# Committee on Resources
## Subcommittee on Fisheries Conservation, Wildlife and Oceans

## Witness Statement

**Testimony of Ted Strong**

**Delegate of the Columbia River Treaty Tribes**

**to the**

**Government-to-Government negotiations**

**under the U.S.-Canada Pacific Salmon Treaty**

**Before the**

**U.S. House of Representatives**

**Committee on Resources**

**Subcommittee for Fisheries Conservation, Wildlife and Oceans**

**October 28,1999 11:00 a.m.**

Good morning, Mr. Chairman, members of the committee, my name is Ted Strong. I served as the governmental delegate for the Columbia River treaty tribes during the recently concluded government-to-government negotiations between the U.S. and Canada under the U.S.-Canada Pacific Salmon Treaty. The Columbia River treaty tribes include the Nez Perce Tribe, the Confederated Tribes of the Umatilla Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, and the Yakama Nation. These four tribes formed the Columbia River Inter-Tribal Fish Commission in 1977 to act as a coordinating forum and as a technical support agency. For ten years, through the spring of this year, I served as the Executive Director of the Commission. I am still serving as an Alternate Commissioner on the U.S. Section of the Pacific Salmon Commission, my appointment runs through January 2000.

As a member of the government-to-government negotiating team, I welcome this opportunity to present my thoughts on the agreement ratified by the U.S. and Canadian governments on June 30, 1999, as well as the initial views of the Columbia River treaty tribes on legislation that is necessary to implement the new agreement. I say initial views, because I believe this committee should continue to provide close oversight for salmon rebuilding and restoration issues to ensure that our gains under the Salmon Treaty are not squandered by federal agency inaction. In particular, I would encourage your committee's, or as appropriate, the full committee's, oversight of the management of federal salmon hatchery production facilities and federal agency actions in facilitating cooperative watershed restoration activities and addressing others factors limiting the production and productivity of salmon.

**Tribal views towards salmon** At the outset, I think it is important that you understand the importance of salmon to the tribal peoples. Salmon are a critical part of the tribal peoples' spiritual and cultural identity. For us, the celebration of the annual return of the salmon assures the renewal and continuation of human and all other life. Historically, we were a wealthy people because of a flourishing economic trade based upon the salmon. For many tribal members, fishing is still the preferred livelihood. It is a livelihood reserved by our peoples and guaranteed under the treaties with the United States.

Because of our interrelationship with an dependence upon the salmon, we are not interested in protecting a collection of "museum piece" salmon stocks under the Endangered Species Act. Instead, our tribal governments are dedicated to

rebuilding and restoring the health of the salmon stocks that originate from the Columbia River, as part of a coastwide rebuilding program for all salmon, in order to provide for healthy, sustainable fisheries. Achieving this goal requires us - tribes, states, and the federal government - to work together on issues critical to restoration and protection of salmon and their habitat. The sooner we can pool our energies to address the issues that impact salmon production and productivity, the greater will be the ecological and economic benefits we can reap from our work under the Salmon Treaty.

**Role of the tribes in salmon management** Treaty Indian tribes reserved rights to Pacific salmon, including steelhead, under treaties with the United States in the 1850's. These rights have been affirmed under several court decisions, such as U.S. v. Oregon and U.S. v. Washington, including a U.S. Supreme Court holding that not even international treaties can diminish the tribes' reserved rights to Pacific salmon.

The tribes adhere to a gravel-to-gravel management approach for salmon, which means that we as managers must follow the entire life-cycle of the salmon to ensure that its needs are met at every stage. The salmon that are subject to our treaties with the U.S. migrate through the waters of the north Pacific, including the coastal waters of Alaska and Canada. For that reason, the U.S.-Canada Pacific Salmon Treaty represents an important link in the management chain. Before the Pacific Salmon Treaty was signed in 1985, and to ensure the conservation of the resource and a fair allocation of the allowable catch, Treaty Indian tribes sought to account for all catches of Pacific salmon by non-tribal fishers in all areas, including the waters off the coast of Alaska. These are referred to as "all citizens" suits, since they seek to account for and allocate all catches of salmon by all citizens of the U.S. as part of the tribal/non-tribal sharing arrangement. One such case is Confederated Tribes of the Yakama Indian Nation et al v. Baldrige (Yakama v. Baldrige), under which the tribes sought to include the catches of chinook salmon by fishers in Alaska as part of the allocation system.

