

Committee on Resources

Subcommittee on Fisheries Conservation, Wildlife and Oceans

Witness Statement

Statement for the Record

of

Jev Shelton

of the

United Southeast Alaska Gillnetters

for

Alaska Trollers Association

Southeast Alaska Seiners

United Southeast Alaska Gillnetters

to

The Subcommittee on Fisheries Conservation, Wildlife, and Oceans

Committee on Resources

United States House of Representatives

October 28, 1999

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 on behalf of the U.S. Section of the Pacific Salmon Commission.

The Pacific Salmon Treaty (Treaty) agreement negotiated with Canada in 1999 is supported by the fishing industry in southeast Alaska. However, it is viewed as an agreement achieved at unfortunately high cost to Alaskan fisheries such that fishermen's support is uneasy at best. Additionally, it remains as yet a tentative agreement, pending satisfaction of an important set of conditions that were recognized explicitly, and bilaterally, at the conclusion of negotiations in June 1999. The 1999 agreement is a package requiring acceptance of all its components, and fulfillment of the remaining conditions comprises an essential element of that package. To date most of those conditions remain unsatisfied.

The initial Treaty, completed in 1985, produced a troubled record. The laudable effort to coordinate management and share harvests of the valuable Pacific salmon resources in the boundary areas of the U.S. and Canada generated genuine successes in specific fisheries, but the Treaty's promise was overtaken by a broader ideological acrimony. Difficulties in this endeavor stemmed from various causes, including incompatible interpretations and expectations in 1985 regarding execution of the then-new Treaty. Those discrepant interpretations separated the U.S. and Canadian national views while the major constituents within the U.S. Section similarly were divided. Many in the U.S. expected the Treaty to stabilize fishing patterns over an extended period of years. Alaskans viewed the promise of long-term stability as making acceptable the very

considerable reductions to certain Alaskan fisheries incorporated in the 1985 agreement. Others, particularly in Canada, anticipated a continuing reallocation of fishery harvests to their benefit. Beyond adherence to the specific fishery regimes, Canada demanded, with ever-increasing adamancy, an overriding coastwide balance in salmon "interceptions," a position never accepted by the U.S.

This unsettled situation was compounded by the underlying basis of the negotiated fishery regimes themselves. At Canada's insistence, compliance in most fisheries governed by the original Treaty was measured in terms of numerical harvest annually, without regard to the natural fluctuations in abundance of the salmon stocks. Annual quotas for specific fisheries came to be viewed as entitlements, especially given Canada's fixation on balancing "interceptions", regardless of the appropriateness of a quota level within a specific year or of the ability of the salmon resource to sustain such harvest levels over time. The resulting systematic overfishing, especially in southern British Columbia, contributed directly to the current depression of coho and some chinook salmon populations in southern British Columbia, Washington, and Oregon.

Undeniably, the Agreement of June 1999 represents a significant advance on both of these fronts. Sufficient detail is incorporated in the specific fishing regimes to restrict potential disagreements of interpretation. Most important, Canada has agreed that adherence to the negotiated fishery terms will in itself constitute full compliance with Treaty obligations. There will be no overriding calculation of the coastwide flow or balance of national fishery benefits. Second, the basis for measuring fishery compliance has been rationalized. All agreed fishery regimes now will state allowable harvests in terms of the measured abundance of the target salmon stocks. Allowed catches will increase or decrease annually with the observed magnitude of defined salmon populations. The ultimate check on the adequacy of fishery performance will be attainment of defined escapement (biological reproduction) levels sufficient to sustain individual populations at numbers approaching their biological maximum. Thus, Treaty-governed fisheries will harvest agreed proportions of salmon production that is excess to biologically defined escapement goals for specific salmon populations. This is essentially the fisheries management model that has been employed successfully in Alaska for decades. Treaty requirements for fishery performance finally should be consistent with successful scientific fishery management practices.

Reaching agreement in 1999 in the contentious atmosphere surrounding Pacific salmon was neither easy nor without substantial cost to Alaskan fishermen. Canada was most aggressive in advocating its interests and objectives. A central Canadian demand asserted that any resolution must transfer salmon harvest from U.S. to Canadian fisheries. That is, a precondition to any agreement was that Canadian fishermen win and American fishermen lose. In the pressure to "get a deal," concessions were made to Canada in virtually every southeast Alaska fishery that is accountable in the Treaty as well as in the non-tribal sockeye salmon fishery in Washington state. No Alaskan fishery gained a negotiated increase.

