

# **Committee on Resources**

## **Subcommittee on Fisheries Conservation, Wildlife and Oceans**

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### **Witness Statement**

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**Testimony of Terry D. Garcia**

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**Department of Commerce**

**on the Pacific Salmon Treaty**

**Before the**

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

**House Resources Committee**

**U.S. House of Representatives**

**October 28, 1999**

Thank you, Mr. Chairman, and members of the Subcommittee, for this opportunity to testify on the Pacific Salmon Treaty.

The new comprehensive Agreement, reached through vigorous diplomacy among the responsible parties, is designed to contribute to the recovery and long-term sustainability of five Pacific salmon species through a combination of scientific co-operation, new funds to improve fisheries management and aid recovery for weakened salmon stocks, and necessary limits on salmon catches. The Agreement is based upon a recognition in both countries that co-operation is essential if our common interest in the conservation of salmon is to be protected.

The new Agreement, and its associated funds, will help resolve a major thorn of contention between the U.S. and Canada. It resolves long-standing disputes arising out of the Pacific Salmon Treaty of 1985, which delineated fishing regimes only until 1992, leaving a number of issues unresolved.

This contention between the U.S. and Canada is of national concern. Since the regimes expired in 1992, we have been in a continual state of turmoil on the west coast. For example, in the summer of 1994, Canada imposed a transit fee on U.S. fishing boats traveling between Washington State and Alaska. In 1997, a group of angry Canadian fishermen "blockaded" and detained for three days an Alaska State ferry, the *Malaspina*. The provincial government of British Columbia, on several occasions, threatened to deny the United States access to a torpedo testing range at Nanoose Bay. The province also has brought suit against U.S. parties in an attempt to impose its interpretations of U.S. laws relating to the Pacific Salmon Treaty.

#### **Provisions of the New Agreement**

There are four conservation elements to the new Agreement under the Pacific Salmon Treaty.

- There are long-term fishing arrangements governing net fisheries in the Northern Boundary Area and on fisheries on transboundary river stocks, southern coho, Fraser River sockeye and pink, chinook salmon coast-wide, and southern chum. There are also provisions for the management and conservation of northern boundary coho. These arrangements are all for ten years except for a Fraser River sockeye and pink arrangement which is

for twelve years. These arrangements are based on a new, cooperative framework called abundance-based management that is more sensitive to conservation requirements than previous negotiated approaches.

- This Agreement provides major reforms to the fish management regimes that have governed these fisheries for over a decade. These reforms put the needs of salmon stocks first, and calibrate the level of fishing directly to the health and abundance of the stocks. More fish, more fishing; less fish, less fishing.
- The Agreement places powerful new limitations on future fishing to ensure that the weak stocks of Puget Sound and the Columbia River are protected from over-harvesting.
- This Agreement also sends a positive signal to all parties that are working on conservation plans, and looking at changes or improvements in habitat, hatcheries, and hydropower to benefit all salmonid stocks. The reductions in Canadian harvest will help them meet their goal of recovering these species. These changes involve new technologies and management practices that represent a firm commitment to conservation first.

### Endangered Species Act Biological Opinion

The United States and Canada have agreed that the new "Agreement would be contingent on a determination that the Agreement satisfies the legal requirements under the United States' Endangered Species Act."

The fisheries that are covered by the new Agreement have a substantial impact on a number of salmon species listed under the ESA, especially chinook salmon. Our negotiators were keenly aware of this throughout the negotiations. They also understood that the Agreement would require Federal approval, and that this constitutes a "federal action" as defined by the ESA, that would have to be evaluated by the NMFS for consistency with the ESA. In recognition of this fact, the diplomatic notes exchanged between the U.S. and Canada on June 30, 1999 expressly included a provision committing the U.S. to complete its ESA process by December 31, 1999.

NMFS has never before consulted on a fishery agreement of this geographical scope, or one that affects so many listed species. Nevertheless, aware of the importance of this Agreement and the urgent need to determine whether it comports with the ESA, NMFS gave completion of its biological opinion its highest priority, while recognizing that the science sometimes cannot be forced to meet timelines that we all would like.

I am happy to report that, as of October 25, our preliminary biological opinion has been completed and distributed to the parties involved in the negotiations. It concludes that the Alaska and Canadian fisheries covered by the Agreement do not jeopardize any listed salmon species. Indeed, the Agreement is an important contribution to the recovery and sustainability of Pacific salmon stocks throughout the treaty area, and vastly superior to previous arrangements under the Treaty.

