annually harvested about 7.5 million salmon in the state, but the Indian share of the catch was less than 10 per cent.

Since the decision, the Indian share of the salmon harvest still has not reached 20 per cent — partly because the tribes still lack the fishing gear to compete on an equal footing with non-Indian fishermen and partly because of off-

shore interception of returning salmon and widespread illegal fishing in Puget Sound by non-Indian fishermen in defiance of the Boldt ruling.

In partial compensation, some Indian tribes have turned to commercial fishing for steelhead, which are off-limits to non-Indian commercial fishing, and more than 90 per cent of the steelhead in some rivers have been taken by Indians. That, in turn, has angered non-Indian steelhead sport fishermen.

The angry fallout from the decision has sometimes left the Northwest seemingly poised on the brink of a civil war. Angry commercial fishermen have periodically threatened to ram or shoot Coast Guard cutters attempting to enforce seasonal closures aimed at protecting the Indian share of salmon runs.

One gillnet fisherman was shot and severely wounded in a confrontation with state authorities. Many more — 300 at last count — were arrested for defying Boldt-ordered fishing closures. Poaching became a critical problem, with more than 2,200 citations issued last year alone.

On a personal level, Judge Boldt became the object of derision and abuse. Threats were made against his life. Bumper stickers sprouted with slogans like "Can Judge Boldt, Not Salmon," "Judge Boldt is an Indian Giver," and "Let's Give 50 Per Cent of the Indians to Judge Boldt." Petitions for impeachment were circulated.

In what his defendants called a "reprehensible cheap shot," Judge Boldt was asked by the state to disqualify himself from further fishing-rights cases for having accepted token gifts and meals on visits to Indian reservations.

Through all the pressure and acrimony, the amicable judge maintained his aplomb and equanimity. During his 20-plus years on the bench he had gained a reputation for fairness and firmness, and no amount of outcry was going to change it.

Even before he was named to the bench, George Hugo Boldt had demonstrated a marked sensitivity to human rights. As an Army colonel stationed in Burma in World War II, Boldt had cautioned American troops against making derogatory racial remarks about Japanese in the presence of Nisei (American-born Japanese) soldiers on the base.

Later, in trials involving underworld figures and former Teamsters President Dave Beck, Judge Boldt demonstrated the courage of his convictions by handing out tough sentences for extortion and tax evasion.

In 1959, he sentenced Beck to five years in prison for income-tax evasion. Two years later, as a visiting judge in Los Angeles, he sentenced an underworld boxing boss, Frankie Carbo, to 25 years in jail for extortion.

By the early 1960s, Judge Boldt's reputation was such that he was named by Chief Justice Earl Warren to a panel of federal judges in charge of handling hundreds of price-fixing cases against major electrical companies.

In 1970, he handled the notorious Seattle Seven conspiracy trial, eventually declaring a mistrial on grounds the defendants had irrevocably prejudiced the jury against them by their courtroom antics.

A year later, he was named by President Richard Nixon to head a special Pay Board charged with the task of enforcing anti-inflationary wage guidelines — a controversial position that exposed the judge to national criticism.

But the cataclysmic Indian-rights decision overshadowed all of Judge Boldt's previous achievements and will be the one thing he will be most remembered for.

His 1974 decision established a legacy which, even in his absence from future fishing-rights litigation, will continue.

THE SEATTLE TIMES

FEBRUARY 8, 1979

Latest Boldt decision a shocker

by PAUL ANDREWS
Times staff reporter

"He did WHAT?!" was the reaction at the Puget Sound Gillnetters Association office here yesterday to news that United States District Judge George H. Boldt had relinquished further handling of Indian fishing-rights litigation.

Indian tribes and the non-Indian commercial fishing community expressed shock and surprise at the announcement. Fishery authorities and lawyers handling fishing-rights disputes were more non-plussed; indications were that they had advance warning of the judge's decision.

In a letter to attorneys participating in the case, Judge Boldt cited "the present status of the litigation, my health and the fact that we are between salmon seasons" as reasons for stepping down. He said he would issue a more detailed public statement later.

Phil Sutherland, president of the Puget Sound Gillnetters, who have bitterly fought the Boldt decision on Indian fishing rights, said his group is "pleased that somebody else will be considering future trial matters.

"We can't help but be hopeful that future consideration of this issue will be from a different perspective than his

(Judge Boldt's). I don't think the fight for the (fishery) resource will ever be anything less, however."

The Boldt decision of February 12, 1974, said treaty Indian tribes were entitled to the opportunity to catch half the harvestable salmon returning to traditional off-reservation Indian fishing waters.

The decision led to cutbacks in the amount of time non-Indian commercial fishermen were allowed to fish, and the gillnetters were hit especially hard.

Sutherland indicated the association hopes Judge Boldt's interpretation of the treaties now will be changed to mean that "half the fishery won't be taken out of our hides."

The Northwest Indian Fisheries Commission, which represents 19 tribes in the state, said it "regrets that health reasons have made it necessary for Judge Boldt to relinquish jurisdiction. We wish him well in his continuing work (in other court cases)."

Calling the judge's 1974 decision "just and scholarly," the commission added that "we are firmly convinced that his decision was not a matter of personality, nor of private conviction, and that any judge given the same evidence and arguments would have reached the same conclusion."

Bertha Turnipseed, Puyallup Indian Tribal Council chairman, said the news "shocked" her.

Asked if tribal members were concerned that the Boldt ruling will not be upheld by future judges, Ms. Turnipseed said: "Naturally, we're always concerned about the political aspects of the case. But we do feel we have the right to fish and think the courts will uphold that right."

She added that Indian tribes consider the judge to be "a special kind of friend."

United States Attorney John Merkel said he did not think Judge Boldt's decision to step down "will change things from what they are at this time. We're in a position where we have to wait and see how the Supreme Court rules."

The Supreme Court is scheduled to hear arguments in an appeal of the decision on February 28. A ruling is not expected for at least two months after that.

Presiding United States District Judge Walter T. McGovern said yesterday the Indian fishing case would not be reassigned to another judge until after the Supreme Court decision.

Several persons expressed concern that the decision would not come before the salmon-fishing season begins in late May and early June.

"You can't predict when the court will decide something, but I'd suspect the court will give its opinion as early as possible," Merkel said. "Undoubtedly it is aware of the problems coming up with the fishing season."

State Attorney General Slade Gorton said he hopes Judge Boldt's move "will not create problems for the coming fishing season." If the court does not rule before its summer recess at the end of June, Gorton said, Judge McGovern "will have to name someone" to handle fishing-rights litigation.

Gorton said he hopes Judge Boldt "is restored to full and complete health as soon as possible. There is no question as to his ability and devotion; his career on the bench has been extraordinarily distinguished."

Noting that he has "not always agreed with Judge Boldt's interpretation," Gorton said he nonetheless "respects the judge's very able, decisive and fine judicial mind."

Some sources said they expect various groups will pressure Judge McGovern to reassign the issue "within a few weeks," regardless of the timing of the Supreme Court ruling.

Several weeks of lead time are needed before the fishing season starts in order to work out fish quotas, regulatory methods and seasonal dates, they said.

THE SEATTLE TIMES

FEBRUARY 8, 1979

Fishing decision was 'just and right,' says judge

United States District Judge George H. Boldt, who yesterday disclosed he is relinquishing jurisdiction over controversial Indian fishing-rights litigation because of poor health, said today he is convinced his historic 1974 decision was "just and right" and will be upheld by the United States Supreme Court.

"I would rule exactly the same way today, there is no doubt in my mind," the judge, 75, said from his Tacoma home in a telephone interview.

Judge Boldt's ruling, which has sparked hundreds of lawsuits and arrests in the five years it has been in effect, gave treaty Indian tribes the opportunity to catch half the harvestable salmon and steelhead returning to traditional off-reservation Indian fishing waters.

Judge Boldt acknowledged that his "50 per cent" allocation has been a point of contention with commercial and sport-fishing groups. He admitted that he suspects "somebody else might have ruled that Indians were entitled to just a third or a fourth of the catch.

"But the thing everybody forgets is that the only place the Indians can do this (harvest fish) is at their usual and accustomed places. They're not entitled to fish just anywhere."

Judge Boldt noted that it was a year ago today he underwent abdominal surgery. The four-hour ordeal "nearly killed me," he said, and made him conscious of maintaining his health.

"I don't want to go into details, but I recently developed some new trouble with my health and felt it was appropriate that I bow out," Judge Boldt added. "It's not anything that's likely to kill me, but it's serious enough to make me wary."

The judge said he "didn't even think about it at the time" when he was reminded his announcement that he was stepping down from the case almost fell on the fifth anniversary of his February 12, 1974, ruling.

That decision, made on Lincoln's birthday, was meant to carry on Lincoln's civil-rights legacy, Judge Boldt acknowledged.

"I really think I've done a service to the Indians in giving them what they're duly entitled to," he said. "Historically, the Indians would never sign a treaty unless they'd retained their prerogatives to fish in their usual and accustomed places."

To prepare for his ruling, the judge said, he spent "days and days on end" reading "all the great court decisions on Indians and fishing rights. Over and over again, every one of the great minds who dealt with the problems of Indians put in their opinions that we were taking away from the Indians their rightful heritage."

Judge Boldt, who will continue to take periodic court assignments under his special retired status, said he plans to "get some rest."

Btt.

ACTION
SUITE A DONNER

25-5-72-Salmon-1
10 30

UNCLASSIFIED

Seattle

FM SEATL UAGR0215 07FEB/79

file

FEB 08 1978

TO EXTOTT GNT

INFO WSHDC ENVOTT/FISHERIES AND OCEANS/HUNTER

DISTR GNG FLM FCO FLO

REF OURTEL UAGR1948 OF 14DEC/78

---JUDGE BOLDT - FISHERIES DISPUTE

US DIST JUDGE GEORGE BOLDT TODAY WAS RELIEVED AT HIS REQUEST FROM FURTHER PARTICIPATION INDIAN FISHING RIGHTS CASE. SEATL TIMES FEB07 HEADLINES JUDGE BOLDT SITES HEALTH QUOTE AMONG OTHER REASONS UNQUOTE FOR RESIGNATION. BOLDT DECLINED DISCUSS RESIGNATION DECISION BUT WILL ISSUE PUBLIC STATEMENT QUOTE WITHIN THE NEXT FEW DAYS THAT I FEEL WILL EXPLAIN IT ALL UNQUOTE.

2. CHIEF DIST JUDGE WILL WAIT TO NAME REPLACEMENT UNTIL AFTER US SUPREME COURT RULES ON APPEAL BOLDT DECISION FEB28.

UUU/810 072350Z UAGR0215

UNCLASSIFIED

FM SEATL UAGR0242 12FEB79

TO EXTOTT GNT

INFO WSHDC FANDO/HUNTER

DISTR FLM FCO FLO

| | | |
|---------|-------------------|-------------|
| DATE | | |
| ACC | 15738 | REF |
| FILE | 25-5-7-2-SALMON-1 | DOSSIER |
| BY HAND | | PAR PORTEUR |
| ATTN: | | |

---COASTAL FISHING CUTS-PACIFIC NORTHWEST COAST cc 25-5-5-CDP/USA

INT SEC ANDRUS IN LET TO PACIFIC REGIONAL FISHERY MANAGEMENT

COUNCIL YESTERDAY STRONGLY STATED QUOTE SOMETHING MUST BE DONE

AND NOW TO REDUCE SALMON CATCHES ALONG THE COAST UNQUOTE.ANDRUS

URGED PROTECTION DEPRESSED WILD STOCK COHO AND CHINOOK SALMON, MORE

SALMON NEED TO BE ALLOWED REACH SPORT AND COMMERCIAL FISHERMEN

INSIDE PUGET SOUND.SEATL TIMES ART FEB 8 STATES QUOTE MOST GENERALLY

AGREE OUTLOOK FOR COHO AND CHINOOK IS GRIM UNQUOTE.

2.FEW FISHERMEN AGREE HOW TO GO ABOUT MAKING NECESSARY CUTS BUT DO

AGREE THAT COASTAL CATCH CUTS MUST BE MADE DUE TO LACK OF FISH.ED

MANARY,EXEC DIRECTOR STATE CHARTERBOAT ASSOC STATED HIS GROUP HAS

COME UP WITH PLAN WHICF COULD SAVE LOTS OF FISH YET RETAIN THREE

FISH LIMIT.PLAN WOULD BE A MAY1 TO SEPT15 COASTAL SPORT SEASON WITH

SAME SIZE LIMIT AS LAST YEAR,CATCH LIMIT REMAINS AT THREE BUT NO/NO

MORE THAN TWO OF FISH COULD BE COHO OR CHINOOK.TO COMPLETE THREE

FISH LIMIT,ANGLER WOULD HAVE TO CATCH A CHUM OR PINK.PINK SALMON

RUN EXPECTED TO BE STRONG IN THIS OFF YEAR RETURN FOR FRASER

RIVER AND MUCH IMPROVED FOR PUGET SOUND.ASSOC ALSO WANTS QUOTA ON

COHO PROVIDED SUCH IS ADOPTED COAST WIDE BY SPORT AND COMMERCIAL

FISHERMEN.

UUU/810 122300Z UAGR0242

DEPARTMENT of the INTERIOR

OFFICE OF THE SECRETARY

news release

For Immediate Release (prepared February 7, 1979)

cc/DFO/Hunter ✓

ANDRUS CAUTIONS AGAINST 1979 DEPLETION OF SALMON STOCKS

+ file

25-5-7-2

Interior Secretary Cecil D. Andrus today cautioned the Pacific Regional Fishery Management Council against a proposal to extend the 1977-78 Salmon Plan through the 1979 season. Salmon

"Substantial problems exist with many of the Pacific salmon stocks," Andrus told John Martinis, Council chairman.

R.

Extending the current salmon take through 1979 "could be disastrous," Andrus said.

Referring to data documenting the predicted low abundance levels of Pacific coho and chinook salmon stocks, Andrus wrote Martinis:

"I would like to emphasize two of the issues with which I have a particular concern: conservation and the allocation between ocean and inside fishermen.

"I believe that significant reductions in the impact of the ocean fisheries beyond those proposed are required to reduce the serious conservation and management problems anticipated in the coastal streams and rivers and the Puget Sound system. If management proceeds on the same basis as in 1977-1978, natural stock escapements past the ocean fisheries will, in most instances, be far below the level needed to meet spawning requirements.

"This is certainly the case for Washington and Oregon coastal streams, the Columbia River, and Willapa Bay. At this time, inadequate information is available from Northern California for Interior to make an independent determination about Northern California stocks. However, California through public statements has acknowledged that a serious problem exists.

"In Puget Sound, sufficient coho are likely to enter the Juan de Fuca Strait to meet spawning requirements. Nevertheless the incidental catch of coho in net fisheries there and in Northern Puget Sound, targeting on the huge pink salmon runs, is likely to reduce that level to less than spawning requirements. This will reduce the reproductive capacity of these natural stocks and is likely to result in a continuation of the severe conservation problem for at least another cycle.

"The statutory mandates under the Fishery Conservation and Management Act of 1976 require the Council to take account of conservation requirements of the resource and other applicable law, including those which provide for certain of the fisheries in inside waters.

"We cannot expect the inside net fishermen, sportsmen and the treaty Indians to bear the conservation burden for all. This becomes particularly serious and potentially explosive in years such as this, when many of the returning salmon runs are expected to be smaller than normal, perhaps not meeting escapement targets even if net fisheries are closed. Fairness alone requires that the ocean fisheries bear their fair share of the conservation burden."

x x x

INT 2158-79

COPY

TO: ROMEO LEBLANC,
MINISTER OF FISHERIES AND OCEANS.

FROM: TABLE OFFICERS, NATIVE BROTHERHOOD OF BRITISH COLUMBIA.

EDWIN NEWMAN, PRESIDENT
JOE GOSNELL, FIRST VICE PRESIDENT
JOE DANIELS, SECOND VICE PRESIDENT
JOHN MACKO, THIRD VICE PRESIDENT
VERA CRANMER, FOURTH VICE PRESIDENT
ROBERT CLIFTON, BUSINESS AGENT
JAMES WHITE, SECRETARY/TREASURER

DATE: 16 JANUARY 1979

*File
in
2/11*

cc 25-5-7-2-SALMON-1

| |
|----------------|
| 25-5-5-CDA/USA |
| |

THE BOARD OF DIRECTORS OF THE NATIVE BROTHERHOOD OF BRITISH COLUMBIA OFFICIALLY PROTESTS AND REJECTS THE DEMANDS BY YOUR MINISTRY FOR THE REMOVAL OF GEORGE HEWISON, UFAWU, SECRETARY/TREASURER AS AN INDUSTRY ADVISOR TO THE CANADA/USA MARITIME AND SALMON NEGOTIATIONS.

IT IS THE SENTIMENT OF THE NATIVE BROTHERHOOD OF BRITISH COLUMBIA THAT THE FEDERAL GOVERNMENT SHOULD IN NO WAY ATTEMPT TO CENSOR THE ADVICE GIVEN BY ADVISORS OF THE INDUSTRY. THE RIGHT OF FREE SPEECH IS ALLOWABLE AND JUSTIFIABLE UNDER THE CANADIAN CONSTITUTION.

WE ARE ADVISED BY THE OFFICIALS OF THE UFAWU THAT MR. HEWISONS' STATEMENTS HAVE BEEN FULLY ENDORSED BY THE UNION'S GENERAL EXECUTIVE BOARD AND MEET THE GUIDELINES SET OUT BY THEIR MEMBERSHIP AT THEIR CONVENTION.

WE IN THE BROTHERHOOD FEEL THAT THERE IS JUSTIFICATION FOR CONCERN OVER THE SELL OUT OF OUR FISHERIES AND BOUNDARY CLAIMS AND THE CANADIAN PUBLIC SHOULD BE AWARE OF WHAT IS HAPPENING. DO NOT FORGET MR. MINISTER YOU ARE THERE TO SERVE THE CANADIAN PEOPLE AND TO PROTECT THEIR INTEREST. THE INDIAN PEOPLE IN THIS PROVINCE KNOW HOW IT FEELS TO BE PUSHED OUT OF THE FISHING INDUSTRY AND WE ARE GOING ON NOTICE THAT OUR PEOPLE WILL NOT SUFFER FURTHER BECAUSE OF SHORT SIGHTED TREATIES WITH THE USA.

OUR ORGANIZATION HAS HANDED THE FOLLOWING RESOLUTION TO CANADA'S CHIEF NEGOTIATOR, DR. MIKE SHEPHERD, AND THE REGIONAL DIRECTOR GENERAL, DR. WALLY JOHNSON, AS PASSED BY OUR GENERAL MEMBERSHIP AT THE 45TH ANNUAL CONVENTION, NOVEMBER 1978.

WHEREAS THE CANADA/USA RECIPROCAL AGREEMENT IS FAST
NEARING COMPLETION, AND

WHEREAS VIEWS OF THE FISHERMEN ADVISORS ON THE AGREE-
MENT HAVE BEEN TOTALLY IGNORED, AND

WHEREAS CANADIAN FISHERMEN ARE NOT INTERESTED IN NEG-
OTIATING WHAT ALREADY BELONGS TO THEM AS
CANADIAN CITIZENS,

THEREFORE BE IT RESOLVED THAT THE GOVERNMENT OF
CANADA BE ADVISED THAT THE MEMBERS OF THE
NATIVE BROTHERHOOD OF BRITISH COLUMBIA BELIEVE
THAT THE CANADIAN NEGOTIATORS SHOULD:

- (A1) WITHDRAW FROM THE NEGOTIATIONS UNTIL WE CAN
DEAL FROM A POSITION OF STRENGTH.
- (2) IMMEDIATELY MAXIMIZE OUR BOUNDARY CLAIMS IN THE
NORTH AND SOUTH AND ENFORCE THEM.
- (3) IMMEDIATELY PREPARE THE STRONGEST POSSIBLE CON-
TINGENCY PLAN TO SUPPORT OUR FISHERY CLAIMS BY
INVOLVING -
 - (A) FISHERIES MEASURES (INCLUDING WITHHOLDING THE
USE OF THE INSIDE PASSAGE WASHINGTON - ALASKA
TO US FISHERMEN.)
 - (B) APPROPRIATE ADJUSTMENTS IN THE AREA OF TRADE AND
COMMERCE GENERALLY.
 - (C) A STATEMENT TO THE WORLD COMMUNITY TO ENLIST
GLOBAL SUPPORT.
 - (D) AN END TO THE MOCKERY OF 'CONFIDENTIALITY'
IMPOSED ON THE CANADIAN PEOPLE AND PUBLICA-
TION OF THE COMPLETE DETAILS OF THE NEGOTIA-
TIONS AND THE POSITION THE US HAS PLACED US IN.

C.C. UFAWU
PRIME MINISTER TRUDEAU
HONOURABLE JOE CLARKE
HONOURABLE ED BROADBENT
HONOURABLE HUGH FAULKNER
HUGH ANDERSON
JACK PEARSALL
IONA CAMPAGNOLO
ART LEE
DR. ROBERT HOMES
HONOURABLE DON JAMIESON ✓
LEN MARCHAND
PREMIER BENNETT
SEN. GUY WILLIAMS
DR. WALLY JOHNSON

MEMORANDUM

File

TO: The Minister of Fisheries and Oceans

FROM: Donald D. Tansley

SUBJECT: Canada-USA Pacific Salmon Negotiations

| | | |
|---------|-------------------|------|
| DATE | Jan 15, 1979 | |
| ACC | 10441 | REF |
| FILE | 25-5-7-2-Salmon-1 | |
| BY HAND | PAR PORTEUR | DATE |
| ATTN: | P/O/E. Kelderman | |

| | |
|---|-------------|
| SECURITY - CLASSIFICATION - DE SÉCURITÉ | |
| OUR FILE - N/RÉFÉRENCE | |
| YOUR FILE - V/RÉFÉRENCE | |
| DATE | JAN 11 1979 |

Summary

This memorandum reports on the Pacific salmon negotiations with the United States, which were held in Vancouver from December 9-15, 1978.

A considerable amount of further progress was achieved in this round, particularly with respect to the takeover by Canada of the management of Fraser River sockeye and pink salmon and with respect to a list of fisheries that would come under immediate interception limitation.

While no further documents were produced at the meeting, the two sides agreed to meet again, in Seattle, as early as possible in 1979.

The memorandum recommends a number of courses of action to deal with the handling of the public debate (the UFAWU problem) and to prepare the Department for implementation of an agreement.

You may recall that I reported in a memorandum dated October 19, 1978 on the progress achieved at the previous round of salmon negotiations in Seattle. At that meeting, the two sides developed a draft treaty within which a number of articles are tentatively agreed, particularly those relating to institutional arrangements. At the Vancouver meeting, the two sides addressed some of the key issues remaining. Although the list may seem familiar, considerable progress was made on most of these issues.

1. Fraser River

The USA is now willing to agree to a phased introduction of Canadian management of Fraser River sockeye and pink salmon over a two or three year period following the entry into force of the Agreement. Under these arrangements, Canada would take

over responsibility for the setting of management objectives for sockeye and pinks, as well as other species, in the Fraser watershed, including the setting of escapement goals, racial composition of the stocks, all upriver research work, etc.

In addition, because of the complex nature of the migratory route of sockeye and pink salmon in the southern approach to the Fraser, and because of the series of fisheries which exploit the stocks on both sides of the line, the two sides have agreed that a Panel of the proposed new Commission should be established with responsibility to develop regulations for approval by the governments for the fisheries in each country, in a specified area similar to that in which IPSFC exerts control at the present time. The Panel would have a permanent staff which would conduct test fishing, scale sampling and other scientific and technical functions required to allow Canada's management objectives and the interception limitation provisions of the treaty to be achieved. We feel that this is a significant advance, but a major problem still exists in negotiating the interception limitation scheme that will apply to U.S. fisheries on Fraser sockeye and pink stocks.

As you will recall, the USA has proposed for a number of years that it be entitled to participate in increased production from recent IPSFC enhancement facilities to which the USA has contributed an equal share of the cost. The Canadian side has indicated in the past that it is prepared to look at an arrangement to repay the USA for such expenditures. The USA is now seeking additional repayment, arguing that IPSFC has practised "good management" which has entailed sacrifices by U.S. fishermen to provide increased escapements in recent years. The USA expects to share in increased returns from those escapements and the U.S. negotiator indicated that the USA would be seeking repayment, in terms of fish, at a level probably unpalatable to Canada.

2. Interception Limitation Scheme

At the Vancouver meeting, the two sides developed an interception limitation program that would apply in different ways to three different categories of intercepting fisheries.

The first scheme would be an immediate limitation on interceptions by the USA of fish bound for the Fraser and Southern British Columbia, as well as immediate limits on specified troll fisheries in both countries, including Alaska. At the time of implementation of the scheme, Canada has indicated a willingness to consider the introduction of coordinated troll fishing regulations with the USA.

Secondly, a series of fisheries were identified for immediate interception limitation, such fisheries being basically

gillnet and purse seine fisheries in Southeastern Alaska (exploiting sockeye bound for the Skeena and Nass Rivers) and net fisheries in Northern British Columbia exploiting pinks and chums originating in Southeastern Alaska. Interception limitations on such fisheries would be subject to review at the end of successive four year periods with the likelihood of changes being made to the scheme to take into account the contributions of enhancement programs to these fisheries.

Thirdly, a group of fisheries were listed for consideration over the first six years of the agreement. During this six year period, an effort would be made to improve information on the proportions of Canadian and U.S. fish in such fisheries. At the end of the period, the Commission would decide whether or not to recommend to the Parties the inclusion of such fisheries in the limitation program.

Again, considerable advances have been made in this area. For many years, the USA was not prepared to place limits on the net fisheries in Southeastern Alaska, nor on its troll fisheries. We have now succeeded in getting the USA to agree that limits should be placed on the "outside" troll fishery in Southeastern Alaska and on those portions of the "inside" troll fisheries which intercept fish bound for coastal B.C. streams. The question of interceptions in Alaska of Canadian fish from the Panhandle rivers is dealt with below.

3. Transboundary Rivers

The interception of stocks which originate in rivers which rise in Canada and flow to the sea through the USA has been dealt with separately. The reason for this is that Canada catches few salmon on its side of the international boundary in these rivers, and, in terms of actual number of fish, the contribution of Canadian stocks to fisheries in Southeastern Alaska is relatively small. In addition, as for its interceptions on the Fraser, the USA views its interceptions of these fish as being different in character from the major Canadian intercepting fisheries. The USA argues that fisheries on such stocks have been conducted for generations, even prior to the formation of the present political entities and, therefore, do not carry the same weight as the relatively new Canadian intercepting fishery by trollers off Vancouver Island.

Closely tied to the treatment of salmon from these rivers is the basic principle of equity which is a major plank in the Canadian position. Canada has put forward the idea that by 1990, each country should be harvesting an amount of salmon commensurate with its own production. Hopefully, with enhancement proceeding in both countries, any existing gaps can be closed in the context of a more abundant resource rather than

by reducing interceptions on existing stocks. Because the USA gives different weight to its intercepting fisheries, we feel that the principle of equity as we have developed it will not be negotiable. The USA would prefer to provide for each side to harvest its own enhancement production and to call resulting sharing of the overall catch "equity", thereby writing off any existing imbalances in interceptions. The problem of providing for equity, therefore, remains as difficult as ever. The solution to the problem will likely have to be a pragmatic one, and the cost to Canada of moving away from the principle of full equity will have to be assessed in terms of the value of the agreement as a whole to the country. The type of pragmatism we are considering involves the development of a mechanism to ensure that each country receives the benefits from its enhancement programs, and which gives some, if not full recognition to the contribution of Canadian fish from transboundary rivers to U.S. fisheries.

4. Enhancement

As noted above, in the agreement the two parties would, through the Commission, coordinate their enhancement projects in order to provide for an equitable balance of salmon production and to prevent the disruption of existing fisheries which may be the recipients of enhancement production from the other country, and thereby, become subject to interception limitation. As an example of the danger of uncoordinated enhancement, the USA has recently increased substantially its production of chum in certain hatcheries in Puget Sound. These fish will be available to the Canadian fishery in Johnstone Strait in a far larger proportion than the present 3% of U.S. fish. Hopefully, the coordinated enhancement would prevent such occurrences, or provide a mechanism for taking agreed ameliorative measures.

5. Base Years

For a number of years, the two countries have discussed an interception limitation scheme based on same base year average. We now appear to be moving towards agreement that the years 1971 to 1974 would form the base period for fisheries to which an interception limitation scheme would apply. Overall catches would be limited to the level existing in that period. The years 1971 to 1974 favour neither country, but seem to provide a reasonable balance of each side's interests.

Summary of Progress

On all these issues outlined above, there is at least a modicum of progress, and in some cases, substantial progress towards agreement. We feel that we are approaching the stage where a judgement will have to be made on whether the price of

an agreement is appropriate. In order to prepare for this decision, a number of administrative steps are going to be necessary and we intend to institute such steps as soon as possible. These steps include, but may not be limited, to the following:

1. Departmental and Interdepartmental Coordination

If we are successful in concluding an agreement with the USA, there will be considerable administrative and financial obligations placed upon the Government of Canada, particularly at the regional level.

On the question of finance, it is not yet possible to estimate what costs might be incurred in the establishment and operation of a new international salmon commission. We are asking regional officials to begin this assessment after which we intend to approach other departments, particularly Finance and Treasury Board to indicate the nature of the obligations we are considering. Within the Department, we have received advice from people working on the salmonid enhancement program and we would wish to continue to take advantage of their advice and guidance because of the impact that the proposed agreement would have on the flexibility of that program.

On the question of research, the proposed agreement foresees a substantially increased level of research activity. Research such as new tagging programs and other methods of determining country of origin will be absolutely essential to the success of the agreement and, in this area, I will be asking our Resource Services Branch in the Pacific region to develop some estimates of costs involved in such research. I certainly do not foresee that present budget levels would be nearly adequate to fund the specialized kinds of programs which will be needed in the future.

2. Industry Coordination

You may recall that in April 1976, you met with industry advisers on the subject of salmon interceptions in Vancouver. At that time, I believe you gave an undertaking to the representatives of the troll fleet that their interests would not be totally sacrificed in an agreement which would, first and foremost, affect the troll fishery. At the present time, there are considerable pressures to limit troll effort in the waters off British Columbia because of a conservation problem for chinook and coho of Canadian origin. We have delayed dealing with this problem, because the troll fishery has represented the major lever against the USA in these negotiations. While I believe we must continue to maintain this lever, I will be asking regional officials to consider the implications of an agreement for our trollers. The Sinclair report on licensing will no doubt be relevant to this examination.

- 6 -

3. The Public Debate

As you know, the day before the last round of negotiations began, the UFAWU, supported by the Native Brotherhood of British Columbia, held a rally in Vancouver and a march on the regional fisheries office to protest the alleged "sell-out" of Canadian interests in fisheries negotiations with the USA. Officials at the negotiations spent a great deal of time with the industry advisory group, particularly with the UFAWU, in analysing the Canadian position, and later expressed satisfaction with the progress of the negotiations. However, the advisers who support our position are not as vocal as those who oppose it, and we feel it important that the other side of the story be presented in as comprehensive a manner as possible to the Canadian public, which may be swayed by the Union's campaign. We have not yet developed the details of this campaign, but our negotiators will be working closely with our information officers in Headquarters and in the region.

In addition, you may consider it useful to hold an all-party briefing for B.C. Members of Parliament who are interested in this subject. I am told that you have used this vehicle in these negotiations before and I believe there would be considerable value in bringing M.P.'s up to date on where things stand at the present time. If this is to be done, we will have to begin to make arrangements as soon as possible with a view to holding the briefing soon after Parliament reconvenes. Do you agree?

Original Signed by
DONALD D. TANSLEY

cc: Min.'s Office (3)
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TO
The Under-Secretary of State
for External Affairs (GNT)

FROM
De Consulate General, Seattle

REFERENCE
Référence

SUBJECT
Sujet Pacific Northwest Fisheries -
Boldt Decision

DATE December 28, 1978

NUMBER
Numéro 490

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The Boldt decision has been referred to the United States Supreme Court as one major step toward the resolution of the fisheries difficulties which the decision has created. The approach to the issue which the Court will take is not known to us at this time, although it will be of paramount importance if the Pacific Northwest Fisheries are to be returned to a stable and manageable state within the near future. A simple re-affirmation of the Boldt decision would probably not be of direct immediate assistance while an expanded review of Native Rights would also be of limited immediate benefit to fisheries issues.

2. Concurrent with the Court review, we understand that inter alia Senators Magnuson and Jackson and Representative Bonker are considering suitable legislation to resolve or mitigate fisheries issues created by the Boldt decision. The legislation would be presented once the Court has made its decision and a need for legislative action has been perceived. Again, we do not know the content of this proposed legislation, its current stage of preparation or the manner in which it will be presented.

3. Although it is not possible to predict when the Boldt decision issue will be resolved, there is optimism in our area that its resolution can be accomplished prior to the commencement of the 1979 fishing season.

4. We have enclosed for your information copies of (a) a press clipping from the Daily Astorian, Astoria, Oregon, concerning Representative Bonker's proposed legislative action; (b) a list of questions raised to the Supreme Court by the State and the Federal authorities concerning the Boldt decision; and (c) a brief of amicus curiae to be filed with the Supreme Court by the American Institute of Fishery Research Biologists.

5. The Institute is an international association of professional...

...2

-2-

fisheries scientists and managers from both the private and public sector. (Donald R. Johnson, Regional Director, National Marine Fisheries Service and Professor Donald L. McKearnon, Institute for Marine Studies, University of Washington, and Department of State representative for various fishery negotiations are both members of this professional institute.) The amicus brief seeks to inform the Court of:

- (i) the complexity and delicacy of management of the salmon and steelhead resources;
- (ii) the existing management institutions and techniques;
- (iii) the various legal precedents which have a bearing on the case; and
- (iv) the Institute's concerns for the future preservation and management of the fishery resource.

6. Because of the importance of the fishing industry in our territory and the political, economic and social questions which the Boldt decision has raised in the Pacific Northwest, our interest in the Boldt saga remains high and we should appreciate being kept abreast of the issue as it unfolds at the national level.


Consulate General

Also enclosed is a copy of a letter from Edward D. Evans to Larry Nakatsu dated November 1, 1978, which we have just received. The letter concerns the Supreme Court review of U. S. v. Washington and associated cases.

Nos. 77-983, 78-119 and 78-139

IN THE
Supreme Court of the United States
October Term, 1978

STATE OF WASHINGTON, *et al.*,
Petitioners,

v.

WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL
ASSOCIATION AND WASHINGTON KELPERS ASSOCIATION,
Respondents.

STATE OF WASHINGTON, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

PUGET SOUND GILLNETTERS ASSOCIATION, *et al.*,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE

BRIEF OF *AMICUS CURIAE*
AMERICAN INSTITUTE OF FISHERY
RESEARCH BIOLOGISTS

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IN THE
Supreme Court of the United States

October Term, 1978

No. 77-983

STATE OF WASHINGTON, *et al.*,
Petitioners,

v.

WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL
ASSOCIATION AND WASHINGTON KELPERS ASSOCIATION,
Respondents.

No. 78-119

STATE OF WASHINGTON, *et al.*,
Petitioners,

v.

UNITED STATES OF AMERICA,
Respondent.

No. 78-139

PUGET SOUND GILLNETTERS ASSOCIATION, *et al.*,
Petitioners,

v.

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON,
Respondent.

MOTION FOR LEAVE TO FILE BRIEF OF
AMICUS CURIAE

BRIEF OF *AMICUS CURIAE*
AMERICAN INSTITUTE OF FISHERY
RESEARCH BIOLOGISTS

I. Motion for Leave to File Brief of *Amicus Curiae*

The *amicus curiae* is the American Institute of Fishery Research Biologists. The Institute is an international association of professional fisheries scientists and managers founded in 1956. Many of the Institute's 1,100 members have been or are involved in managing and investigating salmon and steelhead resources. The Institute moves the

Court for an order giving the Institute leave to file this brief. The Institute has received the written permission of the United States, the Puget Sound Gillnetters Association, and the Purse Seine Vessel Owners Association. The Institute has not received the permission of the Indian tribes, the State of Washington, the Washington State Commercial Passenger Fishing Vessel Association, or the Washington Kelpers Association.

A. *Statement of the Case*

The cases under review in this proceeding comprise the most recent chapter in a dispute which has festered in the Pacific Northwest since before the beginning of the 20th century. The controversy stems from six treaties signed in the 1850's by Isaac Stevens acting for the federal government and by tribal representatives acting for a number of western Washington Indian tribes.¹ Since that time, repeated litigation has required the attention of the state and federal courts of the region. The Supreme Court has regularly been called upon to settle the issues arising from the often hostile encounters between the litigants. The subject matter of the dispute is fish, namely, the salmon and steelhead resources of western Washington.

This latest series of cases, now before this Court, started with the decision of the United States District Court for the Western District of Washington in *United States v. State of Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), cited hereinafter as "*U.S. v. Washington*". The trial judge made two broad rulings. The court ruled first, that the

1. The six treaties are those of Medicine Creek, 10 Stat. 1132 (1855), Point Elliott, 12 Stat. 927 (1859), Point No Point, 12 Stat. 933 (1859); and those with the Makah, 12 Stat. 939 (1859), the Quinaeilt, *et al.*, 12 Stat. 971 (1859), and the Yakimas, 12 Stat. 951 (1859).

treaty tribes and Washington state agencies had defined roles to play in managing the salmon and steelhead fisheries of western Washington, 384 F. Supp. at pp. 339-341, and second, that the members of modern Indian tribes who had descended from the original signatories had the right to an opportunity to harvest a specified share of the salmon and steelhead resources within the tribes' usual and accustomed fishing grounds in a "case area" in western Washington, 384 F. Supp. at p. 343.

The court defined as the case area that portion of the state of Washington west of the Cascade Mountains and north of the Columbia River drainage area, including the American portion of the Puget Sound watershed, the watersheds of the Olympic Peninsula north of the Grays Harbor watershed, and the offshore waters adjacent to those areas, 384 F. Supp. at p. 328. A subsequent order of the court extended the case area to include the Grays Harbor watershed, (R.). Within the case area the court described usual and accustomed grounds as the freshwater systems and marine areas within which the treaty Indians fished at varying times, places and seasons, on different runs, 384 F. Supp. at p. 402.

The judgment of the trial court was affirmed by the Ninth Circuit Court of Appeals in *United States v. State of Washington*, 520 F.2d 676 (9th Cir. 1975). The Supreme Court denied *certiorari*, 423 U.S. 1086 (1976). The trial judge retained continuing jurisdiction over the case for implementation purposes, 384 F. Supp. at p. 408, and issued a number of subsequent rulings which, together with the original decision, led to the cases now before this Court.

B. *Interests Represented*

The Institute submits an *amicus* brief in this proceeding because two critical interests are before the Court without representation. The interests are first, that of the continued productivity of the resource itself and second, that of the science of fishery management. The Institute claims to speak on behalf of both interests. The Institute has no direct economic, recreational, or institutional involvement in the controversy and has never litigated treaty fishing questions in the past.

C. *Reasons for Granting the Motion*

The argument of the *amicus* is fundamentally different from that of all parties before the Court. The Institute presents no argument relating to the right to catch fish which may be enjoyed by any party or by any fisherman. *In fact, the Institute specifically disclaims any purpose to affect the rules which this Court may develop or confirm for sharing the resource.* The Institute's argument is directed solely at the portion of the overall controversy which relates to the fisheries management jurisdiction of the institutions—state, federal, tribal, and international—which are involved in managing fisheries for case area salmon and steelhead stocks.

The Institute believes that no party before the Court will adequately analyze and give appropriate emphasis to the interrelationship among the institutions which currently attempt to manage the case area's salmon and steelhead fisheries. These institutions have had, and will continue to have, a profound impact on the resources.

The *amicus* does not argue in favor of or against the jurisdiction of any existing institution. Rather, the *amicus*

argues that diffuse authority, proliferated among tribes, tribunals, states, federal government, regional fishery councils, and international commissions, has so complicated the conservation of the resources as to threaten their very existence. The relief which the *amicus* suggests is also different from that sought by the parties. The Institute does not seek to "win" or "lose" before the Court on the issue of who should manage the fisheries, but rather asks the Court to make a contribution toward the establishment of a unified fisheries management system capable of preserving the resource and attaining other management objectives as may be required by law.

II. Biological and Technical Premises

The Institute's argument depends on an understanding first, of the biological characteristics of salmon and steelhead resources and second, of the technical characteristics of the fisheries operating on those resources. This section discusses each of the two characteristics. The Institute has relied on the joint biological statement of the parties in *U.S. v. Washington*, hereinafter cited as "JX-2", and on well-recognized scientific materials which are cited as appropriate.

A. The Salmon and Steelhead Resources

Five species of Pacific salmon and one of steelhead trout are indigenous to the waters of the case area. The five species of salmon are *Oncorhynchus tshawytscha* (chinook), *Oncorhynchus kisutch* (coho), *Oncorhynchus gorbuscha* (pink), *Oncorhynchus keta* (chum), and *Oncorhynchus nerka* (sockeye). The one species of steelhead trout is *Salmo gairdnerii*, JX-2, p. 1.

Salmon and steelhead trout are anadromous fish, that is, they spend most of their lives in salt water but return to freshwater rivers and streams and to some lakes to spawn. When ready to spawn, the female excavates a nest or "redd" in appropriate graveled areas and lays her eggs which are then fertilized by an accompanying male. All Pacific salmon die after spawning, but steelhead trout may spawn several times, JX-2, pp. 1-8.

The eggs incubate in the gravel over the winter and hatch in late winter or spring, depending upon water temperature and other environmental factors. After hatching, the young fry commence a feeding and migration period that varies according to species. Chum and pink salmon fry descend directly to saltwater and commence their marine phase. Sockeye salmon, which are nearly always associated with lake systems, remain in fresh water for one or two years before migrating to sea. The young of coho and chinook salmon usually spend one year in freshwater streams, but certain forms of chinook salmon may go to sea earlier. Steelhead spend one or two years in fresh water before migrating to sea, JX-2, pp. 1-8, Tables 1-17.

Once at sea, case area salmon and steelhead distribute themselves widely, Appendix I, pp. A1-A6, *infra*.² The duration of the marine interval varies by species, ranging from two summers and one winter for pink salmon to as

2. Appendix I is based on French, Robert R., Bakkala, Richard G., and Sutherland, Doyle F., 1975. *Ocean Distribution of Stocks of Pacific Salmon, *Oncorhynchus* spp., and Steelhead Trout, *Salmo gairdnerii*, as shown by Tagging Experiments*, National Marine Fisheries Service Technical Report, SSRF-689. See also Fredin, Reynold A., Major, Richard L., Bakkala, Richard G., and Tanonaka, George K., 1977. *Pacific Salmon and the High Seas Salmon Fisheries of Japan*, National Marine Fisheries Service Processed Report, pp. 4-19.

much as five years for some stocks of chinook salmon, JX-2, pp. 1-8. At the end of the marine phase, salmon and steelhead begin a unique activity—their return to place of origin to spawn.

Salmon and steelhead trout bound for western Washington waters spawn in a great number of streams and lakes. The salmon spawning areas are shown in Appendix II, pp. A7-A11, *infra*.³ Each species in each stream system comprises a spawning unit, and the fish born in that stream and returning to it are genetically distinct from all other fish, including those of the same species bound for other streams. Biologists describe each spawning unit as a stock. Each stock among each of the species has its own particular schedule of migration, passing from ocean to stream on a rigid schedule which varies but little over the years.⁴ Once destroyed, any given stock is as extinct and irreplaceable as the passenger pigeon.

In addition to being characterized by genetically unique stocks, salmon and steelhead are also marked by the phenomenon of the cycle. The fish in any particular run are with minor exceptions of the same age. Younger fish of the same species scheduled to return to the same spawning area in a later year generally will not be mixed with older fish, but will remain in the ocean until they are ready to commence their spawning migration. Thus, the spawning fish of any year are, for the most part, distinct from the

3. Atkinson, C.E., Rose, J.H., and Duncan, T.O., 1967. *Salmon of the North Pacific Ocean—Part IV. Spawning Populations of North Pacific Salmon. Pacific Salmon in the United States*. International North Pacific Fisheries Commission Bulletin No. 23, Figures 10-14, pp. 85-89.

4. Royce, William F., 1965. *Almanac of Bristol Bay Sockeye Salmon*. Fisheries Research Institute, College of Fisheries, University of Washington. Circular No. 235, p. 1, Figures 1-5, pp. 41-45.

spawning fish of the next year. Each year's spawners begin a cycle which is repeated periodically. The length of the period is equal to the length of the history, *i.e.*, from two to five years depending on species.

