

# Committee on Resources

## Subcommittee on Fisheries Conservation, Wildlife and Oceans

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### Witness Statement

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Statement For the Record

Of

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Of the

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As

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To

The Subcommittee on Fisheries Conservation,

Wildlife and Oceans Committee on Resources

United States House of Representatives

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Thank you Mr. Chairman, and members of the Subcommittee, for this opportunity to testify on the new agreement on portions of the Pacific Salmon Treaty and on its successful implementation. I would like to provide some historical perspective on the Pacific Salmon Treaty, the evolution of conservation-based fisheries management in Alaska, and the comprehensive package of new agreements developed this year through the Pacific Salmon Commission's scientific, technical and negotiating processes.

The rational management and sharing of Pacific salmon has long been a concern to the States of Oregon, Washington and Alaska, and to Canada. Discussions between these parties have been ongoing since shortly after ocean fishing for salmon began. Prior to the Magnuson Act in 1976, fishermen from each party commonly fished off each other's coast. Agreement on the conservation and allocation of salmon stocks largely eluded the U.S. states and Canada. Intense negotiations occurred beginning in the late 1970's and culminated in an agreement between the U.S. and Canada--the Pacific Salmon Treaty, which was signed in 1985. The Treaty recognized two principles: conservation and equity. It also recognized three guidelines for implementation: the desirability in most cases of reducing interceptions, the desirability to avoid undue disruption of traditional fisheries, and the conservation imperative to consider periodic variations in abundance.

For practical implementation however, the primary management tool used was the establishment of harvest "ceilings". In essence, these ceilings became fixed targets for the fisheries. It was a strict adherence to this primary management tool that nearly caused the undoing of the Pacific Salmon Commission, the implementing body of the Treaty.

No sooner was the Treaty signed in 1985 setting these "ceilings" in place, when the abundance of the Far North Migrating stocks of chinook salmon began to increase dramatically along with northern stocks of pink and sockeye salmon. Many participants believed that the ceilings appeared to violate the principle of equity, and guidelines of

undue disruption and annual variations in abundance. At the same time, the abundance of southern or non-Far North Migrating stocks of chinook and coho, were declining. And yet, fisheries, which targeted these fish, were still managed based on a ceiling or quota target which in many cases was too high. Clearly, in the southern fisheries the hard targets or ceilings violated the principle of conservation, leading to concerns that excessive harvesting of some salmon stocks was occurring.

Ironically, throughout these years the State of Alaska was managing salmon fisheries in Alaska not covered by the treaty far differently, basing harvest levels on the actual abundance of fish, as assessed "in-season," and limiting harvests to ensure that enough fish "escaped" fisheries to return to spawning habitat and thus ensure continued strong salmon production. This fisheries management strategy, known as "abundance-based management," was predicated on the conservation and sustainability of the salmon resource.

Prior to Alaska statehood in 1959 the federal government managed the salmon fisheries, and allowed salmon traps and out-of-state investors to drive salmon populations to dangerously low levels. This was a driving force behind the Statehood movement, and the Alaska State Constitution itself was drafted to include a clause requiring that resources are managed sustainably. As a result, the Alaska Department of Fish and Game worked hard for many years to develop an effective, abundance-based management program for salmon. The effort was a success, as Alaska's salmon populations are the healthiest in the world and the state's salmon management is regarded worldwide as a model of sustainable fisheries management.

Alaska also put in place some of the tougher water quality standards in the western United States, as well as strong laws regarding streamside habitat protection. The state has not built major dams across its critical salmon producing rivers and streams, and has tough fish passage requirements for any activity effecting a stream course. These habitat protection measures combined with abundance-based management are the reason salmon are so abundant in Alaska today.

