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Pacific Salmon Commission

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United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

July 14, 1993

UNCLASSIFIED
MEMORANDUM

TO: OES - Ambassador Elinor Constable
FROM: OES/O - David Colson
SUBJECT: Pacific Salmon Commission, U.S.-Canada

ISSUE:

Whether to sign the attached letter to the U.S. Commissioners to the Pacific Salmon Commission, triggering provisions of law that require the U.S. Section to develop national positions within a particular time frame.

BACKGROUND:

One of the unfortunate facts of the Pacific Salmon Commission is that the U.S. has difficulty reaching internal agreement on chinook salmon matters due to strong differences between the north (Alaska) and the South (Washington, Oregon). Our internal inability to compromise hinders the development of responsible chinook management programs.

In connection with 1993 deal with Canada, the governments agreed to require the bilateral Commission to develop a chinook management program by January 15, 1994 and to report to the governments. There will be a government to government meeting if the Commission fails.

Our U.S. Section needs to develop chinook positions quickly and we need to do what we can to force compromise internally in the development of a good U.S. position. One tool we have is provided in the Pacific Salmon Treaty Act. It indicates that the Secretary of State may communicate to the U.S. Commissioners that the U.S. is in jeopardy of not fulfilling its obligations and

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require the development of a U.S. position by a date certain. If the Commissioners do not comply, the law provides for the Secretary to report to the President. This is largely a political forcing mechanism without direct legal consequence.

You have been delegated the authority to act for the Secretary of State. Following consultations with Commerce and Interior, I believe it would be useful to the U.S. Section process for you to sign the attached letter.

I do not expect any significant negative reaction although there may be some grumbling from Alaska. The Washington and Oregon interests will welcome this move.

I will give the Hill and the Commissioners a heads-up before they see the letter in writing.

RECOMMENDATION:

That you sign the attached letter.

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United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

UNITED STATES SECTION, PACIFIC SALMON COMMISSION

Ambassador David A. Colson
Deputy Assistant Secretary for Oceans
& Fisheries Affairs

Mr. G. I. James
Lummi Indian Tribe

Mr. Charles Meacham, Jr.
Deputy Commissioner
Alaska Department of Fish & Game

Mr. Robert A. Turner
Commissioner
Washington Department of Fisheries

Pursuant to authority delegated to me, (50 Fed. Reg. 28487) and after consultation with the Department of Commerce and the Department of Interior, and in accordance with 16 USC 3632(g)(7), I hereby determine that the United States is in jeopardy of not fulfilling its international obligations under the United States-Canada Pacific Salmon Treaty and so certify to the United States Section. It is understood that Canada bears responsibility in this regard, as well.

The reason for such determination follows:

A central ingredient of the Pacific Salmon Treaty is the chinook rebuilding program it established designed to rebuild chinook stocks on a coast-wide basis by 1998.

It is now 1993 and the Pacific Salmon Commission has not addressed this issue in any effective way. Nor has the U.S. Section adopted an agreed approach to deal with this matter. The bilateral Chinook Technical Committee Report of November 17, 1992 states in part (at Executive Summary, p. xii):

"The rebuilding response of the escapement indicator stocks is inconsistent with expectations. There has

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been a general decline in the proportion of stocks that are classified as rebuilding, while the proportion of stocks that are not rebuilding has increased. Furthermore, 29 of the 42 indicator stocks had lower escapements in 1991 than in 1990 and less than half (16 of 36) of the escapement indicator stocks with goals are currently classified as Above Goal, Rebuilding, or Probably Rebuilding. This is especially significant since most stocks are now more than halfway and the remainder are more than two-thirds through their rebuilding programs. Of particular concern are the 15 stocks classified as Not Rebuilding or Probably Not Rebuilding. In 1991, the escapements of all of these stocks were less than 60% of their rebuilding goals and, for seven of these 15 stocks, the average escapement during the rebuilding period has actually declined from the base period level."

The United States Government and the Canadian Government have agreed that the Commission shall report to the Governments by January 15, 1994, on the progress it has made to achieve the rebuilding program required by the Treaty. This Report shall:

- i) Provide definitions needed for the consideration or evaluation of the rebuilding program including: "rebuilt," "rebuilding," "stock of concern," "depressed stock," "escapement indicator stock," and "pass through."
- ii) Provide a program to monitor and reduce incidental chinook mortalities on a coast-wide basis.
- iii) Provide a chinook management program that is responsive to the abundance of chinook stocks to ensure that the Treaty's chinook rebuilding goals are met by 1998.