The management implication of the cycle is that the abundance of fish returning during peak years does not help to increase the runs in scarce years. Unlike many fisheries, overharvesting in one year cannot be remedied by protective measures in the next. When a cycle is reduced in size to non-productive levels, it may take many years for the stocks to recover to productive levels.⁵

One dramatic example of this phenomenon is the cycle of sockeye salmon runs on the Fraser River in Canada. Every fourth year the size of the run is large, sometimes exceeding the combined runs of the three previous years. The three low years cannot be improved by restrictions in the higher fourth year. A second example of the cycle is that Puget Sound pink salmon return in quantity only during odd numbered years; no viable runs occur in the even numbered years.

The migratory paths of salmon and steelhead follow similar routes year after year, and the fish know no national, state, or local boundaries. Thus, the great Fraser River runs of British Columbia pass through Canadian waters, thence to U.S. waters, and finally back to Canadian waters as they head for the mouth of the Fraser River, pressed forward by the spawning urge. Similarly, salmon destined for spawning grounds in Washington may pass from the open ocean through Alaskan, Californian, Oregonian, and

5. Thompson, William F., 1945. *Effect of the Obstruction at Hell's Gate on the Sockeye Salmon of the Fraser River*. International Pacific Salmon Fisheries Commission, Bulletin 1, pp. 11-12.

then Canadian waters before entering Washington streams, JX-2, pp. 28-37, Figures 13-17.

Each year's spawning migrations are marked by intermixing of stocks. Stocks migrate to shore from widely divergent areas of the Pacific Ocean. Within the near-shore and inshore marine areas, stocks bound for different spawning grounds congregate and intermingle before finally separating and migrating to their respective destinations. As a particular stock progresses through inshore waters toward its river of origin, it becomes identifiable only after separation from other groups of fish.

A run of fish moves through any particular geographical location rapidly, and the bulk of the run may pass along a portion of its route in a matter of a few days, JX-2, pp. 37-39, Figures 20-24.

A final, critical characteristic of the salmon and steelhead resources is that reproductive success depends on the number of adults which reach the spawning grounds, JX-2, pp. 72-73. There is a great deal of evidence indicating a more direct relationship between the numbers of spawners and the resultant progeny in salmon and steelhead than in almost any other species of fish. For each stream there is an optimum number of spawning adults. If more or less than the optimum number spawn, the number of resultant progeny will decline.⁶ The fisheries manager seeks to ensure that the optimum number of each stock of fish escape capture by fishermen and are able to spawn each and every year. There is little margin for error.

6. Ricker, W.E., 1954. "Stock and Recruitment" in *Journal Fisheries Research Board of Canada*, Volume II, No. 5, pp. 559-621.

B. *The Fishermen*

There are seven types of fishermen operating on the salmon and steelhead stocks passing through the waters of the case area using seven distinct types of fishing techniques and gear. These are: 1. ocean trollers, 2. gillnetters, 3. purse seiners, 4. reef netters, 5. set netters, 6. dip net and gaff fishermen, and 7. recreational fishermen. The seven fisheries are geographically dispersed. They operate at various times, sometimes simultaneously, sometimes in sequence.⁷

The ocean trolling fleet is highly mobile, extending from mid-California to the Gulf of Alaska, quickly moving to areas where the fishing is best. Trolling involves dragging a number of baits or lures at selected depths behind a moving boat usually manned by one or two persons. Chinook, coho, and lesser numbers of the other species of salmon are susceptible to capture by troll gear. Thirty-three hundred vessels are licensed for trolling in Washington waters. This figure includes approximately 50 tribal fishermen.⁸

Gillnet, purse seine, and reef net fisheries operate in inside waters in the case area, in the Strait of Juan de Fuca, Puget Sound, and Grays Harbor. Gillnets are made of nylon mesh, varying from 4 to 9 inches stretched measure, and are suspended from floats at the surface. Each net forms a vertical wall of netting. The size of the gillnet mesh determines the size range and species of salmon that will be caught. The migrating fish collide with the net

7. *The Pacific Salmon, a Unique Problem in Resource Management*, 1974. Northwest Fisheries Center, National Marine Fisheries Service, pp. 15-19.

8. Merkel, John C., Alverson, Dayton L., Hough, John D., 1978. *Settlement Plan for Washington State Salmon and Steelhead Fisheries*, pp. 274 and 284.

and are tangled in the fine meshes. All five species of salmon are taken by gillnet gear. Approximately two thousand gillnetters are licensed to operate in U.S. waters in Puget Sound and in the Strait of Juan de Fuca, including approximately 500 tribal fishermen. Approximately 300 gillnetters are licensed to fish in Grays Harbor.⁹

Purse seiners set their nets in a circle and "purse" by closing the bottom of the net and bringing it close to the side of the boat. The enclosure is reduced until the fish can be dipped out. All five species of salmon are taken. Approximately 400 purse seine vessels are licensed to fish in Puget Sound. This figure includes approximately 10 tribal vessels. No purse seining occurs in Grays Harbor. Purse seine vessels have a crew of four or five persons.¹⁰

Reef net fishermen operate in specific locations in northern Puget Sound. An artificial ramp or "reef" is created which leads a school of salmon into the surface layers of the water above a net which is stretched horizontally between two floats. When salmon, particularly sockeye and pink, are observed from a floating tower, the net is raised trapping the fish from below. Approximately 80 fishermen are licensed to operate reef net gear in Puget Sound. Reef netting requires one to four persons.¹¹

Gillnets can be anchored or attached at one end to shore, and are then called "set nets." Set nets are operated primarily in fresh water locations in rivers and estuaries. There are approximately 550 treaty fishermen in the case area employing set nets. All five species of salmon as well as steel-

9. *Id.*, pp. 275-276, and 284.

10. *Id.*, pp. 277 and 284.

11. *Id.*, p. 278.

head are taken by set nets. Non-Indians do not operate set gillnets.¹²

Dip net and gaff fishing occurs exclusively in the rivers, usually upstream of all commercial and recreational fishing activities. Non-Indians do not use dip net and gaff gear. The numbers are not known to the Institute with specificity, but a majority of dip netters and gaff fishermen are fishing for salmon and steelhead for personal consumption or ceremonial use only, JX-2, pp. 112-114.

Angling for coho and chinook salmon and for steelhead is the seventh fishery and is one of the major recreational attractions in the western portion of Washington for a large number of the residents and also for thousands of tourists visiting the state during the summer. Angling for salmon in the ocean is conducted from a fleet of over 400 charter boats on which each angler buys a ticket and from thousands of small, privately-owned boats, usually trailered to the launching site and powered by outboard motor. The recreational fishery has increased significantly in participation (angler-days) and value since the 1950's, especially the recreational salmon fishery on the coast and in the Strait of Juan de Fuca. In 1976, there were over 625,000 resident and non-resident anglers who spent 2 million angler-days fishing for salmon in Washington waters. Sixty percent of the total recreational salmon catches in Washington were made in the coastal fishery, while the remaining 40% were caught in the Puget Sound area.

Steelhead add another dimension to the recreational fishery. The number of recreational fishing days by sportsmen angling for steelhead in the streams and rivers of the state

12. *Id.*, p. 284.

has averaged between 100,000 and 150,000 for the past 10 years. During the 1977-78 season this rose to 310,000. The steelhead recreational fishery is not as large, in terms of numbers of anglers, angler-days, or size of the catches, as the salmon recreational fishery, but the esteem in which it is held by steelhead anglers makes this sport fishery important beyond its numbers.

The total fishing capability of all the fishermen in the case area is sufficient, absent regulation, to decimate the resource, RCW 75.28.500. The stocks have survived to the extent they have due to the management activities of the various governing bodies which are discussed in the next section.¹³

III. Fisheries Management

The Institute has set forth the most important characteristics of the resource and the fishermen who harvest it. In this section the Institute provides the Court first, with a definition and a description of salmon and steelhead fisheries management and second, with a picture of the manner in which jurisdiction to manage the case area's salmon and steelhead fisheries is presently divided among the managing institutions.

A. Salmon and Steelhead Fisheries Management

The activity of managing salmon and steelhead fisheries is the sum of the regulatory measures taken by management agencies to achieve the goals which the fisheries man-

13. Although case area fish are taken throughout their migratory range, the majority of the fish are taken after they have returned to the case area. See Mundt, J. Carl, 1977. *Catch, Licensing, Gear Reduction, and Allowable Fishing Time History for Washington Salmon Fisheries 1965-1977*, Report to the Regional Task Force of the Presidential Task Force on Northwest Fisheries Problems, pp. 1-5, Exhibits 1-12.

agers are directed to fulfill. These goals are as follows: first and foremost, the conservation of the stocks; second, maximization of the yield from the resource consistent with conservation taking into account economic, social, and ecological objectives; and third, allocation of the yield among competing fisheries.¹⁴

These goals are achieved, in general, by regulation and control of the fishermen rather than the fish. The regulatory measures employed are restrictions on the size of fish taken, when and where fishing may occur, for how long, and with what number and types of fishing gear. These measures have an indirect effect on the fish themselves by decreasing the possible catch.¹⁵

The Institute believes that it is essential to understand the mechanics by which the fisheries managers seek to accomplish the goals of conservation, maximization of yield, and allocation. For salmon and steelhead fisheries, those mechanics begin with the collection of biological and statistical information. By obtaining and analyzing historical information on the past performances of the various runs,

14. Gulland, John A., 1977. *Goals and Objectives of Fishery Management*. Food and Agriculture Organization of the United Nations Fisheries Technical Paper No. 166, pp. 6-7. See also Alverson, Dayton L. and Paulik, G.J., 1973. "Objectives and Problems of Managing Aquatic Living Resources." *Journal Fisheries Research Board of Canada*, Vol. 30, No. 12, p. 1937 and McKernan, Donald L., 1972. "World Fisheries—World Concern" in *World Fisheries Policy—Multidisciplinary Views*. Brian J. Rothschild, editor. University of Washington Press, p. 49.

15. To some extent fisheries management agencies manage fish directly through hatchery programs designed to enhance the resource. In addition, fisheries managers with authority beyond regulation of fishermen may have some impact on the use of fresh and estuarine water resources which are the medium in which the fish play out a critical part of their life cycles, see e.g., RCW 75.20.050 *et seq.* The Institute has not discussed these broader forms of authority because its point is adequately made by reference to the more traditional view of fisheries management authority.

the managers can estimate the correlation between the numbers of any given stock permitted to pass through the various commercial and recreational fisheries to spawn on the one hand and the numbers of their progeny which will return at the end of the cycle on the other. As already stated, this relationship between spawners of one generation and adults of the next is more direct for salmon and steelhead than for most other fishes. Managers can then estimate the current escapement necessary to maximize the stock in the future. They can also estimate the minimum escapement necessary to ensure perpetuation of the stock.¹⁶

With information concerning escapement requirements in hand, the managers typically next turn their attention to making estimates of the size of the incoming adult runs. These estimates too are based on the history of the cycles involved; the escapement of adults during the preceding cycle; the environmental conditions in fresh and salt water during the past cycle; and other data bearing upon the survival of the salmon and steelhead during their life histories. Using these estimates, regulations for the fisheries during the upcoming season are developed and promulgated after public hearings. These regulations become the basis for management of the fishery. The regulations are, however, subject to substantial revision as the runs progress. The revisions are necessary as additional information becomes available during the course of the season concerning run size and changes in numbers of

16. Alverson, Dayton L., 1975. "Management of the Ocean's Living Resources: An Essay Review", in *Ocean Development and International Law Journal*, Vol. 3, No. 2, pp. 105-106.

fishermen and fishing success in order to adjust fishing activity and ensure adequate escapement.¹⁷

As this biological and statistical information flows in, the fisheries managers use the information to amend their regulations in order to better attain management goals. Because of the migratory habits of the fish, the characteristics of the fishery, and the increasing accuracy of statistical information as any given run progresses, time is critical. *The degree of success achieved by the managers in reaching escapement and other goals is very often a function of obtaining the very latest information, analyzing it, making decisions on regulations, and communicating the contents of these regulations to the fishermen, all in the shortest possible time period during the fishing season.* The sequence of these events sometimes must be accomplished in 12-24 hours.¹⁸

A factor that complicates this entire process is the intermixing of stocks. A given level of fishing effort may result in an appropriate harvest of one stock but cause over- or under-fishing for a second stock mixed with the first. Difficult management decisions are required in these circumstances.

Finally, the fisheries management agency must enforce its regulations. While this is an important task in the management of any fishery, it is particularly critical in a fishery

17. Existing methods for directly measuring the abundance of a group of fish are prohibitively expensive. Instead, as the runs progress, estimates are made based on the number of fish caught per unit of fishing effort per time interval. The statistical validity of this information improves dramatically as the stocks approach the mouth of their natal rivers and become more concentrated.

18. Carlton, Frank E., 1975. *Optimum Sustained Yield as a Management Concept in Recreational Fisheries*. Special Publication No. 9, American Fisheries Society.

for anadromous species such as steelhead and salmon because illegal fishing can quickly upset the delicate balance between catch levels and escapement goals. The absence of an effective enforcement system renders any salmon and steelhead management plan unworkable. Surveillance, monitoring, and appropriate sanctions are essential ingredients of an effective enforcement system.¹⁹

The management of salmon and steelhead resources is a complex task. The short-term economic interest of the fishermen lies in maximizing their catch. The managers must be concerned with a large number of unique stocks. Information about the size of each of these stocks is always imperfect, but increasingly accurate as the migrating fish congregate and move closer to their spawning grounds. Simultaneously, the fishermen are massing to concentrate on capturing the incoming fish. Based on the best information available, the managers must decide when, where, and how to allow the various fisheries to operate in order to obtain an optimum escapement, provide a target yield to the fisheries, and properly allocate the catch. These decisions must be rapidly and clearly communicated to the fishermen and there must be adequate enforcement. It is not a simple task.

B. Existing Management Institutions

This section sets out the authority of the institutions which presently exercise fisheries management power in the Pacific Northwest. Every entity which exercises control over salmon and steelhead fishermen fishing for stocks of salmon and steelhead which may be found at any stage of their life history within the case area is discussed.

19. Alverson and Paulik, *supra* note 14, at 1944.

1. State Agencies

The federal government through the Submerged Lands Act of 1953, 43 U.S.C. §§ 1301-1315, has confirmed in the states of the United States power to manage and administer the natural resources, including fisheries resources, which are found within the boundaries of the respective states, 43 U.S.C. § 1311(a)(2). The boundaries of the Pacific coast states through which case area salmon and steelhead migrate—California, Oregon, Washington, and Alaska—extend from the coastline seaward for a distance of three geographical miles, 43 U.S.C. § 1301(b).

The courts have recognized that in the absence of conflicting Congressional legislation under the commerce clause of the U.S. Constitution, the police power of the states extends to the regulation of fisheries within the geographical area covered by the Submerged Lands Act, *Corsa v. Tawes*, 149 F. Supp. 771 (D. Maryland 1957), affirmed *per curiam*, 355 U.S. 37 (1957).

a. Washington

(i) Washington Department of Fisheries

The Washington Department of Fisheries, hereinafter referred to as "WDF", has traditionally exercised Washington's police power to manage salmon fisheries. Washington's salmon management authority in the waters of the state is found in RCW 75.08.012, which reads in part:

"It shall be the duty and purpose of the department of fisheries to preserve, protect, perpetuate and manage the food fish and shellfish in the waters of the state . . . to the end that such food fish and shellfish shall not be taken, possessed, sold or disposed of at such times and in such manner as will impair the supply thereof."

State law also provides for a Director of WDF who is authorized and instructed in RCW 75.08.080 to exercise the state's police power to regulate salmon fisheries.

The Washington Supreme Court recently construed RCW 75.08.012 and .080, holding that the salmon fisheries management authority of WDF and its Director does not include the ability to regulate salmon fisheries for the purpose of allocating the catch among fishermen. In the case *Puget Sound Gillnetters v. Moos*, 88 Wn. 2d 677, 565 P. 2d 1151 (1977), the court decided at p. 682 that WDF and its Director have the authority to regulate the harvest of salmon for the purpose of conserving the resource but not for the purpose of allocating a share of the catch between competing claimants for those fish.

(ii) Washington Department of Game

The Washington Department of Game, hereinafter referred to as "WDG", is the state agency that exercises the state's police power to regulate steelhead fisheries. WDG is composed of a six-member Game Commission and a Director, RCW 77.04.020. State policy is to preserve, protect, and perpetuate steelhead so that public recreational opportunities will be maximized but the supply will not be impaired, RCW 77.12.010. RCW 77.12.040 instructs the Game Commission to promulgate rules relating to the taking of steelhead.

b. Oregon

The Oregon state Fish and Wildlife Commission exercises Oregon's police power with respect to fisheries in Oregon state waters. The Commission, which is part of the state Department of Fish and Wildlife, ORS 496.080, has the authority to "formulate and implement the policies and programs [of Oregon] for the management of wildlife", ORS 496.138. In addition, the Commission has been delegated the following specific authority in ORS 506.036(2):

"The duty of protection, preservation, propagation, cultivation, development and promotion of all fishes under its jurisdiction within the waters of [Oregon] is delegated to and imposed upon the [C]ommission."

c. *California*

In California a Fish and Game Commission is created by Section 20 of Article 4 of the state Constitution. The Commission's power to regulate the taking of fish is found in California Fish and Game Code sections 200 and 7701. In addition, California Fish and Game Code section 700 provides for a Department of Fish and Game administered through a Director. Under California Fish and Game Code section 702 the Department administers and enforces the provisions of the Fish and Game Code.

d. *Alaska*

The Department of Fish and Game exercises Alaska's police power through a Commissioner, its principal executive officer. The relevant functions of the Commissioner are found in AS 16.05.020(2), which reads in part:

"The commissioner shall . . . manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state."

2. **The Treaty Tribes**

The fisheries management authority of the Indian tribes located in the case area can be analyzed in two respects: on-reservation authority and off-reservation authority.

a. *On-reservation*

Surprisingly little has been decided by the courts with regard to tribal on-reservation fisheries management authority. It is apparently settled that the tribes have on-reservation authority over tribal fishing, see *Indian Hunting and Fishing Rights II*, Charles A. Hobbs, 37 *George Washington Law Review* 1251 (1969) at p. 1264. A second question is whether the tribal authority is exclusive or is to some extent concurrent.

The parties in *U.S. v. Washington* felt that tribal on-reservation management authority was exclusive

and that on-reservation tribal fishing was not subject to the state's normal police power, 384 F. Supp. at p. 341. However, Mr. Justice Brennan dissenting in *Puyallup Tribe v. Washington Game Dept.*, 433 U.S. 165 (1977), hereinafter cited as "*Puyallup III*", felt that the relationship between state and tribe was not as clear as it had seemed to the parties in *U.S. v. Washington*. He said at p. 182:

"Nor has this Court ever decided whether a State has the power to regulate on-reservation fishing in the interest of conservation."

In contrast, Mr. Justice Stevens, writing for the majority in *Puyallup III* felt that tribal on-reservation authority was not exclusive. He said at pp. 176-177:

"[I]f Puyallup treaty fishermen were allowed untrammled on-reservation fishing rights, they could interdict completely the migrating fish run and 'pursue the last living [Puyallup River] steelhead until it enters their nets.' . . . In this manner the treaty fishermen could totally frustrate both the jurisdiction of the Washington courts and the rights of the non-Indian citizens of Washington recognized in the treaty of Medicine Creek. In practical effect, therefore, the [Puyallup tribe] is reasserting the right to exclusive control of the steelhead run that was unequivocally rejected in both *Puyallup I* and *Puyallup II*."

Based on the majority opinion in *Puyallup III*, the Institute's analysis is that tribal on-reservation management power is not exclusive. The state also has power, albeit unexercised, to manage on-reservation fisheries, at least for the conservation purpose referred to by Justice Stevens. To that extent, jurisdiction is concurrent.

b. *Off-reservation*

Tribal jurisdiction over off-reservation fishing has been a frequent topic of judicial consideration. The tribes have authority over their own members exercising treaty fishing rights at usual and accustomed off-reservation grounds, 520 F.2d at p. 686. See

also *Settler v. Lameer*, 507 F.2d 231 (9th Cir. 1974). The remaining question revolves about state jurisdiction over tribal fishermen fishing off-reservation. The precise question is the overlap between state and tribal authority over those fishermen.

The first case in which the Supreme Court considered the question with regard to one of the six treaties which are now before the Court was *United States v. Winans*, 198 U.S. 371 (1905). That case involved the Indians' right to fish at off-reservation grounds rather than the tribes' or the state's power to manage those off-reservation fisheries. The Court did intimate, however, that the treaty right to fish off-reservation was subject to state regulation when it said at p. 384:

"Nor does it [the right to fish at off-reservation locations] restrain the state unreasonably, if at all, in the regulation of the right."

The first case in which the Supreme Court dealt specifically with the off-reservation jurisdictional relationship between state and tribes was *Tulee v. Washington*, 315 U.S. 681 (1942). In that case a tribal fisherman argued that his treaty right to fish in off-reservation areas was free from state regulation of any kind. The state relied on its broad powers to conserve fish within its borders and asserted the authority to regulate off-reservation treaty fishing in the same fashion as it could regulate any other type of fishing at the off-reservation locations. Mr. Justice Black, speaking for the Court, said at p. 684:

"We think the state's construction of the treaty is too narrow and the appellant's too broad; that while the treaty leaves the state with power to impose on Indians equally with others such restrictions of a purely regulatory nature concerning the time and manner of fishing outside the reservation as are necessary for the conservation of fish, it forecloses the state from charging the Indians a fee of the kind in question here."

The Court went on to indicate at p. 685 that:

"[I]t is clear that [the state's] regulatory purposes could be accomplished otherwise, that the imposition of license fees is not indispensable to the effectiveness of a state conservation program."

The suggestion was that treaty fishermen fishing off-reservation are simultaneously subject to two management authorities, that of their tribe for all purposes and that of the state for indispensable conservation measures.

The next case in which the Supreme Court considered state/tribal off-reservation fisheries management was *Puyallup Tribe v. Department of Game*, 391 U.S. 392 (1968), hereinafter cited as "*Puyallup I*". The Court based its thinking on the state's police power and said at p. 398:

"[T]he manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians."

In *Antoine v. Washington*, 420 U.S. 194 (1975), hereinafter cited as "*Antoine*", the Court dealt with a treaty which is not at issue in these proceedings but clarified its "appropriate standards" language in *Puyallup I*. The Court said at p. 207 that the phrase meant that the state must demonstrate that its regulation is a reasonable and necessary conservation measure, and that its application to the Indians is necessary in the interest of conservation.

In *Washington Game Dept. v. Puyallup Tribe*, 414 U.S. 44 (1973), hereinafter cited as "*Puyallup II*", the Supreme Court considered the meaning of "discrimination" with respect to state management of off-reservation Indian fishing and also elaborated on the conservation objective. With regard to the first question, the Court said at p. 48 that the state was not free to achieve conservation by restricting Indians alone. Rather, the state was obliged to strike a balance between regulation of Indian and non-

Indian fishermen such that conservation was achieved.

With respect to conservation, the Court said at p. 49:

“Rights can be controlled by the need to conserve a species; and the time may come when the life of a steelhead is so precarious in a particular stream that all fishing should be banned until the species regains assurance of survival. The police power of the State is adequate to prevent the steelhead from following the fate of the passenger pigeon; and the Treaty does not give the Indians a federal right to pursue the last living steelhead until it enters their nets.”

Although the Supreme Court has discussed the relationship between state and tribal off-reservation fisheries management authority in the cases referred to above, the trial judge's opinion in *U.S. v. Washington* remains the most comprehensive discussion of the subject. The judge decided that (i) the treaty tribes have full power to manage the treaty fishery in the off-reservation usual and accustomed grounds, 384 F. Supp. at p. 403; (ii) tribal power is not exclusive, but is concurrent with that of the state, 384 F. Supp. at p. 342; and (iii) the state's concurrent power is a power to regulate the *exercise* of off-reservation treaty fishing rights for the purpose of conservation, 384 F. Supp. at p. 403. Prior to exercising its limited concurrent authority, the state must show to the satisfaction of the Indian tribe concerned or to the federal district court that the state regulation is reasonable and necessary to prevent demonstrable harm to the actual conservation of fish, 384 F. Supp. at p. 342.

The term “conservation” is limited to those measures which are reasonable and necessary for the perpetuation of a particular run or species of fish, 384 F. Supp. at p. 342. The state may regulate off-reservation Indian treaty fishing only if alternative means for achieving conservation, such as regulating non-Indians, are insufficient, 384 F. Supp. at p. 342.

The Court of Appeals approved the trial judge's discussion of off-reservation management jurisdiction, reasoning that the federal government, in executing the treaties with the tribes in the first instance had preempted the normal exclusive authority which states have to regulate fisheries, and had converted it into a concurrent authority, 520 F.2d at p. 684. The state's concurrent power is limited to measures designed to prevent the destruction of a run of a particular species in a particular stream, 520 F.2d at p. 685. The Court of Appeals cited *Antoine*, saying at 520 F.2d 686:

"Direct regulation of treaty Indian fishing in the interests of conservation is permissible only after the state has proved unable to preserve a run by forbidding the catching of fish by other citizens under its ordinary police power jurisdiction."

In addition to defining the governing relationship between state and tribes which had been set out by the Supreme Court in the cases cited above, the trial judge in *U.S. v. Washington* went beyond what was the settled law and said at 384 F. Supp. 340:

"[T]his court hereby finds and holds that any one of plaintiff tribes is entitled to exercise its governmental powers by regulating the treaty right fishing of its members without any state regulation thereof."

The *exclusive* off-reservation tribal authority which was created by the judge was available to tribes which demonstrated the existence of six qualifications. These qualifications included the quality of the tribe's leadership and government, the existence of Indian enforcement personnel, the availability of fisheries experts, an approved tribal membership role, and a provision for a certification of tribal membership, 384 F. Supp. at pp. 340-341.

In addition, the trial judge ruled that any tribe which became fully and exclusively self-regulating was required to comply with three on-going conditions. These three conditions were that the tribe first, establish full and complete tribal fishing regula-

tions, which prior to adoption had been discussed with either WDF or WDG, and which included any state regulation which had been established to the satisfaction of the tribe or the court to be reasonable and necessary for conservation; second, permit monitoring of off-reservation Indian fisheries by WDG and WDF to the extent reasonable and necessary for conservation; and third, provide certain fish catch reports when requested by WDG or WDF, 384 F. Supp. at p. 341.

In reaching his decision with regard to exclusive self-regulating status, the judge relied on the Congressional policy of encouragement for the exercise of tribal autonomy and self-government, citing the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1341, 384 F. Supp. at page 340. The judge relied on his equitable power to implement Congressional policy and indicated he would enjoin the state's concurrent power over off-reservation treaty fishing with respect to self-regulating tribes, 384 F. Supp. at p. 414. To date two tribes have achieved self-regulatory status, the Yakimas and the Quinaults, 384 F. Supp. at p. 342.

The Court of Appeals affirmed the trial court's discussion of the self-regulating tribes. It made clear that the state's concurrent power had not been displaced, but merely enjoined, 520 F.2d at p. 686. The appellate court did express concern over the novel relationship which the trial judge had set up between the self-regulating tribes and the state. In the event that tribal self-regulation did not prove practicable, the Court of Appeals felt certain that the trial court would revise its judgment, 520 F.2d at pp. 686-687.

3. The Federal District Court

The federal district court retained continuing jurisdiction over the litigation in *U.S. v. Washington*, 384 F. Supp. at p. 408. The court has issued a series of orders which have affected the ongoing jurisdiction of both the state and the

tribes, and which have increasingly made the court responsible for fisheries management in the case area. The court is unquestionably now serving as a fishery management institution.

The court began its involvement by serving as a depository for the management regulations filed with respect to off-reservation treaty fishing by both the state and the tribes. The state was required to establish either to the satisfaction of all affected tribes or to the court that conservation was involved prior to utilizing its concurrent authority and promulgating its off-reservation regulations for members of all tribes other than the Quinaults and the Yakimas, 384 F. Supp. at p. 342. The tribes, on the other hand, were also required to file their off-reservation regulations with the court prior to the effectiveness of those regulations, 384 F. Supp. at p. 420.

In October of 1974 the court issued an order giving the state the authority to regulate off-reservation treaty fishing for more than the conservation purposes which the court had identified in its original decision. The court said that WDF and WDG could restrict tribal fishing to insure that the tribes did not exceed the catch share provided by the federal court, (R.).

In October of 1975 the trial judge established the Fisheries Advisory Board as an arm of the court. The Board was composed of one member selected by the state, one member selected by the plaintiff Indian tribes, and one non-voting member appointed by the court, (R.). The purpose of the Board was to promote the increased communication and cooperation which the court had requested in its original decision, 384 F. Supp. at p. 418. The Board had the power to consider any matter regarding the fish re-

source that was submitted to it by the court or by the parties.

In December of 1976 the court modified its order relating to the Fisheries Advisory Board. It left the composition of the Board intact, but gave the Board a more precise role in the promulgation and enforcement of the state's conservation regulations. The court ordered that state regulation of off-reservation fishing would only be valid if the proposed regulations were first submitted to the Board 48 hours prior to the effective date of the regulation. If any party so desired, the Board would convene 24 hours or more prior to the effective date of the regulation. Any party to the proceeding could immediately request a court review if dissatisfied with the Board's recommendation, (R.).

In August of 1977 the court issued another important ruling which affected management jurisdiction. The court itself made the allocations which were to prevail between treaty and non-treaty fishermen, (R.). In its 1974 decision the court had made a determination concerning the treaty language but had not initiated an actual allocation of the catch. The state still retained the ability to manage non-Indians in general and Indians for conservation purposes at off-reservation locations.

In June of 1978 the court issued a ruling which further involved the court in the management process. At that time the court took active control of the non-Indian fishery for allocation purposes, (R.....). The state retained exclusive jurisdiction over non-Indians for conservation purposes and concurrent jurisdiction for conservation purposes over off-reservation treaty fishing.

4. Regional Fishery Management Councils

The Fishery Conservation and Management Act of 1976, 16 U.S.C. § 1801, *et seq.*, hereinafter cited as "FCMA", created the Pacific and North Pacific Fishery Management Councils. The Councils are state/federal institutions responsible for developing fishery management plans for fisheries off the coasts of Washington, Oregon, and California (Pacific Council) and Alaska (North Pacific Council), 16 U.S.C. § 1852. The Councils' authority over salmon and steelhead fisheries begins 3 miles from the coast of the respective states, 16 U.S.C. § 1852, and extends throughout the range of the fish except when found within the fishery conservation zone or territorial sea of another nation, 16 U.S.C. § 1812.

The Secretary of Commerce adopts final regulations implementing the Councils' fishery management plans, 16 U.S.C. § 1855. The regulations are enforced by the National Marine Fisheries Service, and the Coast Guard, 16 U.S.C. § 1861. The Secretary has additional authority by virtue of 16 U.S.C. § 1856(b)(A) and (B) to preempt the states' management authority within three miles of the respective coasts in fisheries which are engaged in predominately beyond three miles. Preemption may occur after the Secretary has found that a state's action or inaction in managing fishery resources within three miles conflicts with the way in which those resources are managed by a Council beyond three miles. After the Secretary has preempted state jurisdiction, the FCMA contemplates that the appropriate Council will then assume jurisdiction, at least until the state's action or inaction no longer conflicts with the Council's management plan, 16 U.S.C. § 1856.

Secretarial preemption does not, however, extend to

state jurisdiction for the management of fisheries resources within the internal waters of the states, 16 U.S.C. § 1856 (b)(B). In Washington, Grays Harbor, the Strait of Juan de Fuca, and Puget Sound are internal waters.

5. International Pacific Salmon Fisheries Commission

The International Pacific Salmon Fisheries Commission, hereinafter referred to as "IPSFC", is an international agency which was established by Convention between the United States and Canada to manage the sockeye salmon fisheries for the stocks of the Fraser River in British Columbia. The Convention was signed on May 26, 1930, and entered into force on July 28, 1937, 50 Statutes at Large 1355, Treaty Series No. 918. A Protocol amending the Convention was signed on December 28, 1956 and entered into force on July 3, 1957, 8 UST 1057, TIAS 3867. The Protocol extended the Commission's authority to include pink salmon as well as sockeye salmon. In 1947 the United States enacted what was to become known as the Sockeye or Pink Salmon Fishing Act and which now appears as 16 U.S.C. §§ 776-776f. The Act, as amended, makes it unlawful for any person to engage in fishing for sockeye salmon or pink salmon in Convention waters in violation of the Convention, the Act, or any regulation of the Commission, 16 U.S.C. § 776a.

Pursuant to the terms of the Convention, the IPSFC has extensive power to manage sockeye and pink salmon fisheries for stocks bound for Canada's Fraser River. Specifically, the Convention authorizes the IPSFC to limit or prohibit the taking of sockeye and pink salmon in Convention waters by vessels of any nation, or on the high seas by vessels of the U.S. or Canada. Convention waters are lo-

cated within the state of Washington in northern Puget Sound, as well as within the province of British Columbia, and are shown in Appendix III, *infra*.

The Convention contemplates the development of harvest regulations by the Commission and directs that fishermen of Canada and the U.S. each take 50% of the harvestable portion of the resource. The proposed harvest regulations are, in turn, approved by the two governments. Until 1976 the regulations pertaining to U.S. fishermen were then adopted and enforced by WDF pursuant to the authority contained in RCW 75.40.060.

In 1976 the Commission's proposed regulations contained the following language:

"Insofar as the foregoing regulations prescribe the type of gear to be used during times open to fishing for sockeye and pink salmon, such regulations shall be implemented to the extent permissible under the laws of the Parties."

After U.S. approval, WDF adopted the proposed regulations.

The National Marine Fisheries Service interpreted the quoted language to mean that tribal members were entitled to fish in 1976 on IPSFC stocks at any time open for fishing by any type of U.S. gear, Federal Register, Vol. 41 No. 108, pp. 22392-22393, June 3, 1976. Enforcement of the IPSFC regulations in 1976 was provided jointly by federal and state enforcement officers.

In 1977 the United States approved the proposed IPSFC regulations except as they applied to treaty tribes. The National Marine Fisheries Service utilized its authority under the Sockeye Salmon or Pink Salmon Fishing Act and adopted the IPSFC regulations relating to non-treaty fisher-

men, Federal Register, Vol. 42, No. 117, pp. 30841-30842, June 17, 1977. The Bureau of Indian Affairs utilized its authority in 25 U.S.C. § 2 and § 9 and adopted federal regulations governing IPSFC fishing by treaty fishermen, Federal Register, Vol. 42, No. 119, pp. 31450-31453, June 21, 1977. All regulations were enforced by the federal government. The same procedure was followed in 1978, Federal Register, Vol. 43, No. 121, pp. 26737-26739, June 22, 1978 and No. 122, pp. 27187-27189, June 23, 1978.

The involvement of WDF in the IPSFC fishery has declined dramatically since 1976. WDF did not adopt the IPSFC's regulations in 1977 or in 1978. In both those years the implementation of the Commission's regulations has been essentially a federal activity. The Washington Supreme Court rendered a decision in *Purse Seine v. Moos*, 88 Wn.2d 799, 567 P.2d 205 (1977), which further restricted WDF. The state court held that the grant of authority in RCW 75.40.060 for WDF to adopt the Commission's regulations did not give WDF the power to expand, diminish, or alter those regulations in any respect. Rather, the authority empowers WDF to incorporate in its regulations every provision of the IPSFC regulations and to do no more than that, 88 Wn.2d at p. 808.

6. Federal Agencies

Various agencies of the federal government now take an active role in fisheries management in the Pacific Northwest. The regulations of the Secretary of Commerce implement the fishery management plans of the Councils beyond three miles. The Pacific Council has such a plan in effect for the offshore salmon fishery.²⁰ The National

²⁰ *Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978*, March, 1978.

Marine Fisheries Service and the Bureau of Indian Affairs adopt regulations for the IPSFC fishery for the non-Indians and Indians respectively. Enforcement of all federal regulations as well as of the orders of the federal district court in *U.S. v. Washington* is provided by the National Marine Fisheries Service and the Coast Guard.

7. Canada

Canadian fishery management authority is exercised by the Fisheries and Marine Services division of the Department of the Environment under the provisions of the Fisheries Act of Canada, Chapter F-14, Revised Statutes of Canada (1970). Canada claims a counterpart to the U.S. 200-mile fishing conservation zone. The U.S. disclaims authority over salmon and steelhead while in the Canadian zone, 16 U.S.C. § 1812.

IV. Scientific Argument

The current management system stands in the way of effective fisheries management. In view of the proliferation of regulators and regulations, the system is not capable in the long run of preserving the salmon and steelhead resources or accomplishing the more complicated objectives of maximization of the yield or allocation of the catch.

The jurisdictional defects in the present system are exacerbated by the special characteristics of the fish and the fishermen which the system is charged with managing. The fish are highly migratory, but uniquely vulnerable in that they congregate in areas where they may be easily and rapidly captured. The spawning cycle, the many distinct stocks to be protected, and the relationship in these species of numbers of spawners to numbers of progeny, all serve to increase the damage from over fishing and

complicate yield maximization and allocations among user groups. On the other side of the equation, the fishermen are numerous, far-flung, mobile, and efficient. A miscalculation or delay in developing and implementing a cohesive management plan can result in catches of fish that are far wide of the goals.

Salmon and steelhead fisheries present four special problems for resource managers. These problems relate first, to data collection and analysis, second, to regulation of fishermen for conservation, yield maximization, and catch allocation purposes, third, to the mixed stock character of the fishery, and fourth, to enforcement. Because of these problems, fragmented management authority over a common stock or stocks distributed among multiple jurisdictions, as currently exists, is an ineffective mechanism for managing fisheries.²¹

1. Data Collection and Analysis

Salmon and steelhead management depends on the collection and analysis of a wide variety of scientific data including data relating to catch and effort. The adjustments in regulations which occur while the fishery is in progress are based on these data. The catch and effort data must be rapidly collected from *all* fishermen and must be analyzed with equal dispatch to obtain accurate estimates of run size. The present system is characterized by the independent collection of catch and effort information by a variety of entities. If the data which are collected must be analyzed and transmitted among a mul-

21. Wenk, Edward Jr., 1972. *The Politics of the Ocean*, University of Washington Press, p. 304. See also Alverson and Paulik, *supra* note 14, at 1941-1942.

tiplicity of institutions, the critical decisions cannot be made in a timely fashion and interpretive and communicative mistakes will occur.

2. Regulation of Fishermen

Fishing regulations are designed to achieve conservation first, and yield maximization and allocation second. If different institutions manage different fishermen fishing on the same stocks, the achievement of these goals will be hindered. This will occur either because the institutions interpret the data differently, do not agree on the goals, or simply fail to successfully coordinate their efforts.

The key to successful management is prompt, coordinated regulation of all sources of fishing effort. If the regulations are not timely or if they do not result in control of fishing effort in the manner expected, the goals will not be achieved.

One of the specific goals of fishery management is allocation of the resource among user groups. This goal is especially unattainable under a fragmented system of management because different user groups fish in sequence and the earlier user groups fish on mixed stocks. In these circumstances the earlier fisheries must be restrained in a manner sufficient so as to permit an escapement of each stock sufficient to meet the allocation for subsequent fisheries as well as spawning requirements. This is nearly an impossible task unless the managers can make various "mid-course corrections" as the different user groups harvest the incoming resources. This in turn is fully possible only under a unified management system.

Mixed Stocks

Fisheries for salmon and steelhead occur while different stocks are mixed together. This factor presents fisheries managers with a unique problem. Because the different stocks do not tolerate the same harvesting rate, the mixed stock fisheries must be regulated in a coordinated fashion and in a manner which takes into account the fisheries which occur after the stocks have separated so that the overall harvest rate is consistent with management goals. The complex and coordinated decisions required to deal with this problem can best be accomplished by a unified management system which can exercise control over all the relevant fisheries. If the management of *all* fisheries, those that occur on stocks while mixed and those that occur when stocks have separated, is not consistent, over- and under-harvesting will occur to the subsequent detriment of the stocks.

4. Enforcement

Enforcement is critical to the success of a management regime, particularly one relating to anadromous species which are so vulnerable to over-fishing. When each agency, state, tribe, nation, court, regional group, or international body attempts to enforce its own regulations or orders against a discrete group of fishermen, serious problems arise. These result from the difficulties of distinguishing one fisherman from the next and of detecting and apprehending violations when they do occur. In addition, the multiplicity of jurisdictional boundaries complicates enforcement.

V. Summary of Legal Argument

1. *A Unified Management System is Necessary in Order to Best Effectuate Treaty Rights of Both Indians and Non-Indians.*

a. The treaty rights here under review are ones to "take fish." Diminution of the resource diminishes these rights. A unified management system offers the best chance that the resource will not be diminished.

b. The Court may find that, as a matter of law, treaty-right fishermen are entitled to an opportunity to take a certain percentage of the harvest. An inability to properly allocate this opportunity will necessarily deny one group or the other its treaty rights. A unified management system can best accomplish this allocation.

c. The Court's obligation is to determine treaty rights and to frame relief that will implement those rights. In order to fulfill the latter duty, the Court should take such steps as it can to see to the establishment of a unified management system.

2. *The Court Should Give Effect to Clearly Stated Congressional Policy with Regard to Fishery Resources and the Environment.*

a. The FCMA establishes a clear Congressional policy that salmon and steelhead should be conserved.

b. The Court should heed this Congressional policy in framing its decision in this case.

c. The FCMA also contains policy language favoring unified management systems.

3. *This Court Has Recognized a Judicial Duty to Conserve Renewable Fishery Resources.*

a. States have a common law duty to manage wild game and fish as a public trust for the benefit of the people.

b. This duty requires that the salmon and steelhead resources in the case area be managed so as to ensure their preservation.

c. This Court, in a number of cases, has implicitly recognized a judicial responsibility, in the nature of the public trust duty, to conserve renewable fishery resources.

d. These cases are clear precedent for the Court to take such steps as possible toward establishment of a unified management system in order to preserve the salmon and steelhead resources.

VI. Legal Argument

This section will discuss why, as a matter of law, this Court should seek the establishment of a unified management system.

1. A Unified Management System is Necessary in Order to Best Effectuate Treaty Rights of Both Indians and Non-Indians

The District Court and the Ninth Circuit have held that the treaties to be construed in this case represent a grant of rights from the Indians to the settlers and their descendants, and a reservation of rights not granted, 384 F. Supp. at p. 331, and 520 F.2d at p. 684, both quoting with approval *United States v. Winans, supra*.²² In each case the right was, by the words of the treaties, one to "take fish". Whatever judicial gloss may be placed on these words, the Indians' and the non-Indians' rights to "take fish" can be exercised only so long as there are fish to take. If, as a result of mismanagement, the salmon resource is rendered extinct,

22. For purposes of the argument herein being made, it is irrelevant whether the non-Indians have a "right" to take fish or, as the District Court in this case found, only a "privilege which may be granted, limited, or withdrawn by the state . . ." 384 F. Supp. at p. 332.

the net sum of the treaty rights of Indians and non-Indians would be extinguished. Analogously, diminution of the resource diminishes the net sum of treaty rights. The Institute has argued in previous sections that the structure of the management system is crucial to the conservation of the resource. A unified management system offers the best chance that the salmon or steelhead stocks will not be rendered extinct or greatly diminished due to management errors and thus the best chance that the treaty rights of both Indians and non-Indians can be implemented.

The Institute has also argued that the allocation of the harvestable yields of the salmon and steelhead among user groups can best be accomplished by a unified management system. It is possible that this Court will find that, as a matter of law, treaty right fishermen are entitled to an opportunity to take a certain specified percentage of the available harvest. In these circumstances, an inability of the management system to allocate this opportunity properly will necessarily deny one group or the other its fishing rights.

Viewed in this light, a unified management system is necessary in order to best effectuate the treaty rights of all persons fishing for salmon and steelhead in the case area. This Court's fundamental obligation in this litigation is to determine what those treaty rights are and to frame relief for the parties that will serve to implement those rights. In order to properly fulfill this duty, this Court should take such steps as it can to see to the establishment of a unified management system.

2. The Court Should Give Effect to Clearly Stated Congressional Policy With Regard to Fishery Resources and the Environment

The FCMA establishes a very strong and clear Congressional policy that anadromous species which spawn in U.S. waters should be conserved. Section 2 of the Act, 16 U.S.C. § 1801, provides in pertinent part as follows:

“(a) FINDINGS.—The Congress finds and declares the following:

(1) The fish off the coasts of the United States, the highly migratory species of the high seas, the species which dwell on or in the Continental Shelf appertaining to the United States, and *the anadromous species* which spawn in United States rivers or estuaries, constitute valuable and renewable natural resources. These fishery resources contribute to the food supply, economy, and health of the Nation and provide recreational opportunities.

* * *

(5) Fishery resources are finite but renewable. If placed under *sound management* before overfishing has caused irreversible effects, the fisheries can be conserved and maintained so as to provide optimum yields on a continuing basis.” (Emphasis added.)

These words in the legislation embody the Congress's unmistakable concern that the resources which are the subject of this litigation be “conserved and maintained”. In addition, they indicate the Congress's belief that such conservation and maintenance is possible if the fishery resources are “placed under sound management.”