In the early 1990's the Pacific Salmon Treaty process began to break down. In 1991, an agreement concerning chinook salmon was signed and covered 1991 and 1992. After 1992, chinook salmon arrangements in particular were in disarray with all sides arguing in courts and in public about what levels of escapement are needed, who should be able to fish, and at what level. As a result we saw, on top of the failure of "ceiling" fisheries, such a level of contention over allocation that biology was sometimes secondary. Conservation of the salmon resource itself was sometimes used as a rhetorical excuse to leverage allocations rather than as a scientific guideline for sustainable management. This acrimonious climate continued to worsen with ever escalating rhetoric, vessel blockades, transit fees, declarations of fish wars, and the like. Clearly, by 1995 the treaty was in deep trouble.

In 1996 Alaska Governor Tony Knowles invited Washington Governor Mike Lowry and Oregon Governor John Kitzhaber to Sitka, Alaska to discuss their common interest in salmon conservation. Representatives of the Northwest treaty Indian tribes also attended the meeting. The meeting became known as the Sitka Salmon Summit, and the Governors and tribal representatives made a strong mutual commitment to the stewardship and conservation of a shared, migratory salmon resource. A central theme of the Sitka Salmon Summit was the need for habitat protection and restoration in the salmon spawning rivers of the Pacific coast. Particular attention was paid to the Columbia River basin and the need to safeguard the Hanford Reach of the Columbia, the most productive stretch of chinook salmon habitat on the river.

The spirit of cooperation engendered at the Sitka Salmon Summit contributed significantly to a breakthrough in Chinook discussions among U.S. interests--the U.S. Section Letter of Agreement regarding the management of chinook salmon fisheries in Southeast Alaska (LOA). This agreement called for strict conservation oriented abundance based management for the Southeast Alaska chinook fishery. The LOA did away with the old "ceiling" approach and adopted the Alaska abundance-based management paradigm, including the achievement of basic spawning escapement goals. It also established a scientific agenda and schedule to better address Chinook conservation. This agreement recognized that rational management could only take place if the technical committee structure of the Pacific Salmon Commission (PSC) was used to effectively establish the biological basis for conserving the stocks. Simply put, good science leads to good management.

The U.S. LOA on Chinook salmon proved to be an effective conservation strategy. Harvests respond to natural population fluctuations, and the strong majority of the far north migrating stocks in southeast Alaska are in stable to excellent condition. In addition, the National Marine Fisheries Service (NMFS) determined that fisheries managed under the LOA do not jeopardize the few far north migrating populations of salmon that are not healthy, several of which are listed as threatened under the Endangered Species Act (ESA). Because the LOA also provided a framework for scientific and technical progress, and continuing discussions regarding salmon allocation and management, it provided a relatively stable procedural foundation for additional work on the salmon treaty. In many respects the LOA was the basis for renewed negotiations on chinook between the U.S. and Canada beginning in 1998.

Another critical step forward occurred when the parties to the Pacific Salmon Treaty engaged stakeholders from each jurisdiction in direct negotiations to seek solutions that were eluding the primary negotiators. For the first time those with the most direct stake in the health of the resource, the fishermen themselves, were able to explore fishery arrangements that could meet conservation and allocation requirements in a way that did not unduly disrupt their livelihoods. Although the Stakeholder Process did not produce a bi-lateral, U.S. - Canada agreement, the process really laid the foundation for most of the agreements on the non-chinook fisheries.

For example, it became clear that with the exception of chinook salmon, which migrate through all jurisdictions, fisheries arrangements were essentially northern accommodations between Alaska and Canada or distinct southern accommodations among Canada, Washington, Oregon and the treaty tribes. This north--south clarification ultimately simplified the negotiations and allowed all parties to focus on the biology, conservation, and fair allocation of the specific salmon populations they share. It essentially ended the tendency of one party to use the fisheries of another party as a political tool, and forced each party to confront the hard questions relating to their own fisheries. This was critical to reaching an overall agreement.