With the signing of the Pacific Salmon Treaty in 1985, a coastwide catch management and accounting system was put in place. Though not perfect, this system did allow the tribes to put the "all citizens" suits on hold. For example, a stipulated settlement was entered in Yakama v. Baldrige that provided that the allocation of chinook between Alaska and the tribes and the Pacific Northwest would be satisfied so long as coastwide chinook management decisions were decided by the Pacific Salmon Commission pursuant to the chinook rebuilding program of the Salmon Treaty.

**Summary of new Chinook Agreement** I think it is important to note at the outset what the agreement reached by the U.S. and Canadian negotiating teams does, and does not, provide for with regard to chinook. The agreement:

- is for ten years, running through 2008, and extending and restating the chinook rebuilding goals and objectives;
- replaces the U.S. Letter of Agreement Regarding an Abundance Based Approach to Managing Chinook Salmon Fisheries for Southeast Alaska (Chinook LOA);
- provides an abundance-based management framework, taking into account total fishery mortality, identifies the need to meet ***agreed*** escapement objective, identifies the need to halt decline in spawning escapements and sustain and rebuild chinook stocks;
- implements harvest reductions for the Southeast Alaska (SEAK) all gear chinook fishery from the Chinook LOA and the old ceiling of 263,000 at abundance index levels below 1.35[(1)];
- institutionalizes recent voluntary Canadian reductions, with substantial reductions from the 1985 -1996 average harvest levels in the Northern British Columbia (NBC) Troll, the Queen Charlotte Island (QCI) sport fishery, and the west coast Vancouver Island (WCVI) troll and outside sport fisheries (where a 40% reduction from recent average harvest levels will remain in place; this is the equivalent of about a 60% reduction from the 1979 -1982 base period), these are major reductions from the old harvest ceilings and provide major benefits for chinook stocks originating in the Pacific Northwest, including the Columbia and Snake River basins;
- for the first time, bases ocean fishery management on total fishery mortality with limits on incidental mortalities, provides incentives to reduce incidental mortalities (allows 50% of the reduction in incidental mortalities to be taken as landed catch, passing 50% of the reduction on to other fisheries or to spawning escapement), and includes a "payback provision", requiring reduced catch levels in a fishery the next year if set incidental mortality levels are exceeded;
- includes "weak stock gate" provisions that will reduce harvest levels across all fisheries (though such reductions may be allocated in southern fisheries to meet treaty/non-treaty sharing obligations) if harvest levels are causing

a stock to continue to decline and such reductions will benefit the stock (e.g., meet spawning escapement needs);
- **does not** provide a "get out of jail free" card for any fishery under the Endangered Species Act, NMFS retains the authority to call for additional reductions in U.S. fisheries (including those in Alaska) if necessary to protect listed stocks; and
- **does not** create any new or different harvest obligations for the states or tribes under U.S. v. Oregon, under which case the tribal, state, and federal parties are actively negotiating a management plan.

**Habitat and Restoration** Fishing mortality is quickly becoming a small part of the problem for many salmon stocks; our conflicts over harvest sharing with Canada is really a symptom of the failure to address the larger problems. For that reason, our success in reaching a harvest agreement under the Treaty this year will be wasted unless the underlying problems of production and productivity that led to the fishing conflict between the U.S. and Canada are addressed by both countries. That is why the Agreement on Habitat and Restoration reached by the U.S. and Canada during these negotiations is so important. This agreement will help both countries to identify limiting factors for weak and depressed stocks and provide recommendations on how stock production and productivity may be improved through habitat restoration, enhancement activities (such as supplementing naturally spawning stocks), or other activities directed at restoring production and productivity.