At the same time, Canada was undergoing a major internal restructuring of policy regarding its salmon resource. The nature of that restructuring was to diminish the Canadian commercial salmon industry in favor of recreational and aboriginal (First Nation) interests. The rationale employed by the Canadian national government to justify these changes included maintaining to its public that salmon resources in Canada were dangerously depressed. Canada's assertions did, and do not, stand up to objective scrutiny, especially regarding its very healthy northern salmon populations. Those claims proved to be grossly exaggerated, if not simply fabricated. Nonetheless, Canada persisted in appealing to resource depletion as justification for sweeping social actions. Outright closures of major commercial fisheries were imposed, and the government proceeded to reduce the commercial fishing fleets through a substantial vessel and fishing permit buyout. These Canadian domestic actions entered Treaty fishery negotiations as pressure for Alaska to implement complementary fishery restrictions, ostensibly to facilitate salmon resource conservation but really to produce political cover for Canada's draconian handling of its commercial fishing fleets.

Alaskan fishermen feel most keenly the double irony of these negotiations. They have been obliged to give up important shares of traditional fisheries, involving healthy stocks of primarily Alaskan-origin salmon. These concessions were given in order, on the one hand, to facilitate Canada's imposition of a major social policy initiative on Canadian citizens and, on the other, to induce Canada to accept application of abundance-based fishery management in its Treaty fisheries, a change that seems essential to the preservation of Canadian salmon resources.

In terms of fishery harvests, as in 1985 the numerous concessions made by Alaskan fishermen simply were not

balanced by changes in Canadian fisheries advantageous to Alaska. Such net losses are acceptable if, and only if, other considerations important to Alaskan fisheries are met. The most important of these conditions include:

1. Duration. The stability that proved so illusory from the 1985 agreement must be attained. Harvest sharing arrangements must be settled, not again the focus of continuing controversy, for a minimum of ten years. This condition appears to be satisfied in the 1999 agreement. A period of such length is important for at least three reasons.
2. Extended time for cooling off is necessary if the Treaty is to endure. Resuming difficult negotiations in the near future focussed again on the taking of salmon from Alaskan fisheries to the benefit of others would almost certainly destroy the now tenuous support that exists for this Treaty agreement. The Treaty requires the acceptance and cooperation of those it affects directly, and that acceptance is now perilously fragile.
3. Salmon abundance fluctuates naturally through a wide range as do some aspects of salmon behavior. A ten-year time frame permits the effects of these fluctuations to "even out" so that evaluation of fishery compliance is not unduly influenced by single atypical events that are outside human control. Relatively lengthy agreement on allocation terms also should reduce the tendency, experienced in recent years, for perceived or concocted crises to consume undue time and attention as mechanisms employed to gain immediate negotiating advantage.
4. Much basic information remains lacking for many salmon populations of concern to the Treaty. Progress on developing the needed data has been curtailed severely by acrimonious allocation struggles that have characterized the Treaty since its inception. It has, in fact, been advantageous for some parties not to develop clear data on certain salmon stocks so as not to restrict the claims they might make in pursuit of their allocation objectives. Several years of quiet on the allocation front are necessary to permit progress in developing valid biological escapement goals, reliable estimates of stock abundance in ongoing fisheries, and other important data. The necessary, and considerable, scientific and monetary resources must be committed to the task. Active avoidance of developing a sound technical understanding of certain salmon stocks must cease.
5. U.S. tribal claims. Indian tribes in Washington State have asserted that their rights to a proportion of salmon returning to streams in or migrating through the waters of Washington extend to those salmon when caught in waters off Alaska. The State of Alaska has opposed that assertion. A stipulated agreement to hold those claims in abeyance regarding chinook salmon was attached to the 1985 Treaty and a subsequent agreement to stay court proceedings regarding sockeye salmon has been in effect since 1996. Continuation of tribal agreements not to pursue legal actions for the duration of the negotiated fishing regimes for these species is necessary. Draft stipulations, agreed among the respective attorneys, have been presented to the principals of the various parties, but tribal representatives have not yet signed those documents.

3. Endangered Species Act (ESA). The letter of transmittal for the 1999 Treaty agreement clearly outlines the requirement that its implementation is contingent on determining that the relevant fishery regimes do satisfy the legal requirements of the ESA. With respect to chinook salmon harvests in Alaska, that determination must await the filing of a biological opinion by the National Marine Fisheries Service (NMFS). The schedule for issuance of that biological opinion on the Treaty chinook salmon fishery in Alaska remains uncertain.