The new Agreement was never intended, and does not provide, the same level of specificity governing management of the U.S. "southern fisheries;" those are being developed by the states and tribes in the Northwest in conformity with both the Pacific Salmon Treaty Agreement and the ESA. Just as it did for the Alaskan and Canadian fisheries, NMFS will evaluate those plans for consistency with the ESA when they are available.

### Funds Developed Under the Agreement

The Agreement is also contingent upon funding two new bilaterally-managed regional Pacific Salmon Treaty funds. The Northern Boundary and Transboundary Restoration and Management Fund (Northern Fund) will be used for programs and projects relating to salmon resources in Southeast Alaska and Northern British Columbia. The Southern Boundary Restoration and Enhancement Fund (Southern Fund) will be used for programs and projects relating to fisheries in Southern British Columbia and the states of Washington, Oregon and the Snake River basin of Idaho. The Northern and Southern endowment funds will be administered jointly by both countries to invest in habitat, stock enhancement, science and salmon management initiatives in both countries.

The resources in both the Northern and Southern Funds will be held by the Pacific Salmon Commission, the bilateral Commission established by the 1985 Pacific Salmon Treaty, and managed by two bilateral committees - one for each fund. Only the interest earned by the funds will be used, and then only while bilateral fishing regimes remain in force. The intent is to provide a stable and permanent source of funding for these programs while providing a strong incentive for the two countries to resolve future disputes.

Both bilateral treaty endowment funds will be used solely for purposes outlined in the 1999 Pacific Salmon Agreement and appendixes, including stock assessment, research and monitoring, habitat restoration, and fish enhancement programs. All of these programs are designed to complement the new abundance-based, conservation-oriented fishing regimes. These new regimes require a higher level of scientific and technical information, better and more complete data sets and improved management and monitoring programs. In some cases other approaches may be employed, for example, where problems with depressed salmon stocks can be addressed by restoring degraded habitat and/or enhancing natural salmon using relatively low-technology techniques.

In addition to the two bilateral endowment funds, the Agreement includes a grant to the State of Washington and a grant to the State of Alaska. The grant to Washington will be used to reduce that state's non-Indian commercial fishing fleet to help achieve a reduction, mandated by the new agreement, in the U.S. share of Fraser River (Canadian) sockeye caught by commercial fishermen in Washington State. This reduction in the U.S. share of Fraser sockeye was a primary objective of Canada. As a consequence of recent and continuing declines in Canada's catch of coho and chinook originating in Washington and Oregon, Canada sought to remedy what it sees as an imbalance of interceptions. The grant to Alaska will be used for chinook and coho salmon enhancement to help mitigate for lost fishing opportunities arising from the new Agreement.

The Administration does not believe that new legislation is needed to implement the provisions of the Agreement. Congress's FY 2000 Commerce, Justice, State, and the Judiciary Appropriations conference has provided the authorization needed to administer the bilateral funds.

#### The President's Funding Request for the Agreement

A total of \$190 million in new funding will be required to implement the new Agreement, including the two new Pacific Salmon Treaty endowment funds and grants to the states of Washington and Alaska. The U.S. will contribute \$75 million to the Northern Fund and \$65 million to the Southern Fund over a four-year period. The United States has agreed that initial monies for the bilateral Northern and Southern Funds would be available by December 1999. Additional Fund installments need to be made by the end of FY 2001, FY 2002 and FY 2003.

Either the U.S. or Canada, as well as third parties, may contribute to the funds in the future upon agreement of the Parties.

For the first year, FY 2000, the President requested \$60 million to cover the new funding needs - the Northern Fund, the Southern Fund, the grant to Washington, and the grant to Alaska. A FY 2000 request of \$10 million provides the initial capital for the new Northern Fund. A FY 2000 request of \$10 million provides the initial capital for the new Southern Fund. For the grant to the State of Washington, \$20 million is requested in FY 2000. The \$20 million is the first installment of grant requests that will eventually total \$30 million. The requested Federal contribution will be matched with at least \$5 million from the State of Washington. Also requested in FY 2000 is a grant of \$20 million to the State of Alaska.

The President's amended budget request for these funds will not diminish the budget surplus. Included in the budget amendment are offsets for increasing the prior-year safe harbor percentage for higher income taxpayers, a revision to the Welfare-to-Work program that postpones some of its financing, and an increase to savings proposals for the Federal Family Education Loan program.

Congress's FY 2000 Commerce, Justice, State and the Judiciary (CJSJ) Appropriations conference includes \$5 million for the Southern Fund, and \$5 million for the Northern fund. [It also includes continuation of the Pacific Salmon Treaty Implementation program, at \$5.58 million, and the continuation of the Chinook Salmon Agreement Funding, at

\$1.8 million, which are also vital to continued state, tribal and federal implementation of the overall Treaty.]