**Position on currently proposed legislation** During the negotiations, the federal participants recognized the need to receive Congressional authorization for an important element of the developing package of agreements: the establishment of the Restoration and Enhancement Funds for the Northern Boundary and Transboundary Rivers and for the Southern Boundary areas. This need was discussed openly by the negotiating team and it was agreed that the U.S. State Department staff would draft authorizing language, consistent with the negotiations with Canada, for consideration by the Congress. That language is now being considered as part of the Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2000, and for other purposes (Commerce Appropriations bill).

But for one potentially critical error that has crept into that language, the Columbia River treaty tribes support that part of the legislation currently being considered by Congress to authorize the Treaty funds. The Southern Boundary Restoration and Enhancement Fund covers the "geographic area . . . [of] southern British Columbia [area south of Cape Caution], the States of Washington and Oregon, ***and the Snake River basin in Idaho (emphasis added)***." Unfortunately, language has now crept into the authorization for this fund that would limit the selection of the fund managers to the "Pacific Coastal tribes (as defined by the Secretary of Commerce)." *See* Section 623(a)(2)(B) of H.R. 2670. This language, because of the manner in which some people may interpret it, is inconsistent with the intent of the negotiators. Using or citing the language of the Pacific Salmon Treaty Act of 1985, would alleviate the potential for later confusion on this subject. That Act provides that " 'treaty Indian tribe' means any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon subject to the [Pacific Salmon] Treaty under treaties with the United States.' *See* Section 2(i) of the Pacific Salmon Treaty Act of 1985 (P.L. 99-5).

To be clearly consistent with the intent of the negotiators and alleviate the potential for future confusion, "Pacific Coastal tribe . . ." Should be replaced with "treaty Indian tribe" (as defined by the Pacific Salmon Treaty Act of 1985).

As for the rest of the proposed authorizing language contained in the Commerce Appropriations bill, those sections labeled "Pacific Salmon Treaty Implementation" and "Improved Salmon Management" (Sections 623 (b) & (c) of H.R. 2670) were not discussed by the negotiators, were not recognized as a necessary element of an overall by the negotiating team, and represent an attempt to unilaterally "renegotiate" critical sections of the Pacific Salmon Treaty Act of 1985 and the stipulation in Yakama v. Baldrige.

It's important to remember that when the Salmon Treaty was signed in 1985 there were "three balls" in the air: the Salmon Treaty itself; the Salmon Treaty Act; and the Stipulation in Yakama v. Baldrige. The parties to the treaty negotiations at that time would not allow any ball to fall into place unless they all fell into place at the same time. The voting structure of the U.S. Section was a critical element considered by all the parties: the new voting procedures proposed by the State of Alaska represent a drastic change from the procedures adopted by the parties in 1985. Like 1985, there are three balls in the air again. The U.S. negotiators did agree to recommend to the parties (tribes and

states) that a stay of the "all citizens" suit be entered in U.S. v. Washington and that a stipulation regarding the new sockeye agreement also be entered into by certain parties under U.S. v. Washington. These agreements can only be submitted to the court if the offending "ESA sufficiency" and "Improved Salmon Management" language in Sections 623 (b)&(c) are stripped from the Commerce Appropriations bill.

The reasons the tribes object to these two section are many: I will cite only a few. With regard to the ESA sufficiency language, the negotiators - particularly the federal representatives - were quite explicit about the continuing need for ESA review: the proposal for a one time review of Alaskan fisheries as proposed under the Salmon Treaty agreement without the possibility for later review by NMFS was rejected every time the issue was raised to be a part of the package of agreements. Importantly, from an ESA review perspective, the agreement does not provide for stock specific management of ESA-listed stocks, such as the Snake River fall chinook. While it was generally thought that the effect of the harvest arrangements contained in the agreement would satisfy the current obligations for Snake River fall chinook, as defined for ocean and in-river fisheries by NMFS, at no point was it agreed that the agreement represented a management system designed to address the specific needs of ESA-listed stocks.