In accordance with 16 USC 3632(g)(7), I specify that January 15, 1994, is the date by which a decision by the U.S. Section concerning the above elements is desired. It is of course preferable that the Report to be provided by the bilateral Commission contain jointly agreed recommendations of the U.S. and Canadian Sections. If that is not possible, however, a clear and comprehensive U.S. Section position on the above elements expressed in operational terms, which can be proffered in good faith by the United States, is required by the above date.

Sincerely,

Elinor G. Constable

NOTES for CANADA Link

U.S.-CANADA PACIFIC SALMON COMMISSION

(Apr. '93)

A Deal for 1993?

- Dependent primarily on whether we can agree on the 1993 Fraser catch for the U.S. The power centers are Washington State, the Tribes, and Canada; it is not clear where the Tribes are on this right now.
- If we can get a one-year Fraser deal, Canada probably would agree to a 1.6 million coho cap which would provide Washington State with some relief.

Longer Term:

- If we are to get a longer term arrangement that is satisfactory to our constituents by providing for stability in fisheries and catch quotas that are responsive to conservation concerns, we need to do three things:
 - a) We need to address the equity question; until we reach some understanding on this -- or at least make a good try at it -- the Treaty will not come out of its death spiral.
 - b) We need to address the question of Washington/Oregon salmon production. Canada's vision is one of declining production in the South. That means Canada can not see how we can provide balance for our catch of Fraser sockeye. Further, it makes it politically difficult for Canada to help with U.S. stock conservation concerns because they see it as a lost cause where they get no return on the investment.
 - c) We need to bring about some general level of satisfaction that Alaska's management of its fisheries does not have ulterior motives, and consider means by which increased Canadian production into Alaskan fisheries gets back to Canada where possible, without disrupting traditional Alaskan fisheries on Alaskan stocks.

Message to Canada

- Canada's rigid approach to equity (fish for fish trades -- and they start in the hole) will not work: we won't accept that they started in the hole, and fish for fish trades don't work because of the dynamic nature of the fisheries, the need to deal with stock conservation problems, and the political need in both countries to respond to a diversity of constituent interests.
- The U.S. has helped Canada rebuild the Fraser runs; Canada is not helping us with chinook/coho conservation problems.

UNCLASSIFIEDPACIFIC SALMON COMMISSION

We understand that Prime Minister Mulroney has been briefed on the Pacific Salmon Commission and may discuss the status of its deliberations.

The Pacific Salmon Treaty between the United States and Canada entered into force in 1985 after 14 years of negotiation. The Treaty established bilateral cooperation in management, research and enhancement of salmon stocks that originate in one country but pass through the fisheries of the other. The Pacific Salmon Commission is the decision-making body for matters covered by the Treaty.

The Commission's deliberations for 1993 are particularly contentious because:

- almost all the rules established in the Treaty expired at the end of 1992 and are open for negotiation; and
- Snake River fall chinook salmon have been listed as a "threatened" species under the Endangered Species Act.

The listing has drawn inordinate political attention to the Commission. The stock is caught coast-wide, particularly in Canadian fisheries off the West coast of Vancouver island. U.S. interests want Canada to make substantial reductions in its fisheries so that U.S. interests need not do as much to protect the threatened stock. Canada has said it would help but it wants something in return.

Canada believes the equity balance of benefits under the treaty strongly favors the U.S., and is not prepared to do more for the U.S. unless we move in its direction. (We have hinted that we might be willing to address this issue on a government-to-government basis if other U.S. concerns are met).

At present, no U.S. interest is prepared to pay the price for Canada's apparent willingness to reduce the take from its fisheries. Canadian officials are actively pressing their views in Washington.

We strongly disagree with Canadian arguments but have indicated a willingness for the Commission to meet again on this matter in April.

- - Canada has refused to acknowledge many points of concern to U.S. interests.
- - If there is to be an agreement this year Canada must be much more flexible than it has heretofore been.