Alaska argues most strongly that the fishery reductions that have been imposed in prior years and the additional reductions incorporated into the newly negotiated ten-year regime ensure that Alaska's chinook salmon fishery has contributed sufficiently to restoration of chinook salmon populations listed as threatened under the ESA. In the first place, Alaskan harvests account for very small numbers and very small fractions of the listed populations. For example, of an annual population level of roughly 2,250 Snake River fall chinook salmon, catches in Alaska average about 135, or about 6% of the total. Since the first listing under ESA in 1991, Alaska's fishery has been forced to reduce harvests on three occasions (1993, 1994, 1995) in order to obtain Section 7 incidental take permits and has been under consistent pressure from NMFS for additional reductions prior to annual permit decisions. Multi-year incidental take permits were not issued until the Letter of Agreement of 1996 among the U.S. voting members of the Pacific Salmon Commission was completed. That agreement mandated significant further harvest rate reductions on chinook salmon while shifting management of the Alaskan chinook salmon fishery to an abundance basis.

While NMFS was aggressively pursuing harvest reductions in Alaska, where tens of fish were involved annually, that

agency was granting "no jeopardy" determinations to the Columbia River hydroelectric dams. Those dams have reduced the in-river rearing habitat for juvenile chinook salmon to a small fraction of historic levels and, in addition, have been permitted by NMFS to impose mortality rates between 62% and 99% on juvenile salmon and an additional 39% on returning adults of the Snake River stock referenced above. The point here is not to speculate on the merits or details of NMFS decisions regarding dams. Rather, it is clear that Alaska's fisheries have received a peculiar relative emphasis in the vigor employed by NMFS in implementing its ESA responsibilities. Alaskan fishermen, drawing on this recent experience with NMFS, are most skeptical that the orientation of the agency will produce a reasonable evaluation of the newly negotiated Alaska fishery regime for chinook salmon or that a determination by that agency of satisfaction of ESA requirements can be trusted to endure.

Assuming that a timely biological opinion concludes that the negotiated Alaskan fishery does satisfy ESA requirements (and this outcome is anticipated) for the duration of that regime, in our opinion Alaska's fishery still will not be protected adequately. At issue is the ability of NMFS to reinitiate consultations on incidental take permits under Section 7. Alaska's experience with the reinitiation process is not reassuring. For example, in 1994 NMFS reopened Section 7 consultations, and renewed pressure to reduce commercial chinook salmon harvests, when it estimated that 10 Snake River fall chinook salmon might be caught in a recreational fishery that had not been included in an earlier analysis. Opportunities certainly exist for NMFS to force a reinitiation and then to alter the conditions for incidental take permits. Such opportunities can be anticipated regarding the pending chinook salmon fishery regime in Alaska. As an example, recent listings of additional chinook salmon stocks (most of which occur in only trace amounts in Alaskan waters) will involve determination by NMFS of new jeopardy standards for those "species." Those standards will be established some time after the biological opinion now in progress is completed and will provide an obvious route for NMFS to require review of the resulting permit, if the agency so chooses.

A critical part of the agreed Treaty package for Alaska is security from further fishery reductions imposed through NMFS discretion in implementing the ESA on listed stocks of chinook salmon. The Alaskan fishery is demonstrably not the cause of the declined state of the listed salmon resource. It has suffered disproportionate restriction in the name of conserving those salmon, and is governed by a fishery management regime that assures that its impacts on listed stocks will continue within the range of recent minimal levels. It should also be observed that the Snake River fall chinook salmon have produced stable population levels over the past ten years. Those salmon are not continuing to decline. Further fishery restrictions will not increase that population, a result that is possible only if the very serious freshwater habitat issues currently limiting that stock are addressed effectively.

Given these considerations, and given the history of interaction with NMFS on ESA matters, Alaskan fishermen are forced to conclude that meeting the ESA condition that is prerequisite to implementing the 1999 Treaty agreement will require legislative action by the Congress. We do not propose such action in order to diminish or to override the ESA. We presume that the biological opinion currently being developed will determine that ESA requirements are satisfied. Action by the Congress is requested in order to insure that the good-faith sacrifices made by Alaska's fishermen, for salmon conservation and for facilitating a Treaty agreement, are honored for the full length of that agreement. We respectfully request that the Subcommittee recommend the development and passage of legislation to this effect.