Although the FCMA is perhaps the clearest expression of national policy with regard to salmon and steelhead conservation, the National Environmental Policy Act of 1969, 42 U.S.C. § 4321 *et seq.*, and the Endangered Species

Act of 1973, 16 U.S.C. § 1531 *et seq.*, also express clear Congressional policies in favor of resource conservation.

The Court, in resolving this dispute, is thus confronted with a Congressional policy that the salmon and steelhead resources are to be conserved. This Court may take judicial notice of federal statutes, *St. Louis, I.M. & S.R. Co. v. Starbird*, 243 U.S. 592 (1917); *Missouri, K & T.R. Co. v. Wulf*, 226 U.S. 570 (1913); *Spokane Falls & N.R. Co. v. Ziegler*, 167 U.S. 65 (1897), and in particular public policy as stated in federal statutes, *Helvering v. Sabine Transp. Co.*, 318 U.S. 306 (1943); *United States v. Darby*, 312 U.S. 100 (1941). Since the Court's ruling in this case will inevitably have a significant impact on resource conservation, the Court ought to heed the clear expressions of Congressional policy on this issue in framing its decision.

The FCMA also contains policy language which bears directly on the management issue. Section 301 of the Act, 16 U.S.C. § 1851, sets forth "national standards for fishery conservation and management." One of the national standards enunciated is the management of each stock of fish as a unit throughout its range. Section 301 provides in part as follows:

"(a) IN GENERAL—Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following *national standards* for fishery conservation and management;

* * *

(3) To the extent practicable, an individual stock of fish shall be managed *as a unit throughout its range*, and interrelated stocks of fish shall be managed as a unit or in close coordination." (Emphasis added.)

A unified management system for the salmon and steelhead resources involved in this litigation would be consistent with and a substantial step towards fulfilling this declared national standard of managing the fish as a unit throughout their range.

3. This Court Has Recognized a Judicial Duty to Conserve Renewable Fishery Resources

In the landmark case of *Geer v. State of Connecticut*, 161 U.S. 519 (1896), this Court first clearly articulated the authority of the several states with regard to wild animals. The case concerned whether the state of Connecticut had the legal authority to regulate the interstate transportation of wild game killed within its borders. In deciding this question in favor of Connecticut, the Court found that wild game is a "common property" owned by the states which the states have the right to regulate "as a trust for the benefit of the people", 161 U.S. at p. 529.

The concept that wild animals and fish are "owned" by the states has been rejected by this Court in a series of cases in which states have attempted to rely on ownership to justify regulation of fish and wild game in a manner found to be inconsistent with the Constitution or federal legislation.²³ However, the concept that the state must exercise its regulatory authority as a public trust for the benefit of the people has never been seriously challenged. It is accepted law in the state of Washington, *State ex rel. Campbell v. Case*, 182 Wash. 334, 47 P.2d 24 (1935); *State ex rel. Bacich v. Huse*, 187 Wash. 75, 59 P.2d 1101 (1936).

23. *Toomer v. Witsell*, 334 U.S. 385 (1948); *Takahashi v. Fish and Game Commission*, 334 U.S. 410 (1948); *Douglas v. Seacoast Products, Inc.*, 97 S.Ct. 1740 (1977).

The public trust doctrine received support in a recent District Court case, *State of Maryland, Dept. of N. Res. v. Amerada Hess Corp.*, 350 F. Supp. 1060 (D. Maryland 1972). This case concerned whether the state of Maryland could maintain a common-law action against a defendant tanker corporation and others for damages for pollution of state waters and consequent injury to natural resources. In finding that the state had standing to bring this suit, the court at p. 1067 quoted with approval from Justice Frankfurter's concurring opinion in *Toomer v. Witsell*, *supra*:

"A State may care for its own in utilizing the bounties of nature within her borders because it has technical ownership of such bounties or, when ownership is in no one, because the State may for the common good exercise all the authority that technical ownership ordinarily confers. 334 U.S. at 408, 68 S.Ct. at 1168."

The court then went on as follows:

"It is just this 'technical ownership' that the State of Maryland has in its waters that gives it the legal right to bring suit on behalf of the public in order to serve the 'common good' of its citizens. The conclusion seems inescapable to this Court, that if the State is deemed to be the trustee of the waters, then, as trustee, the State must be empowered to bring suit to protect the corpus of the trust—i.e., the waters—for the beneficiaries of the trust—i.e., the public."

The public trust doctrine requires government to exercise its control over renewable resources for "the common good." The common good requires the preservation of the salmon and steelhead resources in the case area. Failure to manage these resources so as to ensure their preservation under present circumstances would be a clear breach of government's duty to its citizens.

The public trust doctrine has been couched by the

courts as a duty of the various states since these have been the governing units with the authority to regulate the fish and wild game in these cases. However, the courts implicitly have recognized that a duty to conserve applies to their judicial activities as well. In fact, this Court has in several important cases recognized a responsibility on its part to give heavy weight to resource preservation. It should be noted that in none of these was the Court dealing with any legislative enactments favoring preservation.

The first of these cases is *New York ex rel. Kennedy v. Becker*, 241 U.S. 556 (1916). This case involved Indian treaty fishing rights. The Seneca Nation in 1797 entered into a treaty with one Robert Morris, ceding certain land to him, "his heirs and assigns forever." The grant reserved to the Seneca nation and its heirs "the privilege of fishing and hunting on the said tract of land hereby intended to be conveyed." Three Seneca Indians were arrested for fishing off their reservation but on the ceded land in a manner contrary to the conservation laws of the state of New York. The Indians sought a writ of habeas corpus, arguing that the terms of the treaty created dual sovereignty to govern fishing activities on the ceded land. The Court rejected this argument, holding that the state had authority to regulate fishing on this property.

We wish to draw attention not to this result, but to the reasoning by which the Court reached it. The Court essentially reasoned that interpretation of the treaty to require dual sovereignty was unacceptable because such a result would destroy the resource. That is, the Court recognized a clear obligation to protect the resource even though this issue was not directly before the court nor mandated at the time by applicable federal law.

Chief Justice White, writing for the Court, put the matter as follows at p. 563:

“It is said that the state would regulate the whites and that the Indian tribe would regulate its members, but if neither could exercise authority with respect to the other at the *locus in quo*, either would be free to destroy the subject of the power. Such a duality of sovereignty, instead of maintaining in each the essential power of preservation, would in fact deny it to both. . . . We do not think that it is a proper construction of the reservation in the conveyance to regard it as an attempt either to reserve sovereign prerogative, or so to divide the inherent power of preservation as to make its competent exercise impossible.”

Kennedy v. Becker is also the only case which the Institute has discovered in which this Court has expressed an opinion on the ability of a non-unified management system to ensure preservation of fishery resources. The Court believed that division of the power of conservation would “make its competent exercise impossible.” The Institute believes the same is true today, and suggests that *Kennedy v. Becker* offers an excellent precedent for a similar conclusion from the Court here.

The Court has recently been called upon to resolve disputes in three related cases in which, like *Kennedy v. Becker*, the issue was the authority of states to regulate fishing by Indians guaranteed the right by treaty to fish “at all usual and accustomed places, in common with the citizens . . .” *Puyallup I*, *Puyallup II*, *Puyallup III*, *supra*. This Court in these cases consistently held that the states have the authority to regulate treaty right fishing in non-exclusive areas as necessary and reasonable for *conservation*. It is instructive to note that in similar cases the Court has held that state regulation for other purposes,

uch as the collection of a license fee, is impermissible, *Tulee v. Washington, supra*.

Once again, we wish to call attention not so much to the holdings themselves as to the reasoning the Court employed. The *Puyallup* cases involve interpretations of treaty rights between sovereigns. The treaty makes no reference to resource conservation, but the Court in each case has interpreted treaty rights so as to assure preservation of the resource. Although never stated explicitly, what the Court has consistently done is recognize and give effect to a perceived duty to conserve the renewable fishery resources which were the subject of those disputes as well as the present proceedings. For all of the reasons already stated above, we believe this duty is correctly perceived.

The present controversy before this Court presents an opportunity for the Court once again to recognize and give effect to an important resource conservation issue. We submit that the judicial reasoning in the treaty rights cases which this Court has previously resolved provide an overwhelming basis for the Court in this controversy to take such steps as necessary to establish a unified management system in order to best ensure preservation of the salmon and steelhead resources.

VII. Conclusion

The Institute has argued that the current balkanized system for management of the salmon and steelhead resources of western Washington is inadequate. In part as a result of the lower court decisions in this case, management authority is spread among too many entities. As a result, the system is incapable of ensuring the preservation of the resources, optimization of yields, or allocation of the catch among user groups.

It is admitted that preservation of the salmon and steelhead resources, optimization of yield, and allocation are ancillary issues in this litigation. Nonetheless, they bear directly upon the treaty rights which are the fundamental issue before the Court. In addition, preservation of these resources is of itself a matter of great importance and one that this Court has recognized and given great weight to in past rulings.

The Institute has attempted to demonstrate that a unified management system is essential in order to achieve the management goals of resource preservation, yield maximization, and user group allocation. Full realization of such a management system goes beyond the bounds of this litigation and the duties of the Court. It is undoubtedly true that the Court could seek to remedy the institutional fragmentation that has resulted in part from the lower court decisions by confirming greater authority in the District Court to oversee and manage the fisheries. This is an unnatural role for the judiciary, and one to which it is not well-suited. The Institute agrees with Judge Burns in his concurring opinion in the Ninth Circuit's ruling in *U.S. v. Washington*:

"Although I recognize that district judges cannot

escape their constitutional responsibilities, however unusual and continuing the duties imposed upon them, I deplore situations that make it necessary for us to become enduring managers of the fisheries", 520 F.2d at p. 693.

Creation of a unified management system for salmon and steelhead resources is a task for the United States Congress. There is no question but that this Court has the right to request that Congress legislate on this matter. Given, however, that a unified management system is a necessary condition to resource preservation and other management goals, and given that these goals are intimately bound up with the treaty rights here under litigation, the Institute submits that the Court has a duty to urge upon the Congress that it establish a unified management system for the fishery resources here being disputed. This Court can make an indispensable contribution by informing the Congress of the importance of such action from the Court's unique judicial perspective.

The Institute offers the following principles which the Court might use in requesting Congressional action:

1. The management system should have the capability to rapidly collect and analyze statistical information including catch and effort data from all fishermen exploiting the resource.
2. The management system should be capable of making coordinated decisions for regulating the activities of all fishermen and should have the authority to conserve the resources, maximize the yield, and allocate the permissible catch among user groups in a fair and equitable manner according to law.
3. The management system should be able to make

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rapid and timely adjustments to regulations while each
run and each fishery are actually in progress.

4. The management system should have the ability to enforce decisions and regulations with regard to all fishermen.

Respectfully submitted,

J. Carl Mundt
Henry H. Happel III
MUNDT, MACGREGOR, HAPPEL,
FALCONER & ZULAUF
Counsel for *Amicus Curiae*

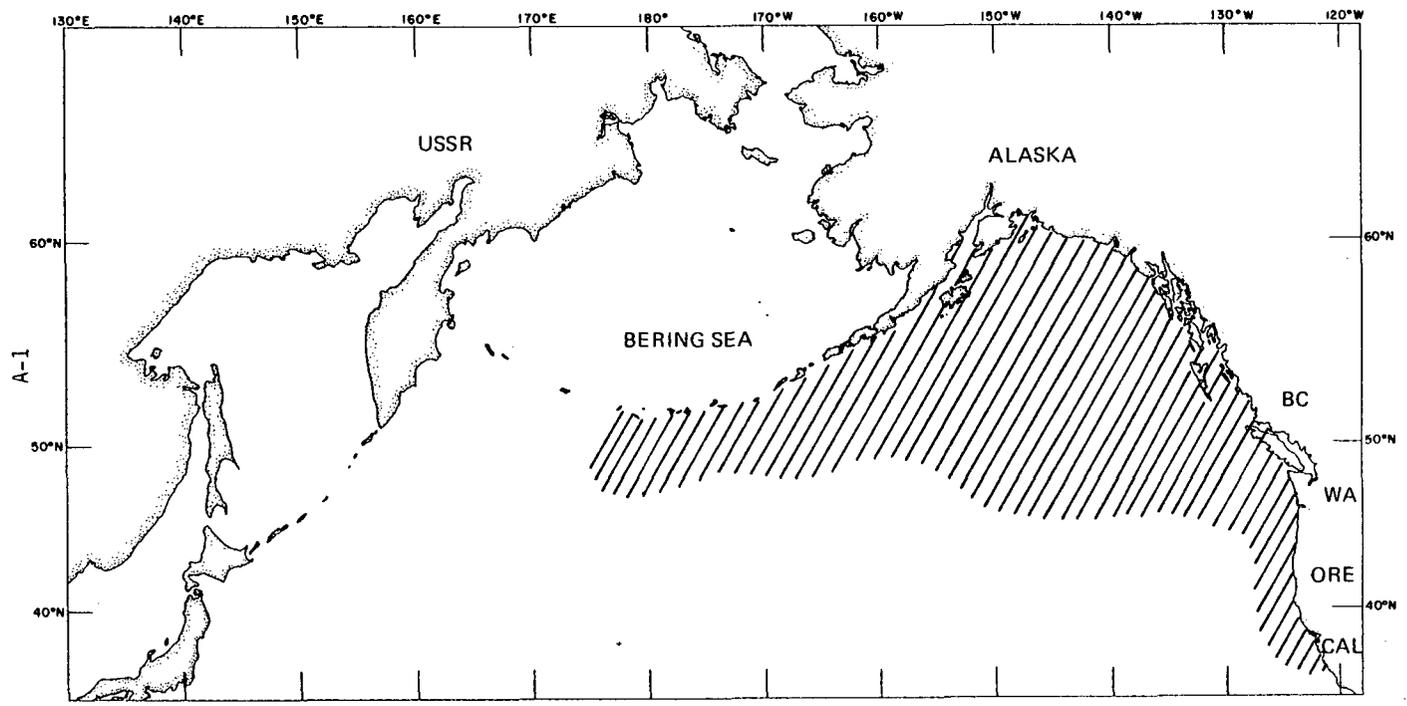
Seattle, Washington
November, 1978

APPENDIX I

pages A1 - A6

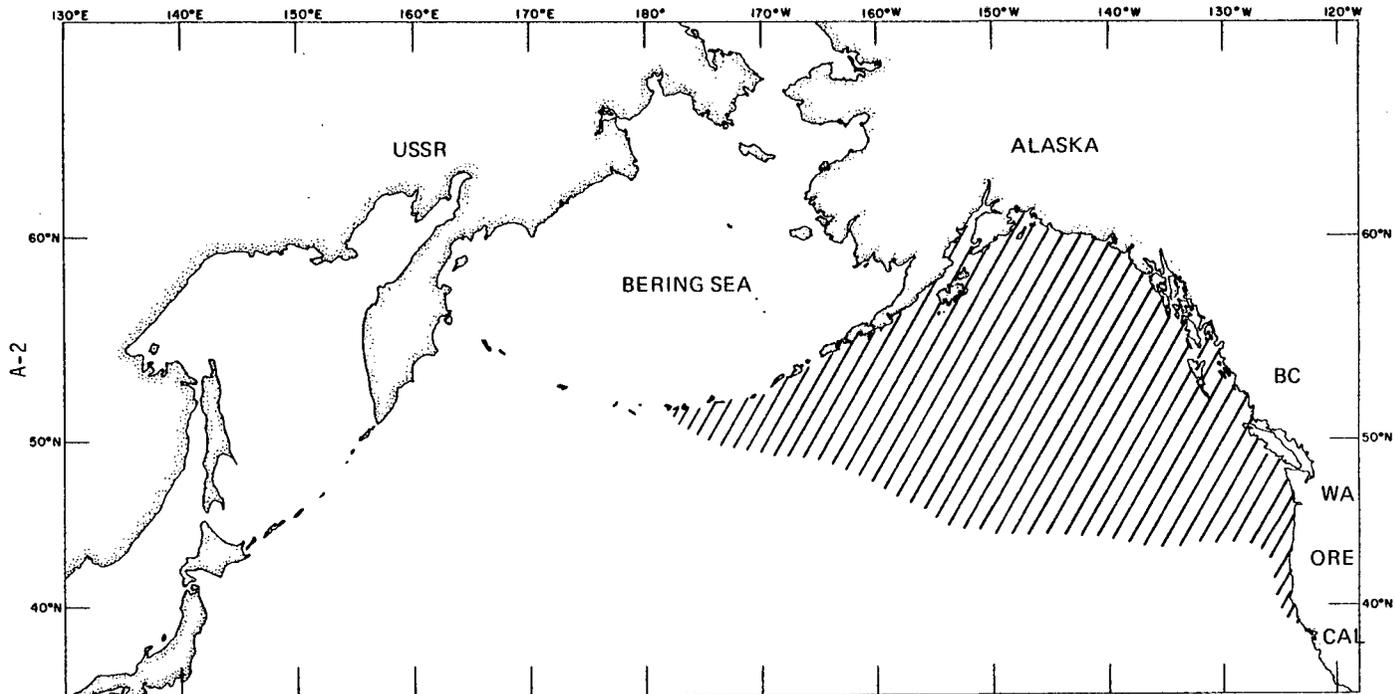
Ocean distribution of chinook salmon from tributaries emptying into the Gulf

of Alaska and from waters of Washington, Oregon, and California.

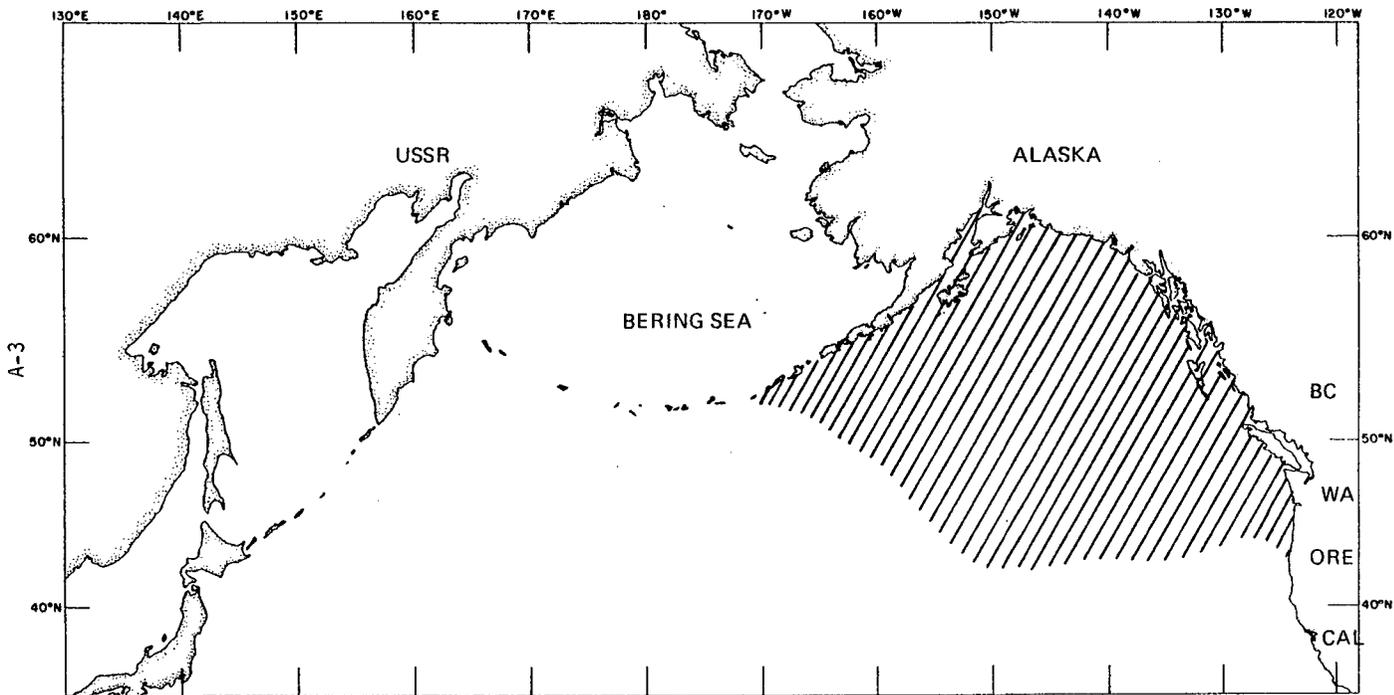


Ocean distribution of coho salmon from tributaries emptying into the Gulf of

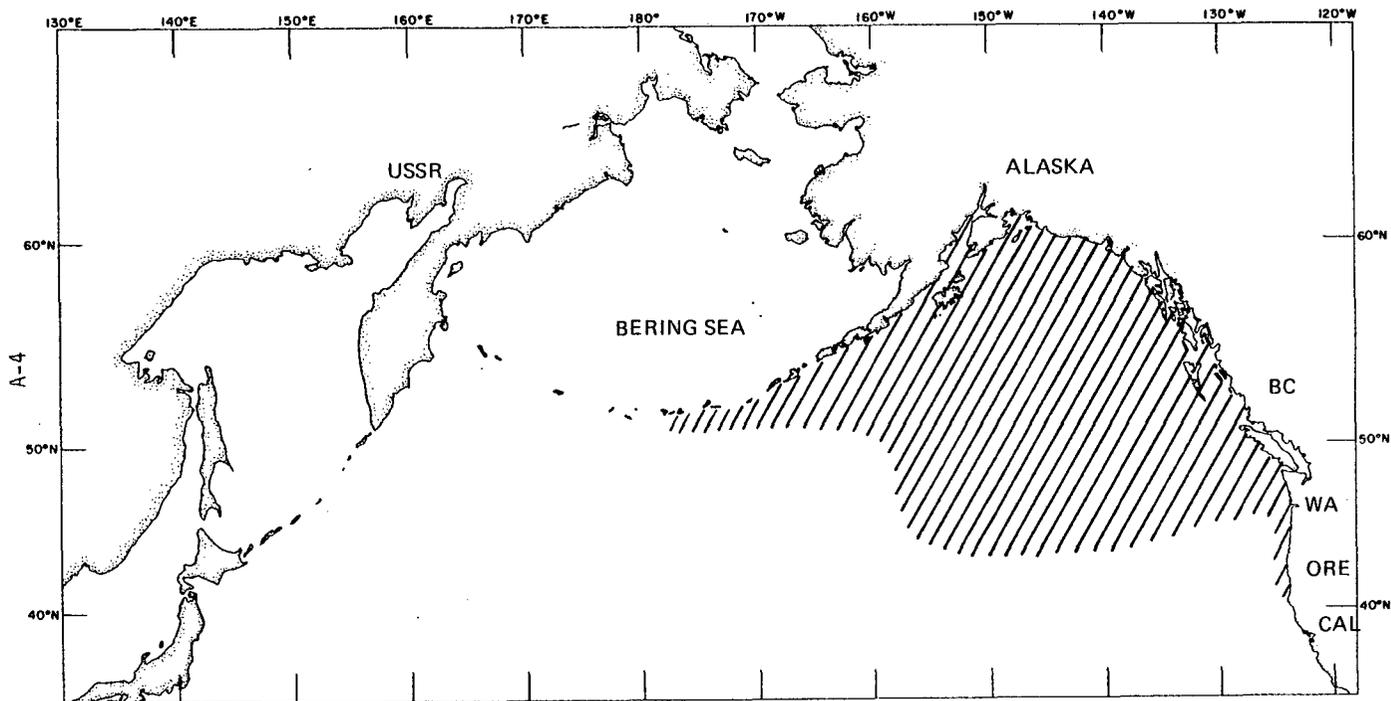
Alaska and from waters of Washington, Oregon, and California.



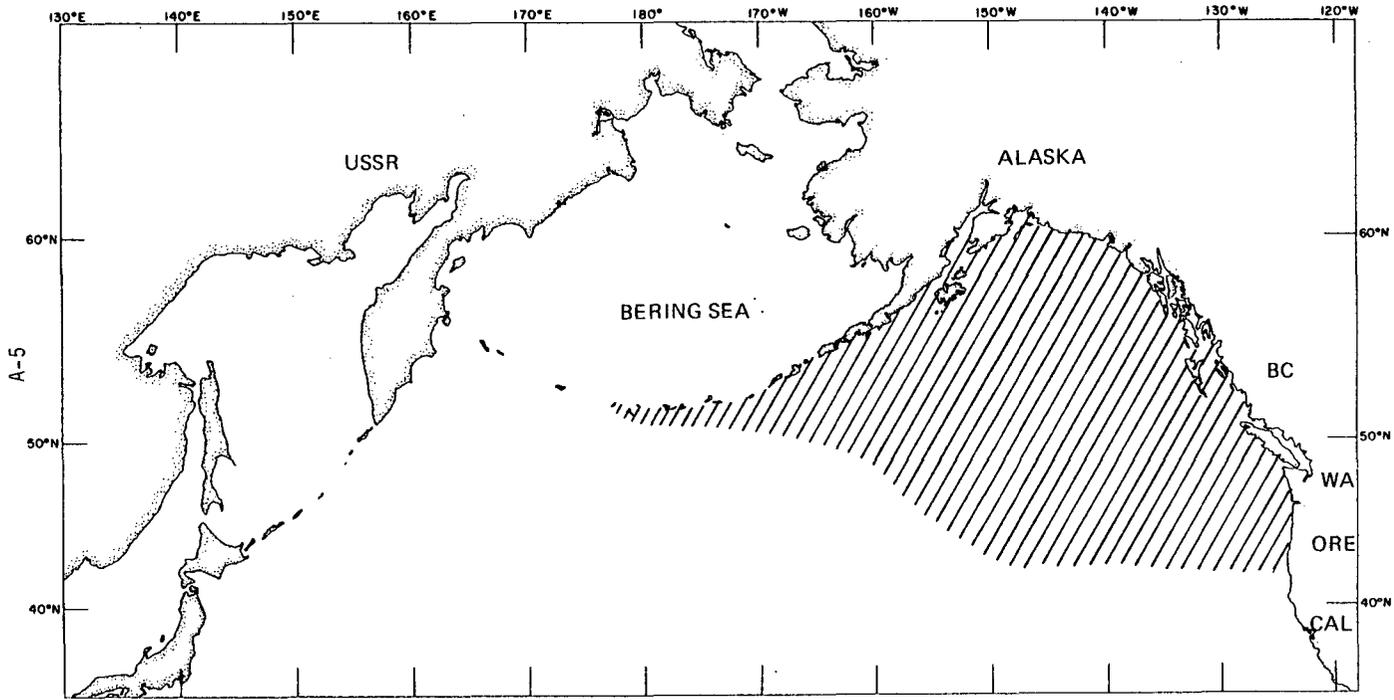
Ocean distribution of pink salmon from tributaries emptying into the Gulf
of Alaska and from waters of Washington.



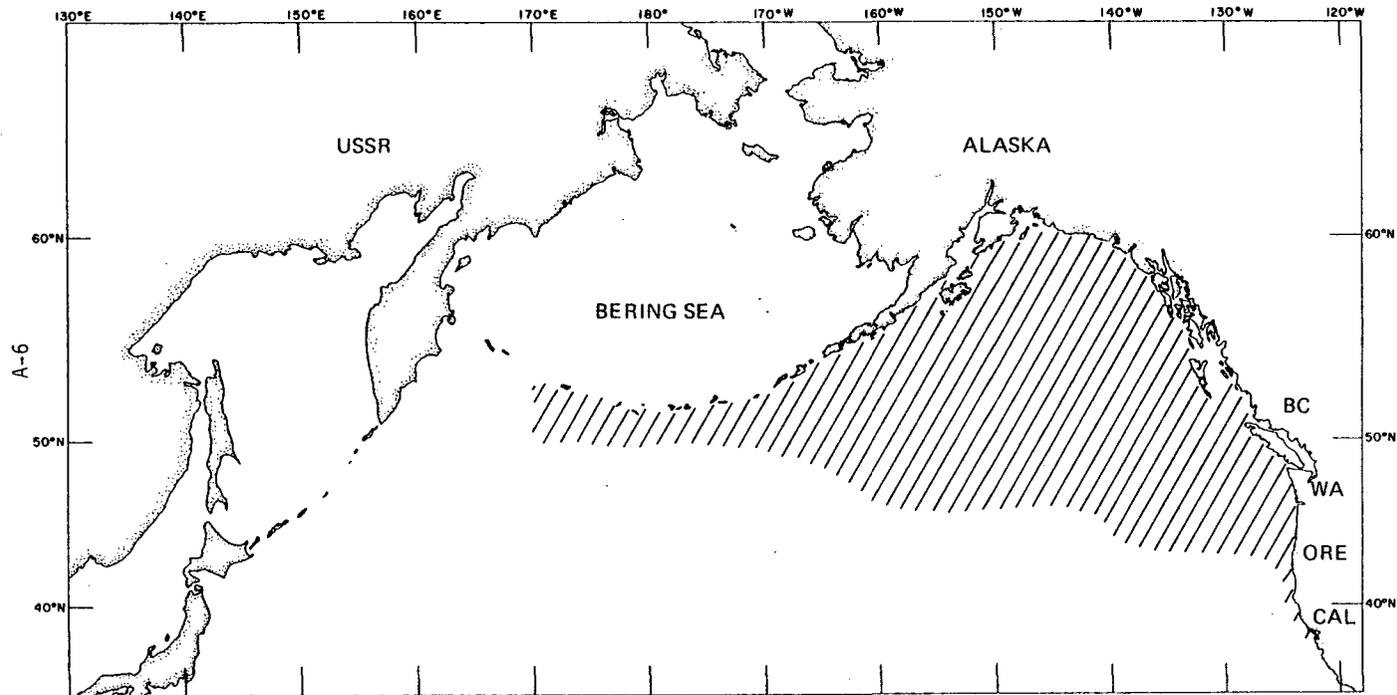
Ocean distribution of chum salmon from tributaries emptying into the Gulf
of Alaska and from waters of Washington and Oregon.



Ocean distribution of sockeye salmon from tributaries emptying into the Gulf
of Alaska and from waters of Washington and Oregon.



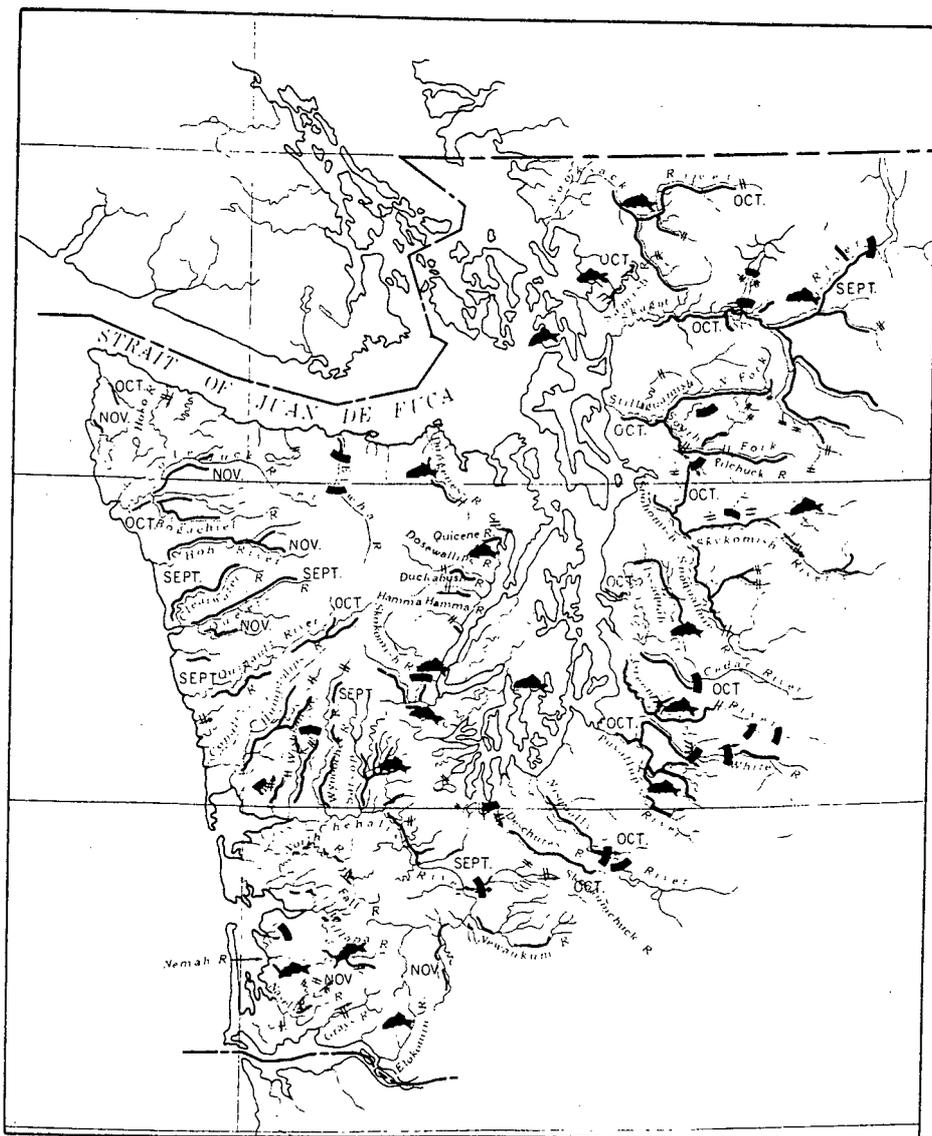
Ocean distribution of steelhead trout from tributaries emptying into the Gulf
of Alaska and from waters of Washington, Oregon, and California.



APPENDIX II

pages A7 - A11

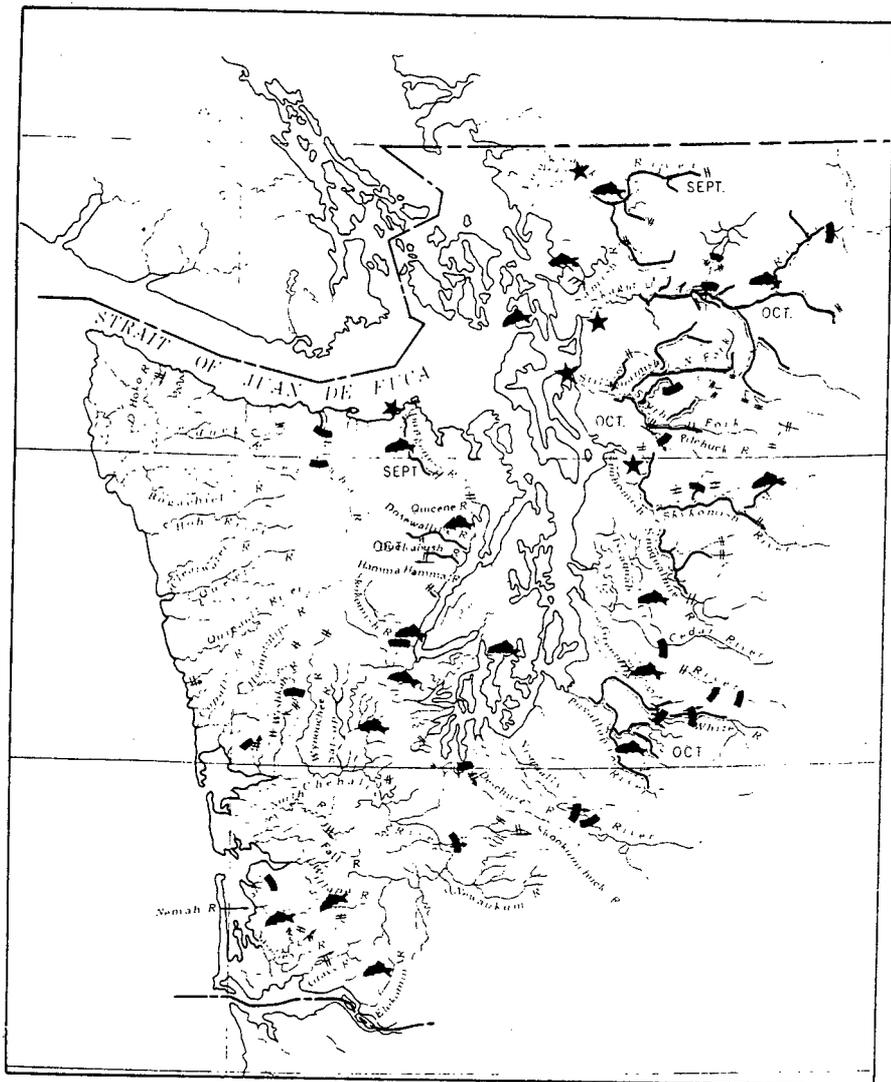
A-7



Spawning grounds of chinook salmon in Washington coastal waters (spawning areas shown by black lines along rivers).

000474

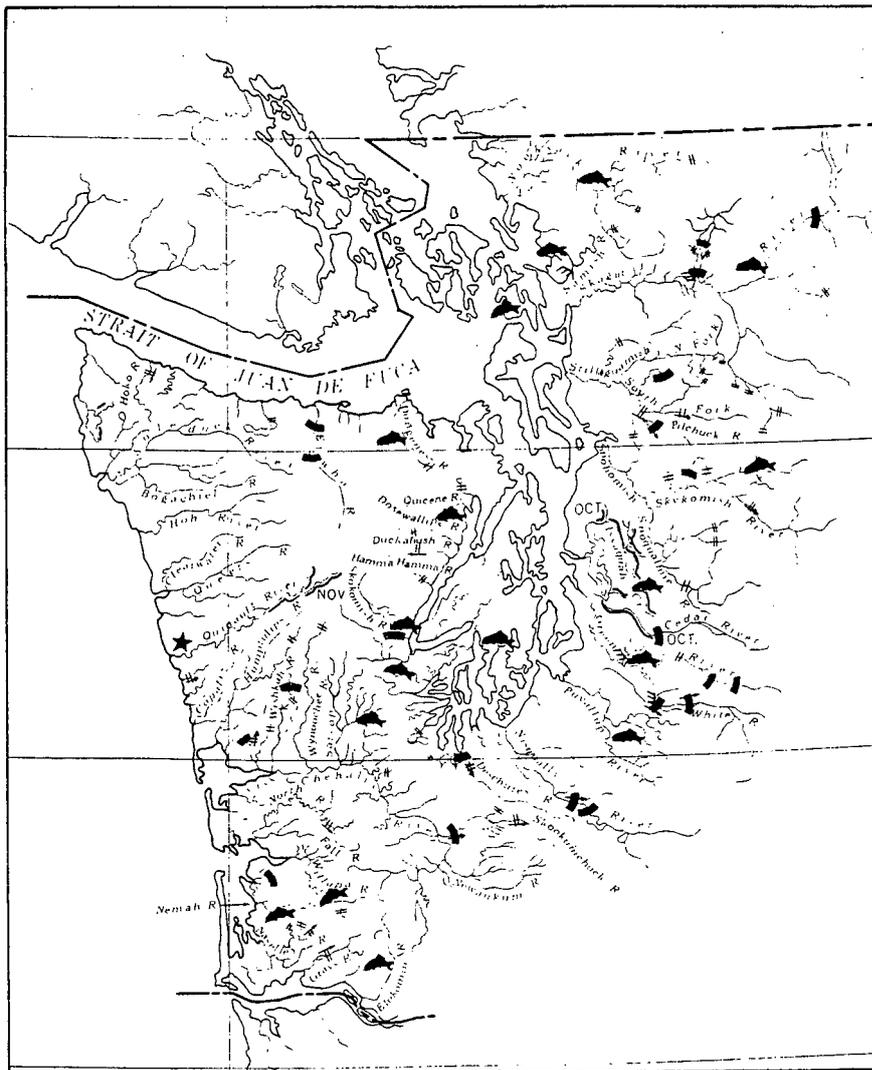
A-8



Spawning grounds of pink salmon in Washington coastal waters (spawning areas shown by black lines along rivers).

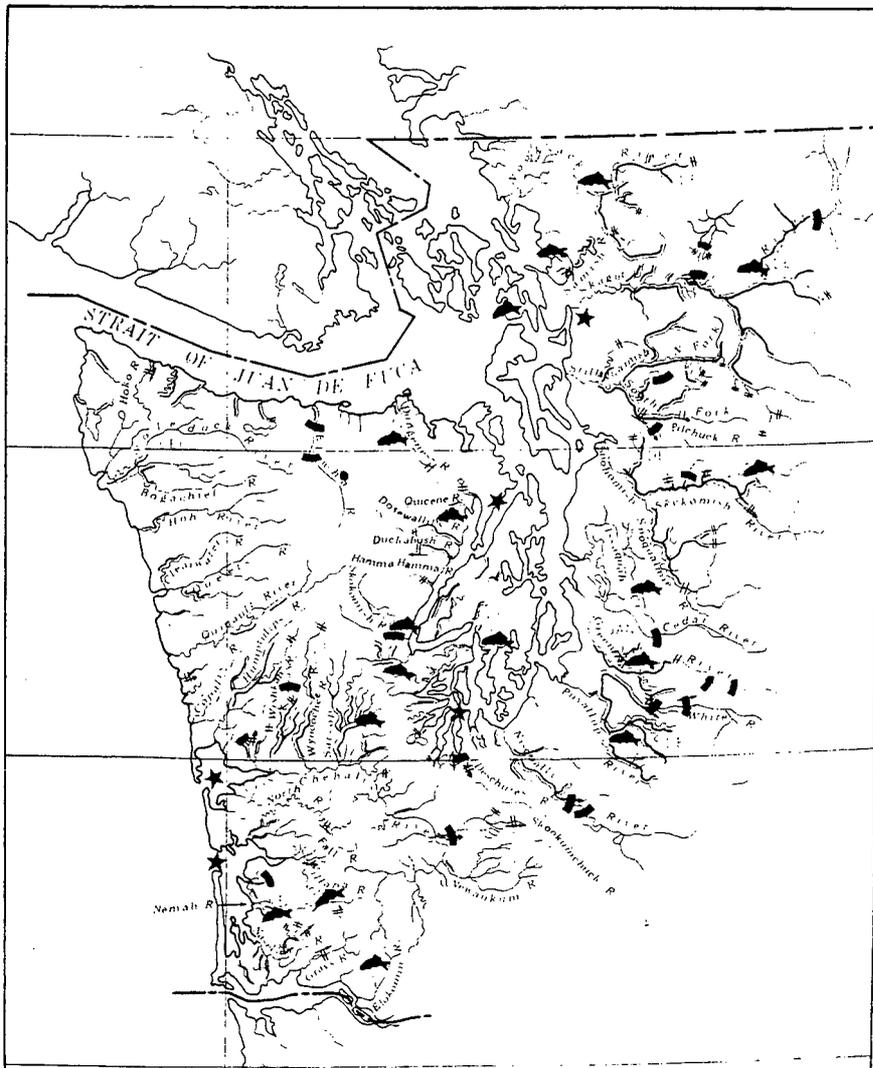
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A-9



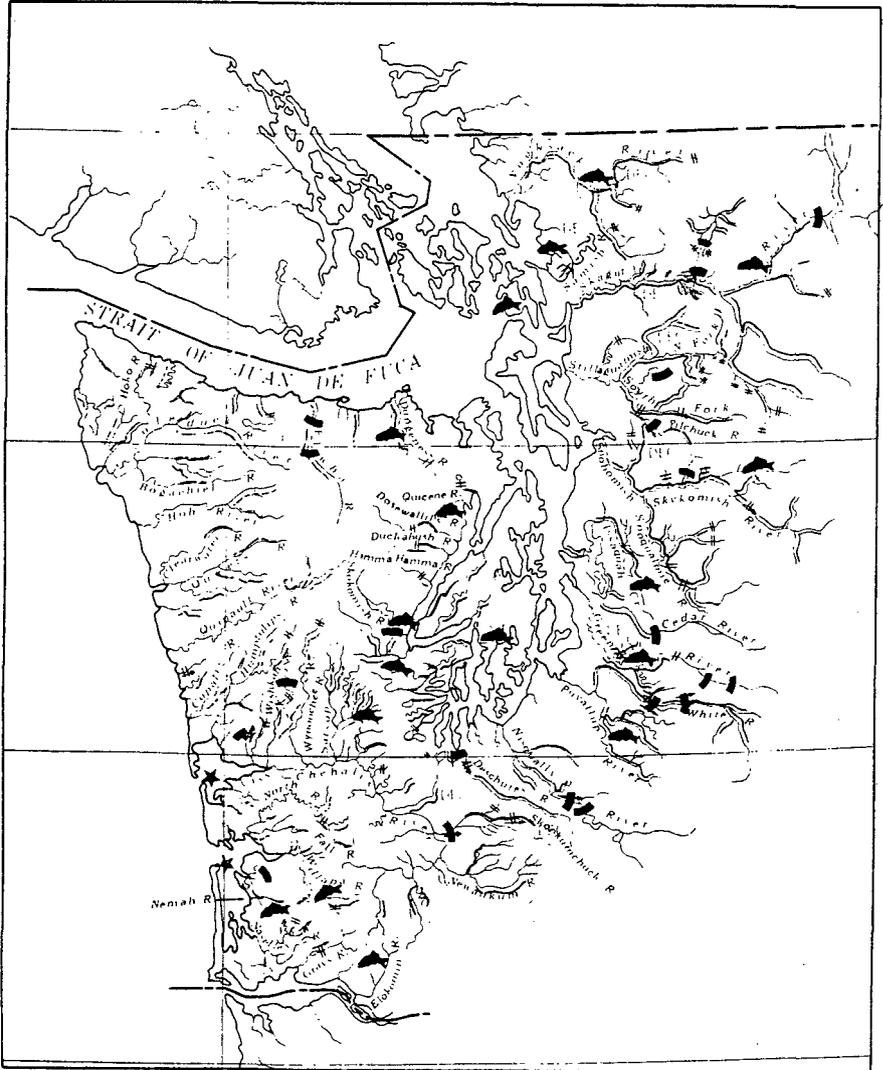
Spawning grounds of sockeye salmon in Washington coastal waters (spawning areas shown by black lines along rivers).