With regard to the proposed change in voting structure, it is necessary to point out only one result of the propose change: without consultation with any other U.S. party to the Pacific Salmon Treaty - including the U.S. Department of State - the State of Alaska could declare *on behalf of the United States* that Canada is out of compliance with the Treaty. That threat to national sovereignty and decision-making should not be tolerated, especially since such action would put the rest of the treaty agreements at risk without the input of the treaty Indian tribes and states of Washington, Oregon, or Idaho.

**Additional legislation necessary to implement agreement** The Columbia River treaty tribes' and their Commission' s technical experts have identified where federal and state resource managers have fallen short in protecting and restoring the habitat and production of **all** salmon stocks. *Wy-Kan-Ush-Mi Wa-Kish-Wit*, the tribes' restoration plan, documents the threats to salmon, identifies hypotheses based upon adaptive management principles to address those threats, and provides specific recommendations and practices that must be adopted by natural resource managers. Will Stelle, the NMFS Regional Director for the Northwest, recognized it as the only salmon restoration plan in the region.

In the same vein, Governor Knowles showed great initiative in 1996 by bringing the Governors of Oregon and Washington to Alaska to discuss salmon conservation issues at the Sitka Salmon Summit. Tribal representatives were impressed with the pro-active approach advocated by Governor Knowles, and the other governors, as exemplified in their statement of principles and in the specific actions they recommended to protect and restore salmon and their habitat in the Columbia River basin. A good framework came out of the Summit. Importantly, some of the key problems the tribes had identified in Wy-Kan-Ush-Mi Wa-Kish-Wit, *The Spirit of the Salmon*, were also identified as critical problems by the Governors.

I would offer the following observation: No one, and I do mean no one, can, by any stretch of the imagination suggest that chinook stocks have been rebuilt in the Columbia River, Puget Sound watershed, Fraser River, or Vancouver Island rivers, let alone coastwide. We need to refocus our attention on rebuilding all of shared salmon stocks and recognize that we can only do so by addressing all of the factors limiting salmon production and productivity. To that end, I would recommend that several elements the tribes' restoration plan be included in additional legislation developed by this subcommittee to support implementation of the new agreements under the Pacific Salmon Treaty.

I would like to put a particular focus on one aspect of the tribes' plan, the need for hatchery reform, that I believe will provide an example of what we are talking about. I believe that such reform will be critical to our joint success under the Treaty's amended rebuilding program for chinook salmon.

The tribes have, for over a decade, identified state and federal hatchery practices at the ninety-eight production facilities within the Columbia River basin as a significant factor in the loss of naturally spawning salmon stocks. NMFS agrees, citing these practices for the loss of naturally spawning coho. The operation of these hatcheries in their current mode has contributed to the decline of naturally spawning stocks throughout the basin.

Only about 4% of Mitchell Act production is released above The Dalles Dam, where most damage caused by the dams occurred and where the majority of mainstem and tributary treaty fishing sites were located. Approximately 1% of

Mitchell Act production is utilized to assist the rebuilding and restoration of naturally spawning salmon, the stocks which have been constraining most fisheries on the west coast, including those in Alaska. Prior to the transition from hatchery-based fisheries to weak-stock management, the mixed-stock fisheries that were regulated on the basis of hatchery abundance had a devastating effect on naturally spawning runs of the Columbia Basin. This is one of the reasons that NMFS must review Alaska's fisheries for their impacts on the Snake River fall chinook, for example.

The tribes believe that the salmon mitigation and enhancement programs authorized under the Mitchell Act and the Lower Snake River Compensation Program have discriminated against treaty protected fisheries and have failed to mitigate the salmon resource damage caused by the mainstem dams. Current management is also inconsistent with the newly adopted abundance based management regime for chinook salmon under the Pacific Salmon Treaty as well.