### Administration Veto of the Commerce, Justice, State, and the Judiciary Appropriations Bill

The Administration has vetoed the CJSJ Appropriations conference bill, in part because it provided insufficient funding to make the Pacific Salmon Treaty package work, and contained objectionable riders.

The level of funding provided in the CJSJ appropriations conference, \$10 million, is a stark comparison to the requested funding of \$60 million. This small amount, which falls far short of the level of funding that is needed, calls into question the integrity of our commitment to implement the Agreement. We have negotiated in good faith with Canada, and have reached consensus through a stakeholder process, and that must be upheld by an appropriate amount of funding.

In addition to insufficient funding for the Agreement, the CJSJ bill includes extraneous legislative riders that would hinder implementation of the Agreement. These riders would prohibit application of the Endangered Species Act to Alaskan salmon fisheries and possibly other activities, change the voting structure of the U.S. Section of the Pacific Salmon Commission, and impose terms on the use of the bilateral Restoration funds that are contrary to the Agreement with Canada. The details of these provisions, and the Administration's objections, follow:

**A. ESA Sufficiency.** This provision would exempt all Alaskan fisheries from the ESA during the life of the Agreement, and as well exempt "other activities" from the ESA, the latter provision so ambiguous as to be unworkable. It would eliminate the ability of NMFS and other resource managers to look to harvest constraints as may be necessary in the future to aid in the conservation of salmon species.

If ESA-listed species continue to decline, or if more salmon are listed in the future, it would take any additional harvest constraints "off the table" so long as the fisheries comply with the 1999 Agreement. The intended purpose of this agreement did not include insulating any management action or any parties from the application of the ESA. To do so now would create serious policy inequities within the region, and no doubt lead to intensive litigation, threatening the viability of both the Agreement and recovery planning efforts.

The treaty tribes and the states of Washington and Oregon have indicated their strong opposition to this ESA sufficiency language.

Furthermore, as evidenced in the just-completed biological opinion, this rider is unnecessary, as NMFS has determined that the Agreement is consistent with the requirements of the ESA.

**B. Commission Voting Structure.** This proposed language, which did not emanate from the negotiations and was never considered by the U.S. negotiating team, would change the voting structure of the U.S. Section of the Pacific Salmon Commission. In essence, it would prevent the U.S. Section from negotiating agreements that balance the interests of all the parties. It would give the Alaskan Commissioner sole authority to vote on northern issues, except chinook salmon, and the Washington/Oregon Commissioner and the tribal Commissioner the sole authority to vote on southern issues, except chinook salmon. In contrast to its purported purpose of "streamlining" U.S. decision making under the Treaty, this change will seriously undermine the delicate balance struck among the many U.S. interests in 1985, when the Treaty and its implementing legislation were approved. This is a bilateral treaty, affecting salmon coastwide. It simply makes no sense to bifurcate U.S. representation in a manner that ignores the interdependence of the Northern and Southern fisheries.

In addition, the Agreement specifies that the funds will be jointly managed, and that if fishery arrangements expire, no funds may be spent until a new agreement is reached. This appropriations rider would give the U.S. representatives the right to determine, unilaterally, whether Canada is complying with the Agreement, and to cut off funding for Canadian projects if the U.S. representatives so decide. This is wholly inconsistent with the bilateral agreement, would certainly be rejected by Canada, and is unacceptable to the Administration.

It is likely that these legislative riders will cause several of the state and tribal parties involved in the Agreement to withdraw their support for the entire package, and could easily result in difficult and protracted litigation.

We are also disappointed that the vetoed bill significantly reduced the President's request for the Pacific Coastal Salmon Fund.

### Conclusion

To conclude, I will re-emphasize Vice President Gore's message last June, that "The agreement reached by U.S. and Canadian negotiators on Pacific salmon is welcome news for the environment and for the economy in both our countries. The long history of conflict over Pacific salmon illustrates that environmental challenges respect no borders." The Vice President continued by stating that the "agreement demonstrates that, by reaching across borders and working together, we can meet our common challenges in ways that ensure both a healthy environment and strong, sustainable economic growth." It is my hope that Congress supports this Agreement by providing adequate funding to implement it, and sends a bill to the President that does not contain harmful riders that undercut the progress we have made.

Thank you again for the opportunity to testify. I would be pleased to respond to any questions members of the Subcommittee may have.

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