During the Stakeholder Process, serious discussions also occurred about creating conservation funds as a means to settle disputes and build the productivity of the salmon spawning rivers to assure more abundant salmon for the future. The priorities for funding included scientific research and cooperation, habitat protection restoration, and wild stock enhancement. The discussions also affirmed that in order for research and habitat restoration to be effective, and for a new allocation arrangement to provide the stability desired by fishermen, new agreements would have to be in place for an extended time period of at least ten years.

Thus, by 1998 the foundation had been set for reaching agreement with Canada, if all the pieces could come together. In addition to the fishing arrangements and agreements, several other U.S. domestic issues had to be settled. These contingencies included a finding by the U.S. federal government that, should a conservation-based package of salmon agreements be put together, the treaty amendments would receive a no jeopardy opinion under U.S. Endangered Species Act (ESA), and that the disputes regarding Northwest Indian treaty fishing right be resolved. Because the southeast Alaska fisheries were already certified as not jeopardizing any salmon populations, and the new arrangements coast-wide would be much more conservative than previous arrangements, the new ESA certification was not considered to be a problem. It was envisioned that both U.S. domestic contingencies would cover the duration of the desired agreements.

In the spring of 1999, agreement was reached between the U.S. and Canada. Abundance-based management was adopted in all fisheries covered by the treaty. A comprehensive package of fishery arrangements was agreed to and will be in place for a minimum of ten years for all the fishery arrangements with two exceptions: The Fraser River sockeye salmon arrangement, which will be for a tenure of twelve years; and southern coho where a process was established to develop a long-term agreement by the year 2000 fishing season.

In addition to these fishery arrangements, the overall package includes a Northern fund and a Southern fund as endowments to promote scientific research, salmon habitat restoration, and small-scale wild stock supplementation programs. The parties recognized that specific funding levels and implementing legislation would be required to establish these funds. The parties also recognized that there would be a need for increased funding to implement abundance based management regimes under the new agreement.

The remaining contingencies regarding the ESA and U.S. v. Washington are fully spelled out in the Letter of

Transmittal signed by the Chief Negotiators for the United States and Canada, and the "Statement of Understanding of the U.S. Negotiators." These two documents mark the agreement of the federal governments of the United States and Canada, the States of Alaska, Washington and Oregon, and the treaty tribes of the Northwest and the Columbia River. Because the agreement is a comprehensive conservation and allocation package in which each component is an integral part of the whole, all parties recognized that the U.S. domestic contingencies are essential.

Unfortunately, not all the elements of the comprehensive package are in place. The stipulations and court orders addressing tribal fishing rights are close to being done as of this date, and we are confident that they can be fulfilled shortly. The funding provided in current legislation is less than the agreement calls on the U.S. federal government to provide, but we expect the

total amounts of the funds to be built up over several years in accord with the schedule presented in the Letter of Transmittal from the Chief Negotiators. Funding for abundance-based management and a buyout of southern United States non-tribal fishing permits must also be secured.

We are not so confident that the U.S. federal administrative process will be successful in meeting the terms of the Agreement regarding the Endangered Species Act. I am dismayed by the lack of focus by the National Marine Fisheries Service in developing a Biological Opinion that is technically sound and legally defensible. Although a Biological Opinion is being made available at the time of preparation of this testimony, we have had no time to review it. We will carefully examine this draft and provide comments to NMFS to ensure that it is both technically and legally defensible. But, suffice it to say that Alaska firmly believes that a biologically and legally defensible ESA determination is absolutely required to fully implement this agreement. In fact, the chief negotiators from both the U.S. and Canada stated that the Salmon Treaty agreements are "...contingent on a determination that the Agreement satisfies the legal requirements under the United States' Endangered Species Act. The Government of the United States would agree to fulfill those requirements as expeditiously as possible..." As such, funding this agreement and related salmon restoration programs must be contingent on attaining a determination that has the durability to cover the full term of the Pacific Salmon Treaty arrangements.