Hatcheries can play an extremely important role in salmon recovery and rebuilding. The tribes have proposed a biologically credible integrated plan to modify hatchery management practices throughout the basin in order to supplement rather than supplant natural spawning. Within the last ten years, the tribes, in coordination with other managers, have developed substantial scientific justification supporting the use of Mitchell Act facilities for natural run enhancement. In fact, a protocol for supplementation was agreed upon by the fish and wildlife agencies and tribes of the Columbia Basin Fish and Wildlife Authority and was peer reviewed and published in the text, Genetic Conservation of Fishes. Using the concepts captured in that protcol, the Umatilla Tribes have successfully restored chinook and coho stocks to the Umatilla Basin that had been extirpated from the basin for over a half-century by an irrigation diversion dam. Given the current status of Columbia Basin salmon stocks, and the important contributions they can make to sustainable in-river and ocean fisheries, the Columbia River treaty tribes' believe these practices need to be implemented immediately as an alternative to current Mitchell Act hatchery practices. If the Mitchell Act facilities continue to be operated as they are now, continued funding will be inimical to the success of the Salmon Treaty's abundance based management systems and restoring natural spawning populations of salmon.

The National Marine Fisheries Service's interpretation of the Endangered Species Act further limits the ability of the federally funded hatcheries to comply with congressional mitigation mandates. Some of these hatcheries can make a substantial contribution to the recovery of populations sought to be protected under the Endangered Species Act. Unless the National Marine Fisheries Service interprets the ESA to permit the use of these hatchery-reared populations for artificial propagation purposes as required under Section 3(15) of the Act, these facilities will not be used in an effective manner to hasten salmon recovery.

The tribal proposal for hatchery reform is but one element of legislation that should be part of comprehensive legislation developed to support the newly reached agreements under the Pacific Salmon Treaty. Other parties may have others thoughts on what might be included in such legislation. And that would be the appropriate forum for consideration of other legislative proposals, such as those Alaska is proposing to rush through the appropriations' process.

Mr Chairman, members of the committee that concludes my testimony for today. For the written record, I am also including a brief outline of events that lead us to the current chinook rebuilding program contained in the new agreement under the Pacific Salmon Treaty. I think it will give you some idea of the difficult road we have had to travel through the various stages of the negotiations. I hope it will also give you an appreciation of why the tribes are adamant about stripping the objectionable language I've identified from the Commerce Appropriations bill.

I am available for additional questions now, or at a later date. I would also encourage this committee to continue to elicit the tribes' views on salmon restoration issues.

**Brief Outline of Events**

In 1985, after several years of negotiation, the U.S. and Canada signed the Pacific Salmon Treaty, largely in response to a coastwide chinook conservation crisis. In order to effectively deal with the chinook conservation crisis, the parties implemented a chinook rebuilding program. As a tool, not as the program itself, a harvest ceiling - not a harvest quota - was imposed on several ocean fisheries impacting chinook stocks. The harvest arrangements limited the Southeast Alaska (SEAK) chinook fishery at 263,000, the North and Central Coast British Columbia (NCBC) chinook fishery at

263,000, the West Coast Vancouver Island (WCVI) chinook fishery at 360,000, and the Strait of Georgia (GS) chinook fishery at 275,000.

These limits were set to rebuild chinook stocks coastwide, based upon certain assumptions regarding stock survival and increasing stock productivity and production through habitat restoration and hatchery reform. By the early 1990's it was quite apparent that these underlying assumptions were wrong and that ocean harvest levels had to be reduced in Canadian and Alaskan fisheries. While Canada was (finally) signaling an intent to implement reductions in 1995, they were reluctant to do so without reductions by Alaska in the SEAK fishery. By this time, tribal and non-tribal fisheries in the Columbia River had already reduced their harvest rate by 50% from the late 1980's.

These ceilings, including the one for the all gear catch of southeast Alaska, were based on a major assumption: a concentrated, cooperative effort to increase chinook stocks coastwide would increase overall stock abundance over time, thereby reducing the harvest rate impacts over time. Ultimately, by making these harvest adjustments, coupled with focused enhancement activities and habitat improvements, we would achieve our goal: chinook stocks at optimum production levels so that we could fairly share in the bounty of a resource important to our tribes and to your fishery.

We now know that this major assumption was flawed: enhancement activities did not result in as many salmon as anticipated coastwide, the salmon continue to suffer from habitat loss and degradation and a hydropower system that should be providing safe passage continues to chew up fish instead. We have also already learned that the tool we had selected to implement the rebuilding program - ceilings - have not adequately addressed annual variations in stock abundance and so we have embarked on developing alternatives.

