

# **Committee on Resources**

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

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### **Witness Statement**

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#### **Statement**

#### **STATEMENT OF**

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#### **UNITED STATES SPECIAL NEGOTIATOR FOR PACIFIC SALMON**

#### **DEPARTMENT OF STATE**

#### **BEFORE THE HOUSE COMMITTEE ON RESOURCES**

#### **SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE, AND OCEANS**

**OCTOBER 28, 1999**

Mr. Chairman and members of the Subcommittee:

Thank you for this opportunity to appear before the Subcommittee to report on the status of the Pacific Salmon Treaty and the 1999 Pacific salmon agreement, which establishes new fisheries regimes under the Treaty and expands commitments to protect and rebuild salmon stocks.

Since 1994, I have been the Department of State's Special Negotiator for Pacific Salmon. From 1994 to 1997, and again in 1999, I was the chief negotiator for the United States in bilateral negotiations with Canada aimed at resolving the long-standing disagreement between the two countries with respect to the implementation of the Pacific Salmon Treaty of 1985. Since 1994, I have also been the U.S. federal commissioner on the Pacific Salmon Commission.

The dispute between Canada and the United States over the allocation of Pacific salmon goes back more than 100 years. Recently, that issue has become even more difficult because of the decline of a number of Pacific northwest salmon stocks and the need to adopt conservation measures.

At the heart of the debate has been the extent to which salmon originating in the waters of one country could be harvested by fishermen of the other country. Such harvests are known as "interceptions".

#### **1985 Pacific Salmon Treaty**

The Pacific Salmon Treaty of 1985 was intended to provide the framework for a permanent resolution of the dispute. The Treaty set forth a number of principles to guide the management and allocation of Pacific salmon. In addition, through an annex to the Treaty, it prescribed harvest arrangements for particular "intercepting" fisheries, arrangements that varied in duration from two to eight years. Moreover, the Treaty established the Pacific Salmon Commission to help implement the Treaty.

Because the Treaty principles have been a source of continuing disagreement, I will summarize them briefly. The Treaty requires both nations to conduct their fisheries and their salmon enhancement programs so as to (1) prevent overfishing and provide for optimum production, and (2) provide for each nation to receive benefits equivalent to the production of salmon originating in its waters. The first of these principles is referred to as the "conservation" principle; the second, as the "equity" principle. The Treaty also provides that in applying those two principles, the

parties are to take into account (a) the desirability in most cases of reducing interceptions, (b) the desirability in most cases of avoiding undue disruption of existing fisheries, and (c) annual variations in abundances of the stocks.

Unfortunately, the Treaty did not set forth how these interrelated principles are to be implemented, and until now the parties have been unable to agree upon an implementation arrangement that satisfies and reconciles all the Treaty principles. In the early 1990s, when the harvest arrangements contained in the 1985 annex had all expired, the dispute intensified. The parties were in sharp disagreement about the fairness of then-current harvest shares and the appropriateness of various conservation measures.

The disagreement led to protests and to actions designed to force a resolution of the controversy. In 1994, the Canadian government imposed a large fee on U.S. fishing vessels transiting the inside passage between Alaska and Washington. Other actions included a threat by the British Columbia government to prohibit U.S. submarines from using Canadian facilities at Nanoose Bay and a blockade organized by Canadian fishermen who surrounded a U.S.-owned ferry.

During this period, the United States and Canadian governments, working in conjunction with their respective constituent groups, undertook a number of unsuccessful efforts to resolve these issues, including high-level negotiation, mediation, talks by representatives of fishers and other "stakeholders," and a joint review of the problem by two eminent individuals.

### 1999 Pacific Salmon Agreement

Although these efforts did not resolve the dispute, they set the stage for another vigorous round of negotiations between the United States and Canada, which began in 1998 and culminated on June 30, 1999 with the conclusion of a new, comprehensive agreement. That agreement constitutes a major achievement, and for many reasons it deserves the full support of the Congress.