A-10



Spawning grounds of chum salmon in Washington coastal waters (spawning areas shown by black lines along rivers).

A-11



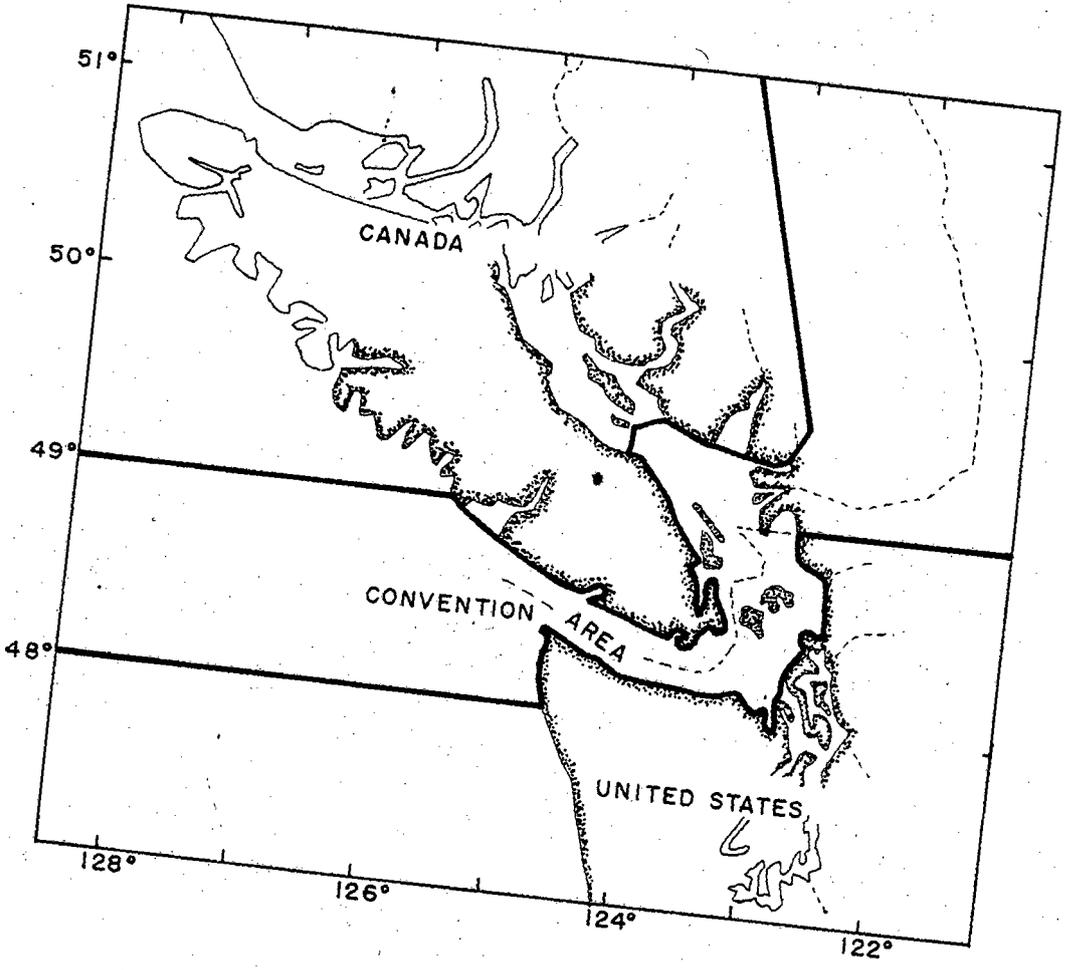
Spawning grounds of coho salmon in Washington coastal waters (spawning areas shown by black lines along rivers).

000478

APPENDIX III

page A12

A-12



Convention area of the International Pacific Salmon Fisheries Convention
between Canada and the United States.

Johnson, K...



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
1700 Westlake Avenue North
Seattle, Washington 98109

November 1, 1978

To: Lorry Nakatsu
Executive Director, PFMC

From: Edward D. Evans, Jr. *EDE*
Northwest Regional Counsel

Subject: Supreme Court Review of U.S. v. Washington and Associated Cases

The Pacific Fishery Management Council will be interested to know that the Supreme Court has accepted review upon petitions for writs of certiorari of U.S. v. Washington and associated cases. The scope of the review, I suspect, will be on the issues presented in the attached document. Pending review, the rulings of the lower courts continue to be the applicable law, but the Council will have to be aware of a pending decision from the Supreme Court. I do not expect a decision from the Court until sometime next year.

Enclosure (as noted)



Review Granted

INDIANS

No. 77-982. State of Washington v. Washington Commercial Passenger Fishing Vessel Assn. Ruling below (Wash SupCt, 88 Wn2d 677 and 89 Wn2d 276):

Washington State Department of Fisheries regulations, adopted in response to federal court decision holding that treaties between Indians and U.S. gave tribes right to take certain percentage of fish in certain coastal streams, that reduced daily salmon limit for sports fishermen violate Equal Protection Clause; regulations that violate Equal Protection Clause are not validated by fact that they implement terms of treaty; director of State Department of Fisheries does not have authority to apportion fish to conform to federal court decision interpreting Indian treaty as requiring granting of more than 50 percent of harvestable fish to .025 percent of population.

Questions presented: (1) Do treaties executed by U.S. with certain Indian tribes require state fishery management agencies, in absence of authorization under state law, to restrict fishing by non-Indians in order to provide specified number or percentage of fish to Indian descendants of signatories to treaties? (2) Is Washington State Supreme Court determination that such allocation of fish is beyond authority of state agencies

matter of state or federal law? (3) Can federal district court, in interpreting treaty language—"right to fish at usual and accustomed grounds and stations in common with all citizens"—require that Indian fishermen be entitled to all fish they desire for subsistence and ceremonial use, all fish harvested on reservation, plus 50 percent of additional harvest and empower or require agencies, officers, and employees to effectuate such division of resource? (4) Does special allocation of fish to treaty Indians who are U.S. citizens and reduction in available fishery for other U.S. citizens constitute violation of Equal Protection Clause and prohibition against granting of special privileges and immunities?

No. 78-119. State of Washington v. U.S. Ruling below (CA 9, 573 F2d 1123 and 573 F2d 1118):

Federal district court order that, in order to enforce Indian treaty rights, apportioned between treaty Indians and others right to take fish does not violate equal protection rights of non-Indian fish catchers; district court did not abuse its discretion in ordering allocation, between treaty and nontreaty fishers, of opportunity to take fish.

Questions presented: (1) Do Indian treaties require allocation of 50 percent of harvestable fish to treaty Indian fishermen? (2) Do Indian treaties mandate allocation of harvestable fish between Indian and non-Indian fishermen when they both have opportunity to participate in fishery on nondiscriminatory basis? (3) Does district court's equitable power in conjunction with treaty provisions permit allocation of fishery resource between Indian and non-Indian fishermen when they both have opportunity to participate in fishery on nondiscriminatory basis, and if so, has court exceeded those powers by its specific 50 percent allocation formula and implementing orders? (4) Does allocation of specific number or percentage of fish to treaty Indians, who are citizens, and reduction or prohibition on commercial fishing by other citizens constitute denial of equal protection or violation of prohibition against granting special privileges and immunities? (5) If Indian treaties mandate allocation of harvestable fish to Indians, does U.S./Canada Convention of 1917 supersede that requirement

sion? (6) Do Indian treaties, or conditions therein, grant Indians immunity from enforcement of IPSC regulations? (7) Can district court assume control of management of fishery resource within Washington state waters?

No. 78-139. Puget Sound Gillnetters Assn. v. U.S. District Court for Western Washington. Ruling below (CA 9, 573 F2d 1123):

Federal district court that allocated fishing rights on non-reservation land to provide treaty fishers with 45 percent and nontreaty fishers with 55 percent and included fish caught in close-in ocean waters in estimate of total opportunity available to nontreaty fishers did not abuse its discretion and, because allocation is not among indistinguishable mass of citizens but between two quasi-sovereigns, each claiming undivided half-interest in quasi-cotenancy, court did not deny equal protection to anyone; district court's order binds individual fishers and fishers' associations who, although not parties to litigation, are in privity with state, which is party.

Questions presented: (1) Is district court judge's interpretation of treaty language correct, and, if not, is injunction issued pursuant to that

interpretation invalid? (2) Is individual who conducts business in state in such privity to that state that court may directly enjoin citizen without his being party or participant in cause of action in which state is party? (3) Assuming privity, if injunctive order is sought against individual, is that individual entitled to notice of and participation in hearing prior to its issuance? (4) Are Indian treaties non-self-executing and non-justiciable, thereby precluding judicial implementation? (5) Did district court judge exceed his authority by ordering Departments of Commerce and Transportation to involve themselves in management of Puget Sound salmon when executive branch has no statutory authority to do so? (6) Is allocation of over 50 percent of salmon resource to less than one percent of population of state or allocation of over 80 percent of commercially harvested salmon to less than 17 percent of commercial fishermen abuse of discretion in utilization of equitable powers by court?

Certiorari Granted

77-983 Washington v. Wash. State Commercial. The petition for a writ of certiorari is granted. The case is set for oral argument in tandem with Washington v. United States, No. 78-119 and Puget Sound Gillnetters Assn. v. U.S.D.C. for W.D. Washington, No. 78-139.

78-119 Washington v. U.S.; and 78-139 Puget Sound Gillnetters Assn. v. USDC WD Washington.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument. The cases are set for oral argument in tandem with Washington v. Washington State Commercial Passenger Fishing Vessel Assn., No. 77-983:

QUESTIONS PRESENTED BY THE STATE

1. Do the Indian treaties require an allocation of 50% of the harvestable fish to treaty Indian fishermen?
2. Do the Indian treaties mandate an allocation of harvestable fish between Indian and non-Indian fishermen when they both have an opportunity to participate in the fishery on a non-discriminatory basis?
3. Does the district court's equitable power in conjunction with treaty provisions permit an allocation of the fishery resource between Indian and non-Indian fishermen when they both have an opportunity to participate in the fishery on a nondiscriminatory basis? If so, has the court exceeded those powers by its specific 50% allocation formula and implementing orders?
4. Does an allocation of a specific number or percentage of fish to treaty Indians, who are citizens, and a reduction or prohibition on commercial fishing by other citizens constitute a violation of the Constitutional doctrines of equal protection or the prohibition against granting special privileges and immunities?
5. If the Indian treaties mandate an allocation of the harvestable fish to Indians, does the United States/Canada Convention of 1937 supersede that requirement for the fish harvest which is subject to the jurisdiction of the International Pacific Salmon Fisheries Commission?
6. Do the Indian treaties, or can the United States District Court, grant Indians an immunity from the enforcement of IPSFC regulations?
7. Can the United States District Court assume control of the management of the fishery resource within Washington state waters?

QUESTIONS PRESENTED BY THE UNITED STATES

1. Whether treaties guarantee Indian tribes in the State of Washington an opportunity to harvest up to one-half of any run of fish that normally would pass through the tribes' usual and accustomed off-reservation fishing stations, with adjustments for tribal subsistence and ceremonial fishing (both petitions).
2. Whether, in light of the State of Washington's failure to adopt regulations permitting Indian fishermen to harvest their treaty share of fish, the district court properly exercised its discretion by allocating the salmon harvest equally between treaty and non-treaty fishermen (with adjustments for tribal subsistence and ceremonial fishing) and enjoining the State from interfering with the court's allocation (both petitions).
3. Whether, in light of the State of Washington's unwillingness or inability to prevent its non-treaty fishermen from encroaching on the fishing rights of treaty Indians, the district court properly enjoined state-licensed non-treaty fishermen from harvesting salmon in excess of their allocated share (both petitions).
4. Whether the State of Washington must manage and regulate its fisheries in such a manner as to ensure that federally-guaranteed treaty fishing rights are protected, notwithstanding the absence of any state statute specifically authorizing enforcement of Indian fishing rights (both petitions).
5. Whether this Court should grant certiorari before judgment in the court of appeals to review an order of the district court which presents the same issues that are before this Court in the petition for review of the Washington Fishery case but which constitutes the enforcement order presently in effect (Pet. No. 78-139 only).
6. Whether the court of appeals correctly concluded that the matters at issue in the International Fishery Case are now moot (Pet. No. 78-119 only).

for nothing

By STEVE FORRESTER
For The Daily Astorian
WASHINGTON — It's highly appropriate that Don Bonker and John Dingell spent a recent weekend dipping their fishing lines into one of the streams of the State of Washington.

Fish certainly dominated the conversation of the two congressmen, but it probably wasn't about fish they did or did not manage to land.

Dingell, who represents a suburban Detroit, Mich., congressional district, is going to have a lot to say about resolution of Washington state's fish problems during the next Congress: Bonker, who represents Washington's Third Congressional District, intends to play an important role in drafting such fishing legislation.

The Bonker-Dingell fishing trip provided the sort of extended informal conversation which congressmen are unable to accomplish here in Washington. It's the kind of prolonged discussion that's essential for doing business.

Fishing has been a controversial matter in Washington state since 1974, when federal Judge George Boldt of Tacoma, acting in a suit filed by the U.S. on behalf of various Indian tribes, ruled the state had been violating treaties signed by the Indians and the federal government in 1854 and 1856. Boldt told the state to assure that the Indians had an opportunity to harvest up to half of any run of fish that normally would pass through the tribes' off-reservation fishing stations, in addition to the fish caught on reservations for subsistence or ceremony.

Since that decision, the Fish and Wildlife Service of the Department of the Interior has spent an inordinate amount of its budget supervising fishing in the state of Washington, with Judge Boldt playing an active day-to-day role in running the season.

But 1979 promises to be full of developments which may resolve what has come to be

known as the "Boldt issue." Recently the Supreme Court agreed to hear appeals of the various Boldt cases. Briefs in the case are due at the Court by mid-January; argument will probably occur during the spring, with a decision to be delivered perhaps by June.

Meanwhile, Bonker, who is a member of the House Merchant Marine and Fisheries Committee, will introduce legislation aimed at Washington's fishery problems. He will be joined by other members of the state's delegation, including Republican Joel Pritchard and Democrat Norm Dicks and probably by the state's two new Democratic congressmen, Al Swift and Mike Lowry. Sen. Warren

Magnuson, D-Wash., will sponsor legislation in the Senate.

Dingell enters the picture as a very influential member of the Merchant Marine and Fisheries Committee. In fact, he has the seniority to be the chairman of that committee, but chooses instead to be chairman of the Energy and Power Subcommittee. Incidentally, in that capacity he will pass on the Northwest energy bill next year.

Bonker's staff is preparing what they call a "talking draft" of a fishery bill. The draft will be circulated among members of the Washington delegation and sent to the various fishing interest groups in the state: purse seiners, gillnetters, trollers, charter boat

operators, sports fishermen and the Indians.

Art Martin, Bonker's fishery specialist, describes the three aims of the legislation.

"Providing as much fish for each fishing group as is possible is the main aim," says Martin. "A fish enhancement program would include a well-financed research and development program and would involve cleaning up the stream environment.

"A second aim would be capitalization money for the fishing fleet that would make money or fishing equipment available to fishermen, including the Indians."

But how would legislation address the central issue which Judge Boldt's decision

raised — the mandate for a 50-50 allocation of fish between Indians and whites?

"The Indian is at the end of the fishing chain right now, on the rivers," says Martin. "So management people have to move the fish past the other groups to get them to the Indians. When fish supply is up, that's okay.

"What we'd like to see is the Indians geared up to compete in equal opportunity fisheries with the rest of the fishermen," adds Martin.

"Hence, money might be made available for buy-out of fishing equipment on a voluntary basis. That equipment might then be made available to the Indians.

"Instead of curtailing non-Indians to supply the Indians

with fish, we'd like to soup up the Indians to compete on a equal opportunity basis."

A third aim of legislation would be to declare steelhead a game fish, as opposed to a commercial fish. "The steelhead harvest has fallen off dramatically since the Boldt decision," says Martin. "There were 30,000 steelhead taken out of the Columbia River last year. You can't take that many out. Steelhead was once strictly a game fish."

Whatever form Bonker's bill takes, a lot waits upon the Supreme Court decision in the Boldt case. An aide to Rep. Pritchard predicts: "Nothing will be reported out of House committee until the court decides the Boldt case."

booklet attached.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

File
25-5-7-2
Salmon

Amir Feldman with

TO
The Under-Secretary of State
for External Affairs (GNT)

SECURITY
Sécurité UNCLASSIFIED

DATE December 28, 1978

FROM
De Consulate General, Seattle

| | | |
|-----------|------------------|-----------------|
| DATE | NUMBER Numéro | 490 |
| ACC 10750 | REF | FILE DOSSIER |
| FILE | DOSSIER OTTAWA | |
| BY HAND | | MISSION "35-11" |

REFERENCE
Référence

SUBJECT
Sujet Pacific Northwest Fisheries
Boldt Decision

ATTN: CC 25-5-7-2 - Salmon

ENCLOSURES
Annexes

3

DISTRIBUTION

BY POST:
(w/attach)

WSHDC

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ENVOTT/
Fisheries/
Hunter

The Boldt decision has been referred to the United States Supreme Court as one major step toward the resolution of the fisheries difficulties which the decision has created. The approach to the issue which the Court will take is not known to us at this time, although it will be of paramount importance if the Pacific Northwest Fisheries are to be returned to a stable and manageable state within the near future. A simple re-affirmation of the Boldt decision would probably not be of direct immediate assistance while an expanded review of Native Rights would also be of limited immediate benefit to fisheries issues.

2. Concurrent with the Court review, we understand that inter alia Senators Magnuson and Jackson and Representative Bonker are considering suitable legislation to resolve or mitigate fisheries issues created by the Boldt decision. The legislation would be presented once the Court has made its decision and a need for legislative action has been perceived. Again, we do not know the content of this proposed legislation, its current stage of preparation or the manner in which it will be presented.

3. Although it is not possible to predict when the Boldt decision issue will be resolved, there is optimism in our area that its resolution can be accomplished prior to the commencement of the 1979 fishing season.

4. We have enclosed for your information copies of (a) a press clipping from the Daily Astorian, Astoria, Oregon, concerning Representative Bonker's proposed legislative action; (b) a list of questions raised to the Supreme Court by the State and the Federal authorities concerning the Boldt decision; and (c) a brief of amicus curiae to be filed with the Supreme Court by the American Institute of Fishery Research Biologists.

5. The Institute is an international association of professional

...2

-2-

fisheries scientists and managers from both the private and public sector. (Donald R. Johnson, Regional Director, National Marine Fisheries Service and Professor Donald L. McKearnon, Institute for Marine Studies, University of Washington, and Department of State representative for various fishery negotiations are both members of this professional institute.) The amicus brief seeks to inform the Court of:

- (i) the complexity and delicacy of management of the salmon and steelhead resources;
- (ii) the existing management institutions and techniques;
- (iii) the various legal precedents which have a bearing on the case; and
- (iv) the Institute's concerns for the future preservation and management of the fishery resource.

6. Because of the importance of the fishing industry in our territory and the political, economic and social questions which the Boldt decision has raised in the Pacific Northwest, our interest in the Boldt saga remains high and we should appreciate being kept abreast of the issue as it unfolds at the national level.


Consulate General

Also enclosed is a copy of a letter from Edward D. Evans to Larry Nakatsu dated November 1, 1978, which we have just received. The letter concerns the Supreme Court review of U. S. v. Washington and associated cases.



U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
1700 Westlake Avenue North
Seattle, Washington 98109

November 1, 1978

To: Lorry Nakatsu
Executive Director, PFMC

From: Edward D. Evans, Jr. 
Northwest Regional Counsel

Subject: Supreme Court Review of U.S. v. Washington and Associated Cases

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Enclosure (as noted)



INDIANS

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Ruling below (Wash Sup Ct, 88 Wn2d 677 and 89 Wn2d 276):

Washington State Department of Fisheries regulations, adopted in response to federal court decision holding that treaties between Indians and U.S. gave tribes right to take certain percentage of fish in certain coastal streams, that reduced daily salmon limit for sports fishermen violate Equal Protection Clause; regulations that violate Equal Protection Clause are not validated by fact that they implement terms of treaty; director of State Department of Fisheries does not have authority to apportion fish to conform to federal court decision interpreting Indian treaty as requiring granting of more than 50 percent of harvestable fish to .028 percent of population.

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Document disclosed under the Access to Information Act / Document divulgué en vertu de la Loi sur l'accès à l'information

tion? (6) Do Indian treaties, or can district court, grant Indians immunity from EPA regulations? (7) Can district court assume control of management of fishery resource within Washington state waters?

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Federal district court that allocated fishing rights on non-reservation land to provide treaty fishers with 45 percent and nontreaty fishers with 55 percent and included fish caught in close-in ocean waters in estimate of total opportunity available to nontreaty fishers did not abuse its discretion and, because allocation is not among indistinguishable mass of citizens but between two quasi-sovereigns, each claiming undivided half-interest in quasi-cotenancy, court did not deny equal protection to anyone; district court's order binds individual fishers and fishers' associations who, although not parties to litigation, are in privity with state, which is party.

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Certiorari Granted

77-983 Washington v. Wash. State Commercial. The petition for a writ of certiorari is granted. The case is set for oral argument in tandem with Washington v. United States, No. 78-119 and Puget Sound Gillnetters Assn. v. U.S.D.C. for W.D. Washington, No. 78-139.

78-119 Washington v. U.S.; and 78-139 Puget Sound Gillnetters Assn. v. USDC WD Washington.

The petitions for writs of certiorari are granted. The cases are consolidated and a total of one hour is allotted for oral argument. The cases are set for oral argument in tandem with Washington v. Washington State Commercial Passenger Fishing Vessel Assn., No. 77-983:

QUESTIONS PRESENTED BY THE STATE

1. Do the Indian treaties require an allocation of 50% of the harvestable fish to treaty Indian fishermen?
2. Do the Indian treaties mandate an allocation of harvestable fish between Indian and non-Indian fishermen when they both have an opportunity to participate in the fishery on a non-discriminatory basis?
3. Does the district court's equitable power in conjunction with treaty provisions permit an allocation of the fishery resource between Indian and non-Indian fishermen when they both have an opportunity to participate in the fishery on a nondiscriminatory basis? If so, has the court exceeded those powers by its specific 50% allocation formula and implementing orders?
4. Does an allocation of a specific number or percentage of fish to treaty Indians, who are citizens, and a reduction or prohibition on commercial fishing by other citizens constitute a violation of the Constitutional doctrines of equal protection or the prohibition against granting special privileges and immunities?
5. If the Indian treaties mandate an allocation of the harvestable fish to Indians, does the United States/Canada Convention of 1937 supersede that requirement for the fish harvest which is subject to the jurisdiction of the International Pacific Salmon Fisheries Commission?
6. Do the Indian treaties, or can the United States District Court, grant Indians an immunity from the enforcement of IPSFC regulations?
7. Can the United States District Court assume control of the management of the fishery resource within Washington state waters?

QUESTIONS PRESENTED BY THE UNITED STATES

1. Whether treaties guarantee Indian tribes in the State of Washington an opportunity to harvest up to one-half of any run of fish that normally would pass through the tribes' usual and accustomed off-reservation fishing stations, with adjustments for tribal subsistence and ceremonial fishing (both petitions).
2. Whether, in light of the State of Washington's failure to adopt regulations permitting Indian fishermen to harvest their treaty share of fish, the district court properly exercised its discretion by allocating the salmon harvest equally between treaty and non-treaty fishermen (with adjustments for tribal subsistence and ceremonial fishing) and enjoining the State from interfering with the court's allocation (both petitions).
3. Whether, in light of the State of Washington's unwillingness or inability to prevent its non-treaty fishermen from encroaching on the fishing rights of treaty Indians, the district court properly enjoined state-licensed non-treaty fishermen from harvesting salmon in excess of their allocated share (both petitions).
4. Whether the State of Washington must manage and regulate its fisheries in such a manner as to ensure that federally-guaranteed treaty fishing rights are protected, notwithstanding the absence of any state statute specifically authorizing enforcement of Indian fishing rights (both petitions).
5. Whether this Court should grant certiorari before judgment in the court of appeals to review an order of the district court which presents the same issues that are before this Court in the petition for review of the Washington Fishery case but which constitutes the enforcement order presently in effect (Pet. No. 78-139 only).
6. Whether the court of appeals correctly concluded that the matters at issue in the International Fishery Case are now moot (Pet. No. 78-119 only).

Bonker-Dingell fish trip not for nothing

THE DAILY ASTORIAN

DEC. 12/78

By STEVE FORRESTER
For The Daily Astorian
WASHINGTON — It's highly appropriate that Don Bonker and John Dingell spent a recent weekend dipping their fishing lines into one of the streams of the State of Washington.

Fish certainly dominated the conversation of the two congressmen, but it probably wasn't about fish they did or did not manage to land.

Dingell, who represents a suburban Detroit, Mich., congressional district, is going to have a lot to say about resolution of Washington state's fish problems during the next Congress: Bonker, who represents Washington's Third Congressional District, intends to play an important role in drafting such fishing legislation.

The Bonker-Dingell fishing trip provided the sort of extended informal conversation which congressmen are unable to accomplish here in Washington. It's the kind of prolonged discussion that's essential for doing business.

Fishing has been a controversial matter in Washington state since 1974, when federal Judge George Boldt of Tacoma, acting in a suit filed by the U.S. on behalf of various Indian tribes, ruled the state had been violating treaties signed by the Indians and the federal government in 1854 and 1856. Boldt told the state to assure that the Indians had an opportunity to harvest up to half of any run of fish that normally would pass through the tribes' off-reservation fishing stations, in addition to the fish caught on reservations for subsistence or ceremony.

Since that decision, the Fish and Wildlife Service of the Department of the Interior has spent an inordinate amount of its budget supervising fishing in the state of Washington, with Judge Boldt playing an active day-to-day role in running the season.

But 1979 promises to be full of developments which may resolve what has come to be

known as the "Boldt issue."

Recently the Supreme Court agreed to hear appeals of the various Boldt cases. Briefs in the case are due at the Court by mid-January; argument will probably occur during the spring, with a decision to be delivered perhaps by June.

Meanwhile, Bonker, who is a member of the House Merchant Marine and Fisheries Committee, will introduce legislation aimed at Washington's fishery problems. He will be joined by other members of the state's delegation, including Republican Joel Pritchard and Democrat Norm Dicks and probably by the state's two new Democratic congressmen, Al Swift and Mike Lowry. Sen. Warren

Magnuson, D-Wash., will sponsor legislation in the Senate.

Dingell enters the picture as a very influential member of the Merchant Marine and Fisheries Committee. In fact, he has the seniority to be the chairman of that committee, but chooses instead to be chairman of the Energy and Power Subcommittee. Incidentally, in that capacity he will pass on the Northwest energy bill next year.

Bonker's staff is preparing what they call a "talking draft" of a fishery bill. The draft will be circulated among members of the Washington delegation and sent to the various fishing interest groups in the state: purse seiners, gillnetters, trollers, charter boat

operators, sports fishermen and the Indians.

Art Martin, Bonker's fishery specialist, describes the three aims of the legislation.

"Providing as much fish for each fishing group as is possible is the main aim," says Martin. "A fish enhancement program would include a well-financed research and development program and would involve cleaning up the stream environment.

"A second aim would be capitalization money for the fishing fleet that would make money or fishing equipment available to fishermen, including the Indians."

But how would legislation address the central issue which Judge Boldt's decision

raised — the mandate for a 50-50 allocation of fish between Indians and whites?

"The Indian is at the end of the fishing chain right now, on the rivers," says Martin. "So management people have to move the fish past the other groups to get them to the Indians. When fish supply is up, that's okay.

"What we'd like to see is the Indians geared up to compete in equal opportunity fisheries with the rest of the fishermen," adds Martin. "Hence, money might be made available for buy-out of fishing equipment on a voluntary basis. That equipment might then be made available to the Indians.

"Instead of curtailing non-Indians to supply the Indians

with fish, we'd like to soup up the Indians to compete on an equal opportunity basis."

A third aim of legislation would be to declare steelhead a game fish, as opposed to a commercial fish. "The steelhead harvest has fallen off dramatically since the Boldt decision," says Martin. "There were 30,000 steelhead taken out of the Columbia River last year. You can't take that many out. Steelhead was once strictly a game fish."

Whatever form Bonker's bill takes, a lot waits upon the Supreme Court decision in the Boldt case. An aide to Rep. Pritchard predicts: "Nothing will be reported out of House committee until the court decides the Boldt case."



EXTERNAL AFFAIRS

FLO/E. Feldman/6-5407/du
AFFAIRES EXTÉRIEURES

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SECURITY
Sécurité RESTRICTED

FROM
De FLO

DATE December 7, 1978

REFERENCE
Référence

NUMBER
Numéro FLO-2838

SUBJECT
Sujet Salmon Interception Meetings

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ENCLOSURES
Annexes

ATTN: 25-5-5-Cda-USA

DISTRIBUTION

Next week the second round of negotiations between Canadian and American fisheries officials and industry advisors will be held in Vancouver to discuss a draft agreement on salmon interception (Discussion Draft Convention on file). The document on which the two sides are working is based on a draft drawn up by Alan Willis (of the Department of Justice) and discussed for the first time at a meeting of Canadian and American fisheries officials in September.

2. The Convention is a framework agreement only, setting out general principles which are to govern the Parties and leaving the details to be worked out by a Pacific Salmon Commission and its component Panels, as provided for in the Convention. It is the Commission which is to coordinate enhancement activities and to develop specific interception programs. At the first round of negotiations held in Seattle in October the two sides reached agreement on the institutional structure to be set up under the Convention (articles II-VI of the draft Convention).

3. [Redacted]

4. [Redacted]

FLO/
Mr. Wang
Mr. Rochon

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E. Feldman
Legal Operations Division.

File - Salmon

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AM-FISHERMEN

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Nov. 17 1978

VANCOUVER (CP) - THE UNITED FISHERMEN AND ALLIED WORKERS UNION HAS CALLED ON THE FEDERAL GOVERNMENT TO GET OUT OF NEGOTIATIONS WITH THE UNITED STATES AND TAKE ACTION, IF NECESSARY, TO EXPEL AMERICAN FISHERMEN FROM CANADIAN WATERS.

UNION SPOKESMAN GEORGE HEWISON SAID THURSDAY THAT U.S. NEGOTIATORS HAVE TOLD THEIR CANADIAN COUNTERPARTS THAT 300 TO 400 CANADIAN HALIBUT FISHERMEN SHOULD BE EXPELLED FROM THE GULF OF ALASKA BY NEXT MAY.

HEWISON SAID THIS IS THE LATEST ROUND IN A 10-YEAR, UNDECLARED FISHING WAR AND ADDED CANADIANS SHOULD GET OUT OF THE NEGOTIATIONS WHILE THEY STILL HAVE THEIR SHIRTS ON THEIR BACKS.

HE SAID UNDER A NEW AGREEMENT, YET TO BE SIGNED, AMERICAN FISHERMEN WILL GET ABOUT 12 PER CENT MORE FISH PER YEAR THAN THE 2,100,000 SALMON THEY CURRENTLY ARE ALLOWED TO TAKE FROM THE FRASER RIVER RUN.

HEWISON SAID THE U.S. WILL GET THE ADDITIONAL FISH IN RETURN FOR GIVING CANADA FULL MANAGEMENT CONTROL OF THE FRASER SALMON RUN. HE SAID CANADA WILL BE LEFT TO FOOT THE BILL FOR THE SALMON IMPROVEMENT PROGRAM.

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OTTAWA
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October 18, 1978

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Dear Rod:

RE: CANADA/USA SALMON NEGOTIATIONS

Please find attached a draft ~~Canadian statement on~~ the principle that each country should receive benefits commensurate with the salmon production of its rivers for your review and comment. I would be grateful if you would circulate this draft to the other regional officials on the delegation.

Mike Hunter will be discussing this statement with you in Vancouver during the week of the IMFFC meetings for possible revision prior to presenting it to the advisers later in the same week. If acceptable to the advisers, Hunter will then transmit the final version to McKernan so that he can have our thinking on this subject prior to the next round of negotiations in early December.

Yours sincerely,

R.F.A.

R.F.A. Roberts

Mr. W.R. Hourston
Director, International & Intergovernmental Affairs
Fisheries and Marine Service, Pacific Region
Department of Fisheries
VANCOUVER, B.C.

cc: ENVOTT/Vernon/Applebaum/Hunter
EXTOTT/FLO/Leger/Feldman

DRAFT CANADIAN STATEMENT

(ON THE PRINCIPLE THAT EACH COUNTRY
SHOULD RECEIVE BENEFITS COMMENSURATE WITH THE
SALMON PRODUCTION OF ITS RIVERS)

October 18, 1978

The Canadian side is committed to the principle that each country should receive benefits commensurate with the salmon production of its rivers. We believe that this principle should be the fundamental basis for our long-term salmon fisheries relations developed under a new salmon agreement providing a framework for the coordination of enhancement activities and the development of specific interception limitation programs. Our reasons are not only related to the need to establish and maintain fairness and equity in our salmon relations. We are also convinced that there should be a firm assurance for both sides that the results of their management and environmental protection efforts and enhancement programs will benefit their citizens: such an incentive is needed if the full potential of the salmon resources of both countries is to be realized.

The Canadian side is of the view that it is essential to elaborate a binding framework for implementing the principle that each country should receive benefits commensurate with its own salmon production. It follows that it will be necessary to reach agreement on a formula for measuring and comparing interceptions in accordance with this principle. This problem has not been addressed in the negotiations since 1974, though, prior to that time, both sides undertook an intensive examination of the issue. While the problem was not solved at that time, this examination provided new insights into the salmon interception question. Nevertheless, we realize that there remain differences in approach between the two sides on how to measure and compare interceptions in the context that each country should receive benefits commensurate with their own salmon production. In the framework agreement we are developing, we do not anticipate resolving these differences, but we do think that we should provide a timetable and a strategy for coming to grips with the problem so as to be able to implement the fundamental principle. With this in mind, and anticipating that it may not be possible to resolve our differences over measuring and comparing benefits, we would suggest the following process, which involves a dispute settlement procedure in the form of a non-binding conciliation commission.

- a) During the first three years of the agreement, the two sides would develop, on a negotiated basis, a detailed interception limitation program for the fisheries listed in Annex II.

- b) Both sides would also enter into negotiations on the mechanics of measuring and comparing interceptions in the context of the above principle with a firm target of having a formula worked out by the end of the fourth year of the agreement. If the two sides cannot reach agreement because of technical differences with regard to interception percentages or economic data, then either side would be allowed to request advice of independent technical experts.
- c) Bearing in mind, however, that ultimately the question becomes one of equity and the formulation of an equitable rule to be applied in measuring and comparing the interceptions in accordance with the basic principle, we would propose that, failing agreement, either side be allowed to request the services of a conciliation commission. The Canadian side is open to discussion as to the structure of such a conciliation commission, although our preference would be to have it composed of a jurist, or jurists, capable of exercising a sense of equity and practicality.
- d) By the end of the fourth or fifth year, the two sides, if necessary, with the assistance of a conciliation commission, would have agreed on a formula for measuring and comparing interceptions; the two sides would then negotiate modifications to the interception limitation program that would bring about a balance by 1990. By this time, we would hope that new enhancement by both countries will allow adjustments to be made with the minimum economic disruption.

The Canadian delegation is prepared to discuss this approach at the next round of negotiations and will be preparing draft treaty articles for consideration at that time.

SEP 20 1978
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**ACTION
SUITE A DONNER**

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Seattle

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25-5-7-2-Salmon-1
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---SALMON/STEELHEAD FISHERIES - WASHINGTON

SEATTLE TIMES SEP 18 CONTAINS ARTICLE SIGNED BY DON MCKERNAN
AND OTHER SCIENTISTS EXPRESSING CONCERN OVER EVENTS FOLLOWING BOLDT
DECISION AFFECTING CONSERVATION AND MANAGEMENT SALMON AND STEELHEAD
STOCKS IN WASH STATE. ARTICLE CALLS ON CONGRESS TO DEVELOP
APPROPRIATE LEGISLATION TO BE IN EFFECT FOR 1979 SEASON BASED ON
SETTLEMENT PLANS PREPARED BY REGIONAL TASK FORCE, COMMERCIAL/
RECREATIONAL DELEGATION, STATE OF WASH, ANY OTHER PROPOSALS
SUBMITTED BY INDIAN TRIBES AND ANY SUGGESTIONS YET TO EMERGE.
2.COPY OF ARTICLE AND RELATED EDITORIAL TO FOLLOW.

UUU/810 192353Z UAGR1441

Department of Justice / Ministère de la Justice

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| To / A | FLO |
| From / De: | B'CO A-4 |
| SEP 1 1978 | |
| Att'n: | Feldman |

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August 31, 1978.

Mr. Mike Hunter,
 International Fisheries and Marine
 Directorate,
 Department of Fisheries and Environment,
 240 Sparks,
 8th Floor,
 Ottawa, Ontario.

| | |
|-------------------|--|
| 25-5-7-2-SALMON-1 | |
| 28. | |

Dear Mike:

Re: Salmon Agreement

I am enclosing two copies of a third draft of a Salmon Agreement, incorporating a number of changes resulting from our discussion of Tuesday.

I do not think we should spend more time on the drafting of this Agreement until our differences with the Pacific Regional Management of DFE have been worked out. If, however, we decide eventually to proceed with an Agreement along the lines of the attached draft, the following points should be noted for future reference:

1. The Agreement should describe more clearly the relationship between the general interception obligation in paragraph 1 of Article VIII and the detailed program to be negotiated by the Commission for application in the 1980's.
2. We should review the area description in paragraph 1 of Article XI. Why is the offshore area referred in the IPSFC Convention omitted from this description?
3. I do not fully understand the "pay back" provisions in paragraph 7 of Article XI and will wish to review these with you further.
4. The interception limitation program should probably be incorporated into the Treaty as an Annex 4, which would be blank when the Treaty is concluded, just as Annex 3 will be blank at the outset.

.../2

5. We should probably add descriptive headings to each Article, to facilitate an understanding of the general structure of the Treaty.

Yours truly,



L.A. Willis,
Constitutional, Administrative
and International Law Section

atts.

c.c. Dick Roberts
External Affairs (FLM)
Claire Feldman
External Affairs (FLO)

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25-5-7-2

Salmon-1

December 15, 1978

VANCOUVER, B. C. - Negotiations between the United States and Canada to develop a Pacific salmon agreement adjourned today in Vancouver, B. C. after eight days of talks. The Canadian delegation was headed by Dr. Michael P. Shepard, representing the Department of Fisheries and Oceans, and the United States delegation was headed by Donald L. McKernan, representing the U.S. Department of State. The delegations included representatives from Fishery Management Councils, the private sector, fishing industry, fishermen's organizations, sportsmen, and native Indian groups as well as Federal and State Government Officials.

The talks, which were a continuation of the discussion held over a period of time, the most recent having been in Seattle, in October, are expected to resume early in the New Year. In the meantime, the two sides will attempt to consolidate a number of documents addressing the questions of future coordination in salmon management and enhancement in light of the problems created by fisheries in both countries which intercept salmon bound for the rivers of the other. The need for cooperation between the two countries to maximize the production of salmon so that the benefits of enhancement programs would accrue to the enhancing countries was recognized as an essential principle of future relations between the two countries.

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This information was released to the wire services on the date indicated. Despite the delay, some releases and speeches are mailed to out-of-town media because the content is not time-dependent or because it will be useful for background files.

Cette information a été transmise aux agences de presse à la date indiquée. Malgré le retard, certains communiqués et discours sont expédiés aux médias de l'extérieur, parce que leur contenu n'a rien à voir avec les délais ou parce qu'ils peuvent servir comme documentation.

- 2 -

The meeting received reports on matters relating to the interception problem in the coastal areas of both countries which had been assigned to a Technical Committee of scientists of the two Governments at the October meeting.

These negotiations are related to efforts by the two Governments to develop a long-term agreement on resource arrangements and maritime boundaries associated with the extensions of jurisdiction to 200 miles by the two countries in 1977.

- 30 -

U.S. DISCUSSION ARTICLE

December 10, 1978

ARTICLE VII

1. The Commission shall, within 30 months after entry into force of this Convention, submit to the Parties a program for the development of limitations on the interceptions by Pacific salmon fisheries listed in Annex II (except for the fisheries covered in Article VI bis), based on the principles set out in this Convention. This program shall include a timetable for the progressive imposition of interception controls on specified fisheries and may include variations in the basic limitation program for specified fisheries. The program shall be designed to meet the objectives of this Convention, ensuring that by _____ each Party shall have in effect specific limitation controls for the fisheries listed in Annex II.
2. The program shall be considered by the Parties. They shall inform the Commission of their acceptance, including any agreed modifications, or rejection of the program within 180 days of its transmittal by the Commission. If the program is accepted by the Parties, the Commission shall proceed to develop the specific measures described in the program. If the program is rejected by either Party, the Commission shall reconsider the matter and submit a new program to the Parties as soon as possible.
3. In accordance with the program, the Commission shall develop specific limitation of interceptions controls. Such controls shall be recommended to the Parties. If such controls, or

agreed modifications thereof, are accepted by both Parties,
the controls shall become binding upon the Parties with effect
from the date on which the Commission receives the last of the
two notices of acceptance, or from such other date as may be
agreed by the Parties.

4. The program adopted pursuant to this article, and as amended
from time to time, shall be set forth in Annex II.

U.S. DISCUSSION DRAFT

December 13, 1978

ARTICLE VIII

1. Recognizing the complex problems associated with programs for the development of the Pacific salmon resources of the Parties, and that inter alia
 - (i) enhancement into a fishery with a low percent of the other Parties salmon would make it difficult to demonstrate enhancement since the intercepting Party would have to disproportionately enhance into the fishery;
 - (ii) enhancement of one species into a fishery with limitations on the interception of another species would make it difficult to harvest that enhancement without increasing interceptions;
 - (iii) both Parties enhancing into an intercepting fishery would make it difficult for the intercepting Party to harvest its enhancement,and recognizing the desirability of providing that by ___ each Party receives benefits commensurate with its own salmon enhancement, the Parties agree to coordinate their respective programs for the development of their Pacific salmon resources.

iv harvesting of the added production from certain development projects can result in serious injury to the salmon resources originating in the waters of the other Party

ARTICLE VII

2. The Parties recognize that further consideration must be given to the fisheries listed in Group B of Annex II in order to determine the most appropriate treatment of these fisheries for the purposes of this Agreement, and that the acquisition of further data as to the nature and extent of any interceptions in these fisheries may assist the Parties in this regard. The Parties therefore agree to prevent changes in fishing patterns in these fisheries which could significantly increase existing interceptions unless:

- (a) the Parties agree otherwise; or
- (b) the Party engaged in the fishery presents clear evidence to the Commission that the fishery does not involve significant intercep-

tions in relation to the entire fishery or

U.S. language {

(c) the existing interception data in the fishery are clearly insufficient to warrant the implementation of restrictive measures in the fishery.

December 15, 1978

ARTICLE XI - Can. draft

1. This Article applies to pink salmon and sockeye salmon originating within the Fraser River and its tributaries.

(2. Provisions on U.S. entitlements to be placed in Article VII.)

2. In the first year after the entry into force of this Agreement, the Fraser River Panel shall conduct the scientific research and field work (including test fishing, sampling, and racial analyses) necessary for the establishment of management policies, in accordance with the practices established by the International Pacific Salmon Fisheries Commission prior to the entry into force of this Agreement.

3. In the second year after the entry into force of this Agreement, Canada will take over all upriver work necessary to allow it to work jointly with the Fraser River Panel to make the determinations referred to in paragraph 1 of Article V for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 4 of this Article.

4. In the third year after the entry into force of this Agreement and thereafter, Canada shall submit annually to the Fraser River Panel preliminary determinations

- 2 -

referred to in paragraph 1 of Article V for the management during the subsequent year of the stocks governed by this Article, taking into account:

- (a) the objective of optimum production, having regard to the interests of both Parties;
- (b) the need to set escapement goals in such a way as to permit the United States to achieve the entitlements set out in Article VII;
- (c) the need to avoid disruptive changes in patterns of exploitation; and
- (d) the best scientific evidence available.