4. Funding. The establishment of two ongoing funds (northern and southern) within the Pacific Salmon Commission is a primary condition for bilateral acceptance of the Treaty agreement. Provided that Congressional authority and appropriation are secured, those funds are conceived as being permanent, with expenditures occurring only from accumulated earnings of the invested principal. Use of these funds will be limited to certain activities directly related to improving the status of the salmon resources in the regions. Improving the information base for resource management, improving scientific understanding of the environmental factors that govern salmon production, and rehabilitating or improving natural salmon habitat are among the primary activities identified as appropriate for support from this funding source. Approval of expenditures will be controlled by committees of three U.S. and three Canadian representatives for each fund.

Establishment of these funds with the U.S. providing capitalization in the amounts of \$75 million and \$65 million respectively came at the initiative and the insistence of Canada. Agreement in the Treaty would not have been possible without inclusion of this component. It must be observed that the existence of such a resource can be immensely productive, both in contributing meaningfully to improved understanding and development of salmon stocks and in

facilitating cooperation between U.S. and Canadian interests in a setting that has been most adversarial previously. We encourage approval by Congress of installments to these funds up to the specified levels.

One further topic should be raised that does not pertain directly to the 1999 Treaty agreement itself but relates to operation of the U.S. Section. One of the serious difficulties that has faced U.S. delegations even prior to the conclusion of the 1985 Pacific Salmon Treaty is the divergence of interests and positions that characterizes the three voting components of the U.S. Section. Relations among the U.S. entities frequently have been as difficult as that between the U.S. and Canada regarding salmon. The divergence of views among U.S. groups is not surprising, especially when viewed as Washington, Oregon, and the Indian tribes together in one region of salmon production and Alaska in another. The salmon resource differs regionally both in terms of species composition and especially in magnitude. Commercial fishing plays a central role in southeast Alaska's economy and is no longer a significant element, excepting tribal fisheries, in the more populous southern region. Fisheries management approaches differ greatly, and on and on. Recognizing the lack of natural common interest in 1985, legislation implementing the Treaty specified that decisions within the U.S. Section could be taken only by consensus of the three voting Commissioners.

Unfortunately, in recent years "domestic" relations have tended to deteriorate further. Alaskan fishermen have found themselves consistently placed in double jeopardy in fishery negotiations. Non-Alaskan U.S. representatives have attempted to force Alaskan positions regarding Alaskan fisheries toward positions advocated by Canada. These actions reflect the apparent belief, whether or not informed, that advantaging Canada in northern fisheries would lead to more favorable consideration of U.S. interests near the southern boundary. Additionally, in 1993 Treaty representatives of Washington state and the Indian tribes attempted to amend in Congress the U.S. Section's voting structure to permit decisions by majority only, a move vigorously opposed by Alaska. Washington, Oregon, and the Indian tribes filed suit in federal court against Alaska in 1995. A very contentious negotiation among the U.S. groups in 1996 finally produced the Letter of Agreement regarding chinook salmon but little lasting philosophical agreement.

The 1999 negotiations must be described as having been chaotic. It was effectively impossible to conduct productive discussions with Canada due to open disagreement regarding positions within the U.S. Section. Those negotiations were successful in the end because Canada initially was willing, and subsequently actively encouraged, dealing separately with Alaskan and non-Alaskan U.S. negotiating teams who made the decisions and commitments on fishery terms in their respective regions.

Following on these experiences, we suggest that now is an appropriate time to alter the structure of the U.S. Section in a manner that should serve the interests of all the constituent groups. Institutionalizing the model for negotiations that worked in 1999 appears to place no U.S. constituency at a disadvantage. With the exception of some chinook salmon, the salmon stocks that support fisheries in the northern boundary area are wholly independent of those in southern boundary area fisheries. Negotiating fishery terms only by those with direct knowledge about the areas and salmon stocks involved would seem to benefit all. Eliminating the ability of Canada directly to play U.S. interests off against each other clearly is desirable and should be particularly helpful to all U.S. groups in Washington and Oregon. If Canada can gain nothing in future negotiations in Alaska from aggressively harvesting salmon bound for Washington or Oregon, then that behavior is much less likely to occur. Again, separating the discussions by region worked. Those negotiations were successful and efficient to a degree not experienced previously in the Treaty. We recommend amendment of the 1985 implementing legislation for the Pacific Salmon Treaty. We propose that decisions on Alaskan and northern Canadian fisheries, with the possible exception of chinook salmon fisheries, be the responsibility of the Commissioner from Alaska and that U.S. decisions regarding southern boundary fisheries be the responsibility of the tribal Commissioner and the Washington/Oregon Commissioner in the Pacific Salmon Commission. .

I thank you for the opportunity to offer my thoughts on Pacific Salmon Treaty matters. It has been an honor to appear before you.

#####