First, it represents a long-term solution to the controversy that for many years has been a significant irritant in our relationship with Canada. The parties have agreed that as long as the new fishery regimes are in effect, the regimes will be deemed to satisfy all obligations under the Pacific Salmon Treaty.

Second, representatives from the states most affected (Alaska, Washington, and Oregon) and the 24 treaty Indian tribes participated fully in the negotiations. (Indeed, without their participation, no agreement could have been possible.) As a result, assuming that the contingencies are satisfied, the states and tribes are strongly committed to the implementation of the new agreement.

Third, the central part of the agreement is a series of long-term fishery regimes that relate allowable harvests to salmon abundance. Those arrangements promote conservation and provide a firm and complementary base for other salmon recovery efforts, such as habitat restoration, currently underway in both countries to restore depleted stocks.

Fourth, the agreement attempts to insulate science from politics and sets out a program of science and information gathering that will improve our understanding of salmon and facilitate better management of fisheries.

Fifth, the agreement provides a framework for closer coordination between fishery managers on both sides of the border, including personnel exchanges, which should avoid future surprises and encourage managers to feel that they are working together to address a common problem.

Sixth, the new bilaterally-managed funds will facilitate initiatives that optimize production, to the benefit of fishers in both countries. The funds will also provide a strong incentive to the parties to reach agreement on fishery regimes in the future, since money from the funds will not be available unless bilaterally-agreed fishery regimes are in place.

Seventh, the agreement is contingent on the issuance of a biological opinion by the National Marine Fisheries Service to determine whether fisheries managed pursuant to the agreement comply with the Endangered Species Act. The opinion will cover northern fisheries for the duration of the agreement. This determination will promote stability in the operation of the fisheries.

Eighth, the issue of harvest sharing between Indian and non-Indian fishers in Washington and Oregon will be resolved, for the duration of the agreement, by stipulations that will be filed in the relevant federal courts.

In summary, the pact is a major milestone toward achieving both conservation objectives and the long-term sustainability of salmon fisheries and the livelihoods of those who depend on this resource.

Let me add a few words of amplification on some of those points.

### Fishery Regimes

Most of the fishery regimes are contained in new chapters that replace earlier expired versions in Annex IV of the Treaty. The new abundance-based fishery regimes cover the major salmon intercepting fisheries in the United States and Canada. Larger catches will be allowed when salmon abundance is higher, and catches will be constrained in years when abundance is down. This type of regime will be much more responsive to the conservation requirements of salmon stocks than the fixed ceilings that existed under the original Treaty arrangements.

The duration of most of the fishery regimes is ten years. The Fraser sockeye regime will be in effect for twelve years.

The agreement also includes an understanding on the management of northern boundary coho to address conservation needs.

### Regional Bilateral Funds

Another vital element of the 1999 Pacific salmon agreement is the creation of two bilaterally-managed funds for the restoration and enhancement of salmon. David Balton, Director of the State Department's Office of Marine Conservation, will provide an overview of the purpose and establishment of these funds. The funds are an essential component of the overall agreement with Canada, and, if the agreement is to survive, it is critical that Congress authorize the funds and appropriate money for them, beginning this year and with full funding to be completed by the end of FY2003.

### Renewed Cooperation on Scientific and Institutional Matters

The 1999 agreement commits the two countries to improve how scientific information is obtained, shared, and applied to the management of Pacific salmon. It encourages staff exchanges between the management agencies, bilateral workshops, and participation in each other's public consultation processes leading to annual management regimes.

This agreement also requires the establishment within the Pacific Salmon Commission of a new bilateral Committee on Scientific Cooperation, drawn from both governmental and non-governmental scientific communities. It will assist the Commission in setting its scientific agenda and will provide advice on research and monitoring needs. Further, the Committee will provide support to the technical committees of the Commission, including arranging peer review of scientific reports.

### Habitat

While the primary focus of the agreement is on the management of salmon fisheries, it is understood that achieving optimum production of salmon will depend on other initiatives as well. Recognizing that many factors have contributed to the decline in naturally spawning Pacific salmon stocks, the agreement directs the Pacific Salmon Commission to report annually on stocks for which conservation measures beyond harvest control are required, the non-fishing factors that limit their production, and options for addressing those factors. Additionally, the Commission will report on the progress of United States and Canadian efforts to improve the habitat of these declining stocks.