5. In order to facilitate the work of the Fraser River Panel, Canada shall submit to that Panel, in addition to the preliminary determinations referred to in paragraph 4, an annual report of its management plans and activities respecting the stocks governed by this Article.

6. The Fraser River Panel shall promptly examine the preliminary determinations submitted under paragraph 4 and report its view to both Parties. Canada shall take these views into account before the determinations are made final and shall notify the Fraser River Panel of its final determinations not later than _____ days after the Panel has reported its views.

7. The United States may refer to the Commission any final determination by Canada made under paragraph 4 which the United States considers inconsistent with the provisions of this Convention. The Commission shall within _____ days report its views and any recommendations to the Parties. If modifications are indicated, Canada shall within _____ days notify the Commission of its response. If the United States objects to the response, it may refer the matter to the Parties (possibility of dispute settlement under general provisions of Convention).

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8. After the determinations referred to in paragraphs 6 and 7 have been made final, the Fraser River Panel shall develop proposed regulations for the subsequent year with respect to the fishing seasons, times and areas for the harvest of the stocks governed by this Article within the area referred to in Annex _____, including the provision for fishing by each type of gear authorized by the Parties to participate in the fishery. These proposed regulations shall take into account:

- (a) the entitlements of the United States provided for in Article VII;
- (b) the final determinations referred to in paragraph 6 or 7 as the case may be;

- 4 -

- (c) the relationship between the fisheries referred to in this paragraph and other fisheries conducted within the same area, including the need to regulate by area in order to allow the passage or harvest of salmon other than stocks governed by this Article migrating through the waters described in Annex ____; and
- (d) the domestic allocation objectives of the parties.

9. In carrying out the provisions of paragraph 8, the Fraser River Panel is empowered to:

- (a) make recommendations to the Parties with respect to regulations for minimum mesh sizes and times and areas for chinook salmon fishing in the area described in Annex ____, upon a finding that such regulations are necessary in order to accomplish the objectives of the Panel with respect to the stocks governed by this Article; and
- (b) conduct such studies as are necessary to achieve the objectives of paragraph 8, including: (i) monitoring of runs of stocks governed by this Article (including test fishing, sampling and racial

and catch statistics

analyses) in the area described in Annex _____, and beyond that area with the consent of the Party in whose waters or territory the activity is to be carried out^{*}; and (ii) securing from Canada, for areas outside the area described in Annex _____, escapement, outmigration, and other required data.

10. The Commission shall, at the request of the Panel or of either Party, consider and provide advice upon any question which may arise respecting the coordination of the activities of the Fraser River Panel with those of the Southern Panel or of either Party with respect to stocks not governed by this Article.

11. Annual regulations proposed by the Fraser River Panel be submitted in a timely manner to the Parties for approval and shall be effective upon approval by the Government in whose waters such regulations are applicable.

12. During the fishing season, the Fraser River Panel may make emergency orders for the adjustment of fishing times and areas provided by the annual regulations, and other modifications resulting from variations in _____

* Canada would authorize monitoring at Hell's Gate.

- 6 -

anticipated conditions, taking into account the factors referred to in paragraph 8. Such orders shall be effective when issued, but shall not remain in effect beyond the time, if any, when such orders are objected to by the Government of the Party in whose waters they are applicable. Such orders shall not be made with respect to any management area at a time when the management objectives for stocks other than those governed by this Article are deemed to take precedence in accordance with by-laws or rules established under paragraph 5 of Article III. The Parties shall coordinate their management activities for stocks other than those governed by this Article with those of the Panel in order to allow the Panel to carry out its functions under this paragraph effectively.

U.S. DISCUSSION DRAFT

December 15, 1978

ARTICLE X

1. This Article applies to salmon originating in those rivers listed in Part ___ of Annex II, hereinafter referred to as "transboundary rivers."
2. Both Parties recognize their joint interest in transboundary rivers and each Party's right to harvest salmon from these stocks and to maintain long-standing, traditional fisheries.
3. The Parties agree to prepare and discuss, within the appropriate panel, the management and conservation plans for terminal and river fisheries, taking into account stock requirements of each Party. In this regard, the Parties shall be guided by appropriate provisions of Article 5, recognizing that cooperative development and utilization of transboundary river stocks requires a flexible approach to the management of these stocks, and that the management requirements and procedures will be different for each transboundary river. *U.S. suggests that Transfer Panel be sub-panel of Northern*
4. Upon the recommendation of the appropriate Panel, the Commission shall consider the cooperative development and utilization of transboundary river stocks, and in this regard shall make recommendations to the Parties on the means by which cooperative development should proceed and by which benefits can be realized from cooperative development programs.

5. The Parties agree that the salmon enhancement projects proposed by either Party within their respective portions of the transboundary rivers shall be subject to review by the appropriate Panel and the Commission. The Parties shall consider recommendations of the Commission made pursuant to paragraph 4 of this Article, and other means by which development viewed as equitable by both Parties may proceed.

U.S. DISCUSSION ARTICLE

December 10, 1978

ARTICLE VI (bis)

1. Within two years of the entry into force of this Convention, the Commission shall submit to the Parties a detailed proposal for:

- (a) the limitation of interceptions by U.S. fisheries for sockeye and pink salmon of the Fraser River systems, and
- (b) the limitation of interceptions by Canadian fisheries for chinook and coho salmon originating in Washington, Oregon and Idaho.

*Edna
H. 100
Fishery*

The proposal shall be based on the principles set forth in this Convention and shall be designed with the objective of ensuring

- (i) that the special circumstances affecting U.S. entitlements to sockeye and pink salmon of the Fraser River System are accounted for;
- (ii) that the social and economic importance of the Canadian troll fisheries are taken into account;
- (iii) that implementation of the proposal shall ensure, with respect to chinook and coho salmon, that each party receives benefits commensurate with its own enhancement, and
- (iv) that these goals are achieved without unnecessary disruption in existing fishing patterns consistent with conservation requirements.

2. The proposal referred to in paragraph 1. shall be considered by the Parties. They shall inform the Commission of their acceptance, including any agreed modifications, or their

rejection of the proposal, within 180 days of its transmittal by the Commission. If the proposal is accepted by the Parties it shall be implemented with effect from the date the Commission receives the last of the two notices of acceptance, or from such other date as may be agreed by the Parties. If the proposal is rejected by either Party, the Commission shall reconsider the matter and submit to the Parties a new proposal, developed under paragraph 1., within 180 days of the receipt of the first notice of rejection.

3. Upon approval of the proposal by the Parties, the Commission shall notify the Fraser Panel to prepare for assumption by Canada of responsibilities under paragraph 3. of Article XI.
4. (Cross reference Articles VIII and XII.)
5. Upon approval by the Parties of the proposal referred to in Paragraph 1., it shall be listed in Annex

U.S. DISCUSSION DRAFT

December 13, 1978

ARTICLE VII

2. With respect to fisheries listed in Group B of Annex II, the Parties recognize that data ^{are} ~~is~~ either not available or ^{are} ~~is~~ incomplete regarding the nature or extent of the interceptions which may occur in these fisheries.

In this connection, the Parties agree that ^{catch of} these fisheries shall generally remain ^{the same} ~~at present levels~~, except:

- (a) if the Parties agree otherwise; or
- (b) if the Commission agrees otherwise; or
- (c) if it is demonstrated by the Party engaged in the fishery that the numbers of intercepted fish within a fishery is less than _____ percent, ^{of} ~~the total catch of all species~~ and the Commission does not decide that such demonstration is inadequate to justify a change in ~~the levels of~~ such fisheries.

CANADIAN LIST OF FISHERIES FOR CONSIDERATION IN AN INTERCEPTION LIMITATION SCHEME

GROUP A - Fisheries to be immediately subjected to an interception control scheme.

GROUP B - Fisheries to be considered for future application of an interception control scheme.

SOUTHEAST ALASKA FISHERIES

GROUP A

| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
|----------------|----------------------------|-------------|
| Sockeye | 1 B | All |
| Sockeye | 4 | All |
| Odd Pink | 4 | All |
| Coho | 1 | Troll |
| Coho | 2 | Troll |
| Coho | 150 | Troll |
| Coho | 104, 152 | Troll |
| Coho | 113, 154 | Troll |
| Chinook | All Areas South of Yakatat | Troll |

GROUP B

| | | |
|----------|---------------|-------|
| Odd Pink | 1 AB | Net |
| Chum | 1 AB | Net |
| Chum | 4 | Net |
| Coho | 1 AB | Net |
| | 2 | Net |
| | 3, 5, 9 | Troll |
| | 116, 157, 181 | Troll |

CANADIAN FISHERIES ON SALMON ORIGINATING IN ALASKAN RIVERS

GROUP A

| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
|----------------|--------------------------------|-------------|
| Even Pink | 3X, 3Y | Net |
| Even Pink | 5 - 1 | Net |
| Chum | Portland-Pearse Canal of 3Z | Net |

GROUP B

| | | |
|-----------|--------|-------|
| Even Pink | 1 | Troll |
| Even Pink | 5 | Troll |
| Odd Pink | 3X, 3Y | Net |
| Chum | 3X, 3Y | Net |

CANADIAN FISHERIES ON SALMON ORIGINATING IN WASHINGTON-OREGON
RIVERS

GROUP A

| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
|----------------|-------------------|-------------|
| Coho | 18, 19, 20 | All |
| Coho | 21 - 27, C | Troll |
| Chinook | 18, 19, 20 | All |
| Chinook | 21-27, C, Alaska | Troll |
| Chinook | 1, 2, 5, 6-11, 30 | Troll |

GROUP B

| | | |
|---------|---------|---------------|
| Chum | 20 | Net |
| Coho | 14 - 17 | Troll & Sport |
| Chinook | 14 - 17 | Troll & Sport |

WASHINGTON, OREGON, CALIFORNIA FISHERIES ON SALMON ORIGINATING
IN CANADA

GROUP A

| <u>Species</u> | <u>Area</u> | <u>Gear</u> |
|----------------|----------------------------|-------------|
| Sockeye | Present Convention Area | All |
| Odd Pink | Present Convention Area | All |
| Odd Pink | 3, 4, off Canada | All |
| Chum | Present Convention Area | All |
| Coho | Present Convention Area | All |
| Coho | 2, 3, 4, off Canada | All |
| Chinook | Present Convention Area | All |
| Chinook | 4, off Canada | All |

GROUP B

| | | |
|----------|-------------------------|-----|
| Odd Pink | 1, 2, Oregon-California | All |
| Chum | 7b | All |
| Coho | 7b | All |
| Chinook | 7b | All |

ARTICLE VII - *Can draft*

1. The Parties agree to limit interceptions ~~in~~
Category A fisheries listed in *Group A* Annex II in accordance with
the provisions of that Annex.

2. With respect to *Category B* fisheries listed in
Annex II, the Parties agree to prevent changes in fishing
patterns which could significantly increase existing rates
of interception unless:

- (a) the Parties agree otherwise, or
- (b) the Party in whose waters the fishery
is conducted presents evidence satisfactory
to the Commission that the fishery does
not involve significant interceptions.

3. The Commission shall study the Category B
fisheries listed in Annex II and shall, not later than six
years after the entry into force of this agreement, recommend
to the Parties, with respect to each such fishery, either:

- (a) that it be transferred to Category A and
made subject to a specific scheme of intercep-
tion limitation to be recommended by the
Commission for incorporation into the
Annex;

- (b) that it be deleted from the Annex; or
- (c) that it be the subject of further research and consideration within a time frame to be specified by the Commission.

4. Recommendations referred to in paragraph 3 shall be considered by the Parties who shall inform the Commission of their acceptance, including any agreed modifications, or rejection thereof, within 180 days of its transmittal by the Commission. Where any such recommendation is accepted, with or without agreed modifications, Annex II shall be amended accordingly.

5. The Commission shall review the provisions of Annex II respecting ~~Category A~~^{Group A} stocks annually and shall, where appropriate, make recommendations to the Parties for the amendment of the schemes of interception limitation set out in Annex II in order to improve the effectiveness of those schemes and to fulfill the principles set out in Article I. The Commission shall also provide to the Parties a general assessment of the effectiveness of the provisions of Annex II, respecting ~~Category A~~^{Group A} fisheries after the fourth year of operation of this agreement.

6. The Commission shall review the implementation of the interception limitation program each year, and shall

- 3 -

report to the Parties on any case where a limitation binding on the Parties has been exceeded or on any other factor which should be taken into account in formulating management policies or regulations for the purposes of this Agreement. The Parties shall furnish to the Commission such information as it may require for the purposes of this Article.

ARTICLE VIII

1. The Parties agree to coordinate their respective programs for the development of their Pacific salmon resources to the extent necessary to ensure:

- (a) that each Party is enabled to achieve the optimum salmon production from its rivers;
- (b) that by 1990 [each Party receives benefits commensurate with its own salmon production; and]
- (c) that development projects are avoided where the harvesting of the added production would necessarily result in serious injury to the salmon resources originating in the rivers of the other Party.

2. The Parties shall notify the Commission, as far in advance of implementation as possible, of salmon development projects which may lead to the initiation of, or have an impact upon, ^{our} intercepting fishery.

3. The Commission shall promptly review the project and advise the Parties of its expected impact. In cases where the adverse impact is expected to be significant, the Commission shall make recommendations to the Parties designed to ensure that the principles set out in paragraph 1 are fulfilled. Such recommendations may include, without

limitation:

- (a) adjustments in regulations for the harvesting of the added production designed to avoid increased interceptions;
- (b) where a project would necessarily result in increased interceptions, amendments to Annex II to allow the Party proposing the project to increase its interceptions to the extent necessary to harvest the added production and to allow the other Party to increase its interceptions by an equivalent amount;
- (c) provision for access to the waters of the Party proposing the project to allow the other Party to harvest salmon to an equivalent extent/to any increased interceptions resulting from the project; and
- (d) changes in the development plans of either Party.

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Where the Parties agree on recommendations referred to in paragraphs (a), (b), or (c), the appropriate provisions shall be added to Annex II.

- 3 -

4. If a Party rejects such recommendation, or if the Commission is unable to agree on proposed recommendation, the Parties shall seek to agree on measures that will be regarded as equitable to minimize significant adverse impacts, recognizing that fully coordinated development projects are essential to the attainment of the principles of this agreement.

5. For the purpose of carrying out the principles set out in Article I of this Agreement and of implementing the provisions of this Article, (provision for developing a common denominator for comparing the catches of the various species of salmon within the scope of this Agreement).

6. Salmon development projects on transboundary stocks shall be considered under Article X and not under this Article.

7. (Dispute settlement with respect to adjustments in regulations or entitlements pursuant to this Article).

December 13, 1978

000528

ANNEX II

PART I - CATEGORY A FISHERIES

1. Net Fisheries

(a) List

(b) Formula indicating limit based on lesser of a percentage or numerical limit derived from base period.

2. Troll Fisheries

(a) List

(b) Formula as in 1 (b) but with adjustments to take into account regulatory changes affecting the size and age composition of the catch.

3. Fraser River Pink and Sockeye

Fifty percent of the catch in the present Convention Area for the first two years; thereafter the standard limitation formula with adjustments to take into account past U.S. investments in enhancement facilities.

PART II - CATEGORY B FISHERIES

List

File

EXTERNAL AFFAIRS



AFFAIRES

| | | |
|----------------|------------------|-------------|
| DATE | NOV 21 1978 | REF |
| ACC | 4556 | |
| EXTERIEURES | | DOSSIER |
| BY HAND | 25-5-72-Salmon-1 | PAR PORTEUR |
| ATTN: SECURITY | Unclassified | FLO |
| Sécurité | | |

DATE November 14, 1978

NUMBER 419
Numéro

| | |
|---------|---------|
| FILE | DOSSIER |
| OTTAWA | |
| MISSION | 35-11 |

TO The Under-Secretary of State
A for External Affairs (GNT)

FROM Consulate General, Seattle
De

REFERENCE Our telegram UAGR 1667 of October 24, 1978
Référence

SUBJECT Northwest Fisheries - Boldt Decision
Sujet

ENCLOSURES
Annexes

2

DISTRIBUTION

BY POST
(w/attach)

FLO ✓

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FANDOOTT/
Hunter

WSHDC

Enclosed is a copy of the Northwest Indian Fisheries Commission's formal response to the settlement plan for Washington State salmon and steelhead fisheries and a copy of the Executive Summary. These documents outline the Treaty Indian position with regard to the recommendations made by the Presidential Task Force on Northwest Fisheries. In short, the Treaty Indians have rejected the Task Force recommendations, recommending instead that "the only acceptable position for the United States is to continue to implement the Treaty rights through the enforcement of the Federal Court decision." (Part 4 of both documents refers.)

2. The Treaty Indians perceive the recommendations of the Task Force as abrogating their treaty rights, diluting Treaty Indian control over their commercial, subsistence and ceremonial fisheries, transferring jurisdiction on certain issues from Federal to State authorities, putting a drain on Treaty Indian financial resources and offering them a less advantageous share of the fishery resource. Treaty Indians had previously made these points known in their informal responses to the Task Force. Consequently, reaction to the Treaty Indian formal response was very low key which also reflected the fact that the Judge Boldt decision issue had moved into the Federal Supreme Court for review and decision.

3. In this context, it is interesting to note that

...2

-2-

federal fisheries personnel with whom we have spoken are not optimistic that the Judge Boldt decision will be overturned by the Supreme Court. While one must await the Supreme Court ruling, it should perhaps be viewed as a first step towards a resolution of the difficulties rather than as a panacea.

4. You should note that the attached documents make special mention of Canadian fisheries (Part Three, IIb, section 9 and 9a refer).



Consulate General

RECEIVED OCT 19 '78

Northwest Indian Fisheries Commission



EXECUTIVE SUMMARY

of

Formal Response to

Settlement Plan for Washington State
Salmon and Steelhead Fisheries

October 1978

EXECUTIVE SUMMARY

INTRODUCTION

The nature and extent of Indian treaty rights has been established by the federal courts. But the State and its non-Indian allies have refused to obey the law. Instead they have gone to Congress seeking a "solution" to the court decisions. As a result, a "Task Force" was established to propose such a solution. The proposal has been rejected by the Northwest Indian Fisheries Commission for the following reasons:

1. The Task Force did not attempt to devise a solution which accommodated Indian treaty rights. Rather it ignored or abrogated those rights.
2. The State of Washington and its officials as well as members of Congress did not commit themselves to a good faith effort to negotiate.
3. The plan failed to address the true problems which plague the fisheries which problems include decades of mismanagement, the recalcitrance of state officials to abide by the federal court's decision, and lack of state law enforcement.

PART 1 - SUMMARY OF LEGAL RIGHTS ABROGATED BY THE TASK FORCE

The Task Force proposal undermines or eliminates virtually all legal rights affirmed by the courts.

1. Traditional fishing areas of Indian people are eliminated.
2. The tribal opportunity to harvest 50% of the resource is reduced.
3. Steelhead - a necessary winter fish - can no longer be harvested commercially by most tribes.
4. Substantial tribal authority to regulate tribal members in both on- and off-reservation fishing is removed.
5. The state's regulatory power over treaty fishing is expanded without regard to court limitations.
6. The treaty defense in state court proceedings is limited.
7. The federal court and federal trust protection of Indian people is substantially weakened.

PART 2. - JURISDICTION, MANAGEMENT AND ENFORCEMENT

I. The Treaty Fishing Right

The treaty fishing right is based upon treaties negotiated between the United States Government and Indian tribes in which tribes relinquished claims to "land" but reserved to themselves all rights not granted to the United States including the right to fish off-reservation. The meaning of the treaty fishing language was clarified in 1974, in United States v. Washington and was affirmed upon appeal. The decision held that the treaty was the Surpeme Law of the land and that the State of Washington could not limit treaty fishing except in limited circumstances.

II. The Task Force Failed to Address the Real Problems

The problems threatening the resource are state recalcitrance in accepting the lawless illegal non-treaty fishing, state non-enforcement, and state and private attempts to overturn the decision by collateral attack. Treaty fishing and tribal management are not substantial contributing factors. The Task Force does not meaningfully address these concerns but rather suggests a complete restructuring of tribal management while leaving the state's management untouched despite its dismal record in environmental protection and fisheries regulation. The Task Force undermines the progress made by the tribes and state toward cooperative management.

III. Legal Relationships Between the State and Tribes

- A. Jurisdiction of Tribes and State Prior to United States v. Washington
- B. Jurisdiction After The United States v. Washington
- C. Post United States v. Washington Jurisdictional Development

Off-reservation, the state has only the authority to regulate treaty fishing when reasonable and necessary for conservation. On-reservation, the state's power is limited to those areas where Congress allows the state to act. The jurisdictional limitations on the state are settled by United States Supreme Court decisions.

United States v. Washington did not change existing law. Its benefit was to clarify the law. The decision did free Indians from the burdens of discriminatory state regulations which were improper under pre-decision case law.

Nevertheless, the state and the non-Indian fishing groups did not accept the decision. Non-Indian

fishermen engaged in massive illegal fishing while the state failed to regulate non-Indian fishing, and assisted private groups in attacking the decision. Fish managers for the tribes and state have begun to work cooperatively toward coordinated management systems designed to protect the resource. Tribes have employed fishery scientists and technicians to insure their part of management is done professionally. Such cooperative management has served both treaty and non-treaty fishing interests in developing a healthier fishery. What was left for the Task Force to deal with was the non-Indian illegal fishing - the only jurisdictional problem not effectively addressed by the Task Force.

IV. The Settlement Plan for Jurisdiction and Management

- A. The Task Force Proposal Abrogates the Treaties
- B. The Task Force Management Proposal Discriminates Against Tribal Management and Regulation
- C. Task Force Goals Discriminated Against the Treaty Fishing and Violated Treaty Guarantees

The proposal eliminates the ability of tribes to regulate and exercise jurisdiction over their own members. It imposes limited state regulation over some aspects of the on-reservation fishery. The abrogation is accomplished through the transfer of jurisdictional authority to the state, and the creation of a tribal commission which does not equally represent all of the tribal interests. Duplication of jurisdiction is perpetuated by providing for state secondary control in those few areas where tribes or the tribal commission retains some authority. Local control (as opposed to federal involvement) abrogates the trust responsibility of the United States for Indian people. The United States has been the only institution which has been effective in protecting treaty rights in the past. The state has shown no willingness to assume the role of protecting and enforcing treaty rights.

D. The Management Structure: A Negation of the Treaty Rights to Regulate Tribal Fisheries

- 1. State management authorities supplement Tribal authorities

The state is free to manipulate its management models and plans without effective participation from tribal management entities. The

ability of tribes to manage their own sport fishery both on and off reservation is significantly and adversely affected. The tribal ability to regulate off-reservation at all usual and accustomed places is eliminated. Tribal management is delegated to a Tribal Commission and limited to reservation and small newly created Indian fishing zones. No standard for determining a conservation closure is set out. Given the historic state practice of limiting treaty fishing on the unfounded pretense of a conservation need, tribes can expect a further limiting of their fishery. The ability of tribes to develop their own enhancement and resource projects is eliminated as state permits are required for all such activities.

2. Tribal authorities are supplanted by super government

The proposal creates a Tribal Commission which is not representative of all of the treaty tribes. The Tribal Commission preempts all aspects of tribal management. It even manages on-reservation fishing. Tribal licensing, research, management, enforcement, and judicial authority are removed from the tribes and placed with the Commission. Tribal management, a part of the treaty rights, is eliminated. The authority of the Tribal Commission is significantly less than that held by the tribes under United States v. Washington.

3. The Fishery Review Board - A Study of Frustration

The Fishery Review Board established to enforce the principles of the Task Force settlement is impotent. The Board has no power to insure that the Settlement Plan is complied with; no power to enforce against illegal fishermen, or to require any of the parties to thus enforce; nor power to provide for an allocation, or to enforce allocation regulations. The agreements and procedures already reached between the tribes and the state which work toward cooperative management are undermined, for the state need not, under the Settlement Plan, meet and agree with the tribes on any aspects of management. In-season management problems are not dealt with by the Fishery Review Board but are relegated to a post-season determination and possible equitable adjustment which further

exacerbates the animosities between the parties. Federal Court review of Fishery Review Board decisions or non-decisions is cumbersome and is unlikely to be implemented.

V. Enforcement

Much of the enforcement plan is welcome. However, the enforcement scheme also fails to recognize essential treaty rights. Tribal court systems are replaced with a Tribal Commission Court used only in limited situations. Instead heavy reliance on state court jurisdiction and legal process is substituted, but the treaty defense in those courts is eliminated. Cross deputization, while welcome, serves only to provide a vehicle for state enforcement of regulations on-reservation, but does not provide an equal opportunity for tribes to enforce in the newly created state fishing areas. Tribal enforcement and management systems created place an inordinate financial burden on the tribes. Tribal governments must provide all costs for the Tribal Commission, one-third of the cost of the Fishery Review Board, the cost of their own enforcement, and the cost of the operation and maintenance of their enhancement facilities. Tribes do not have the resources of either the federal or state government yet are made to pay as if they had equal revenue producing ability. Such a discriminatory system will bankrupt the tribes.

PART 3. - A SETTLEMENT PLAN FOR RESOURCE DISTRIBUTION

I. Principles of Resource Distribution Under the Settlement Plan

The resource distribution plan is based upon five principles, none of which are adequately supported by the substance of the plan. The plan does not protect the fishery as it continues to rely upon mixed stock fisheries and extensive use of hatchery plants. The plan does not guarantee a fair fishing opportunity to all fishermen because of the absence of comprehensive harvest management. The concept of an equal opportunity fishery is not supportable either in biological or economical terms. It would force tribes to give up their traditional fisheries and fishery locations and promote continued use of energy wasteful fishing gear. The plan continues to discriminate against historic treaty fisheries in favor of non-treaty highly mobile present day fisheries. The plan increases potential conflict as fishermen would be forced to fish at the same times and in the same areas.

II. Components of Resource Distribution.

A. Enhancement

The Task Force recognizes the depelted nature of the present day fishery caused in the main by overzealous and uncontrolled non-Indian fishing and environmental degradation. The enhancement system proposed is without adequate management control and runs the risk of adversely affecting existing natural stocks.

1. The Task Force attempted to blackmail tribes to accept the terms of the settlement.

The plan utilizes federal funds and the expectancy of more fish to convince tribes to "voluntarily" forego exercising their fishing rights.

2. The plan calls for tremendous increase in artificially propagated fish (T.F. p. 118) without the results of research and development studies which are required to develop effective enhancement plans

Many enhancement proposals are mere feasibility studies without sufficient planning to insure they will not have an adverse impact upon the existing fishery. Monies provided by the Task Force are insufficient to insure that the necessary studies are undertaken.

3. The plan would require tribes to absorb the cost of operations and maintenance for their facilities prematurely

Insufficient revenues are projected from all funding sources to fully fund the operation and maintenance of the hatcheries to be built under the proposal.

4. The Task Force misrepresented their settlement plan and information relating to the Tribal-State negotiations

The Task Force has selected certain preliminary statements made by tribal and state negotiators and characterized them as agreements on enhancement. Neither the state nor the tribes agreed, both indicating that any agreement would depend upon the structure of the entire settlement rather than any one unit within it.

5. Ill-conceived enhancement is dangerous.

While enhancement does in fact provide certain benefits to the fishery and in certain cases can be highly productive, uncontrolled hatchery operations may swamp resident populations in the environment, spread disease, and contaminate genetically adapted stocks, all leading to the destruction of natural stocks and perhaps the destruction of the hatchery fish planted.

6. The task force plan could cause the demise of salmon and steelhead.

The Task Force report emphasizes a need to harvest all hatchery fish, and therefore, runs the risk of significant over harvest of natural fish that cannot withstand the higher harvest rates used for hatchery fish. The continued reliance on mixed stock fishing as proposed by the Task Force will increase the danger that natural stocks will be adversely affected.

7. The settlement plan would place the state in a position to manipulate tribes.

The Task Force proposal requires that enhancement projects be undertaken by tribes only after obtaining a permit from the state. This allows the state to accept or reject tribal enhancement programs to benefit non-treaty fishermen or state political motives. In the past the state has forced tribes to make significant concessions in certain of their harvest practices in order to receive permission to rear fish.

8. The Task Force calls for the use of settlement funds to finance projects which would not appreciably benefit treaty fisheries

Several enhancement projects are to be placed in Willapa Bay and on the Columbia River. These enhancement projects will not significantly benefit treaty fishermen.

B. Resource Distribution.

1. The settlement can provide no guaranteed harvest opportunities for treaty fishermen.

The Task Force provides no mechanism to enforce any

allocation which may be mandated by the settlement plan. The system established encourages overharvest by non-treaty fisheries before the salmon return to the tribal management zones.

2. Harvest opportunity is a particularly unmanageable basis for allocation

Under the current state of fishery science it is practically impossible to evaluate and manage the fisheries on the basis of a guaranteed opportunity. The fish are subject to a long series of intercepting harvests. In order to control such harvest adequately an extensive and costly reporting system would have to be, but is not, established. The management structure does not provide for co-management responsibility and there is no adequate mechanism for tribes to evaluate and challenge determinations of prior interceptions, recreational harvests, etc.

3. Catch counting formulas do not protect the resource.

The proposal to count harvest opportunity in terms of adult equivalent is not sufficient. The ocean troll and sport fishery which is perpetuated by the Settlement Plan kills more fish than would have died naturally without the fishery.

4. Settlement plan would require the tribes to give up their traditional treaty fishing areas

Tribes are required to give up their usual and accustomed fishing grounds and stations for tribal commercial management zones which are smaller and less productive.

5. The tribal rights of 50% of the harvest are negated.

The tribes are required to accept an immediate reduction in their harvest opportunity to, in some cases, less than 25% of the available fish.

6. The Task Force proposed elimination of separate accounting for on-reservation ceremonial and subsistence classifications for treaty harvest.

The treaties reserved an exclusive right to harvest on-reservation and to harvest an additional number of subsistence and ceremonial fish. These aspects of the consideration for signing the treaties are taken without compensation.

7. Settlement plan provides meaningless tests for compliance.

The test for compliance is made after a six year period, and is based upon percentages of harvest opportunity enjoyed by treaty fishermen. Such a method is difficult if not impossible to quantify, and cannot uniformly be utilized throughout the case area because of different harvest goals.

8. The harvest management structure established by the Task Force is incapable of regulating the fishery either to insure a treaty harvest opportunity or protect the resource.

The settlement plan proposes a pass through system designed to protect the tribal harvest opportunity. However, there is no mechanism established either in the Fisheries Review Board or other body which can insure that the pass through is maintained. The settlement plan does not address difficult questions of harvest management created by the plan's heavy reliance on hatchery fish and mixed stock fishing.

9. Ocean fisheries and prior interceptions are inadequately regulated in the settlement plan

- a. The settlement plan does not propose specific measures regulating harvest of Washington chinook and coho by Oregon, Alaska, and especially Canadian fisheries.
- b. The settlement plan does not propose meaningful regulation of Washington ocean troll fisheries.
- c. Charter boat regulation is inadequate.
- d. Recreational fisheries are inadequately addressed.
- e. The settlement plan's approach to the ocean fishery will not be possible to implement in practice.

The plan does not provide for the regulation of ocean fisheries. The ocean fisheries account for a substantial interception of fish that would otherwise be available to treaty fishermen. Other United States fisheries such as, Oregon, and Alaska are not dealt with and those

fisheries will continue to intercept case area fish. Of special importance is the Canadian fishery which intercepts significant numbers of United States bound fish. Treaty Indian harvest has been substantially diminished by bilateral agreements between the United States and Canada. The plan does not propose meaningful regulation of the Washington troll fisheries. It is unclear whether or not the reduction of the troll harvest rate is to apply to all troll fisheries or to just those within Washington State waters. The Task Force report does not deal with the charter boat and recreational fisheries. These fisheries take substantial numbers of mature salmon and under the plan will continue to do so in an unregulated fashion. The settlement plan would continue to allow the state to curtail treaty fishing while leaving the recreational fishery unregulated - a process that cannot withstand scientific study. Unless the intercepting ocean, and sport fisheries are regulated there is little likelihood that a substantially larger in-Sound fishery can develop. The failure of the settlement plan is assured by its failure to mandate the development of needed data and a change in coastal and international management.

10. Coastal resource distribution

a. Plan for the south coast

The Quinault Tribe is asked to forego fisheries in Willapa Bay and on the Columbia River at a potential economic loss of \$4 million. Those fisheries remaining in Grays Harbor are calculated on a basis which perpetuates non-treaty prior interceptions which all but wipe out the available fish.

b. Resource distribution plan for the north coast.

The interim plan provides for a stabilization of ocean harvest rates to reverse a decline of ocean salmon stocks, but gives no guarantee that the rates proposed will be sufficient to bring about the reversal planned. The plan requires inter-governmental participation from the tribes, state and

federal government without providing any vehicle to insure that all of the parties do in fact comply. The final plan provides for a substantial reduction in the treaty share of the harvests.

11. Salmon distribution plan for the Strait of the Juan de Fuca.

The plan establishes the terminal fishing areas but does not set out how those will apply to Indians. Fresh water fisheries which provide the mainstay of tribal fishing in this area, are not clearly provided for. While harvest rates are referenced for the Strait there is no sharing formula developed which would employ the harvest rates to control the fishery. The maximum tribal fishery in the Strait is set by a quota. With the anticipated enhancement under the settlement plan, the tribes will continue to harvest a decreasing portion of the available fish. Traditional fishing methods are limited, especially the use of set nets or other fixed gear. For the first time a non-Indian gillnet fishery is established outside of the IPSFC jurisdiction. This will only further exacerbate existing problems.

12. Salmon resource distribution for Puget Sound.

- a. Introduction
- b. Interim Plan, Puget Sound Stocks
- c. Interim Plan, IPSFC.
- d. Final salmon distribution plan, Puget Sound Origin Stocks.
- e. Final salmon distribution plan, IPSFC fisheries.

The salmon resource distribution plan for Puget Sound is based upon the establishment of well defined geographic areas within which tribal fishing is confined, and the institution of a so-called equal opportunity fishery where treaty fishermen would compete directly with non-treaty fishermen. The fishery proposed continues to inadvisedly explicit mixed stocks consisting of strong and weak runs of both natural and artificial stocks, and requires that treaty

fishermen give up their more efficient terminal fishery and enter the biologically unsound mixed stock fishery. The settlement plan uses terms in contradictory ways, making it impossible to evaluate the actual impact of many provisions - for example, the phrase "Puget Sound origin harvestable runs". If this phrase is used to refer to the total numbers of harvestable fish originating in Puget Sound then the sharing formula does not allow for the harvest of any Puget Sound fish by other than Puget Sound fisheries. However, if this phrase applies only to harvestable fish available in Puget Sound, then the distribution formula would be correct. But, because of prior interceptions, the true treaty share of the chinook and coho catch would be reduced substantially below the nominal shares stated in the plan. There is no guarantee that after fleet adjustment, the resulting "equal opportunity" fleet will be small enough to allow treaty fishermen to catch even the small number of fish which they are allocated.

C. Steelhead resource distribution plan

The plan calls for virtual elimination of tribal commercial steelhead fishing. This is based upon the incorrect view that sportsmen cannot compete with a commercial fishery. In 1976, according to the Department of Fish and Game, only 19% of the persons who purchased fresh water fishing licenses in Washington State, fished for steelhead. Thus, the curtailment of a treaty right is done to benefit only a small segment of the fishing community. Non-Indian fishermen have traditionally harvested significant numbers of steelhead even after the runs have passed through tribal fisheries. The plan does not take into consideration the particular need of tribes for the steelhead fishery for their subsistence and winter commercial needs.

D. Fleet Adjustment

The Plan incorporates a massive non-Indian gear reduction program as one of its primary methods of insuring that treaty fishermen can realize their opportunity. The gear reduction will not provide any meaningful guarantee to the tribes. Under the proposal, the

most inefficient fishermen are removed from the fishery leaving only the most efficient. The non-Indian ocean fishery and other commercial fisheries will continue to harvest the overwhelming majority of the fish before they are available to Indians. For example, if the total troll licenses are reduced by 53% (as predicted under the mandatory portion of the license reduction program), that reduction would amount to a mere 4% reduction in the harvest by the troll fisheries.

PART 4. - SOLUTION

The tribes see the settlement plan as a devise to strip them of their rightful share of the fish and their governmental powers over their own people and resources. The plan cannot be salvaged as a vehicle to protect the resource since it perpetuates and encourages wasteful and biologically dangerous mixed stock fisheries. The settlement plan provides no meaningful assurances that the meager promises made can be carried out. Finally, the Task Force avoids coming to grips with the salient problems: illegal non-Indian fishery and a recalcitrant state government. Rather the bad faith of the state and its non-Indian allies are rewarded by a grant to the state of even more authority at the expense of tribal governments, and an increase in the share of fish to non-treaty fishermen.

The tribes believe, therefore, that the hope of settlement and protection of the resource lies with a new commitment to implement the law as it is. The majority of our citizens believe in the rule of law and with normal leadership from the state and federal governments will accept their responsibilities with a firm commitment to the law; details of implementation can be worked out with fairness to all.

EF
File
25-5-5-
Cola/US

UNCLASSIFIED

FM SEATL UAGR 1667 25OCT/78

TO EXTOTT GNG

INFO WSHDC, ENVOTT/HUNTER

DISTR FLM, FCO FLO

| | |
|---------|-------------------|
| DATE | |
| ACC | 2146 |
| REF | |
| FILE | 25-5-7-2-Salmon-1 |
| DOSSIER | |
| BY HAND | PAR PORTEUR |
| ATTN: | |

---INDIAN CLAIMS AND BOLDT DECISION

SEATL TIMES OCT20 RFPORIS SENATOR JACKSON TELLING TIMES EDITORS AND REPORTERS THAT USA SUPREME COURT IN CONSIDERING WHETHER TO UPHOLD OR MODIFY BOLDT DECISION ALSO SHOULD LOOK AT BROADER ISSUE OF INDIAN CLAIMS AGAINST STATES. QUOTE THE WISE WAY IS TO HAVE ISSUE HANDLED IN CONTEXT. WE SHOULD DECIDE ONCE AND FOR ALL, THE QUESTION OF INDIAN CLAIMS AGAINST THE STATES. I THINK WE SHOULD CALL ON COURT TO NOT JUST DECIDE BOLDT, BUT TO LAY DOWN SOME GUIDELINES ON ALL INDIAN CLAIMS AGAINST STATES UNQUOTE. JACKSON REPORTED TO HAVE SAID THAT IF COURT IS PRESSED IT WILL MAKE DECISION BY SPRING WHICH WOULD END CONFUSION BEFORE NEXT FISHING SEASON. ALSO REPORTED AS SAYING IT IS VERY UNLIKELY QUOTE POLITICALLY IMPOSSIBLE UNQUOTE CONGRESS WOULD ACT PROTECT FISH STOCKS WHILE BOLDT DECISION IS BEFORE SUPREME COURT. QUOTE WE HAVE CONTINGENCY PLANS BUT MUST WAIT TO SEE WHAT COURT DECIDES UNQUOTE. JACKSON EXPECTS COURT LIMIT RIGHTS OF INDIANS TO CLAIM FISH OR OTHER RESOURCES BUT QUOTE WE HAVE TO BE PREPARED, IF THE COURT UPHOLDS BOLDT, TO MOVE WITH LEGISLATION UNQUOTE. JACKSON REPORTEDLY CONSIDERS FEDERAL LEGISLATION DEALING WITH ENHANCEMENT FISH RESOURCES NECESSARY EVEN IF COURT REVERSES BOLDT DECISION. ACCORDING TO ARTICLE JACKSON BLAMES ATTORNEYS FOR PROLIFERATION INDIAN CLAIMS WHICH COULD

.....PAGE TWO UAGR 1667

PAGE TWO UAGR 1667 CONTINUED

TOTAL HALF TRILLION DOLLARS FOR LAND AND RESOURCES AND WHICH IF
UPHELD COULD HAVE QUOTE CATASTROPHIC UNQUOTE CONSEQUENCES.

2. IF SUPREME COURT EXPECTED ESTABLISH SOME GUIDELINES AND
PRECEDENCE CONCERNING LARGER AND MORE COMPLEX QUESTION INDIAN
RIGHTS, DECISION BY SPRING MIGHT BE OPTIMISTIC. UNDOUBTEDLY ANY
DECISION WILL BE ILL RECEIVED BY ONE OR OTHER GROUP AND MAY HAVE
IMPLICATIONS FOR CDA IN CONTEXT FISHERIES AND CDN NATIVE RIGHTS.

UUU/810 251745Z UAGR1667

EF

File

25-5-5-

Cola/US

UNCLASSIFIED

FM SEATL UAGR 1618 17OCT/78

TO EXTOTT GNT

INFO WSHDC, ENVOTT/HUNTER

DISTR FCO FLM FLO

---FISHERIES-BOLDT DECISION

| | |
|---------|-------------------|
| DATE | |
| ACC | 1016 |
| REF | |
| FILE | 25-5-7-2-Salmon-1 |
| BY HAND | PAR PORTEUR |
| ATTN: | |

ACCORDING SEATL TIMES OCT16 WASHINGTON FISHING INDUSTRY LEADERS AND STATE OFFICIALS QUOTE HAPPY UNQUOTE THAT US SUPREME COURT HAS AGREED REVIEW BOLDT DECISION. COURT REFUSED HEAR CASE ON FIRST APPEAL FOUR YEARS AGO. ACCORDING TO ARTICLE, PHIL SUTHERLAND, PRES PUGET SOUND GILLNETTER'S ASSOC, EXPRESSED HOPE THAT COURT WILL GIVE SOME CLARIFICATION INDIAN/NON-INDIAN RIGHTS WHILE GORDON SANDISON, STATE FISHERIES DIRECTOR, SAID IT WAS QUOTE GOOD NEWS UNQUOTE AND COMMENTED ON DIFFICULTIES OF MANAGING THE FISHERY WITH CONFLICTING FEDERAL AND STATE COURTS AND WITHOUT HAVING CLEAR POLICY FROM FEDERAL GOVT. SPOKESMAN FOR NORTHWEST INDIAN FISHERIES COMMISSION SAID COMMISSION HAD NO/NO IMMEDIATE COMMENT.

UUU/810 170006Z UAGR1618

JL

ACTION
SUITE A DONNER

*Legg
Siddman 30/R*

UNCLASSIFIED

FM WSHDC UNGR4246 5OCT78

TO EXTOTT LLO

INFO INVOTT/VERNON/ROBERTS SEATL

DISTR FLM GNT GNG

---ARREST CDN FISHERMAN

INFORMED BY STATE DEPT THAT SALMON BOAT VICTORY BOY(1K1232)
CAPTAINED BY MR T WILSON(4920 44A DELTA BC)ARRESTED FOR ILLEGALLY
FISHING SOME ONE AND ONE-HALF MILES INSIDE USA WATERS OFF PT
ROBERTS.WILSON WAS GILL NETTING AND HAD SOME 43 SALMON ABOARD
OR IN NETS WHEN ARRESTED.UNDERSTAND HE HAS BEEN ARRAIGNED AND
RELEASED ON OWN RECOGNIZANCE.

UUU/275 052237Z UNGR4246

| | | |
|---------|--------------------|-----|
| DATE | File | |
| ACC | 180 | REF |
| FILE | 25-5-7-2-Salmon -1 | |
| BY HAND | PAR PORTEUR | |
| ATTN: | | |

Pal

**ACTION
SUITE A DONNEL**

UNCLASSIFIED

Seattle

25-5-7-2-Salman-1
10 L

*file
Pal
27/9/78*

FM SEATL UAGR 1487 26SEP/78

TO EXTOTT LGNT

INFO WSHDC BOSTN ENVOTT/HUNTER

DISTR GNG FLO FLM

REF BOSTN TEL 291 19SEP/78

...CDA/USA FISHERIES AND BOUNDARIES: MEDIA REACTION

DURING PAST TWO MONTHS HAVE HAD NO/NO DIRECT MEDIA REACTION
CDA/USA FISHERIES AND BOUNDARIES NEGOTIATION REST CDN GILLNETTER
NEGRO SPARKED INTEREST ONLY MARGINAL AND INDIRECT TO NEGOTIATIONS.
PRIME MEDIA INTEREST WASH STATE RELATES TO INTERNAL DIFFICULTIES
CAUSED BY BOLDT DECISION AND REACTION OF VARIOUS SEGMENTS OF
POPULACE TO THAT DECISION.

2. SUBSTANTIAL COVERAGE HAS BEEN GIVEN ACTION OF MORE MILITANT
GROUPS PROTESTING UNFAIRNESS AND ABSURDITY OF BOLDT DECISION AND
ENSUING ENFORCEMENT. HIGHLIGHT OF GROUPS ACTION WAS RECENT BLOCKADE
OF FERRY CLAIMING 50/50 PERCENT FERRY PASSENGERS SHOULD BE INDIANS.
MEDIA EDITORIALIZED ON ARTICLE SIGNED BY GROUP OF SCIENTISTS CALLING
ON CONGRESS TO RESOLVE PROMPTLY CONFUSION IN FISHERIES CAUSED BY
BOLDT DECISION. INABILITY OR UNWILLINGNESS OF STATE GOVT TO ENFORCE
BOLDT DECISION HAS ALSO RECEIVED COVERAGE. INTEREST HAS ALSO FOCUSED
ON SUPPORT FOR REVIEW BY SUPREME COURT OF BOLDT DECISION VOICED
BY GOV RAY AND INTERIOR SEC ANDRUS.