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TELEFAX COVER SHEET

United States Department of State

*Bureau of Oceans and International
Environmental and Scientific Affairs*

Washington, D.C. 20520

DATE May 14, 1993 TIME

NUMBER OF PAGES TO FOLLOW: 11

TO: Ms. Eileen Claussen TEL.# 395-4985

OFFICE: NSC - OEOB FAX#: 395-1590

FROM: Mr. David Colson TEL.# 647-2396

OFFICE: Oceans & Fisheries Affairs FAX#: 647-2396

MESSAGE:

I did not include the incoming congressional correspondence
with this package.

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make another copy
for Doniger*



United States Department of State

Washington, D. C. 20520

MAY 1993

BRIEFING MEMORANDUM

S/S

UNCLASSIFIED

TO: C - Mr. Wirth

FROM: OES - Curtis Bohlen *CS*

SUBJECT: Your Meeting with Canadian Ambassador de Chastelain
and Minister of Fisheries and Oceans Crosbie,
Your Office, 3:30 pm, Monday, May 17, 1993

I. OBJECTIVES

1. To listen to Canada regarding its straddling stock problem off the Grand Banks of Newfoundland.
2. To hear Canada out on complaints it has about the inability of the U.S.-Canada Pacific Salmon Commission to come to agreement on fishing regimes for west coast salmon fisheries in 1993.
3. To stress to Canada that our west coast salmon relationship is a two way street and that Canada has not moved in our direction on a number of issues sufficiently far to bring about requisite flexibility from U.S. constituents.

II. APPROACH

Minister Crosbie may briefly raise the upcoming UN Conference on Straddling Fish Stocks and Highly Migratory Fish Species, which Canada called for at UNCED last year. Canada may seek our support that the Conference should result in a legally-binding international agreement for the conservation and management of such fish stocks.

We can not accept the linkage Canada has made between straddling stocks and highly migratory species and that similar remedies should be applied to problems of both. Further, a binding global treaty is unrealistic:

Regarding Pacific Salmon, Canada will complain about the impasse which has been reached in the U.S.-Canada Pacific Salmon Commission on the establishment of agreed salmon fishing regimes for the west coast for 1993.

This impasse is not the end of the world. Neither country wants a fish war. The managers on both sides probably will be responsible. Canada will present itself as the aggrieved party; blame the present deadlock on splits within the U.S. Section between Alaskan and Washington State interests; and assert that the U.S. is not fairly implementing the Salmon Treaty's equity principle. Canada may press for additional meetings of the Commission or at a government-to-government level.

We suggest you hear the Canadians out and respond by stressing: (1) that U.S. constituent interests do not believe Canada is doing enough to meet U.S. needs; (2) that U.S. decision-making rests with the States and Treaty Tribes; (3) and that we will keep the lines of communication open, but another meeting would be premature unless there is some sense of how we would come to closure on the array of issues.

III. PARTICIPANTS

U.S.

Mr. Wirth
OES/O - Mr. Colson

C - Mr. Harwood
OES/OFA - Mr. Finnegan
(notetaker)

Canada

Ambassador de Chastelain
Minister of Fisheries and Oceans
Crosbie
Mr. Kergin (notetaker)

Attachments:

- Tab 1 - Background Paper/Talking Points: Straddling Stocks and Highly Migratory Species
- Tab 2 - Background Paper: PSC
- Tab 3 - Talking Points: PSC
- Tab 4 - Congressional PSC Correspondence

Drafted:OES/O:DAColson:eb
72396 5/7/93 SEOFAA 3356

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Attachment I

United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Species

Background

- o Last year at UNCED Canada called for measures to strengthen international law to prevent overfishing on the high seas.
 - Canadian cod stocks off its Atlantic Coast have been seriously overfished by European vessels fishing just outside the Canadian 200-mile zone. The stock is a classic "straddling stock", living both within and outside the 200-mile EEZ. Foreign vessels are, of course, free to fish on the high seas beyond the 200-mile zone.
- o UNCED agreed that an intergovernmental conference should be held, which last fall's UN General Assembly subsequently approved.
- o The Conference is to promote effective implementation of the provisions of the United Nations Convention on the Law of the Sea (UNCLOS) on straddling fish stocks and highly migratory fish species by: (1) identifying and assessing existing problems related to the conservation and management of such fish stocks, (2) considering means of improving fisheries cooperation among States, and (3) formulating appropriate recommendations.
 - The work and results of the conference are to be fully consistent with UNCLOS, in particular the rights and obligations of coastal States and States fishing on the high seas.
- o In order to gain support for its position, Canada has been a primary proponent of the "Santiago Declaration". This document proposes principles and measures for the effective conservation of high seas fishery resources, but does so in such a way that could harm U.S. interests. Particularly, it proposes that similar management measures for straddling stocks and highly migratory species should be taken. We can not accept such an approach. It is not consistent with the Law of the Sea, which distinctly treats each stock separately.