### Programs Related to the 1999 Pacific Salmon Agreement

To meet U.S. commitments under the 1999 Pacific salmon agreement, the President has sought authorization and appropriations for the two regional restoration and enhancement funds. In addition, the President has sought funding

for two other programs related to the implementation of the 1999 agreement. These programs are designed to alleviate the impact of certain reductions in U.S. harvests that will occur under the new agreement. They address the reduction in fishing capacity for sockeye salmon in the State of Washington and a program to enhance fish stocks in Alaska.

### Washington Buy-Back Program

In exchange for concessions made by Canada in the 1999 agreement with respect to Canadian harvests of chinook and coho that originate in the waters of Washington and Oregon, the United States agreed to reduce the U.S. share of Fraser River sockeye caught in the waters of Washington State to 16.5 percent by year 2002. Normally the U.S. share is allocated equally between the State of Washington and the treaty Indian tribes in Washington State. To effectuate the reduction, the State of Washington agreed to reduce its share of the domestic allocation of Fraser River sockeye. The State of Washington plans to initiate a sockeye fishery license buy-back program to reduce the size of its commercial salmon fleet and to provide economic relief for fishermen who would be adversely affected.

During the negotiation of the 1999 agreement, the Administration indicated that it would seek up to \$30 million of federal funding over three years to help implement the State of Washington's proposed buy-back program. It is my understanding that the State of Washington has appropriated \$2.34 million for buy-back purposes and will provide additional funding as necessary. The required reduction of U.S. Fraser River sockeye harvests is phased in over the next three years, with the first reduction taking effect next summer. The State of Washington intends to conduct the initial phase of its buy-back program prior to next summer.

The federal government and the State of Washington will develop administrative guidelines for the federal funds. A United States government agency will be designated to administer the funds and grant them to the State of Washington for the buy-back program. Procedures for monitoring and evaluating the program will be established. The types of commercial fishery licenses that will be retired are Puget Sound gill net, Puget Sound Purse Seine, and Puget Sound reef net.

### Alaska Salmon Enhancement Program

To help mitigate for lost fishing opportunities that flow from the 1999 agreement, the President has sought \$20 million for a salmon enhancement program that will be undertaken by the State of Alaska. The program will supplement wild chinook and coho salmon populations in southeast Alaska.

### Endangered Species Act

The 1999 agreement includes a provision that implementation of the agreement by the United States is "contingent on a determination that the agreement satisfies the legal requirements under the ... Endangered Species Act." It goes on to say that if the U.S. government has failed to fulfill the legal requirements of the Endangered Species Act by December 31, 1999, the obligations under the agreement will be suspended pending fulfillment of those legal requirements, unless the parties agree otherwise. In drafting these provisions, the negotiators envisioned that the National Marine Fisheries Service would issue, prior to December 31, 1999, a biological opinion addressing the new fishery arrangements. This week, the National Marine Fisheries Service, released in draft form that biological opinion. Comments have been requested from the states and tribes. Once the opinion is finalized, it will satisfy the contingency in the agreement.

### Tribal Sharing Stipulations

The issue of harvest sharing between Indian and non-Indian fishers has been the subject of litigation in Washington State and Oregon for many years. Although not part of the formal agreement with Canada, the U.S. negotiators agreed among themselves to recommend to their principals that relevant stipulations and court orders in pending lawsuits should be amended to reflect the provisions of the 1999 agreement. They further agreed that acceptance of the 1999 agreement should be contingent on those actions being taken. I understand that stipulations have been drafted and are being circulated for signature. Some of the tribes have indicated an intent to delay the signing process until Congress completes work on FY2000 funding, but it is my expectation that the stipulations will be filed with the relevant courts in the near future.

Thank you Mr. Chairman. That concludes my presentation. I would be happy to answer any questions that you and other members of the Subcommittee may have.

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