3. UNTIL INTERNAL SITUATION RESOLVED DO NOT/NOT EXPECT MEDIA HERE
TO DWELL ON INTERNATL BOUNDARY/FISHERIES ASPECTS SINCE THERE IS
NOT/NOT SAME IMPACT THESE NEGOTIATIONS HERE AS ON EAST COAST.

UUU/810 261725Z UAGR1487

W.P.
U.S.

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO The Under-Secretary of State
A for External Affairs (GNT)

SECURITY Unclassified
Sécurité

FROM Consulate General, Seattle
De

DATE September 19, 1978

REFERENCE Our telegram UAGR 1441 of September 19, 1978
Référence

NUMBER 338
Numéro

COPY / COPIE

SUBJECT Salmon/Steelhead Fisheries - Washington
Sujet

| | |
|------------------|---------|
| FILE | DOSSIER |
| OTTAWA | DOSSIER |
| 25-5-72-Salmon-1 | |
| MISSION | |
| 35-11 | |

ENCLOSURES
Annexes

2

DISTRIBUTION

Attached is a copy of the article appearing in the Seattle Times of September 18, 1978, signed by Mr. D. L. McKernan and other scientists concerning the Washington State salmon and steelhead fisheries. A copy of a related editorial is also attached.

BY POST
(w/attach)

FLM/Shepard

FLO ✓

WSHDC

ENVOTT/
Hunter

R.D. Martens
for Consulate General

Statement of concern on salmon, steelhead

THE SEATTLE TIMES

September 18/78

WE HAVE watched with concern the events that have followed the Boldt decision as it has affected the conservation and management of the salmon and steelhead stocks in this state.

Although many problems that confront maintenance of viable runs of steelhead and salmon are unrelated to the jurisdictional and allocations issue addressed by the court, we have become increasingly concerned that conservation of the resources is deteriorating and that many of the salmon runs in the coastal areas, particularly Puget Sound, are in danger of being depleted.

It appears that control of fishing by state and federal courts, state and federal fishery agencies, international organizations, and Indian tribes has been inadequate and that the preservation of the resource is threatened if the trend continues.

FOLLOWING the various conflicting court decisions and the breakdown of the traditional authority of state fisheries officials, events have shown that Indians, state and federal governments, and the courts have been unable to manage the salmon and steelhead fisheries in a satisfactory manner. Some runs have seriously declined, and there is a real threat that virtually all the stocks will be jeopardized by the lack of adequate regulation and effective control of fishing.

The result will mean far fewer fish in the immediate future, with elimination of some runs, fewer jobs for commercial fishermen and shoreside workers, a serious loss in recreational opportunities, and a serious long-term loss to the Indians, who were supposed to benefit from the federal-court decision. We see that all citizens of the state are bound to lose with the present course of salmon and steelhead management.

ABOUT A year ago President Carter appointed a task force and a regional team to work with the various elements of the fisheries with the objective of developing a management plan for the salmon and steelhead in the state. It was hoped that the task-force plan might be the basis for agreement that would lead to improved conservation, enhancement and equitable allocation between Indian and non-Indian fishermen.

The accompanying article has been signed by Dr. Dayton L. Alverson, director, Northwest and Alaska Fisheries Center; Dr. Pete Bergman, director of salmon programs, State Department of Fisheries; Dr. Donald E. Bevan, associate dean, University of Washington College of Fisheries; Dr. Douglas G. Chapman, dean, U.W. College of Fisheries; Dr. Lauren R. Donaldson, professor emeritus, U.W. College of Fisheries; Frank Haw, deputy director, State Department of Fisheries; Donald R. Johnson, regional director, National Marine Fisheries Service, and Donald L. McKernan, fisheries professor and director of the U.W. Institute for Marine Studies.

Events in recent weeks have convinced us that the parties involved — recreational fishermen, commercial fishermen, and the Indians — are not prepared to accept the plan as prepared by the regional team of the task force.

Press reports indicate continuing disagreement on essential elements of the plan, and at this time we obviously are not close to a solution. The rejection by both Indians and non-Indians of the federal-task-force proposals indicates that greater efforts must be made to find a course of action reasonably acceptable to the various user groups, if we are to avoid further disruptions of the fisheries and serious diminution of the salmon and steelhead stocks.

IN RECENT YEARS the science and technology of supplementing natural production of salmon and steelhead have developed to a point where it is possible to increase the runs greatly by both natural and semi-artificial means.

Great efforts by the state and federal governments and Indian tribes have been exerted toward that end. With public support in the application of this science and technology, the potential for great economic, recreational and social benefit to our state is very good.

However, the regulation of the 1977 salmon fisheries was disastrous. Inadequate control of fishing, both offshore and inshore, contributed to overfishing and a lack of spawning escapement on some of the important salmon runs.

The large and potentially very productive salmon-enhancement program that was started in this

state has been seriously disrupted by the lack of spawning escapement and, in the face of institutional management paralysis, there is a decline in public confidence in the future.

LAST YEAR'S difficulties should have been a clear signal of the problems ahead. Yet we see no evidence that the 1978 salmon management in this state is improved. Diffuse authority, lack of a clear acceptance by the public, and lack of a unified management program indicate to us that once again in 1978 the conservation of the salmon resource is in jeopardy.

Although the downward trend in some of the salmon and steelhead runs was apparent before the recent court decision, the current management impasse can only aggravate historic problems and inhibit restoration. A failure to provide for adequate spawning escapements inevitably will lead to grave consequences for the future of salmon and steelhead in this state, and must not continue for another year.

The people of Washington must be informed that continued diffuse and inadequate control will lead to serious declines in the runs; disruption of the enhancement program already started, and perhaps irreversible declines in certain salmon and steelhead runs.

ACTION IS needed to protect the public interest. What is needed is unified, authoritative management capable of carrying out conservation measures required to ensure the preservation and enhancement of the salmon and steelhead runs.

Proposals for such action are

not new. On April 27, 1976, the Northwest Washington District of the American Institute of Fisheries Research Biologists unanimously approved a resolution calling for the management and regulatory control of salmon and steelhead by a single entity, with equitable representation from Indian and non-Indian groups.

Proposed solutions have been developed by both Indian and non-Indian groups, but none has received wide acceptance. The actions by the courts, the state, the Indian tribes, and the federal government have not provided an acceptable plan for conservation of the resources; yet a plan must be agreed upon and in place for the 1979 fishing season if we are to avoid a third successive salmon and steelhead-management failure.

WE SUGGEST that Congress take the settlement plan for Washington salmon and steelhead fisheries prepared by the regional task force; the settlement plan proposed by the commercial-recreational delegation; the state proposal, and any proposals submitted by the tribes as a basis for congressional consideration of the subject.

With these plans and further suggestions that might emerge, Congress, with whatever assistance from us and other interested parties is necessary, can develop legislation that must be in effect for the 1979 season.

We are committed to support any effort to find even a temporary solution. No one gains from the present hiatus; the public interest is not served, and neither is the interest of the non-Indian or Indian fishermen.

It is essential that the present piecemeal, diffuse, unworkable system of controlling salmon and steelhead fisheries be replaced by a plan that, as a minimum, permits a logical, relatively unified scheme providing for salmon conservation, enhancement and management, and one that is viewed as equitable by at least some of the user groups in the state.

Such a plan is essential and the need is urgent. If it is not initiated soon, the salmon and steelhead runs of the State of Washington may well cease to exist as an important economic and recreational asset to the state.

September 18/78

The Times' opinion and comment

A call to save this state's salmon

THE full text of a statement by some of this region's most respected fisheries scientists and professionals, appearing elsewhere on this page today, should be required reading for everyone who cares about the future of Washington State's salmon fishery.

The statement should be given special notice by members of Congress, particularly Senators Magnuson and Jackson and Representatives Pritchard, Meeds, Bonker and Dicks, because it has become increasingly evident that the fate of the fisheries resource will hang on action by federal lawmakers.

Hopes for a negotiated settlement of the problems stemming from United States District Court Judge George Boldt's Indian-treaty decision eight years ago have been all but lost because neither Indian nor non-Indian fishing groups will support a proposed compromise plan developed by a federal task force.

Even if the United States Supreme Court should undertake a review of the Boldt decision, the time required to litigate the issue would be long enough that continued depletion of salmon and steelhead stocks could reach irreparable proportions.

By itself, the Boldt decision cannot be blamed for all of this region's fisheries problems. But the emotionalism and politicking associated with the Indian-

fishing issue have distracted attention from the total perspective required.

The general public, meantime, seems to have narrowed its view of the controversy, regarding it largely as a fight between Indian and non-Indian fishermen. The consequences, of course, are of much broader significance.

As the statement by the scientists notes, "all citizens of the state are bound to lose with the present course of salmon and steelhead management."

What is urgently needed is early legislative action — if only on a stopgap basis — to establish a unified, authoritative management of the fishery. The present confusion stemming from the involvement of a multiplicity of federal and state agencies and the courts makes coherent management, conservation and enhancement of fish runs all but impossible.

Speaking for the scientists, a group with sufficient clout that it cannot be ignored, Prof. Donald L. McKernan, director of the University of Washington Institute for Marine Studies, says the call for congressional action on a management commission is based solely on concern for the preservation of a precious resource.

"We are not pro-Indian and we are not anti-Indian," McKernan says. "We are pro-fishing, period."

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W.F.
U.S.

2

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

TO
A The Under-Secretary of State
for External Affairs (GNT)

FROM
De Consulate General, Seattle

REFERENCE Our telegram #1326 of September 5, 1978
Référence

SUBJECT Northwest Fisheries
Sujet

EF OK

SECURITY
Sécurité Unclassified

DATE September 6, 1978

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|------------------|-------------------------|
| NUMBER Numéro | 308 |
| FILE DOSSIER | OTTAWA 25-5-72-Salmon-1 |
| MISSION | 35-11 |

ENCLOSURES
Annexes

1

DISTRIBUTION

BY POST
(w/o attach)

WSHDC

BY OTT
(w/o attach)

FLO

FLM

Recently we met with Mr. Paul Anderson, Executive Director of the Purse Seine Owner's Association of Washington. Mr. Anderson may be characterized as a leading figure among non-treaty fishermen in the controversy arising from the 1974 United States Federal Court decision which gave over 50% of the salmon catch to treaty Indian fishermen in Washington. Mr. Anderson was very forthcoming and struck us as being rather more optimistic concerning the resolution of the Indian Rights question than when we had last spoken. Despite the fact that treaty Indian fishermen have recently rejected proposed recommendation for settlement by the Presidential Task Force on Northwest Fisheries, Anderson seemed confident that a legislative solution was at hand in the near future.

2. The basis of Mr. Anderson's confidence rests on the attached proposals for a settlement of the fisheries problem which has been put forward by a coalition of non-Indian groups which spans both commercial and sports fishing interests in the state of Washington. The attached proposal would recognize Indian rights to the extent of guaranteeing Indian fishermen a bigger share of enhanced salmon runs; the coalition proposal would further reduce the treaty share of the catch to 29% from the 40% recommended by the Task Force. At first blush, it would seem that the chances of acceptance of the coalition plan are even less than the chances of acceptance for the Task

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-2-

Force plan which has recently been rejected by the treaty Indians. Mr. Anderson pointed out, however, that the coalition proposal would still involve substantial reduction of the non-Indian commercial fleet and the building up of the treaty fleet to enable them to catch the 29% of the salmon to which they would be entitled. Mr. Anderson claimed that he and other members of the coalition had presented the plan to all members of the state Congressional Delegation and that the delegation as a whole had approved of the plan and in Mr. Anderson's opinion, preferred it to that of the Presidential Task Force.

3. A key element in the delegation's proported approval of the coalition plan was the large constituency represented by the sport fishermen's group which, according to Mr. Anderson, represents some 200,000 voters. Therefore, Mr. Anderson felt that a legislative solution to the problem would be based on the attached plan. Of prime importance in attracting sports fisheries support to the attached, is the de-commercialization of steelhead, a sea going trout, which presently may be commercially caught by treaty Indians. The de-commercialization of steelhead is also a primary recommendation of the Task Force proposal.

4. It is difficult at this point to assess the validity of Mr. Anderson's claims concerning the status of the coalition proposal and its acceptance by the Congressional Delegation. However, it should be noted that recent treaty Indian refusal to accept the Task Force recommendations for a settlement has made few friends for the Indian position either in the Congressional Delegation or among the general public. An exceptionally legalistic and hard line stance by treaty fishermen at this time could well work against treaty hopes for overdue recognition of their aboriginal rights.


Consulate General

File

AGREEMENT BETWEEN CANADA AND
THE UNITED STATES OF AMERICA
ON COOPERATION WITH RESPECT
TO WEST COAST SALMON

August 31, 1978

The Government of the United States of America and the
Government of Canada have agreed as follows:

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|-------------------|--|
| 25-5-7-2-SALMON-1 | |
| 28 | |

ARTICLE I

1. The Parties undertake to cooperate in the management of the salmon resources originating in their rivers which flow into the Pacific and its adjacent seas, taking into account the provisions of this treaty and the objective of achieving the optimum sustainable yield from these resources.

2. The Parties agree that the following principles shall govern their cooperation under this Agreement with respect to salmon originating in their rivers which flow into the Pacific and its adjacent seas:

(a) States in whose rivers anadromous stocks originate have the primary interest in and responsibility for such stocks.

(b) The Parties are committed to achieving the optimum production from the salmon stocks originating in their rivers through the conservation and rational management of these stocks.

(c) Each Party should be enabled to realize the full potential of its salmon resources and to receive benefits commensurate with the salmon production of its own rivers.

3. The Parties recognize that because of the intermingling of salmon stocks at sea and the migration of stocks originating in the rivers of each Party into waters under the fisheries jurisdiction of the other Party, the implementation of the principles set out in paragraph 2 will require

- (a) jointly agreed controls on intercepting fisheries, that is to say, fisheries in which the fishermen of one Party catch salmon originating in the rivers of the other Party;
- (b) coordination in the management of intercepting fisheries;
- (c) cooperation and coordination in the development of salmon stocks which contribute to intercepting fisheries in areas where stocks originating in the waters of both Parties are intermingled; and
- (d) cooperation in research and exchange of scientific information in order to broaden the scientific basis for salmon management, in particular with respect to the migratory patterns and productivity of stocks of common concern and with respect to the extent of interceptions by the fishermen of each country.

ARTICLE II

1. The Parties agree to establish and maintain a Pacific Salmon Commission (hereinafter referred to as "the Commission") whose functions shall be:

- (a) to provide a forum for consultation between the Parties with respect to annual management objectives for west coast salmon stocks and regulations for west coast salmon fisheries of common concern;
- (b) to provide a forum for consultation between the Parties with respect to cooperation and coordination in the development of salmon stocks which contribute to intercepting fisheries;
- (c) to recommend to the Parties, pursuant to Article VIII, controls on intercepting fisheries;
- (d) to review the Annexes to the Agreement and to make recommendations respecting their amendment where appropriate;
- (e) to monitor the implementation of controls on intercepting fisheries;
- (f) to assist the Parties in their scientific cooperation with respect to salmon management; and
- (g) to carry out such other functions as are assigned to it by this Agreement.

2. The Commission and its constituent bodies shall work closely with the domestic authorities of the two Parties in carrying out the objectives of this Agreement and shall, to the extent possible, coordinate their activities with those authorities.

ARTICLE III

1. The Commission shall consist of up to ten Commissioners, of whom up to five shall be appointed by each Party to serve as the national section of that Party. Each Party may, in its discretion, appoint up to four alternate Commissioners to serve in the absence of any Commissioner appointed by that Party.

2. Each Commissioner and alternate Commissioner shall serve at the pleasure of the Party which appointed that person. Each Party shall fill vacancies in its national section, and may fill vacancies in its slate of alternate Commissioners, as they occur.

3. The Commission shall select a Chairman and a Vice-Chairman annually from among the Commissioners to serve for terms of twelve months, except that the first Chairman and Vice-Chairman shall serve for the calendar year in which the Convention enters into force and for a portion of the subsequent calendar year to be determined by the Commission. The Chairmanship and Vice-Chairmanship shall alternate between the two national sections, with the national section from which the first Chairman is selected to be determined by lot; and the Vice-Chairman shall be a Commissioner of the other national section.

4. Decisions and recommendations of the Commission shall be adopted by affirmative votes of both national sections. Each national section shall have one vote in the Commission, which shall be cast by the Commissioner of that national section designated for

.../5

the purpose of voting by the appointing Party. The Chairman and Vice-Chairman of the Commission shall not be designated for the purpose of voting.

5. The Commission may decide upon and amend, as occasion may require, by-laws or rules for the conduct of its meetings and the exercise of its functions.

6. Unless otherwise agreed between the Parties, the seat of the Commission shall be at . . .

7. Meetings of the Commission shall be scheduled by the Chairman who shall notify all the Commissioners. Such meetings may be held at the seat of the Commission or at such other place as the Chairman may decide.

8. Each Party shall pay the expenses of its own national section. All other expenses of the Commission shall be borne in equal shares by the Parties, unless otherwise agreed between them. An annual budget of joint expenses shall be prepared by the Commission before December 31 of each year and submitted to the Parties for approval. After the budget has been approved, the contributions owing by each Party shall be paid as promptly as possible.

9. The Commission shall authorize the disbursement of funds contributed by the Parties pursuant to paragraph 8 for its joint expenses, and may acquire property necessary for the performance of its functions.

10. The Commission shall, with the concurrence of the Parties, appoint an Executive Secretary, who shall be charged with the general administration of the Commission under the supervision of the Commission [and who shall carry out such other duties as the Commission may decide].

11. The Commission may engage such staff, whose composition and terms and conditions of employment shall be included in the annual budget submitted to the Parties pursuant to paragraph 7 of Article III. The Executive Secretary shall have full authority over the staff, subject to any general directives established by the Commission.

ARTICLE IV

1. The Commission shall establish the following Panels:

- (a) a Northern Panel for salmon originating in rivers whose mouths are situated north of [Cape Caution];
- (b) a Southern Panel for salmon originating in rivers whose mouths are situated south of [Cape Caution] other than those stocks for which the Fraser River Panel is responsible; and
- (c) a Fraser River Panel to carry out the duties and responsibilities set out in Article XI.

2. The function of the Northern Panel and the Southern Panel shall be to keep under review the stocks for which they are responsible and fisheries affecting those stocks, and to make recommendations to the Commission with respect to the management of such fisheries and stocks.

.../7

3. Each Panel shall consist of Commissioners and alternate Commissioners designated by each Party to serve as the national section of that Party in that Panel.

4. Paragraph 4 of Article III applies, *mutatis mutandis*, to the proceedings of each Panel.

5. The Commission shall adopt, and amend as occasion may require, by-laws or rules for the conduct of Panel meetings and the exercise of the functions of each Panel.

6. The Commission may establish, in addition to the Panels, such committees as it considers desirable to assist it in carrying out its functions.

ARTICLE V

1. This Article and Article VI apply to all salmon stocks and fisheries subject to this Agreement, other than those for which the Fraser River Panel is responsible.

2. Each year the state of origin shall, with respect to each stock which contributes to a fishery listed in Annex 1 which originates in its rivers, submit to the Commission preliminary determinations of the following matters to serve as the basis for the regulation during the subsequent year of fisheries affecting that stock:

(a) the estimated size of the run;

- (b) the escapement required to produce the optimum yield, taking into account the inter-relationships between stocks;
- (c) the total allowable catch; and
- (d) any other matter whose determination may be necessary in order to develop regulations for that fishery.

3. The preliminary determinations referred to in paragraph 2 shall be reviewed by the appropriate Panel of the Commission, which shall promptly report its findings to the Commission. If these findings are approved by the Commission, they shall be considered by the state of origin before its determinations with respect to the matters referred to in paragraph 2 are made final.

4. The state of origin shall notify the Commission of its final determinations with respect to the matters referred to in paragraph 2 not later than thirty days after the Commission has completed its consideration of these matters pursuant to paragraph 3.

5. In this Article, "state of origin" means, in relation to any stock of salmon, the Party in whose rivers that stock originates.

ARTICLE VI

1. After the necessary determinations referred to in Article V have been made final, each Party shall submit annually to the Commission proposed regulations for the subsequent year with respect to fisheries listed in Annex 2 which are conducted in its waters. These regulations shall take into account

- (a) the determinations referred to in Article V;
- (b) the provisions of Article VII with respect to trolling operations;
- (c) the provisions of Article IX with respect to limitations on intercepting fisheries; and
- (d) the effect of such regulations on other stocks affected by the fishery, whether or not such stocks are listed in Annex 1.

2. The proposed regulations referred to in paragraph 1 shall be reviewed by the appropriate Panel of the Commission, which shall promptly report its findings to the Commission. The Commission may thereupon, in a timely manner, recommend modifications to these regulations in order to accomplish the objectives of this Agreement.

3. After affording the Commission a reasonable period for review of the proposed regulations referred to in paragraph 1, each Party shall promulgate for the subsequent year regulations respecting the fisheries listed in Annex 1 which are conducted in its waters, taking into account any timely recommendation of the Commission, and shall enforce these regulations against persons fishing in its waters. These regulations may be modified during the fishing season where modifications are necessary in the light of variations from anticipated conditions.

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ARTICLE VII

The Parties agree to implement the regulations set out in Annex 2 with respect to ocean trolling for salmon, in all waters under their fisheries jurisdiction off the west coast of North America.

ARTICLE VIII

1. Subject to Articles IX and X, the Parties agree to prevent any increase in interceptions or the initiation of new intercepting fisheries within waters under their fisheries jurisdiction.

2. The Commission shall, prior to January 1, 1980, submit to the Parties a detailed proposal for the limitation of interceptions in west coast salmon fisheries, based on the principles set out in Article I and the provisions of paragraph 1 of this Article. This proposal shall include a timetable for the progressive imposition of interception controls on specified fisheries and may include recommendations for variations in the basic limitation program for specified fisheries. The proposals for a program of interception limitation, and the timetables and recommendations for its progressive implementation, shall be designed with the objective of ensuring

- (a) that by 1990, each Party shall receive benefits commensurate with its own production of salmon, and
- (b) that this goal is achieved without sudden disruption in existing fishing patterns.

3. The proposals referred to in paragraph 2 shall be considered by the Parties, and within [sixty] days of their transmittal by the Commission they shall inform the Commission of their acceptance or rejection of these proposals. If the proposals are accepted by the Parties, they shall become binding on the Parties, subject to any modifications agreed between them, and shall be implemented with effect from the date on which the Commission receives the last of the two notices of acceptance. If the proposals are rejected by either Party, the Commission shall reconsider the matter and attempt to submit new proposals to the Parties not later than July 1, 1980; and in any event, the Parties agree that the implementation of a detailed program of interception limitations shall begin not later than March 31, 1981.

4. The Commission shall conduct an annual review of the interception limitation program beginning in the first year after its introduction, and may make recommendations with respect to its modification or with respect to the timing of its implementation and the extent of its coverage. Such recommendations shall be transmitted to the Parties for consideration. If such recommendations are accepted by the Parties, they shall become binding on the Parties, subject to any modifications agreed between them, and shall be implemented by them with effect from the date on which the Commission receives the last of the two notices of acceptance.

5. The Commission shall review the implementation of the interception limitation program each year, and shall report to the Parties on any case where a limitation binding on the Parties has been exceeded.

or on any other factor which should be taken into account in formulating management policies or regulations for the purposes of this Agreement. The Parties shall furnish to the Commission such information as it may require for the purposes of this Article.

ARTICLE IX

1. The Parties agree to coordinate their respective programs for the development of west coast salmon resources to the extent necessary to permit each Party to achieve the optimum salmon production from its west coast rivers, and to ensure that each Party receives benefits commensurate with its own salmon production.

2. In the case of projects which could contribute additional salmon to an intercepting fishery in an area where stocks originating in the rivers of both Parties are intermingled, the Parties shall observe the following guidelines in coordinating their programs:

- (a) To the extent practicable, the harvesting of increased production from new projects shall be regulated in terms of seasons, areas and fishing methods so that the additional fishing effort deployed does not result in increased interceptions.
- (b) If increased interceptions by one Party cannot practicably be avoided in the harvesting of such added production, the other Party shall be compensated by a corresponding allowance for increased interceptions, where possible in the same general area;
- (c) Allowances referred to in sub-paragraph (b) shall be considered in the following order of priority:

- (i) allowances necessary to permit a Party to harvest added production from its own development projects;
- (ii) special fishing entitlements in the waters of the other Party; and
- (iii) notwithstanding the provisions of Article VIII, increased interceptions in existing intercepting fisheries, or new intercepting fisheries, not related to the harvesting of added production from new projects.

[(d) Neither Party shall undertake development projects where the harvesting of the added production would necessarily result in serious injury to [a significant fishery conducted] [to the salmon resources originating] in the waters of the other Party.]

3. All development projects which contribute to intercepting fisheries in areas where stocks originating in the waters of both Parties are intermingled, or which could lead to the initiation of such fishery, shall be brought to the attention of the Commission as far in advance of their implementation as possible.

4. The Commission shall conduct an annual review of all development projects proposed to be commenced within the next five years, any may make recommendations to the Parties with respect to

- (a) regulations for the harvesting of the added production designed to avoid increased interceptions;

- (b) any entitlements that may be appropriate to compensate a Party for increased interceptions resulting from such projects; and
- (c) the compatibility of such projects with the provisions of this Agreement.

Where the Parties agree on regulations as referred to in paragraph (a) or on an increased entitlement as referred to in paragraph (b), those regulations or that entitlement shall be listed in Annex 3.

5. If either Party considers that a project proposed to be commenced within the subsequent calendar year by the other Party would result in increased interceptions, and no regulations to avoid increased interceptions or compensatory entitlements have been agreed on, that Party may submit the matter to the Arbitrator appointed pursuant to Article . The Arbitrator may, in these circumstances, render a decision establishing such regulations or entitlements which shall be final and binding on the Parties and shall be listed in Annex 3.

ARTICLE X

1. This Article applies to salmon originating in rivers which rise in Canada and flow to the sea through the United States, hereinafter referred to as "transboundary rivers".

2. The provisions of Articles V and VI shall apply with respect to the formulation of annual management policies and regulations for stocks originating in transboundary rivers; except that the annual

regulations respecting these stocks shall be adopted with the concurrence of both Parties, and if agreement on such annual regulations has not been reached by the beginning of the calendar year, the matter shall be referred to the Arbitrator appointed pursuant to Article XIV for determination.

3. If Canada initiates or expands a fishery in its own portion of a transboundary river in order to harvest either existing salmon production from that portion of the river or salmon production generated by future development projects undertaken by Canada, the United States shall adjust its fisheries to the extent necessary to allow Canada to harvest such production without affecting escapement levels set pursuant to this Agreement.

4. If the United States develops or enhances a stock originating in its portion of a transboundary river, and the harvesting of the increased production results in increased interceptions of salmon originating in the Canadian portion of the river, the Parties shall consult through the Commission in order to reach an agreement based on the following provisions:

- (a) Canada shall be offered compensatory entitlements equivalent to the increased interceptions; and
- (b) If Canada decides to increase the production of the intercepted stock, it shall be granted access to United States waters to harvest an amount equivalent to that increased production.

The consultations shall take place in accordance with the procedures set out in Article IX with respect to coordination in salmon development, and if agreement is not reached within one year of the commencement of a project, the matter shall be referred to the

arbitrator who shall determine the amount of the compensatory entitlement to be awarded to Canada and the terms and conditions of any access to be granted to Canada in order to harvest that entitlement.

5. Any entitlements and access conditions established pursuant to paragraph 4 shall be listed in Annex 3.

ARTICLE XI

1. This Article applies to pink salmon and sockeye salmon originating within the Fraser River and its tributaries, within the following area:

" 1. Beginning at Bonilla Point, Vancouver Island thence along a direct line to Tatoosh Lighthouse, Washington, thence to the nearest point of Cape Flattery, thence following the southerly shore of Juan de Fuca Strait to Point Wilson, on Quimper Peninsula, thence in a straight line to Point Partridge on Whidbey Island, thence following the western shore of the said Whidbey Island, to the entrance of Deception Pass, thence across said entrance to the southern side of Reservation Bay, on Fidalgo Island, thence following the western and northern shore line of the said Fidalgo Island to Swinomish Slough, crossing the said Swinomish Slough, in line with the track of the Great Northern Railway, thence northerly following the shore line of the mainland to Atkinson Point at the northerly entrance to Burrard Inlet,

British Columbia, thence in a straight line to the southern shore of Bowen Island to Cape Roger Curtis, thence in a straight line to Gower Point, thence westerly following the shore line to Welcome Point on Seechelt Peninsula, thence in a straight line to Point Young on Lasqueti Island, thence in a straight line to Dorcas Point on Vancouver Island, thence following the eastern and southern shores of the said Vancouver Island to the starting point at Bonilla Point. Except that such regulations and order shall not apply in the following waters: That portion of Puget Sound southerly of a line from the Angeles Point Monument to the Partridge Point Light. That portion of Puget Sound (Skagit Bay) lying easterly of a line from West Point on Whidbey Island to Reservation Head on Fidalgo Island. That portion of Puget Sound (Bellingham-Samigh-Padilla Bays) lying easterly of a line described as follows: northerly along 122°40' west longitude from Fidalgo Island to where said line intersects the southerly shore of Sinclair Island at high tide; thence along the southerly snore of said Island to the most easterly point thereof; thence north 46° east true to the line of high tide at Carter Point; then northwesterly along the westerly shore at

.../18

high tide of said Lummi Island to where said shoreline at high tide intersects line of longitude 122°40' west; thence north on said line to where said line intersects the mainland at the line of high tide.

2. The Fraser River below the Mission Bridge.

2. Beginning in 1981, Canada shall submit annually to the Fraser River Panel the preliminary determinations referred to in paragraph 2 of Article V for the management during the subsequent year of the stocks governed by this Article, taking into account

- (a) the objective of optimum production, having regard to the interests of both Parties;
- (b) the need to set escapement goals in such a way as to permit the United States to achieve the entitlements set out in this Article;
- (c) the need to avoid disruptive changes in patterns of exploitation; and
- (d) the best scientific evidence available.

3. The preliminary determinations referred to in paragraph 2 shall be reviewed by the Fraser River Panel, which shall promptly report its findings to the Commission. The Commission may thereupon make recommendations in a timely manner which Canada shall consider before these determinations are made final.

4. Canada shall notify the Commission of its final determinations with respect to the matters referred to in paragraph 2 not later than thirty days after the Commission has completed its consideration of these matters pursuant to paragraph 3. If the United States considers that any of these determinations by Canada fail to take adequately into account the factors set out in subparagraphs (a) to (d) of paragraph 2, it may refer the matter to the Arbitrator appointed pursuant to Article XIV for a decision. If the Arbitrator concludes that any of these determinations fail to take these factors adequately into account, he shall substitute his own findings for that determination, and these findings shall in that event be final and binding upon the Parties. The Arbitrator shall render his decision not later than thirty days after the matter is referred to him by the United States.

5. After the determinations referred to in paragraph 2 have been made final and conclusive, each Party shall submit to the Fraser River Panel proposed regulations for the subsequent year with respect to fisheries governed by this Article which are conducted in waters under its fisheries jurisdiction, taking into account

- (a) the determinations referred to in paragraph 2;
- (b) the provisions of Article VII with respect to trolling operations;
- [(c) the provisions of Article IX with respect to limitation on intercepting fisheries;]

- 20
- (d) the provisions of paragraph 7 of this Article with respect to United States entitlements in the stocks governed by this Article; and
 - (e) the effect of such regulations on other stocks affected by the fishery, whether or not such stocks are listed in Annex 1.

6. The Fraser Rivers Panel shall have authority to make emergency orders during the fishing season for the adjustment of fishing times and areas provided for in annual regulations made pursuant to paragraph 5, where conservation requires such modifications as a result of variations from anticipated conditions. [Such orders shall be effective immediately, but shall cease to have force and effect upon objection thereto by either Party.]

7. The entitlement of the United States with respect to the stocks governed by this Article shall be one half of the average annual catch during the years from 1971 to 1974 inclusive from those stocks within the area described in Article I of the Convention between Canada and the United States of America for the protection, preservation and extension of the sockeye salmon fisheries in the Fraser River system, signed at Washington on the 26th day of May, 1930, adjusted as follows:

- (a) where the total allowable catch for the stocks governed by this Article is lower than the average annual catch referred to in this paragraph, the United States shall be entitled to one half of that catch;
- (b) if Canada desires to stock a new enhancement project, the required escapement shall be taken from the Canadian share of the catch, so that the Canadian share of the catch and the required escapement for that

project is equal to the United States shares of the catch; and

(c) in recognition of prior United States expenditures on

, there shall be added to the United States entitlement one half of the catch of sockeye and pink salmon originating from each of those projects during a period ending twelve years after the date on which that project was fully stocked, and after that twelve year period there shall be added to the United States share one half of the average catch during that period for a further period of eight years in the case of sockeye salmon projects and fourteen years in the case of pink salmon projects.

8. In 1979, the Fraser River Panel shall, in cooperation with Canada, conduct the scientific research and field work (including test fishing, sampling, and racial analyses) necessary for the establishment of management policies, in accordance with the practices established by the International Pacific Salmon Fisheries Commission prior to the entry into force of this Agreement.

9. In 1979 and 1980, the Fraser River Panel shall make the determinations referred to in paragraph 2 of Article V for the management of the stocks governed by this Article, taking into account the factors referred to in paragraph 2 of this Article.

10. The Fraser River Panel shall cooperate closely with the Southern Panel in the exercise of its functions.

ARTICLE XII

1. The nationals and vessels of each Party shall have access to waters under the fisheries jurisdiction of the other Party off the west coast of North America to fish for salmon in accordance with the provisions of this Article.

2. The nationals and vessels of each Party shall be entitled to conduct salmon trolling operations within waters under the jurisdiction of the other Party

(a) beyond 12 nautical miles of the coast, and

(b) between 3 to 12 nautical miles off the coast in the area west of a line joining Bonilla Point and Tatoosh Island; north of a line projected due west on 47°6' north latitude; and south of the line projected from Bonilla Point to latitude 48°29.7' north longitude 125°00.7' west.

3. Fishing pursuant to paragraph 2 shall be conducted in accordance with the provisions of Annex 3.

4. In addition to the access provided for in paragraph 2, the nationals and vessels of each Party shall have access to the waters of the other Party as provided for from time to time in Annex 4 for the purpose of harvesting compensatory entitlements established where development projects result in increased interceptions.

5. Either Party may require that nationals and vessels of the other Party obtain a permit or licence for the purpose of exercising the reciprocal fishing privileges provided for in this Agreement, but except as otherwise agreed between the Parties no fees shall be made payable for such licences or permits.

ARTICLE XIII

1. The Parties agree to cooperate in scientific research and the exchange of scientific information in order to broaden the scientific basis for salmon management, in particular with respect to the migratory patterns and productivity of stocks of common concern and with respect to the extent of interceptions by the fishermen of each country. The Parties shall make available to the Commission all relevant scientific data and other information in their possession.

2. The Commission shall coordinate the collection of statistics pertaining to west coast salmon management and may make proposals to the Parties for cooperative research programs.

3. Subject to normal permit requirement, the Parties agree to allow vessels conducting research with respect to west coast salmon to have access to their marine waters for the purpose of carrying out such research.

[4. Each Party shall, in consultation with the other Party, and as appropriate in cooperation with the other Party, finance research related to the operations of the Commission.]

ARTICLE XIV

1. An impartial arbitrator (referred to in this Agreement as the "Arbitrator") shall be appointed jointly by the Parties when instruments of ratification of this Agreement are exchanged, and thereafter, from to time to time and as set forth in this Agreement.

2. The Arbitrator shall have jurisdiction to determine
- (a) any dispute respecting a development or enhancement project to be commenced within the next calendar year, as more fully set forth in Article IX ;
 - (b) any dispute respecting management goals for Fraser River pink salmon and sockeye salmon stocks, as more fully set forth in Article XI; and
 - (c) any other dispute respecting the interpretation or application of this Agreement.

3. The Arbitrator's decision on matters referred to arbitration shall be final and binding upon the Parties; except that either Party may request a review of a decision if it discovers the existence of a new factor of decisive importance which was unknown to that Party when the decision was rendered due to circumstances not attributable to its negligence.

4. Every decision by the Arbitrator shall be accompanied by a reasoned opinion setting forth the basis on which the decision was reached.

5. (1) The Arbitrator may award appropriate relief in his decision, which shall be final and binding unless the Parties agree to implement other relief. In the case of a dispute respecting annual regulations, such relief shall be in the form of a direction as to the measures to be implemented by the Parties during the year in question.

(2) In cases where time permits, the Arbitrator may make a preliminary recommendation with respect to the relief to be awarded and allow the Parties a period of time in which to consult before relief is awarded in a final and binding fashion.

6. Subject to paragraph 7, the Arbitrator shall be appointed for a term of five years, unless a shorter term is agreed upon by the Parties and the Arbitrator. An arbitrator may be appointed to successive terms of office.

7. Either Party may at any time transmit to the other Party a written notice stating that it withdraws its consent to the services of the Arbitrator, in which case the two Parties shall jointly appoint a successor within a period of ninety days from the transmittal of the written notice. If a successor is not appointed by the Parties by the end of that period, the President of the International Court of Justice shall appoint an Arbitrator within a period of ninety days from the expiry of the initial ninety day period. In the circumstances described in this paragraph, the original Arbitrator shall retain jurisdiction, both before and after the appointment of his successor, to hear and decide any matter referred to him before the appointment of his successor.

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8. The Parties shall jointly appoint a new Arbitrator

(a) prior to the expiry of the term of office of the previous incumbent, or

(b) where the office becomes vacant more than ninety days before the expiry of a term of office, not later than ninety days after the vacancy first occurs.

If the Parties have not appointed a new Arbitrator by the time referred to in paragraph (a) or (b), as the case may be, the President of the International Court of Justice shall appoint an Arbitrator within a period of ninety days from that time.

9. In each case where the President of the International Court of Justice appoints an Arbitrator, he shall select a person who would be eligible for appointment to a high judicial office in the state of which he is a national, and who is not a national or permanent resident of Canada or the United States of America.

10. The remuneration of the Arbitrator and his expense allowances shall be determined by the Parties at the time of his appointment, and may be modified from time to time with the agreement of the Parties and the Arbitrator. The Arbitrator shall be provided with office facilities and services at the seat of the Commission.

ARTICLE XIII

1. Except as may otherwise be specified in this Agreement or agreed between the Parties, when a matter is referred to arbitration, the Arbitrator shall render a decision within thirty days of the date on which the matter is referred to arbitration.

2. The Arbitrator shall provide an opportunity for each Party fully to present evidence and arguments both in writing and, if requested by either of the Parties, in oral hearing.

3. The Arbitrator may, with the agreement of both Parties, seek the advice of independent experts or of the professional staff of the Commission. The advice given to the Arbitrator by any such experts or staff shall be made part of the record of the proceedings and shall be made available to the Parties, who shall be afforded an opportunity to comment on any such advice.

4. In any arbitration proceeding, each Party shall have the right to call its own witnesses, to present documentary evidence, and to cross-examine the witnesses of the other Party. The Arbitrator shall not be bound by any technical rules respecting the admissibility of evidence, but may take such rules into account in considering the relevance or probative value of any evidence presented.

5. Each Party shall bear its own expenses associated with an arbitration. All other expenses of the arbitration shall be shared equally by the Parties. The Parties shall provide facilities for the arbitration of any matter in such manner as may be agreed between them or as may be required by the Arbitrator.

6. Where a dispute respecting annual regulations is referred to the Arbitrator less than thirty days before the beginning of the relevant fishing season, or in any other case where a decision is required as a matter of urgency, the Arbitrator may either

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- (a) render an interim decision to safeguard the interests of the Parties pending the final decision, or
- (b) establish procedures for an expedited hearing of the case subject only to the right of both Parties to have a full opportunity to be heard.

7. The decisions of the Arbitrator shall be made public.

8. After a decision is rendered, the Arbitrator shall retain jurisdiction for the purpose of clarifying the meaning or scope of the decision at the request of either Party, or, where relief has been granted, of determining any question of compliance submitted by the Party in whose favour the relief was granted.

9. Subject to this Agreement, the Arbitrator shall be free to determine all questions of procedures, including time limits for submitting written material and the time and place of any hearings, provided that each Party is given an adequate opportunity to present its evidence and arguments.

ARTICLE XIV

1. Each Party shall take all necessary measures, including the enactment and enforcement of legislation with respect to the waters and vessels under its fisheries jurisdiction, to make effective the provisions of this Agreement and, in particular, to ensure that its nationals and vessels do not exceed any entitlement or interception limitation established pursuant to this Agreement and to ensure compliance with all regulations adopted pursuant to this Agreement.

2. Each Party shall require of its nationals and vessels reports of catch and related data for all stocks and fisheries covered by this Agreement. Each Party may also require nationals and vessels of the other Party to make reports of such data while fishing within waters under its fisheries jurisdiction.

3. Each Party shall make available to the Commission the data obtained pursuant to paragraph 2.

4. The Parties agree to exchange fisheries statistics on a timely and regular basis in order to facilitate the enforcement and implementation of this Agreement.

ARTICLE XV

1. The Annexes to this Agreement, either in their present terms or as amended in accordance with the provisions of this Agreement, form an integral part of this Agreement and all references to this Agreement shall be understood as including the said Annexes.

2. The Commission shall review the Annexes each year and may make recommendations to the Parties for their amendment. If both Parties accept a recommendation to amend an Annex, that Annex shall be considered amended in accordance with the recommendation, with effect from the date on which the Commission receives the last of the two notices of acceptance. The Parties may also agree to amend an Annex without a recommendation from the Commission, in which case the amendment shall enter into force with effect from the date specified by the Parties.

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3. The Executive Secretary shall from time to time cause to be published a consolidated text of the Annexes showing all amendments currently in force.

ARTICLE XVI

1. This Agreement shall enter into force on the date of the exchange of instruments of ratification and shall remain in force for an initial period of five years, and thereafter for successive five year periods subject to the termination provisions of paragraph 2. The instruments of ratification shall be exchanged at as soon as possible.

2. Either Party may terminate this Agreement at the end of any five year period referred to in paragraph 1 by giving notice of termination to the other Party not later than one year before the end of that period.

3. The Parties shall review the provisions of this Agreement during the third year of each five year period referred to in paragraph 1.

4. Upon the entry into force of this Agreement, the convention between Canada and the United States of America for the protection, preservation and extension of the sockeye salmon fisheries in the Fraser River system, signed at Washington on the 26th day of May 1930, as amended, shall be terminated.

ANNEX 1

Intercepting Fisheries

Area

Gear

1.

2.

3.

ANNEX 2

Coordinated Troll Regulations

ANNEX 3

Entitlements

AC DIARY DIV DIARY FILE **MESSAGE**
 CIRC

| FM/DE | PLACE | DEPARTMENT | ORIG. NO. | DATE | FILE/DOSSIER | SECURITY SÉCURITÉ |
|---|--------|------------|------------|----------|-------------------|----------------------|
| | LIEU | MINISTÈRE | N° D'ORIG. | | 25-5-7-2-SALMON-1 | |
| | OTTAWA | FLO | 1962 | aug28/78 | 28 | UNCLAS |
| TO/A MOSCOW | | | | | | PRECEDENCE |
| INFO ENVOTT/FISHERIES/HUNTER TOKYO WASHDC | | | | | | |

AUG 28 21 40 '78

DISTR.

REF

SUB/SUJ

NORTH PACIFIC SALMON SCIENTIFIC SEMINAR

YOU MAY ALREADY BE AWARE THAT USSR HOSTING SEMINAR IN SOUTH SAKHALINSK, SAKHALIN ISLAND IN OCT. DATES NOT FINALLY SETTLED BUT OCT 1-18 PROPOSED. PARTICIPANTS WILL INCLUDE U.S. GOV'T SCIENTISTS AND ACADEMICS, JAPANESE ACADEMICS (XNO/NO GOV'T INVOLVEMENT, REFLECTING JAPANESE GOVT CONCERN OVER USSR INTENTIONS) AND UP TO 10 CDN GOVT SCIENTISTS.

2. SEMINAR BEING COORDINATED BY DR. P. MOISEEV OF ALL UNION INSTITUTE (VNIRO) IN MOSCOW. CDN COORDINATOR IS HUNTER OF ENVOTT/FISHERIES.