What approach?
Why?

- why - interest?
ambiguity?*
- o Canada and its "core group" (Argentina, Chile, Iceland, New Zealand) have indicated that they are looking for a new global legal regime. We can not support such an approach either. Rather, we believe that non-binding guidelines or principles which could be applied on a regional, case-by-case basis would be more achievable and serve a better purpose.
 - Get up half* o Canada has called for an intersessional meeting in New York later this month of a small number of key countries on both side of the issue. We have expressed reservations about this approach as countries not invited might misread intentions and believe that the session might bias the outcome of the July session. We will participate if Canada proceeds.

Talking Points

- o We thoroughly sympathize with Canada regarding its "straddling stock" problem off the Grand Banks of Newfoundland.
- o We look forward to the possibility that the UN Conference will elaborate on the rights and duties of coastal States and States fishing on the high seas. However, in our opinion, the examination must include discussion of measures applicable to areas under national jurisdiction as well as the high seas.
- get this
declaration* o We continue to have serious concerns about the "Santiago Declaration". It promotes a relationship between straddling stocks and highly migratory species that is not founded in the 1982 United Nations Convention on the Law of the Sea.
- not out of one
meeting, only
it why
not part of
a defined
process to
reach a treaty?* o We also believe that it is unrealistic to set as a conference objective a binding, legal treaty.
- o The U.S. has played a useful broker role and will continue to do so long as is in the U.S. interest.

Attachment II

Pacific Salmon Commission

Background

- o Salmon which originate in U.S. rivers are often caught ("intercepted") in Canadian fisheries before they return to U.S. waters, and vice versa.
- o The U.S. and Canada have been arguing about the balance of these interceptions since the early 1900s.
- o The U.S.-Canada Pacific Salmon Treaty was concluded in 1985 to conserve and manage west coast salmon fisheries and to reconcile and balance interceptions by establishing agreed management and allocation regimes from Southeast Alaska to Oregon.
- o Most fishing regimes established by the Treaty in 1985 have expired and are to be renegotiated by the Commission established by the Treaty.
- o The Commission has reached an impasse in its effort to do so for the 1993 fishing season.

U.S. Politics/Law

- o There are wide differences between and among U.S. Northern (Alaska) and U.S. Southern (Washington, Oregon, Idaho and Treaty Tribes) interests.
- o Under U.S. law, decisions in the Commission by the United States are made by consensus of the Commissioners from Alaska, Washington, and the Treaty Tribes. The Federal Commissioner has no vote.
- o This year, Snake River Fall chinook salmon has been listed as a threatened species under the Endangered Species Act (ESA). This salmon is caught coast wide, but most are caught in Canadian fisheries. This listing has complicated U.S. decision-making in the Commission.
 - The U.S. side is faced with several other potential ESA salmon listings. This creates a political situation on the west coast akin to the spotted owl problem, although this time Canada is involved.
- o The Treaty Tribes are entitled by law to 50% of the salmon harvest in Washington and Oregon (Boldt decision). In respect of Alaskan fisheries, this is an open legal question and is politically controversial.

- Canadian positions often divide the U.S. community by playing off Washington State and Alaskan interests and/or playing into the controversy surrounding Boldt decision application.
- The Salmon Treaty enjoyed wide support initially within the U.S. although the Alaskans were always nervous. Washington State and Tribal support is now beginning to wane. It's hard to identify what U.S. constituents get from this deal - the only answer is that stock conservation problems would be worse without it.