In 1995, Alaska announced their intention, based upon a National Marine Fisheries Service review of their fishery pursuant to ESA (about 5 to 10% of Snake River fall chinook fishing mortality occurs in this fishery), to harvest 230,000 chinook. The tribes, Canada, and the states of Washington and Oregon believed a harvest level in the range of 100,000 to 150,000 was more consistent with estimates of stock strength. The tribes, joined by these other parties, filed suit in federal court against Alaska pursuant to the stipulation entered in Yakama v. Baldrige. This stipulation had settled tribal harvest allocation issues with Alaska, so long as the obligations of the chinook rebuilding program under the Pacific Salmon Treaty were being met by all parties.

After the litigation limited the Southeast Alaska (SEAK) chinook fishery to less than 180,000 in 1995, complementing harvest reductions made by Canada, talks began on the structure of the ocean chinook fisheries for 1996 and the long term. Not much progress was made in bilateral talks. In May 1996, Alaska offered an abundance-based management proposal for the SEAK fishery that would form the basis of a U.S. proposal to Canada. Intense negotiations among the states and tribes during the next seven weeks resulted in the adoption of a Letter of Agreement Regarding the Abundance-Based Approach to Managing Chinook Fisheries in Southeast Alaska. This agreement was referred to as the LOA or the "broken stick" (because of the stepped harvest rate approach employed to determine catch levels in SEAK). The LOA limited the chinook catch in SEAK to less than 150,000 in 1996. The U.S. passed this proposal to Canada on June 26, 1996.

While these talks leading to the LOA were occurring, Governor Knowles of Alaska convened the Sitka Salmon Summit, with Governors Lowry and Kitzhaber. The Statement of Principles and Recommended Actions that were developed at this summit played a significant role in the adoption of the LOA. In fact, but for the jointly stated objectives of the Governors to address significant issues in the Columbia River basin, including habitat restoration, hatchery reform, and coordination on addressing hydropower system problems, tribal staff would have recommended that the tribes not agree to the LOA. Since the summit, Alaska has been participating in the Three Sovereigns process, other fish advocate forums and in litigation involving the hydropwer system.

Rather than making a counter- proposal in 1996, Canada instead tried to institute a dispute resolution process under the Treaty to challenge the LOA, claiming that it increased interceptions of Canadian origin salmon. After rather substantial efforts, an appropriate dispute to be put before the panel could not be developed. Canada did not provide a counter-proposal until June 1997. The Canadian proposal came too late in the talks, and was too skeletal in nature, to be useful in bilateral talks to modify the LOA in 1997. Meanwhile, Canada shut down most of their chinook fisheries in 1996 and limited them substantially in 1997, providing substantial benefits to the U.S. in the form of increased

returns of chinook stocks for harvest and spawning escapement. The U.S. anticipated, and even counted upon, Canada taking these management actions as part of our talks leading to the LOA in 1996. Finally, in February 1998, the U.S. and Canada exchanged proposals for coastwide, long-term abundance-based management of chinook stocks. The U.S. proposal was based upon the framework set out in the LOA.

Not much progress was made in bilateral talks on chinook management in 1998 after proposals were exchanged in February. In the meantime, certain assumptions were made regarding harvest levels in Alaska and Canada during development of harvest options under the Pacific Fishery Management Council (PFMC) discussions in March for ocean fisheries off Washington and Oregon. Using early estimates of stock abundance, it was assumed that the chinook harvest levels would be 279,000 for SEAK, 154,000 for NCBC, and about 75 to 100,000 for WCVI. The LOA was used to determine harvest levels for SEAK while it was assumed that Canada would fish at 1997 harvest rates. None of these harvest levels include the impacts of incidental mortalities, which can be substantial, depending on how a fishery is managed to achieve its allowed catch level.

1. [1]The Chinook LOA used the standard treaty base period of 1979 thru 1982, the period for which the first good ocean harvest interception data from the coded wire tag program became available, as a base level of abundance. That is, when abundance index is 1.25, that means abundance is 25% greater than it was in the base period.

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