3. WILL PROVIDE ASAP NAMES OF CDN DELS, ITINERARY, AND FURTHER DETAILS OF MEETING DATES. WHILE SEMINAR SHOULD NOT REQUIRE ATTENTION OF EMB OFFICIALS, YOU SHOULD BE AWARE OF VISIT.

| DRAFTER/RÉDACTEUR | DIVISION/DIRECTION | TELEPHONE | APPROVED/APPROUVÉ |
|---|--------------------|-----------|--|
| SIG... <i>E. Feldman</i> ELAINE FELDMAN/bo'n | FLO | 6-5407 | SIG... <i>[Signature]</i> ERIK WANG, DIRECTOR |

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| ACC | REF DATE |
| FILE | 25-5-7-2 - SALMON |
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W.F. BOSNIER

PM-FISH
VCR OUT Y00
OTT NOTE

VANCOUVER (CP) - THREE FISHERMEN HAVE ASKED THE FEDERAL COURT FOR A DECLARATION THAT THE BAN ON TROLLING FOR SOCKEYE SALMON LAST WEEK WAS ILLEGAL.

THE PLAINTIFFS-JOHN GORDON SANDERSON, DAVID ROSS BOYES AND GREGORY GEORGE LINCOLN-FILED A WRIT TUESDAY ASKING FOR A DECLARATION THAT THE ORDER CLOSING THE WATERS OFF THE WEST COAST OF VANCOUVER ISLAND WAS OUTSIDE THE JURISDICTION OF FISHERIES OFFICERS.

THEY ALSO SEEK A DECLARATION THAT THE FISHERIES ACT AND ITS REGULATIONS DO NOT EMPOWER THE REGIONAL DIRECTOR OF FISHERIES "TO BAN THE USE OF ANY TYPE OF GEAR FOR FISHING FOR A PARTICULAR SPECIES IN A PARTICULAR AREA FOR THE PURPOSES OF EFFECTING THE ALLOCATION OF THE CATCH OF THAT SPECIES AMONGST GROUPS OF COMMERCIAL FISHERMEN."

THE COURT ACTION NAMES FEDERAL FISHERIES MINISTER ROMEO LEBLANC AS A DEFENDANT, IN ADDITION TO THE REGIONAL DIRECTOR AND THE "FISHING OFFICER."

TROLLERS HELD PROTEST MEETINGS AT WINTER HARBOR AND UCLUELET AFTER THE BAN WAS ANNOUNCED AND A FEW TROLLERS FISHED IN CONTRAVENTION OF THE BAN.

A FISHERIES OFFICER WHO ATTENDED THE WINTER HARBOR MEETING WAS QUOTED AS SAYING THE PURPOSE OF THE CLOSURE WAS CONSERVATION, BECAUSE THE ADAMS RIVER SOCKEYE RUN WAS SMALLER THAN EXPECTED.

23-08-78 15.42ED

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ACTION
SUITE A DONNER

cc 25-5-7-2-SALMON

UNCLASSIFIED ①
WASHINGTON DC
FM WSHDC UNGR3552 22AUG78

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| 25-5-7-2-Salmon-1 | |
| 28 | |

TO EXTOTT FLO

INFO ENVOTT/FISHERIES/HUNTER SEATL

DISTR GNT FLP

REF YOURTEL FLO1646 16AUG

---CDA/USA SALMON INTERCEPTION NEGOTIATIONS

APPRECIATE INVITATION FOR BOEHM TO PARTICIPATE IN FORTHCOMING
SALMON INTERCEPTION TALKS IN VNCVR AND SEATTLE. WHILE AGREEING
CONSIDERATIONS OUTLINED REFTEL MAKE HIS PRESENCE DESIRABLE,
OTHER PRIORITY EMB REQUIREMENTS MAKE IT DIFFICULT TO SPARE HIM
AT THIS TIME FOR SUCH EXTENDED PERIODS. IN CIRCUMSTANCES HIS
ATTENDANCE NOT/NOT POSSIBLE.

UUU/275 221903Z UNGR3552

File

cc 20-3-8-CDA-3

UNCLASSIFIED
SEATTLE ①

CC ~~20-3-8-CDA-3~~

FM SEATL UAGR1216 AUG21/78 ~~25-5-7-2-Salmon-1~~

25-5-9-CDA-4

TO EXTOTT (GNT)

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INFO WSPDC DFE/VERNON

DISTR FLO FLM

...INDIAN FISHING RIGHTS IN CDA

WOULD APPRECIATE INFO ON CURRENT STATUS OF INDIAN
TREATY FISHING RIGHTS ON CDN WEST COAST AND SPECIFICALLY
FRASER RIVER. SUBJECT HAS RECENTLY PEAKED INTEREST IN THIS
AREA WITH ITS ONGOING PROBLEMS ARISING FROM BOLDT DECISION.

UUU/810 212340Z UAGR1216

ACTC/FILE/DIARY/CIRC/DIV MESSAGE

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|-------|-------|------------|------------|----------|-----------------|----------|
| FM/DE | PLACE | DEPARTMENT | ORIG. NO. | DATE | FILE/DOSSIER | SECURITY |
| | LIEU | MINISTÈRE | N° D'ORIG. | | 25-5-7-2-SALMON | SÉCURITÉ |
| | OTT | EXTAFF | FLO1646 | AUG16/78 | 281 | UNCLASS |

CC 25-5-7-2-SALMON

TO/A WSHDC

Aug 16 21 37 '78

INFO ENVOTT/FISHERIES/HUNTER SEATTLE

DISTR. GNT FLP

REF

SUB/SUJ

CDA/USA SALMON INTERCEPTION NEGOTIATIONS

NEGOTIATIONS INTERRUPTED LAST YEAR IN COURSE OF BOUNDARY TALKS WILL RESUME IN VANCOUVER SEPT 7-15. ALTHOUGH THESE NEGOTIATIONS ARE CLOSELY RELATED TO BOUNDARY TALKS, THEY WILL INITIALLY BE CONDUCTED AS SEPARATE EXERCISE. CDN SIDE WILL BE HEADED BY MIKE SHEPARD, DFE, AND WOULD INCLUDE REP FROM FLO AS WELL AS INDUSTRY AND PROVINCIAL ADVISERS.

2. AS AT LAST ROUND OF PREVIOUS SET OF NEGOTIATIONS, DFE AND OURSELVES WOULD BE GRATEFUL IF BOEHM COULD BE MADE AVAILABLE TO JOIN CANDEL IN ORDER TO PROVIDE CONTINUITY NEEDED IN WHAT MIGHT WELL BE ~~XXX~~ YEAR-LONG EXERCISE (THIS IS TIME-FRAME PROVIDED BY CDN WITHDRAWAL FROM IPSFC). BOEHM'S PRESENCE WOULD ALSO BE USEFUL IN ASSURING LIAISON WITH USA OFFICIALS AND WITH BOUNDARY NEGOTIATING GROUPS IN BOTH CAPITALS DURING INTERVALS BETWEEN NEGOTIATING SESSIONS. SECOND ROUND SCHEDULED TO BE HELD IN SEATTLE OCT2-6.

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|----------------------|--------------------|-----------|----------------------|
| DRAFTER/RÉDACTEUR | DIVISION/DIRECTION | TELEPHONE | APPROVED/APPROUVÉ |
| <i>G. Leger</i> | FLO | 2-2002 | <i>G. Leger</i> |
| SIG..... G. LEGER | | | SIG..... DIRECTOR |

2-Comcentre diary w.f. circ
CC25-5-7-2-~~SALMON~~
CC25-5-7-2-SALMON

MESSAGE

| | | | | | |
|--------|------------|------------------------|---------|----------------|----------------------|
| PLACE | DEPARTMENT | ORIG. NO. | DATE | FILE/DOSSIER | SECURITY SÉCURITÉ |
| LIEU | MINISTÈRE | N ^O D'ORIG. | | 25-5-6:CDA/USA | |
| OTTAWA | EXTAFF | FLM 0153 | AUG1/78 | 28 | UNCLASSIFIED |

FM/DE

PRECEDENCE

TO/A

PROFESSOR DL MCKERNAN
 DIVISION OF MARINE RESOURCES
 UNIVERSITY OF WASHINGTON
 3716 BROOKLAND AVENUE, NE
 SEATTLE, WASHINGTON 98105

~~DE~~ WDC

INFO

AUG 1 9 37 '78

DISTR.

REF

SUB/SUJ

REGRET THAT ABSENCE OF KEY OFFICERS HAS CAUSED
 DELAY IN ~~PROVIDING YOU WITH CANADIAN~~ PROVIDING YOU WITH CANADIAN
 DRAFT ON SALMON INTERCEPTIONS. CAN ASSURE FINAL PAPER BY
 AUGUST21. HAVE ADVISED MCDONALD AND ASKED HIM TO INFORM
 KEN HENRY AT AUGUST2 TECHNICAL MEETING.

SHEPARD

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SG.....
MPShepard/flp

FLM

3-7891

SG.....
[Signature]
SHEPARD
DIRECTOR

I file

~~25-5-6-CDA/USA~~

ACTION
SUITE A DONNER

CC 25-5-5-CDA/USA

CC 25-5-6-CDA/USA

C O N F I D E N T I A L
BRUSSELS - EEC ①

FM BREEC YCGR2838 21JUL78

TO EXTOTT FLM

INFO WSHDC

BH ENVOTT/FISHERIES/HUNTER DE OTT

DISTR FLP FLO

REF YOURTEL FLM0147 JUL20

---CDN INTENT TO WITHDRAW FROM IPSEC

I CAN SEE ADVANTAGE(OF TACTICAL NATURE)IN EARLY WARNING OF THE KIND
SUGGESTED:THIS IS ANOTHER ELEMENT FOR THE USA TO BEAR IN MIND IN
CONSIDERING BRU PACKAGE.

CCC/216 210720Z 00060

| | |
|--------------------|--|
| 25-5-7-2-SALMON-17 | |
| 28 | |

To file

~~25-5-6-CDA/USA~~
~~25-5-5-CDA/USA~~

ACTION
SUITE A DONNER

~~CC 25-5-7-2-SALMON-1~~

CC 25-5-5-CDA/USA

C O N F I D E N T I A L
FM BREC YCGR2767 17JUL78

TO EXTOTT FLM

INFO PM ENVOTT FISHERIES/HUNTER DE OT

DISTR FLP FLO

REF YOURTEL FLM0139 JUL13

| | |
|----------------|--|
| 25-5-6-CDA/USA | |
| 28 | |

---CDN NOTICE OF INTENT TO WITHDRAW FROM INNATL PACIFIC SALMON FISHERIES COMMISSION(IPSFC)

IN PRINCIPLE,I AGREE THAT NOTICE OF INTENTION TO WITHDRAW FROM IPSFC SHOULD BE PROVIDED.I WONDER FOWEVER WHETHER CONSIDERATION HAS BEEN GIVEN TO TIMING OF PUBLICATION OF EQUITABLE EQUIDISTANCE BOUNDARY IN GULF OF MAINE.

2.IF IN QUICK SUCCESSION WE ARE TO TAKE BOTH MOVES THE IMPACT ON NEGS COULD BE SEVERE PARTICULARLY AS I EXPECT THAT FISPERIES COUNCILS ARE UNLIKELY TO SUPPORT PACKAGE DEVELOPED AT BRU JUL4-6 MTG.

3.WOULD IT NOT/NOT BE PREFERABLE TO AWAIT CUTLERS REPORT ON REACTION OF HIS COUNCIL AND CONGRESSIONAL SOUNDINGS.IF ANSWER IS NEGATIVE AND NEW POLICIES HAVE TO BE ENVISAGED,MOVES ON SALMON FISHERIES COMMISSION AND REVISED BOUNDARY CLAIMS IN GULF OF MAINE COULD BE CONSIDERED AS PART OF OVERALL STRATEGY.IF WE WERE TO MOVE NOW ON EITHER OR BOTH,USA SIDE COULD PLEAD THAT THESE DECISIONS ON OUR PART HAD NEGATIVELY INFLUENCED SITUATION ON THEIR SIDE AND THUS PROVIDE JUSTIFICATION FOR REFUSING TO ENDORSE PACKAGE WHICH WAS TENTATIVE OUTCOME OF NEGS SO FAR.

CCC/102 171512Z 00260

EF
+ file

CONFIDENTIAL

June 27, 1978

| | |
|-------------------|--|
| 25/5-7-2-SALMON-1 | |
| 28. | |

MEMORANDUM FOR THE MINISTER:

Subject: Canadian Notice of Withdrawal from the International Pacific Salmon Fisheries Convention (IPSFC)

The purpose of this memorandum is to seek your concurrence for Canada to submit a notice of withdrawal from the IPSFC. The provisions of this Convention, to which Canada and the U.S. are parties, require notice to be given one year in advance. This action is intended to secure for Canada an option to withdraw by this time next year, i.e. in advance of the 1979 salmon fishing season. Your colleague, Mr. LeBlanc concurs with this recommendation, subject to your approval.

2. The one-year option of withdrawal would be presented to the U.S. authorities as providing a reasonable time-frame for the conduct and conclusion of negotiations on a revised salmon interception agreement, to take into account 200-mile legislation passed by both sides. In this respect, the proposed action is analogous to that taken by Canada in 1976, when notice was given of withdrawal from ICNAF (later withdrawn on the basis of progress made in negotiating NAFO) and by the U.S. in 1977, when the U.S. Government gave notice of withdrawal from the North Pacific Fisheries Convention (INPFC): this latter action resulted in the conclusion of negotiations on a revised INPFC within the proposed time-frame. As seen in this context, it would be made clear to the U.S. authorities that this action is not linked in any way with the current difficulties related to the negotiation of long-term Canada/U.S. fisheries arrangements. It is in fact intended to activate and expedite talks on a salmon interception agreement, which both sides agree is an essential element in the bilateral fisheries relationship.

.../2

28.6.8(usc)
I agree but presume Am. Cabinet is aware & agrees re effect on our talks

3. The bilateral IPSFC Commission manages the Fraser River sockeye and pink salmon stocks to ensure adequate escapement to spawning areas through regulating the number of fishing days for nationals of Canada and the U.S., and types of fishing gear. As a result of dissatisfaction on both sides with the rates of interception of salmon from one country by the fishermen of the other, negotiators have been attempting to develop a better distribution of interception ratios and a wider geographical coverage. Besides the Fraser River stocks, Canada would like to bring into the ambit of a revised Convention all salmon stocks migrating to other B.C. rivers, and possibly Yukon River stocks.

4. Another issue which has been increasingly causing difficulties for both Governments is the U.S. court decision awarding a proportion of all salmon catches in U.S. West coast waters to Indians benefiting from historic treaties with the U.S. Government. Measures to implement this decision have seriously hampered the management system established under the Convention. This problem must also be dealt with in the framework of a revised Convention.

5. It is recommended that this option be adopted and that a notice of intent to withdraw be deposited with the United States Government.



A.E.G.

FLO/G.Léger/2-2002/mw

file/diary/div/circ

RETURN TO DS/FLO

| | | |
|---------|-------------------|-------------|
| DATE | 9/17/78 | REF |
| ACC | 1000 | |
| FILE | 25-5-7-2-Salmon-1 | DOSSIER |
| BY HAND | | PAR PORTEUR |
| ATTN: | | |

MIN(2)
SEC.
AEG

FPR
FAI
POL

GNT
SER
DFE/Hunter

CONFIDENTIAL

June 27, 1978

| | |
|-------------------|--|
| 25-5-7-2-SALMON-1 | |
| 28. | |

MEMORANDUM FOR THE MINISTER:

Subject: Canadian Notice of Withdrawal from the
International Pacific Salmon Fisheries
Convention (IPSFC)

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.../2

- 2 -

CONFIDENTIAL

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5. It is recommended that this option be adopted and that a notice of intent to withdraw be deposited with the United States Government.

ORIGINAL SIGNED BY
A. E. GOTLIEB
A SIGNÉ L'ORIGINAL

A.E.G.

Fisheries Environment

Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO: G.C. Vernon
B. Applebaum

FROM: M. Hunter

| | |
|--------------|----------|
| To / A | FLO |
| From / De | BICO A-4 |
| JUNE 22 1978 | |
| Regen | |

[Handwritten signatures and initials]
see file

| | | |
|---|---------------|-----|
| SECURITY - CLASSIFICATION - DE SÉCURITÉ | | |
| RESTRICTED | | |
| OUR FILE - N/RÉFÉRENCE | | |
| YOUR FILE - V/RÉFÉRENCE | | |
| 25-5-7-2-Salmon-1 | | |
| DATE | June 21, 1978 | AY. |
| RB | 31 | |

SUBJECT / OBJET: Salmon Interception Discussions, June 14-15, 1978

Canadian and United States officials met in Seattle on June 14 and 15 to continue discussions on a salmon interception agreement and to begin preparations for full negotiations later in the year.

With the meeting taking place at a time when Canada/USA fisheries relations are somewhat strained, the Canadian side was anxious to avoid any situations which could have been construed by the U.S. side as having a negative impact on the Cadieux-Cutler negotiations.

During the meeting, discussion on three items was of particular importance.

1. U.S. Salmon Treaty Draft

The U.S. side presented a new treaty draft, which in order, if not in content, is substantially different from previous drafts. Its major departure from the format of the draft Convention developed at the negotiating session in Seattle last October was especially disappointing, as was the continuing reference to the special management responsibilities assigned to the proposed Fraser River Panel.

2. Fraser River Management

Because of the fact that the U.S. attitude towards Fraser River sockeye and pink salmon management is pervasive in the U.S. draft treaty, a substantive discussion of this issue was held. There remains a major difference in principle between the two sides on the division of responsibilities between Canada and the proposed Fraser River Panel for management and regulation of the sockeye and pink salmon. The Canadian side is adamant that management functions (research, establishment of escapement levels, racial composition strategy, etc.) be carried out by Canada, with an international body responsible

.../2..

- 2 -

for in season regulation of the fishery to meet Canadian management objectives and the catch division provisions of the interception limitation agreement.

The USA, on the other hand, is looking for a continuation of IPSFC, but with Canada responsible for development and enhancement. Hopefully, Canadian withdrawal from IPSFC will make the USA realize the serious nature of the dispute which will have to be addressed at the next negotiating session. Further legal drafting work is, of course, hampered by the fact that the issue pervades the negotiations and affects the substance of many draft Articles.

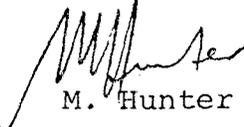
3. Report of the Ad Hoc Technical Committee

The Ad Hoc Technical Committee, comprising salmon scientists and managers from both countries reported on the preliminary results of their investigation into the effects of salmon enhancement plans of both countries on the manageability of fisheries to be subject to interception limitation.

The report showed that no fisheries management problems would be created for U.S. intercepting fisheries (i.e. enhancement production could be harvested without increasing interceptions), but that substantial effort reductions would be required in certain intercepting fisheries in Canada. In particular, the West Coast of Vancouver Island troll fishery, and the net fishery at the approaches to the Nass River would be affected, and would have to reduce effort in order to stay within interception limits as U.S. enhancement increases the proportion of U.S-bound fish in the fishery.

It is important to emphasize that the technical report has been made without reference to future (Phase II) Canadian enhancement on some major B.C. rivers, especially the Fraser, Skeena and Nass. When production from these systems is included, an analysis will doubtless reveal substantial management problems for U.S. intercepting fisheries. In the meantime, the U.S. appetite for an agreement has been whetted, both in Washington and Alaska (a breakthrough) because it appears that the USA is in a win situation, with no need to restrict its intercepting fisheries.

The cold light of day will eventually dawn, namely on September 27, when the next negotiating round begins. In the meantime, we must actively prepare our position. Recommendations on the most effective manner to assure adequate preparation for what is hoped to be the final push towards an agreement are contained in a separate memorandum. The Draft Agreed Summary record of the meeting is attached.


M. Hunter

cc: Distribution (attached)

000604

DISTRIBUTION

K.C. Lucas

D.J. McEachran

M.P. Shepard

J.S. McDonald)

G. Jones)

D. Schutz) Pacific Region Committee Members

A. Gibson)

W.R. Hourston)

R. Roberts

G. Léger

L.A. Willis

M. Walsh

PAL

ACTION
SUITE A DONNER

JUN 20 1978

UNCLASSIFIED

FM SEATL UAGR 0813 JUN19/78

TO EXTOTT GNT *Seattle*

INFO ENVOTT/VERNON WSHDC

DISTR FLO FLM

| | |
|----------------------|---|
| 25-5-7-2-Salmon file | |
| 10 | 3 |

Pal
20/6/78

REF OURTEL 0789 OF JUN15/78

...CDA/USA TROLLER AGMT

REACTION OF WASH STATE TO PROPOSED SOLUTION TO BILATERAL FISHING DESPUTE NEGOTIATED BETWEEN CDN AND USA TROLLER GROUPS, HAS BEEN LUKEWARM. USE OF WASH STATE HATCHERIES IS CENTRAL TO PLAN ALTHOUGH REPORTEDLY FUNDING WOULD ORIGINATE WITH USA FEDERAL GOVT.

2. POSITION OF WASH STATE ON INCREASE IN ENHANCEMENT TURNS ON HIGH LEVEL OF INTERCEPTION (FORTY TO SIXTY PERCENT) OF USA PUGET SOUND SALMON WHICH WASH STATE CLAIMS CDN FISHERMEN ALREADY ENJOY. IN VIEW OF THIS WASH STATE OFFICIALS CONTEND THERE IS LITTLE SENSE IN PRODUCING EVEN MORE FISH FOR CDNS TO CATCH.

3. WASH STATE SAYS IT WILL MAKE THESE VIEWS KNOWN IF AND WHEN CONSULTED ON PROPOSAL BY USA GOVT.

UUU/810 191830Z 00180

UNCLASSIFIED

FM SEATTLE UAGR0807 JUN16/78

ACTION
SUITE A DONNER

TO E. FOTT (GNT *Seattle*)

INFO WSHDC ENVOTT/VERNON

25-5-7-2-Scelmax-1
10

JUN 20 1978

file
pal.
20/6/78

DISTR FLO FLM

---BOLDT DECISION: PRESIDENTIAL TASK FORCE

FEDERAL TASK FORCE ON FISHERIES MADE PUBLIC JUN14 PLAN FOR SETTLEMENT WASH STATE SALMON AND STEELHEAD FISHERIES WHICH IN TASK FORCES VIEW SHOULD FORM BASIS OF RESOLUTION OF INDIAN FISHING RIGHTS QUESTION WHICH HAS BEEN DISRUPTIVE INFLUENCE IN USA FISHERY MGT SINCE 1974 BOLDT DECISION.

2. FORWARD MOVEMENT ON FISHING RIGHTS QUESTION WITH EMPHASIS ON ENHANCEMENT PUTS ADDITIONAL PRESSURE ON USA TO BRING CDA/USA SALMON TALKS TO SUCCESSFUL AND WORKABLE SOLUTION. IF TASK FORCE REPORT IS ADOPTED AND INDICATIONS ARE THAT CHANCES ARE GOOD, NEED TO REGULATE AND LIMIT CDN INTERCEPTIONS OF USA FISH IN EXCHANGE FOR SIMILAR USA LIMITATIONS WILL BECOME EVEN MORE PRESSING.

\$1236 million

3. MAIN ELEMENTS OF PROPOSAL ARE: (A) ONE HUNDRED TWENTY ONE POINT SIX MILLION DOLLAR ENHANCEMENT PROGRAM TO DOUBLE COMMERCIAL AND SPORT SALMON CATCH FROM SEVEN POINT FIVE MILLION FISH TO FIFTEEN OR TWENTY MILLION BY 1988 (B) REDUCTION OF NON-TREATY COMMERCIAL FLEET BY ONE HALF BY REDUCING LICENSES AND INSTITUTION OF BUYBACK PROGRAM. (C) AGMT BY TREATY INDIANS TO REDUCE CATCH TO FORTY PERCENT OF TOTAL (D) JOINT MTG SCHEME BETWEEN WASH STATE AND TRIBES WITH FINAL ARBITER BEING THREE JUDGE FEDERAL COURT PANEL.

7.5

15

20

4. PRELIMINARY PROPOSALS HAD BEEN CIRCULATED FOR COMMENT LAST JAN AND DREW CRITICISM AND LITTLE ENTHUSIASM FROM EITHER SIDE OF ISSUE. PRESENT PROPOSALS ARE LITTLE CHANGED THOUGH SOME ACCOMODATION OF CRITICISM IS EVIDENT IN PROVISIONS FOR ELIMINATION OF COMMERCIAL INDIAN STEELHEAD FISHERY.

5. INITIAL REACTION FROM NON-INDIAN AND INDIAN FISHERMEN HAS BEEN HOP-

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00000



PAGE 2 UAGR0807 JUN16/78 UNCLASS

FUL BUT GUARDED REFLECTING THE COMPLEXITY AND LENGTH OF FINAL DOCUMENT. EDITORIAL COMMENT HAS ON WHOLE BEEN FAVOURABLE TO REPORT IN ABSENCE OF ALTERNATIVES TO TASK FORCE RECOMMENDATIONS. EDITORIALS HAVE NOTED THAT WASH STATE HAS MUCH TO GAIN FROM PROPOSED SALMON ENHANCEMENT. INDIANS ON THEIR PART BY CUTTING BACK PERCENTAGE COULD WITH ENHANCEMENT END UP WITH LARGER ABSOLUTE CATCH.

6. SETTLEMENT PLAN HAS BEEN TRANSMITTED TO ADMINISTRATION AND IS SUBJECT TO APPROVAL BY PARTIES CONCERNED AND CONGRESS. REPORT HOWEVER IS RESULT OF ONGOING NEGOTIATIONS IN WHICH ALL PARTIES HAVE REPORTEDLY HAD SUBSTANTIAL INPUT. CONGRESSIONAL RUMBLINGS HAVE IN RECENT PAST GIVEN NOTICE THAT FAILURE TO COME TO AGMT BY PARTIES WILL RESULT IN LEGISLATED SOLUTION ALONG LINES OF TASK FORCE RECOMMENDATIONS. THIS HAS AND WILL GIVE ADDED INCENTIVE TO PARTIES TO REACH AGMT.

UUU/810 162515Z 00470

RECORDS MANAGEMENT
DIRECTOR OF ARCHIVES
JUN 13 1 42 PM '78
CANADIAN EMBASSY
WASHINGTON, D.C.

June 8/78.

c.c. FHO
(Leir)

file
JFB

| | |
|-----------------|---------------|
| 25-5-7-2-Salmon | |
| 9 | 67 |

Washington-Dept of State.

AIDE-MEMOIRE

| | |
|-------------------|-----|
| 25-5-7-2-Salmon-1 | |
| RB | 0-4 |

The Department of State refers the Embassy of Canada to the Convention between the United States and Canada for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries of the Fraser River System, signed in Washington on May 26, 1930, as amended by the Pink Salmon Protocol amending the Convention, signed in Ottawa on December 28, 1956, and to informal discussions between officials of the two Governments relating to regulation of the Convention fishery in 1978. Reference is further made to the recommendations suggested by the International Pacific Salmon Fisheries Commission for Regulatory Control of Sockeye and Pink Salmon Fishing in Convention Waters for 1978.

As indicated in the attached letter to Mr. W. R. Hourston, Chairman of the International Pacific Salmon Fisheries Commission, the United States has decided to approve the 1978 regulations of the Commission with respect to fishermen other than United States Indians who are entitled to exercise fishing rights in United States Convention waters by virtue of treaties with the United States. The United States wishes to assure the Government of Canada that the United States Indian

-2-

fishery will be regulated in a manner fully consistent with the objectives of the Convention. To this end, the United States Department of the Interior, as in 1977, is promulgating regulations for the Indian fishery. Copies of these regulations will be forwarded to the Commission.

The cooperation of the Commission is once again being sought to assure the exchange of information required to fully meet the conservation and allocation objectives of the Convention. United States authorities intend to enforce strictly the Commission and domestic United States regulations.

United States authorities wish to express their appreciation of Canadian understanding and cooperation in this sensitive and complex matter, and to again affirm the United States wish to cooperate with the Government of Canada in seeking to reach a long-term solution to the entire range of salmon fisheries issues in the context of a comprehensive Pacific salmon agreement.

Enclosure:

Letter to Mr. Hourston

Department of State,
Washington,

June 8, 1978

JMN



DEPARTMENT OF STATE

Washington, D.C. 20520

BUREAU OF OCEANS AND INTERNATIONAL
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

June 5, 1978

carbon copy

The Honorable
W. R. Hourston, Chairman
International Pacific Salmon
Fisheries Commission
National Marine Fisheries Service
U.S. Department of Commerce
1700 Westlake Avenue North
Seattle, Washington 98109

Dear Mr. Hourston:

Thank you for your letter of May 3, 1978, forwarding recommended regulations of the International Pacific Salmon Fisheries Commission for regulation of the sockeye and pink salmon fisheries in Convention waters of the United States in 1978.

As in 1977, the United States Government has approved the recommended regulations except as to United States Indians who are entitled to exercise fishing rights by virtue of treaties with the United States in U.S. Convention waters and are fishing in accordance with Federal regulations providing for the exercise of such fishing rights.

United States treaty Indians will again fish pursuant to regulations promulgated by the Department of the Interior in order to ensure that the Indian fishery proceeds in a manner consistent with the basic objectives of the Convention. These regulations will be forwarded to the Commission in the very near future. We would ask the Commission and its staff to cooperate with the United States Departments of the Interior and Commerce to facilitate the exchange of information necessary to ensure that spawning requirements are met and to prevent or correct any imbalances in the division of the harvest between fishermen of the United States and Canada.

As you are aware, the National Marine Fisheries Service, in cooperation with other Federal agencies, will be enforcing Commission regulations as approved by the United States Government pursuant to the Sockeye

-2-

Salmon or Pink Salmon Fishing Act of 1947, as amended.
The United States Government wishes to assure the
Commission that it intends to fully enforce both
Commission and domestic United States regulations in
this important fishery.

Sincerely yours,


John D. Negroponte
Acting
Assistant Secretary

JP
W.F. Salmon
AKK
EP
to Jee

UNCLASSIFIED

FM SEATL UAGR0744 JUN7/78

TO EXTOTT GNT DELIVER BY 080900

INFO WSHDC ENV/VERNON

DISTR FLO FLM

REF BROWN/SHARP TELCON JUN7/78

| | | |
|------------------------|----|------|
| CC | RL | DATE |
| DOSSIER | | |
| FILE 25-5-7-2-SALMON-1 | | |

---JUDGE BOLDT TO ALLOCATE PUGET SOUND SALMON

JUDGE BOLDT, BY VIRTUE OF 1974 DECISION ORIGINATOR OF ONGOING CONTROVERSY OVER INDIAN FISHING RIGHTS, ISSUED PRELIMINARY INJUNCTION JUN 7 WHICH ENABLED USA DISTRICT COURT TO TAKE OVER ENFORCEMENT OF FISHING REGULATIONS FROM WASH STATE DEPT OF FISHERIES. OBJECTIVE OF INJUNCTION IS TO PREVENT NON-INDIAN FISHERMEN FROM HARVESTING INDIAN ALLOCATED SALMON, OBJECTIVE WHICH STATE FISHERIES AUTHORITIES QUOTE UNWILLING OR UNABLE UNQUOTE TO CARRY OUT.

2. IMPACT OF FOREGOING WILL BE TO PLACE STILL ONE MORE BOTTLE NECK ON SUPPLY OF SALMON TO NON-INDIAN FISHERMEN WHO FORM VAST MAJORITY OF WASH FISHERMEN. INDIANS ARE ENTITLED UNDER 1974 BOLDT DECISION TO FIFTY PERCENT OF SALMON RETURNING TO TRADITIONAL OFF-RESERVATION GROUNDS WHICH MEANS FOR PRACTICAL PURPOSES MOST PLACES WHERE FISH ARE CAUGHT. ALSO INDIANS ENTITLED TO ADDITIONAL FISH IN EXCESS OF FIFTY PERCENT QUOTE FOR SUBSISTENCE AND CEREMONIAL PURPOSES. ALL SALMON CAUGHT ON RESERVATIONS ARE ALSO NOT/NOT INCLUDED IN FIFTY PERCENT TOTAL.

3. INEQUITY OF SITUATION TELLS HEAVILY ON MOOD AND ATTITUDE OF WASH STATE COMMERCIAL AND SPORTS FISHING COMMUNITY.

PAGE TWO

PAGE TWO CONTINUED

HARD LINE BY USA COMMERCIAL FISHERMEN ON FOREIGN FISHING CAN IN
PART BE TRACED BACK TO INEQUITABLE DOMESTIC USA FISHING SCENE.
LATEST BOLDT RULING BOUND TO INCREASE THEIR CONCERN AT CLOSING
OF CDN WATERS.

UUU/810 072320Z 00290



DEPARTMENT OF STATE

Washington, D.C. 20520

IPSC file
cc G. Léves (FIO)
cc 1165-0J10

BUREAU OF OCEANS AND INTERNATIONAL ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

June 5, 1978

The Honorable
W. R. Hourston, Chairman
International Pacific Salmon
Fisheries Commission
National Marine Fisheries Service
U.S. Department of Commerce
1700 Westlake Avenue North
Seattle, Washington 98109

| | |
|--------------------------|------------|
| 25-5-7-2- <i>Summary</i> | |
| <i>cc</i> | <i>A-4</i> |

Handwritten notes:
cc
file
25-5-7-2-
Salmon
J.

Dear Mr. Hourston:

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-2-

Salmon or Pink Salmon Fishing Act of 1947, as amended.
The United States Government wishes to assure the
Commission that it intends to fully enforce both
Commission and domestic United States regulations in
this important fishery.

Sincerely yours,


John D. Negroponte
Acting
Assistant Secretary

M.H.

W.F. Silvers

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

FM EXTOTT FLO1151 MAY30/78

TO MOSCO TOKYO

INFO WSHDC

BH ENVOTT/FISHERIES/HUNTER DE OTT

DISTR GPO GEA

---NORTH PACIFIC SALMON

| | | |
|-------------------|---------|------|
| ACC | RE | DATE |
| FILE | DOSSIER | |
| 25-5-7-2-SALMON-1 | | |

YOUR REPORTS ON JPN/USSR FISHERIES AGREEMENT AND SALMON PROTOCOL HAVE BEEN MOST USEFUL IN ASSESSING STATUS OF JPNSF INDUSTRY. THE AGREEMENT, TOGETHER WITH PROTOCOL AMENDING INPFC APPEARS TO PLACE JPNSF MOTHERSHIP FISHERY IN SEVERE DIFFICULTY, AND REDUCTION FROM SIX TO FOUR MOTHERSHIPS FOR 1978 WILL HAVE IMPACT ON CATCHES THROUGHOUT MOTHERSHIP AREA.

2. DURING CDA/USSR DISCUSSIONS IN OTT MAY 15, SOVIET FISHERIES VICE-MINISTER KAMENTSEV IN STRESSING ILL EFFECTS OF THE HIGH SEAS FISHERY, NOTED SIMILARITY OF USSR AND CDN POSITIONS ON WIDE RANGE OF SALMON QUESTIONS AND CALLED FOR BILATERAL MTG IN ADVANCE OF PROPOSED FOUR PARTY DISCUSSIONS. (REPORT BEING BAGGED).

AT THE SAME TIME, UNCLOS AND USSR/JPN TALKS WERE PRODUCING RESULTS WHOSE EFFECT CLEARLY SHOULD SATISFY USSR.

3. THIS SUCCESS IN FURTHER LIMITING JPNSF FISHERY, TOGETHER WITH OUTCOME OF ANADROMOUS SPECIES DISCUSSIONS AT RECENT UNCLOS SESSION RAISES QUESTIONS AS TO USSR OBJECTIVES IN CALLING FOUR PARTY MINISTERIAL MTG ON SALMON FOR AUTUMN 1978, TO WHICH MIN LEBLANC HAS

...2

PAGE TWO FLO1151 CONF

RESPONDED POSITIVELY BUT WITH QUALIFICATION(OURLET FLO1022 MAY5).

GRATEFUL FOR ANY LIGHT YOU MIGHT BE ABLE TO SHED ON SOVIET
THINKING,AND ANY INDICATIONS OF PRESENT JPNSE VIEWS IN LIGHT OF
RECENT DEVELOPMENTS,

4.FOR TOKYO:YOU SHOULD BE AWARE THAT KAMENTSEV INITIATIVE FOR
BILATERAL MTG HAS NOT/NOT YET BEEN MADE KNOWN TO JPN EMB IN OTT.

CCC/168

file

25-5-7-2-SALMON-1
31

s.23

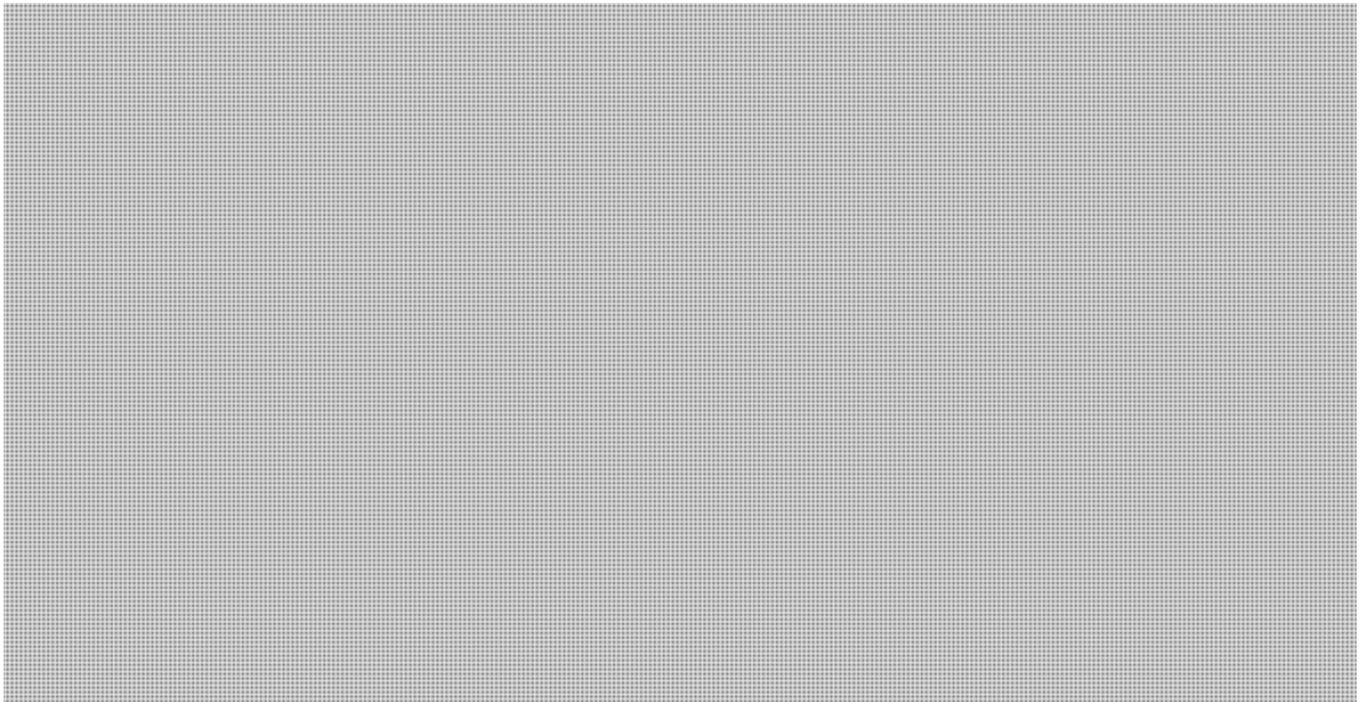
CONFIDENTIAL

May 24, 1978

MEMORANDUM FOR THE MINISTER:

Subject: Court Action by Canadian Salmon Trollers

The purpose of this memorandum is to report on developments regarding proposed court action by Canadian salmon trollers against the Government decision to close Swiftsure Bank, and to provide information which could be used publicly in response to queries on this subject.



A E S

A.E.G.

Overtaken

24.5.51/05

000619

26.5.78/min

Government of Canada / Gouvernement du Canada

MEMORANDUM / NOTE DE SERVICE

TO / A : G.C. Vernon

FROM / DE : M. Hunter

SUBJECT / OBJET : 1978 IPSFC Regulations

To / A: *FLD*
From / De: ACRA
APR 26 - 8
Att'n: *LEIR*

25-572-SALMON-1
31

| |
|---|
| SECURITY - CLASSIFICATION - DE SÉCURITÉ |
| OUR FILE - N/ RÉFÉRENCE |
| YOUR FILE - V/ RÉFÉRENCE |
| DATE April 21, 1978 |

FILE

On Thursday, April 20, 1978, Mr. Leir and I met with Mr. Carmen Blondin, Assistant Director for International Fisheries (NMFS), Mr. McCaleb (NMFS) and Mr. Marshall, Department of State, to review again the question of the regulatory scheme to be applied in U.S. Salmon Convention Waters in 1978.

You will recall that the Canadian side rejected a U.S. proposal put forward at an earlier meeting in Montreal. Mr. Blondin advised me informally that our resistance to the U.S. approach of giving more and more fishing time to treaty Indians had a salutary effect on officials from the Department of the Interior.

The United States is now prepared to accept the IPSFC regulatory recommendations for 1978, which will be passed by IPSFC at its meeting on April 28. The United States will again exempt treaty Indians from coverage of IPSFC regulations and the Department of Interior will issue separate regulations. These separate regulations will permit treaty Indian fishing with any kind of gear when U.S. Convention Waters are open under IPSFC regulation to a particular type of gear. In other words, the so-called "extent permissible" provision will be applied by the USA, but it will be applied under two sets of regulations issued by two separate authorities. The U.S. side intends that the two authorities will consult closely between each other and with IPSFC.

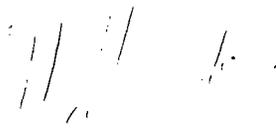
Mr. Blondin noted that the Northwest Indian Fisheries Commission (NWIFC), representing treaty Indians in the State of Washington, expected the Indian share of the sockeye harvest in U.S. waters to reach 20% of the U.S. total in 1978. In order for this goal to be reached, we must expect that the Department of Interior regulations will be amended early in the season to provide additional fishing time for treaty Indians.

.../2..

- 2 -

The United States' intentions for 1978 are, therefore, to repeat the 1977 performance, with a minor concession to Canadian concerns (no extra fishing time) which will very quickly be taken back. I indicated to Mr. Blondin that I could only take note of his Government's intentions, and that the Canadian side would be examining the situation.

On a separate matter, the two sides were able to reach agreement. Mr. Blondin noted that a request had been made by a U.S. Government agency to IPSFC for certain data on sockeye salmon. While the request had not yet been answered, I expressed the view that such a request, whether from a government agency, or private citizen or citizen's group was quite in order and should be met by IPSFC. The requesting agency has a legitimate interest in the management of the resource, and any data in the hands of IPSFC is the joint property of the Governments of Canada and the USA.


M. Hunter

cc: W.R. Hourston
R.A. Crouter
M. Leir

Government of Canada

Gouvernement du Canada

MEMORANDUM

NC

Review

TO
A

The Minister
Fisheries and Environment Canada

FROM
DE

K.C. Lucas

*W.F.
Salmon*

| | | |
|---|------------------|------|
| SECURITY - CLASSIFICATION - DE SÉCURITÉ | | |
| OUR FILE - N/ RÉFÉRENCE | REF | DATE |
| FILE | 25-57-2-SALMON-1 | |
| YOUR FILE - V/ RÉFÉRENCE | | |
| DATE | April 18, 1978 | |

SUBJECT
OBJET

Proposed Ministerial Meeting on North Pacific Salmon

Attached for your signature is a reply to an invitation which you have received from the Soviet Minister of Fisheries, Mr. A.A. Ishkov, to participate in a four party (Canada, USA, Japan and USSR) meeting on "Salmon Problems of Mutual Concern in the North Pacific Ocean". The telegram from Moscow containing this invitation is also attached.

We feel that a Ministerial meeting, as proposed by Mr. Ishkov is premature, although we would support the idea of a meeting of officials from the four parties to develop an agenda and the details of what might result from a Ministerial meeting.

The Soviet initiative has arisen at a time when Canada, Japan and the USA have successfully renegotiated the INPFC Convention, when the salmon issue is again being discussed at the LOS conference and when the annual Japan-USSR salmon negotiations are being conducted. We are, therefore, frankly suspicious of the Soviet motives in putting forward the invitation at this time and would welcome a delay in the scheduling of a meeting.

It is interesting to note that Japan has already refused the invitation. We feel that the presence of Japan at any discussion is essential both from the political and practical resource conservation viewpoints.

Accordingly, it is recommended that you sign the letter to Mr. Ishkov. The original should be returned to us for transmission to our Ambassador in Moscow who will ensure its delivery to the appropriate Soviet authorities.

K. C. LUCAS

K.C. Lucas,
Senior Assistant Deputy Minister.

Encl.



Minister
Fisheries and Environment Canada

Ministre
Pêches et Environnement Canada

Ottawa, Ontario.
K1A 0H3

MAY 4 1978

The Honourable A.A. Ishkov,
Minister of Fisheries,
Moscow, U.S.S.R.