In saying this, let me be clear that Alaska is not advocating weakening the ESA. Several of the U.S. stocks that are harvested in the PSC fisheries have been listed as threatened under the ESA. The agreement was carefully constructed, in consultation with scientists from all jurisdictions including the U.S. federal National Marine Fisheries Service, in order to ensure these stocks are rebuilt to maximum sustainable yield production levels and maintained there. This is a much higher standard than that of "not likely to jeopardize the continued existence."

Furthermore, with regard to the populations of salmon, which spawn in the rivers of the Pacific Northwest and migrate throughout the north Pacific, including the populations considered to be threatened, scientists agree that fisheries are not causing the problem. Consider that the National Marine Fisheries Service (NMFS) allows the federal dams on the Columbia and Snake Rivers to kill 62-99 percent of the juvenile Snake River fall chinook and nearly 40 percent of the adults. Oregon biologists estimated the dams are responsible for up to 93 percent of total mortality on Snake River fall chinook. Alaska biologists note 70 percent of the river miles between the ocean and the spawning grounds for these fish have been converted to reservoirs.

Even before the new, more restrictive Pacific Salmon Treaty agreements Alaska fisheries barely scratched this salmon population, accounting for only three tenths of one percent of the human-caused mortality. Clearly, fishing is not the problem. The problem is with the habitat in the salmon spawning rivers of the Northwest. This is why Alaska insisted that the new arrangements include habitat and safe passage. Alaska, working with Northwest Tribes, introduced to the negotiations the principle of Safe Passage for salmon to and from their spawning grounds in the rivers of the Northwest, Canada and Alaska. The Safe Passage principle recognizes that even with very conservative, abundance based fishery arrangements salmon must be able to flourish in the fresh water streams and rivers where they spawn, mature, and migrate back to sea. The Safe Passage proposal advocated by Alaska was included in the treaty agreements in the Attachment on Habitat and Restoration, which calls on all parties to:

"...protect and restore habitat so as to promote safe passage of adult and juvenile salmon and achieve high levels of natural production, maintain and, as needed, improve safe passage of salmon to and from their natal streams, and

maintain adequate water quality and quantity."

The Chief Negotiators' Letter Of Transmittal for the entire treaty package further states:

"...freshwater habitat must be protected or restored to allow for successful salmon migration, spawning, and juvenile rearing. ...Fishery arrangements are not a substitute for sound habitat management. Governments, communities and other interests are urged to work diligently to protect salmon habitat and to continue to take the necessary measures to ensure that freshwater habitat is not a limiting factor for achievement of salmon production goals."

This simply illustrates the importance of every one of the contingent elements of the 1999 Pacific Salmon Treaty Agreements. Abundance-based harvesting regimes were designed to assure fisheries are conducted in accord with scientific, conservation principles and in accord with the U.S. Endangered Species Act. The U.S. federal government committed to provide the certification that those fishery arrangements comply with the ESA, so that the arrangements can be implemented effectively to achieve salmon conservation and restoration goals. The extended court stipulations addressing tribal allocations and the ten to twelve year duration of the fishery arrangements contribute the stability necessary for effective management and for the fishermen. Habitat restoration measures will increase the productivity of the salmon streams of the Northwest, which will mean more fish for everyone--particularly chinook salmon--and restoration of populations listed as threatened under the U.S. ESA. Funds appropriated by the U.S. federal government will support implementation of fisheries arrangements, scientific and technical work, salmon enhancement, and habitat restoration.

Alaska is committed to implementing the entire suite of arrangements under the new agreement. Alaska also expects each of the other parties to the agreement to meet their obligations in implementing all of these arrangements as well. Each of the states of Alaska, Oregon, or Washington, the Northwest Indian Treaty Tribes, and the federal governments of the United States and Canada must all commit the staff and resources necessary to make this agreement work. Each part of the whole is essential to succeed in our mutual goal: assuring the continued long-term abundance and sustainability of our shared resource of Pacific salmon.

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