Dear Mr. Minister:

I am writing in reply to your invitation, extended on behalf of your government, to meet during the latter part of 1978 with yourself and our counterparts from Japan and USA to discuss problems of mutual concern regarding the salmon of the North Pacific Ocean.

I have given serious consideration to your suggestion and agree in principle that such a meeting could be useful, particularly in view of the changed circumstances arising out of extension of fisheries jurisdiction and the need to develop increased cooperation among those countries for which the salmon fishery is of such importance. I welcome your invitation, particularly in view of the spirit of cooperation that exists in the field of fisheries between our two countries.

I am of the view that in order for meaningful discussions to take place, we must prepare the ground well in advance by having officials of the governments concerned meet within the next few months to discuss the problems and clarify the issues prior to a Ministerial meeting. In anticipation of a meeting of officials, I would appreciate receiving your views on the specific issues which might be

.../2

discussed and a further elaboration of what, in your view, should be the objectives of the proposed Ministerial meeting.

I look forward to this meeting and the opportunity of renewing our close personal and friendly ties.

Yours sincerely,

ORIGINAL SIGNED BY

A SIGNÉ

Roméo LeBlanc.

: Executive Assistant
Minister's Office-2
Central Registry
International Directorate-G.C. Vernon
M. Hunter
R. Roberts
FLO
Geneva
K.C. Lucas
D.J. McEachran
A.W. May
C.R. Levelton

*Mr Hunt
Has then been
very follow up
let's discuss if not*

MAR 31 1978

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

FM TOKYO UIGR1831 MAR22/78

TO EXTOTT FLO

INFO ITCOTT/OGR/EUR PCOOTT PMOOTT WSHDC MOSCO BREEC GENEV PRMNY

BH ENVOTT/FISHERIES/LEBLAC/VERNON/APPLEBAUM/HUNTER DE OTT

DISTR MIN AEG KGO JST FLP FLA GEP GEA PSI EBP EBI GPO

---PROPOSED MINISTERIAL MTG ON PACIFIC SALMON

WE RAISED WITH SHIMA (DEP DIR, INNATL AFFAIRS DIV, FISHERY AGENCY)

ISHKOV PROPOSAL REPORTED ON IN MOSCO REFTEL.

2. AS MIGHT BE ANTICIPATED SHIMA SAID THAT JPNSE WERE VERY UPSET

TO RECEIVE SOVIET PROPOSAL, AND INDEED ARE UNABLE TO ACCEPT

INVITATION TO ATTEND MTG. SHIMA REQUESTED PERSONALLY THAT CDA

GIVE SERIOUS CONSIDERATION TO ALSO REFUSING SOVIET INVITATION.

3. JPNSE VIEW SOVIET INITIATIVE AS DESIGNED TO LINK CONTINUED

JPNSE HIGH SEAS FISHING IN NORTH PACIFIC TO ADVANCEMENT OF SOVIET

INTERESTS WITH RESPECT TO LOS. ALSO QUADAPARTITE NATURE OF PROPOSED

MTG IS NATURALLY SEEN IN CONTEXT OF SOVIET SUSPICIONS OF INPFC

ARRANGEMENTS.

4. WOULD BE GRATEFUL TO LEARN INITIAL CDN THINKING WITH REGARD TO

SOVIET PROPOSAL.

5. FOR WSHDC: ENSURE COPY THIS TEL PROVIDED TO INPFC DEL.

CCC/274 220925Z 00210

3316

05707

MAR 28 1978
mnl/el

M. Hunter
See my comments
MAR 23 1978
AMM

FISHERIES & MARINE
SERVICE
MAR 21 1978
FILE 1439-02
D.O.E

D I F F U S I O N R E S T R E I N T E

DE MOSCO XYGR1511 16MAR78

A EXTCTT FLC

INFO ITCOTT/OGP/EUR PCOOTT PMOOTT TOKYO WSPDC CANMISEUR

LOSGENFV

PM ENVOTT/PECHERIES/MIN LEBLANC/FMS/APPLEBAUM/VEHON/LEFEBVRE DE OTT

DISTR MIN AEG KGO JST FLP FLA GEP GEA PSI EBP EBI

---PROJET DE REUNION MINISTERIELLE SUR SAUMON DU PACIFIQUE.

MOSCO, 2EME SEMESTRE 1978.

MINISTERE DES PECHERIES VIENT DE NOUS PERMETTRE LET CI-DESSOUS (NOTRE
TRADUCTION) ADRESSEE A HON ROMEO LEBLANC PAR MIN PECHERIES URSS
AA ISFKOV.

2. CIT MOSCO, 10 MAR 78, MONSIEUR LE MINISTRE, LES CHANGEMENTS FONDAMEN-
TAUX QU A SUBIS CES DERNIERS TEMPS LE REGIME JURIDIQUE DE L OCEAN
MONDIAL EVOQUENT LA NECESSITE D ETABLIR ET DE DEVELOPPER COLLABO-
RATION, EN PARTICULIER ENTRE CES PAYS DONT LES INTERETS SE TOUCHENT
DE TRIS PRES.

3. TANT POUR L UNION SOVIETIQUE QUE POUR LES EUA, LE CDA ET LE JPN, LA
CONSERVATION ET LA REPRODUCTION DU SAUMON QUI HABITE LA PARTIE
SEPTENTRIONALE DE L OCEAN PACIFIQUE PRENNENT UNE SIGNIFICATION
PARTICULIEREMENT GRANDE.

4. A CET EGARD ET A LA DEMANDE DE MON GOUVERNEMENT JE VOUDRAIS,
MONSIEUR LE MINISTRE, VOUS INVITER, AINSI QUE LES MINISTRES DES
EUA ET DU JPN CHARGES DES PECHERIES, A PRENDRE PART A UNE CONF
DE TRAVAIL CONSACREE A L ETUDE DES PROBLEMES DU SAUMON DE L OCFAN

...2

PAGE DEUX XYCR1511 CONF

PACIFIQUE. NOUS PROPOSONS DE TENIR CETTE REUNION A MOSCO AU
DEUXIEME SEMESTRE 1978.

5. JE VOUS SAURAI VIVEMENT GRE D ACCEPTER MON INVITATION ET DE ME
COMMUNIQUER LA PERIODE QUI VOUS CONVIENTRAIT POUR TENIR LA CONF
PRECITEE. VOTRE TOUT DEVOUE. AA ISFKOV FINCIT.

CCC/252 161232Z 00300

Mike

could you please draft a reply
for Helblum's signature.

I don't see how we can say
no. I think the letter should indicate
we're prepared to meet + discuss things
with them - spirit of cooperation, close
relations ^{on fisheries} between our interests + between Tstka
+ Helblum personally etc etc, shared interest
in conservation of salmon in N. Pacific ocean.
- prepared to meet though it should be borne in
mind that relationship between Cda USA + Japan
has been established through new revised INPFC.
be negative a dates - could not meet
during April - June period because of political
circumstances, but if USSR continues to
believe entry would be useful, prepared to
look at dates next fall.

ACTC FILE DIARY DIV CIRC **MESSAGE**

| | | | | | | |
|-------|-------|------------|------------|--------|-----------------------|-------------------|
| FM/DE | PLACE | DEPARTMENT | ORIG. NO. | DATE | FILE/DOSSIER | SECURITY SÉCURITÉ |
| | LIEU | MINISTÈRE | N° D'ORIG. | | | |
| | OTT | EXTOTT | FLO-0784 | 6/4/78 | 25-5-7-2-SALMON 31 | CONFID |

| | | |
|--------|--|------------|
| TO/A | TOKYO | PRECEDENCE |
| INFO | WSHDC ENVOTT/IDFMS/VERNON/HUNTER GVLOS | |
| DISTR. | GPO GNT | APR 7 23 |

REF

SUB/SUJ

--RENEGOTIATION OF INPFC

AGREEMENT AMENDING INPFC HAS NOW BEEN INITIALED. FOLLOWING UPON MAR21-23 SESSION IN WSHDC, JPNSE AND USA DELS FINALLY AGREED APR5 ON TEXT OF MEMORANDUM OF UNDERSTANDING ON MARINE MAMMAL RESEARCH IN NORTH PACIFIC. THREAT OF SENATE REFUSAL TO RATIFY ~~PROTOCOL~~ AGREEMENT (IN FORM OF PROTOCOL) AMENDING EXISTING CONV WITHOUT SUCH UNDERSTANDING HAD PREVENTED AGREEMENT BEING REACHED AT WSHDC MTG.

2. AMENDING PROTOCOL IS ACCOMPANIED BY TRILATERAL MEMO OF UNDERSTANDING ON SALMON DATA REQUIREMENTS, TRILATERAL AGREED MINUTE ON NORTHERN BERING SEA SALMON RESEARCH AND JPN/USA MEMO OF UNDERSTANDING ON MARINE MAMMALS. LATTER REFERS TO PROTOCOL BUT DOES NOT/NOT IMPLICATE EITHER CDA OR INPFC IN RESEARCH ACTIVITIES AND REPRESENTS BEST POSSIBLE COMPROMISE FROM CDN STANDPOINT.

3. TEXTS OF DOCUMENTS BEING SENT BY BAG.

.../2

29*78

DRAFTER/RÉDACTEUR

DIVISION/DIRECTION

TELEPHONE

APPROVED/APPROUVÉ

SIG

M. Leir/pb

FLO

6-5407

SIG

DIRECTOR

FLO-0784

- 2 -

CONFD

4. PROTOCOL AND SUPPORTING DOCUMENTS ARE EXPECTED TO BE SIGNED IN TOKYO APR24. MIN LEBLANC WILL SIGN IF HE IS IN JAPAN AND AUTHORITY FOR AMBASSADOR TO SIGN IS ALSO BEING PREPARED IN EVENT THAT LEBLANC IS UNABLE TO VISIT.

5. ORDER-IN-COUNCIL AUTHORITY FOR SIGNATURE IS BEING SOUGHT ON URGENT BASIS. GRATEFUL YOU ASCERTAIN THAT JPNSE ARE IN FACT READY TO SIGN ON APR 24 AS PLANNED, AND ASK WHETHER SIGNATURE AUTHORITY WILL BE REQUIRED FOR MOU AND AGREED MINUTE AS WELL AS FOR PROTOCOL.

C.S. Fleming / *Hambury*

+ return to Leir

[Handwritten initials/signature]



Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

| |
|-------------------|
| To: A <i>GC-D</i> |
| From/De: ACRA |
| APR 5 1978 |
| Att'n: <i>LBH</i> |

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| SECURITY - CLASSIFICATION - DE SÉCURITÉ |
| CONFIDENTIAL |
| OUR FILE - N/RÉFÉRENCE |
| YOUR FILE - V/RÉFÉRENCE |
| DATE March 31, 1978 |

TO A

W.E. Johnson,
Director-General,
Pacific Region.

FROM DE

Director-General,
International Directorate,
Fisheries and Marine Services.

file

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|-------------------------|
| <i>25-572-Salmon-11</i> |
| <i>31</i> |
| <i>[Signature]</i> |

SUBJECT
OBJET

Fraser River Salmon Convention

As you know, as a result of the 1974 Boldt decision, we are continuing to have problems in reaching agreement with the USA on the implementation of IPSFC regulations. Last year, the USA implemented IPSFC recommendations only with respect to non-Indian treaty fishermen, and this year are proposing similar action. This approach is unacceptable to Canada as it involves the bifurcation of management responsibilities between the Commission (in respect of all fishermen but U.S. Treaty Indians). As you will recall, the U.S. action created significant management difficulties for the Commission, as well as some vocal criticism within Canada for our apparent acquiescence. Last year, we formally reserved our position as to the legal right of the USA to approve regulations on a selective basis; this year, we are working with the U.S. authorities to develop something more acceptable, but chances of success appear extremely remote.

In the event that it is not possible to develop a regulatory approach acceptable to Canada, one option we have under serious consideration is to serve notice of our intent to terminate the Convention. (The Convention would then terminate one year after serving notice.)

Quite apart from the difficulties encountered under the current situation, we believe that there might be another compelling reason for serving notice to terminate the Convention: to apply pressure on the USA in coming to a salmon interception agreement.

Serving notice to terminate the Convention would, of course, require the approval of the Minister, and quite possibly the Cabinet. Before coming to a final recommendation on this matter, and before preparing a reference to Ministers, a thorough in-house policy review is needed, bearing in mind that, if notice

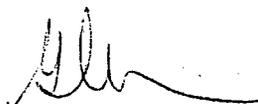
- 2 -

is to be served, it should be done before June 15, so as to come into effect, if necessary, before the 1979 fishing season.

The policy review needed should be set in terms of comparing the present situation with what would happen if the Convention terminated -- how would we provide for escapement? How would our fleet be deployed? What would be the effect on the stocks? What are the implications for our enhancement plans? What alternatives are available for achieving the same results short of terminating the Convention? What effect would termination have on being able to conclude a salmon agreement?

I would appreciate your views on how best to proceed in developing a policy paper on this issue, and on what consultations with the Province and with our IPSFC Commissioners are appropriate at this stage. I would expect that Mr. Hunter of my office, who has been handling this whole question, would wish to provide Regional officials with a thorough and extensive review of the current situation. Bearing in mind the time constraints we have if the contemplated action is to be effective, I would appreciate receiving your views by April 30.

I would remind you of the sensitivity of this issue, and ask you to keep the substance of this memo confidential.



G.C. Vernon

cc: W.R. Hourston
C.R. Levelton
G. Jones
M. Hunter
R. Roberts
M. Leir (FLO)



Government of Canada / Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

Mr. Hunter

TO / À

M.P. Shepard

| | |
|------------|-----------------|
| To / A | <i>FR</i> |
| From / De | <i>RICO A-4</i> |
| JUN 9 1978 | |
| Att'n: | <i>LEGER</i> |

FROM / DE

M. Hunter

FILE

| | |
|-------------------------|------------|
| <i>25-5-72-SALMON-1</i> | |
| <i>31</i> | <i>ALL</i> |

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|---|
| SECURITY - CLASSIFICATION - DE SÉCURITÉ |
| OUR FILE - N/RÉFÉRENCE |
| YOUR FILE - V/RÉFÉRENCE |
| DATE June 5, 1978 |

SUBJECT / OBJET

Salmon Interception Negotiations

At the April 19 Intergovernmental Meeting in Bellingham, an agenda was agreed for the June 14-16 meeting, now scheduled for Seattle. Item 6(b) of the agenda refers to the Fraser River, and it might be useful to review briefly the recent history of discussion of the issues surrounding the Fraser, and put forward views on what the Canadian position should be at the forthcoming session.

You will recall that the subject of the management of Fraser stocks was discussed in detail in the full negotiating session in Vancouver in May 1976. During that session, an "IPSFC Working Group" was struck (Canadian members, as I recall, were Todd, Hourston and myself). That group developed a paper which put forward the essential elements of the Canadian position, i.e., Canadian management of the river, including establishment of TAC's, escapement goals, overall management strategy (dominance and racial composition, etc.) and the need for an international regulatory institution.

At a subsequent plenary session, Don McKernan was highly critical of the Working Group's report, claiming that the arrangements reviewed therein did not conform to the United States' views. The draft treaty which emerged from that May 1976 session simply left a space for a "Fraser River Article".

Subsequently, the U.S. side (Steve Powell) drafted a treaty Article which was reviewed at an intergovernmental meeting in Vancouver in August 1976. The U.S. draft was totally unacceptable to Canada since it was concerned with the management rights of a renewed IPSFC, rather than with the management responsibilities of Canada with a revised regulatory institution.

Since that time, the U.S. side has come forward with a couple of redrafts of its Fraser River draft Article, but the basic message still has not penetrated. Indeed, you

- 2 -

will recall that, in November 1977, the Canadian side attempted to soften the U.S. side on this issue by proposing adoption of a dispute settlement procedure under which the USA would be able to protect what it sees as its vital interests in the management of the Fraser from over-zealous or unscrupulous Canadian management practices. The idea was flatly rejected by the USA.

How should this issue be addressed when we meet in Seattle next week, bearing in mind the fact that a recommendation has gone to Mr. LeBlanc that Canada serve notice of intent to withdraw from the present Fraser River Convention before June 30, 1978?

My view, which I believe to be strongly held by other members of the Canadian delegation, is that we should be absolutely clear that the principle of Canadian management of Fraser River salmon is non-negotiable. The supposed "concession" that McKernan claims to have made in this direction must be rejected, since it is a "concession" that we cannot recognize. u

Further, it is my view that we must, henceforth, discourage the idea of the treatment of the management of Fraser River stocks in a separate treaty Article. It seems to me that a clause terminating the present Convention is quite adequate, since, clearly, Canadian sovereignty over Fraser River stocks is not an issue in the absence of IPSFC.

We can, however, encourage the idea of including language in the treaty (not necessarily, and not preferably, a separate Article) that will grant particular powers to one of the projected four Panels. The basis for this reasoning is found in the fact that, conceptually, the management of the Fraser is no different from that of any other coastal stream which lies totally within one country. The peculiar migratory characteristics of the stocks can be dealt with under the powers of the Panels. Meanwhile, our position of principle is not circumscribed or prejudiced by special treatment in the Treaty.

M. Hunter

, M. Hunter

cc: G.C. Vernon
W.R. Hourston
L.A. Willis
G. Léger ✓
J.S. McDonald

FLO/R.Hage/6-3622/mw

file/diary/div/circ

c.c. FLA

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|---------------|----|
| 25-5-7-2-Sawm | |
| 31 | 31 |

FISHERIES (1)

OTTAWA K1A 0G2

March 31, 1978

Dear Mr. Hunter,

Further to your memorandum of March 9 regarding a legal opinion on certain questions related to the Fraser River Convention, we are attaching an opinion prepared by the Treaty Advisory Section of the Legal Bureau. Their opinion is self-explanatory and deals with each of the three questions which you raised in your memorandum.

Filed Separately see memo of March 21

Yours sincerely,

ORIGINAL SIGNED BY
E. B. WANG

Erik B. Wang,
Director,
Legal Operations Division.

Mr. M. Hunter,
International Fisheries & Marine Directorate,
Department of Fisheries & the Environment,
240 Sparks St., 8th Floor,
OTTAWA.

c.c.: DFE/J. Carton

RF/6L
↑

File

ACTION
SITE A DONNER



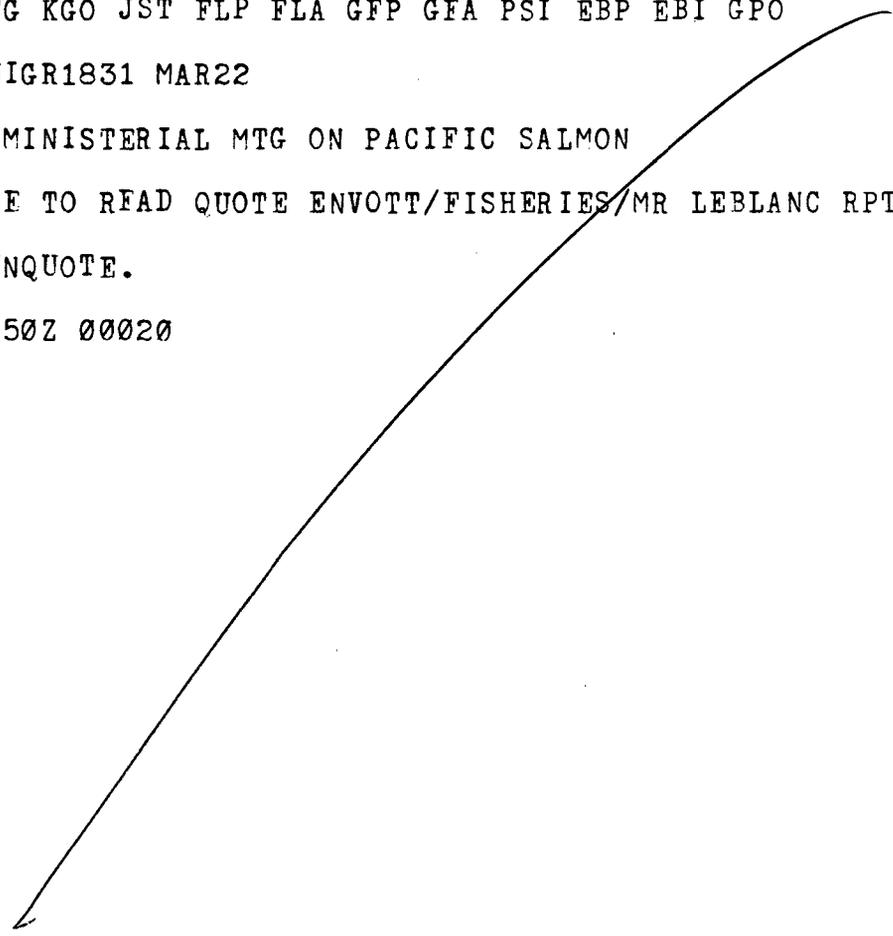
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C O N F I D E N T I A L
FM (TOKYO) UISV1839 MAR23/78

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| 25-5-72-SALMON-1 | |
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TO EXTOTT ACTC L FLO
INFO ITCOTT/OGR/EUR PCOOTT PMOOTT WSPDC MOSCO BREEC GENEV PRMNY
BH ENVOTT/FISHERIES/MR LEBLANC/VERNON/APPLEBAUM/HUNTER DE OTT
DISTR MIN AEG KGO JST FLP FLA GFP GEA PSI EBP EBI GPO
REF OURTEL UIGR1831 MAR22

---PROPOSED MINISTERIAL MTG ON PACIFIC SALMON
AMEND BH LINE TO READ QUOTE ENVOTT/FISHERIES/MR LEBLANC RPT
MR LEBLANC UNQUOTE.
CCC/274 230350Z 00020



Q

File ✓
Diary
Div.
Circ.

FLA/J.O.PARRY/5-7707/sp

FLO/Hage

CONFIDENTIAL

FLA

March 21, 1978

Your memorandum of March 10/78

IPSFC Regulations for 1978

| | |
|-------------------|--|
| 25-5-7-2-SALMON-1 | |
| 31 | |

You have asked for our views on the following questions related to the Canada/USA Convention for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries in the Fraser River System, signed on May 26, 1930, as amended by the Protocol of December 28, 1956:

(a) Does the Convention permit either party to partially approve or partially disapprove regulatory recommendations made by the International Pacific Salmon Fisheries Commission (IPSFC)?

2. Under Article VI of the Convention, as amended by the 1956 Protocol, the second paragraph states:

"All regulations made by the Commission shall be subject to approval of the two Governments with exception of orders for the adjustment of closing or opening of fishing period and areas in any fishing season and of emergency orders required to carry out the provisions of the Convention".

Our understanding is that if the regulations made by the Commission are approved by both Governments the Commission then "adopts" the regulations in question. Once adopted by the Commission under the authority of the Convention the regulations are binding on the two Governments, each of which is responsible for their enforcement and agrees "to enact and enforce such legislation as may be necessary to make effective the provisions of this Convention and the orders and regulations adopted by the Commission under the authority thereof, with appropriate penalties for violations" (Article X).

3. The Convention is silent on the question of whether either Party may partially approve or partially disapprove regulatory recommendations made by the IPSFC. It simply states that "All regulations made by the Commission shall be subject to approval of the two Governments" with the exception of orders for the adjustment of closing or opening of fishing periods and areas in any fishing season and of emergency orders required to carry out the provisions of the Convention.

4. The general rule is that a treaty is to be "interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose" (Article 31, para 1 of the Vienna Law of Treaties Convention). Article 31, para 3 of the Law of Treaties Convention states that "any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation shall be taken into account together with the context" and para 4 provides that "A special meaning shall be given to a term if it is established that the parties so intended".

5. We are not aware that the parties intended to give a special meaning to the phrase "All regulations ... shall be subject to approval of the two Governments", or of any practice which might establish the agreement of the Parties regarding the interpretation of this phrase.

6. Until regulations are approved by the two Governments and adopted by the Commission they appear to have the status of recommendations. As such they could be viewed as analogous to resolutions of the U.N. General Assembly which embody a number of recommendations - some or part of these recommendations may be accepted by a particular State while others may not. U.N. practice, in other words, has established the severability of recommendations contained in a GA resolution. The parallel, admittedly, is not an exact one.

7. In the absence of any provision which specifies that regulations must be approved or disapproved in toto, it seems reasonable to conclude that there is nothing in the Convention which prevents a Party from partially approving or partially disapproving regulations made by the Commission. However this conclusion is based on the following assumptions:

- (i) that the regulations are discrete in the sense that partial approval or disapproval of a particular regulation would not affect that Party's approval or disapproval of other regulations;

.... /3

- (ii) that such partial approval or disapproval would not lead to a result which is manifestly absurd or unreasonable;
- (iii) that there is no practice in the application of the Convention which establishes the agreement of the Parties that the Convention is to be interpreted in a contrary sense, i.e. as meaning that a Party must approve or disapprove a regulation as a whole.

(b) Can either party exempt any or all of its citizens from coverage of regulations approved in part or in whole?

8. The answer to this question is no, on the assumption this refers to regulations which have been duly adopted by the Commission following approval in part or in whole by the Parties. Once adopted the regulations are binding in their entirety. Under Article X the Parties agree "to enact and enforce such legislation as may be necessary to make effective the provisions of this Convention and the orders and regulations adopted by the Commission under the authority thereof, with appropriate penalties for violation".

9. Under Article VIII each Party is responsible for the enforcement of the orders and regulations adopted by the Commission in the portion of its waters covered by the Convention and, except as provided in Article IX, is responsible, in respect of its own nationals and inhabitants and vessels and boats, for the enforcement of the orders and regulations adopted by the Commission, under the authority of the Convention, on the high seas embraced in para 1 of Article 1.

10. The above answer is framed in terms of treaty obligations under the Convention on the plane of international law. It would, of course, be possible for either Party, on the plane of domestic law, to exempt any or all of its citizens from the application of regulations adopted by the Commission but this would be in violation of its international obligations under the Convention.

(c) Does either party have the right to promulgate regulations relating to the taking of sockeye and pinks in Convention Waters which permit fishing times or fishing with gear not provided for in approved IPSFC regulations?

11. A basis premise of the Convention as amended by the 1956 Protocol is that the IPSFC was to be the regulatory body for the fishery. This is reflected in a number of articles, most clearly in Article VII as amended by the Protocol. Moreover,

in the preamble to that Protocol the two governments express their desire "to co-ordinate the programs for the conservation of the sockeye and pink salmon stocks of common concern ...". Accordingly if either Government is to claim or exercise the right to promulgate regulations relating to the taking of sockeye and pinks in Convention waters which permit fishing times or fishing with gear not provided for in approved IPSEFC regulations it would be essential that this be based on prior agreement between them.

12. If both Parties are in agreement on such a procedure it would appear to be open to either to promulgate regulations relating to the taking of sockeye and pinks in Convention waters which permit fishing times or fishing with gear not provided for in orders or regulations adopted by the Commission, always provided that:

- (i) such regulations are not in conflict with obligations assumed under the Convention as a whole; and
- (ii) provided they are not inconsistent with orders or regulations adopted by the Commission.

13. It would be essential to examine the specific regulations envisaged in order to determine whether they comply with the conditions noted above.

14. If both parties agree on an interpretation or application of the Convention which would permit them to promulgate such regulations the agreement could be oral or written. At the Law of Treaties Conference in 1968 the Expert Consultant to the I.L.C., Sir Humphrey Waldock, pointed out that the International Law Commission "recognized that in some cases treaties ... were varied by informal procedures and even by oral agreement". The Vienna Convention does not apply to oral agreements but does not affect the legal force of such agreements. If the agreement is in written form it would constitute a "subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions" within the meaning of Article 31, para. 3(a) of the Law of Treaties Convention.

15. We stress again that the above answer is predicated on the prior agreement of both parties and that any such regulations promulgated by either party must not be in conflict with obligations assumed under the Convention as a whole and must not be inconsistent with orders or regulations adopted by the Commission.

D. GRÉGOIRE de BLOIS

Treaty Section

FLO/R.Hage/6-3622/mw

EXTERNAL AFFAIRS



AFFAIRES EXTÉRIEURES

*Jack,
we spoke
17*

TO
A - FLA/Treaty Section

file
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14
MAR 13 1978
In Legal Services Division
Department of External Affairs

SECURITY
Sécurité
UNCLASSIFIED
DATE March 10, 1978

FROM
De FLO

REFERENCE
Référence

SUBJECT
Sujet IPSFC Regulations for 1978

NUMBER
Numéro

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| FILE | DOSSIER |
| OTTAWA | |
| 25-5-7-2-SALMON-1 | |
| MISSION | 31 |

ENCLOSURES
Annexes

DISTRIBUTION

... We have received the attached self-explanatory memo from the Department of the Environment requesting the Treaty Section to provide an opinion on certain questions related to the Fraser River Convention. The three questions are posed in paragraph three of the memorandum and we would be grateful to have your opinion as soon as possible since the questions soon will be under active discussion with United States officials.

Erik B. Wang

Erik B. Wang,
Director,
Legal Operations Division.



Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

J. Carton,
Legal Services,
Fontaine Building.

ADVANCE

COPIE PRÉPARÉE

FROM
DE

M. Hunter,
International Directorate,
Fisheries and Marine Service.

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| SECURITY - CLASSIFICATION - DE SÉCURITÉ |
| OUR FILE - V/RÉFÉRENCE COPY |
| YOUR FILE - V/RÉFÉRENCE DATE |
| March 9, 1978 |

SUBJECT
OBJET

IPSFC Regulations for 1978

You are well aware of the problems which have confronted us with respect to regulatory proposals of the International Pacific Salmon Fisheries Commission over the past few years because of domestic law in the United States dealing with allocations to treaty Indian fisheries.

I am afraid that the situation in 1978 is less bright, if anything, than before, and the possibility of a confrontation is strong. You may recall in 1977 that the U.S. Government approved the standard regulatory recommendations of the IPSFC, but exempted treaty Indians from coverage, and promulgated separate Indian regulations under the authority of the Department of the Interior. The basic objective and result of these separate regulations was to provide three days Indian fishing for every two days all citizens fishing. At the time, Canada reserved its position on the appropriateness of the U.S. action in exempting its Indian fishermen from coverage of the IPSFC regulations.

For 1978, Canada has already rejected a U.S. proposal that would provide legal "cosmetics" to return management control to IPSFC, while allowing up to three extra Indian fishing days per week. I am afraid that little middle ground for a solution exists, and I would, therefore, ask that you conduct, on an urgent basis, a review of the Fraser River Convention and provide your opinion on the following points:

- (a) Does the Convention permit either party to partially approve or partially disapprove regulatory recommendations made by IPSFC?
- (b) Can either party exempt any or all of its citizens from coverage of regulations approved in part or in whole?

- 2 -

- (c) Does either party have the right to promulgate regulations relating to the taking of sockeye and pinks in Convention Waters which permit fishing times or fishing with gear not provided for in approved IPSFC regulations?

By copy of this memorandum, I am requesting the treaty law experts in the Department of External Affairs to review this question.

There is a voluminous amount of documentation on this question which I would be happy to review with you if you so desire.



M. Hunter

52193

cc: M. Leir ✓
L.A. Willis

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**ACTION
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INFO ENVOTT/FISHERIES/VERNON/HUNTER

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REF YOURTEL FLO0550 MAR7

---INPFC NEGOTIATIONS:MAR21-23

GUARANTEED RESERVATIONS MADE AT ONE WASHINGTON CIRCLE HOTEL AS
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Fisheries and Environment Canada
Pêches et Environnement Canada
Fisheries and Marine

Pêches et Environnement Canada
Pêches et Mer

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| To/A | FLO |
| From/De: | ACR |
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| Att'n: | LEIR |

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| 25-5-72-SALMON-1 | |
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February 27, 1978

Your file Votre référence

Our file Notre référence

Mr. C.J. Blondin,
Assistant Director for International
Fisheries,
National Marine Fisheries Service,
Department of Commerce,
Washington, D.C. 20235

Dear Carmen,

Canadian fisheries officials have reviewed very carefully the proposal for regulations in U.S. waters covered by the Fraser River Convention contained in the draft diplomatic note provided to us in Montreal on February 16, 1978.

The primary criterion used in assessing the United States proposal was whether it provided for the IPSFC to clearly and unmistakably regain regulatory control of all fishing for Fraser River sockeye salmon in U.S. Convention Waters as provided for under the terms of the Convention. Our examination confirms the preliminary views which I presented in Montreal, that the proposal would not meet this criterion but would serve to formalize a dual management system in U.S. Convention Waters which would be inconsistent with the terms of the Convention, and that having the IPSFC recognize that deviations from its regulatory regime would occur, would be no more than legal "cosmetics" to cover up this basic inconsistency.

You are fully aware of the concerns expressed by Canada that the operation of two regulatory agencies governing fishing of one stock of fish, even when those agencies work in close but informal cooperation, contains latent dangers. We are particularly concerned that the ability of the IPSFC, to which both Governments have assigned the responsibility for management of Fraser River sockeye salmon,

.../2..

- 2 -

to manage the fishery in accordance with the object of the Convention could be adversely affected, notwithstanding the stated intention of the United States Government to ensure fulfillment of its obligations under the Convention.

Two other criteria were also employed in examining the merits of the U.S. proposal. These criteria were first established at a meeting between officials in July 1974, and were that:

- (a) proposed changes in IPSFC regulations would not reduce the regulatory options available to the IPSFC to meet the needs of Canadian fisheries (i.e. action on the U.S. side to accommodate Indian fishing would not require disadvantageous adjustments in Canadian fishing times and areas); and
- (b) that proposed changes would not require the IPSFC to recommend specific regulatory action for Indians alone.

We feel that the U.S. proposals fail to meet either of these criteria. With respect to criterion (a) above, the proposed 24-hour delay in opening times every other week, coupled with a substantial increase in Indian fishing time could well have effects on fishing patterns not only in Canadian Convention Waters, but throughout southern British Columbia. With respect to criterion (b) above, the reference to deviations from regulations to meet the legal obligations of the United States, can only be construed to mean IPSFC recognition of the necessity for, and recommendation of specific regulatory action for Indian fishing.

In view of these considerations, the Government of Canada would be unable to accept the regulatory proposals contained in the document presented in Montreal. In addition to the reasons pertaining to resource questions, which are of basic and overriding concern, questions of public relations cannot be ignored. The IPSFC has, over the years, developed a rapport with the fisheries communities of both our countries. The fisheries community in Canada, at least, is insistent that IPSFC continue to carry out its management role, until new arrangements are negotiated, without reference to domestic problems in the United States. Serious departure from a position held unanimously by the fishing industry is obviously very difficult for the Canadian Government.

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- 3 -

Indeed, feelings in Canada run so high that acceptance by the Government of the kind of arrangement initially approved in 1977 would be difficult, though perhaps not impossible at this time. It appears to officials in Canada, that the 1977-type approach, with adjustments of fishing times to provide for a continuous Indian fishery, is the only middle ground available to us. Even this approach creates difficulties in the context of the expected run of sockeye in 1978. From a personal standpoint, I can see little merit in the United States argument that Treaty Indian fishermen require two or three extra fishing days because the Adams River race is more difficult to catch (a claim unsubstantiated by IPSFC data, but a common assertion of both Canadian and U.S. fishermen), and because Northern Puget Sound chinook runs are coincident with the Adams River sockeye run. The difficulty in catching sockeye applies to Indians and non-Indians alike, while the free choice of Indian fishermen to fish the coincident chinook runs should not be an impediment to the proper management of Fraser River sockeye.

In light of these observations, I would urge that your side explore the possibility of using an approach similar to that proposed by the USA in 1977. Since it is evident that we will be unable to reach a mutually satisfactory conclusion on this matter before the scheduled meeting of IPSFC on March 3, I would suggest that the Commissioners of both countries be requested to delay any action on submission of regulatory recommendations to governments until a later date. I would appreciate your views on this proposal.

I remain hopeful that we can reach a solution to this issue that will permit IPSFC to resume and retain the regulatory control over the sockeye fisheries. The Canadian side would be willing to meet again to further discuss the matter if you so desire.

Yours sincerely,



M. Hunter,
Pacific Programs Officer,
International Directorate.

cc: W.R. Hourston
G.C. Vernon
G. Jones (Vancouver)
J. Stephen
L.A. Willis
M. Leir ✓
File 1165/J10

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Government of Canada

Gouvernement du Canada

MEMORANDUM

NOTE DE SERVICE

TO
A

G.C. Vernon

To: A FLO
 From/De: AFRA
 Feb 21 1978
 AM LET

AA to see

FILE

FROM
DE

M. Hunter

25-572-SALMON-1
 DATE
 February 17, 1978
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SECURITY - CLASSIFICATION - DE SÉCURITÉ

OUR FILE - N/RÉFÉRENCE

YOUR FILE - V/RÉFÉRENCE

February 17, 1978

SUBJECT
OBJET

IPSFC Regulations for 1978

the change of the light brigade!!

On February 16, 1978, I led a four-man Canadian delegation in a meeting with U.S. officials, headed by Mr. C. Blondin of the Department of Commerce, to review progress towards an agreed regulatory system for the Fraser River sockeye fishery in 1978. The results of the meeting were not at all encouraging, but before discussing the present situation in detail, it may be useful to briefly review the rather complex background to the issue.

Background

In February 1974, a U.S. Federal Judge (Boldt) ruled that Treaty Indian fishermen in Washington are entitled to have the opportunity to take 50% of the available salmon harvest passing through their "usual and accustomed" fishing places, which has been interpreted to mean virtually all salt water off the State of Washington. The U.S. Government is, by this Court ruling, obliged to afford Treaty Indians the opportunity to take one-half of the U.S. share of Fraser River sockeye and pink salmon, the harvest of which is regulated by IPSFC.

The United States, therefore, has a domestic allocation problem. The enabling legislation for IPSFC does not provide statutory authority to solve the problem and, while implementation of the Court decision could be handled by citing offenders for contempt of Court, the citation process is described as being so cumbersome as to be ineffective. The domestic allocation problem has, therefore, been thrown into the IPSFC arena for solution and Canada has been drawn into the fray.

In 1974, the United States attempted to have IPSFC amend its regulations in mid-season to provide for extra time for Treaty Indian fishermen in U.S. Convention Waters. This attempt was successfully blocked by Canada on the grounds that we could never accept a regulatory regime which made specific or implied reference to a particular ethnic group.

.../2..

In 1975, the IPSFC regulatory recommendations of the usual form were adopted by both Governments, but the United States on July 19 withdrew its acceptance of the regulations as they pertained to the type of gear permitted. This action which was protested by Canada, had the effect of allowing Treaty Indians to fish with any type of gear during times when IPSFC regulations permitted fishing with a particular type of gear.

In 1976, the formula of permitting Indians to fish with any gear whenever U.S. Convention waters were open under IPSFC regulations was formally adopted by agreement between Canada and the USA that implementation of the IPSFC regulations would be carried out "to the extent permissible under the laws of the Parties". The quoted words appeared in the 1976 regulations promulgated in the United States.

In 1977, the United States once again proposed a variant of the "extent permissible" formula. In order to provide increased fishing time for Treaty Indians, the USA suggested the juggling of fishing times permitted certain gear types in order to eliminate any closed times between the beginning and the end of the fishing week.

Canada modified the "extent permissible" language to provide for implementation of regulations in a "manner consistent" with the laws and obligations of the Parties, and, with this change, initially accepted the U.S. proposal. This acceptance was withdrawn when it became clear that the U.S. proposal had no support from the U.S. fisheries community and when suggestions were made that massive civil disobedience would result from allowing Indians extra fishing time.

Upon withdrawal of Canadian acceptance, the USA took action to approve IPSFC regulations, but exempted Treaty Indians from their coverage and promulgated separate regulations for the Indian fishery under the authority of the Department of the Interior. Canada reserved its position on the appropriateness of the U.S. exemption of certain of its citizens from IPSFC regulations.

The hard work of two U.S. civil servants and the smile of lady luck prevented a total collapse in the effective management of Fraser River sockeye and pink salmon in 1977. However, the Canadian fisheries community in southern British Columbia was incensed by the unilateral U.S. action, the imposition of a second management authority in Convention Waters, and the perceived acquiescence of the Government of Canada in the whole affair.

The Present Situation

At the February 16, 1978 meeting, the United States delegation informally presented a diplomatic note (which was to

be delivered in Washington on the same date). The note contains the U.S. proposal for handling the allocation problem in 1978, and is a response to certain suggestions made by Canada at a previous meeting in Washington last November.

The essence of the proposal is for the IPSFC regulatory recommendations to the Governments to note the possibility of deviations from regulations to take account of the "legal responsibilities" of the U.S. Government. Under this "chapeau" of IPSFC regulation, the USA is proposing a pattern of fishing in U.S. Convention Waters that would permit additional fishing time (1-3 days) for Treaty Indians.

Analysis of Proposal

The language proposed by the USA for inclusion in IPSFC regulatory recommendations is clearly unacceptable to Canada because of its implied reference to Indian fishing (legal responsibilities of the U.S. Government). Indian gillnetters would be permitted two extra nights fishing per week because of:

- (a) a claim that Adams River sockeye (dominant in 1978) are harder to take than other races; and
- (b) the lateness of the run (August) conflicts with late summer chinook salmon runs to northern Puget Sound.

Indian purse seines would be offered one extra day for ostensibly similar reasons. The Makah tribe would be offered three extra nights per week. These extra times, coupled with a one day delay in opening (from Sunday night to Monday night) would, according to the USA, serve to maintain the Indian share of the harvest in U.S. Convention Waters (20% in 1977). The implications of the 24 hour delay in opening time are being studied by the IPSFC staff.

It appears that the U.S. proposal does not, in any way, meet the concerns expressed by Canada. It would maintain, in practice, a dual management system, while providing a legal "chapeau" under which IPSFC would, on the face of it, regain management control. It is the view of the Canadian side that this "chapeau" could be better described as a blindfold.

At the February 16 meeting, the Canadian side asked whether a system of the type proposed by the USA in 1977 could be considered (i.e. juggling gear times to provide a continuous Indian fishery), in view of the fact that, at first glance, the U.S. proposal appeared to be unacceptable. The U.S. side replied that the IPSFC staff's 1978 regulations proposals did not lend

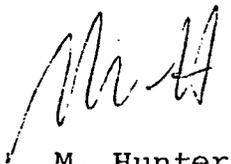
themselves to such manoeuvres. After further examination, it is clear that the U.S. proposal is unacceptable to Canada and there appears to be little, if any, middle ground.

Next Steps

A diplomatic note, in reply to the U.S. proposal will have to be developed once we have received further advice from the IPSFC staff on management/biology questions as opposed to political/philosophical questions.

It appears that, when IPSFC meets on March 3 to adopt regulatory recommendations for transmittal to Governments, the U.S. Commissioners will be under instruction to float the U.S. regulatory proposal, but may accept the IPSFC staff proposals, which will again be implemented in part by the USA, with exemptions for Treaty Indians. We are, it appears, faced with a repeat of the 1977 situation, or a situation somewhat worse, in that increased Indian fishing time will be permitted in U.S. Convention Waters, by one means or another. The situation is likely to get worse, since the answer to the allocation problem, according to U.S. officials is implementation of the recommendations of a Presidential task force which was established to examine fisheries problems in the Pacific Northwest. Such implementation is a minimum of five years away.

May we discuss this matter further?



M. Hunter

Attachment (U.S. note)

cc: W.R. Hourston
G. Jones (Vancouver)
P. Liebel
L.A. Willis
J. Stephen
M. Leir ✓

Fisheries and Environment Canada
Pêches et Environnement Canada
Fisheries and Marine

Pêches et Environnement Canada
Pêches et Mer

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| To/A | FO |
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| Att'n: LBR | |

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cc. GRT
GNP
FLP

February 1, 1978

Wash DC / Bochner
Kretzschmar to

Mr. Carmen J. Blondin,
Assistant Director for International
Fisheries,
National Marine Fisheries Service,
Washington, D.C.

Your file Votre référence
Our file Notre référence

Dear Carmen:

As you are no doubt aware, IPSFC is scheduled to meet in Bellingham on March 3 to review the staff's regulatory proposals for 1978, and to decide on recommendations to the Governments for regulation of the fisheries.

After our meeting in Washington last November, I was hopeful that we had identified a number of possible approaches to the problem of allocation and fishing times in U.S. Convention Waters for 1978. However, since that time we have not received a response from your side on any of the suggestions which we made at that meeting.

I am, therefore, concerned that IPSFC will be making recommendations to the Governments which you will be unable to accept, and which will open up a whole series of questions from the Canadian fisheries community about the legality of actions taken by the U.S. Government, and will create severe political problems in Canada. I must say that I am not at all certain that we will be able to restrain the tide of public opinion in Canada for another year, and I do not need to point out the consequences with which we might be faced should this prove to be the case.

We remain anxious to resolve the problems in the considered and careful manner which have characterized our discussions in the past, and I would urge that you provide us, as soon as possible, with any ideas which might provide a feasible solution.

I look forward to hearing from you very soon.

Yours sincerely,



M. Hunter,
Pacific Programs Officer,
International Directorate.

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strong
 words
 for an
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 letter