Canada's Interests

1. Equity

- o Canada's principal interest is the promotion of the equity principle: that catches reflect salmon production. Canada's view of equity has two elements.
- o Canada believes that the fishing regimes established in the Treaty in 1985 were unfair to Canada in this respect and that new regimes must be negotiated to redress this perceived imbalance.
- o Further, Canada will not make a move on anything unless it is convinced that its equity position is not worsened.
- o For instance, when we request Canada to reduce Canadian catches on Snake River Fall chinook for conservation reasons, Canada demands that the U.S. reduce its catches of Canadian stocks somewhere else.
- o This raises two problems for us: one, the U.S. beneficiary of a reduction in Canadian catch is not likely to be the one that is asked to pay the price; two, as a matter of philosophy, Canada refuses to help us on a conservation problem without being compensated from reductions in traditional U.S. fisheries on healthy salmon stocks.
- o Canada's perspective on this issue, and Canada's rigidity, are the primary causes of the breakdown in the process.
- o Note: Generally, at a technical level we can tell what species of salmon are caught in various west coast fisheries. Where the debate gets complicated is that

the U.S. and Canada don't intercept fish of comparable value. Generally, U.S. interceptions are of Canadian sockeye and pink salmon while Canadian interceptions are of U.S. chinook and coho, mostly. These species all have different commercial values, which vary; Canada catches U.S. chinook and coho commercially, which would otherwise enter high-value U.S. recreational fisheries.

2. Fraser River

- o Canada's Fraser River is perhaps the world's greatest salmon producing river.
- o Canada has kept hydro projects off the river. Canada often contrasts its salmon stewardship of the Fraser with U.S. use of the Columbia River. Puget Sound fishermen, however, always remind Canada that it was the U.S. Corps of Engineers that unblocked the river from an enormous landslide in the 1930s and saved the River for salmon production.
- o Fraser River stocks are subject to interception in major U.S. fisheries in the Strait of Juan de Fuca and Puget Sound - including large Tribal fisheries.
- o The U.S. has always cooperated with Canada in the management of U.S. fisheries on Fraser stocks.
- o Together, we have rebuilt these runs to historic levels, demonstrating the benefits of cooperation. But Canada wants all the benefits of that cooperation for itself. Thus, for the future, as we look at increased Fraser runs, Canada refuses to consider any increase for U.S. fisheries. That is dispute number one.
- o Because of the vastly increased run sizes, some Fraser fish have been caught incidentally in recent years in Alaskan fisheries. Canada demands that we count these Alaskan incidental catches against our Washington State quota. Canada says that we owe Canada for what was caught incidentally in Alaska over the last eight years - approximately 330,00 sockeye. We say no and that is dispute number two. Dispute number three: Canada says that future deals must make clear that Alaskan incidental catches count against our Washington quota. Again we say no because that would cause major difficulties in implementing the Boldt decision.

3. Alaska

- o Canada believes that Alaskan fisheries are shaped to target Canadian stocks. Canada calls for significant adjustments in major Alaskan fisheries on Alaskan stocks to allow small amounts of Canadian fish to pass through.
 - It is hard to discern the truth in all of this -- much of it well established in dockside folklore. Alaska has been willing to make adjustments in its fisheries for demonstrated conservation concerns.

This Year's Impasse

- o In October 1992 the Commission began its normal meeting schedule in an effort to renegotiate the expired fishing regimes. Both sides sought to negotiate regimes for an extended period of years.
- o At December 1992 meetings both sides laid out comprehensive positions. Negotiations during January and February did little to narrow the differences.
- o In late March 1993 both sides began to talk of a one year status quo deal.
- o We let it be known that we would do a one year status quo deal generally; asked the Canadians to reduce their coho catch on the West Coast of Vancouver Island for conservation reasons from 1.8 to 1.4 million coho annually; and indicated in return that we would begin to talk about equity on a government-to-government basis.
- o Canada agreed to a status quo deal but defined it very differently, basically by continuing to ask for adjustments in Alaskan fisheries and in reductions in our Fraser River catch.
- o Numerous phone calls, another meeting of the Commission, and more phone calls only led to the conclusion on April 30 that we were at impasse.
- o Generally, the big difference was about the U.S. Fraser catch for 1993. We wanted 2.6 million sockeye in Washington state. The Tribes won't go below that. Canada offered about 2.25 million sockeye wherever caught, including Alaska.

- o (Note: if Canada will agree to 2.6 million sockeye in Washington State and a 1.6 million coho catch on the West coast of Vancouver Island we could probably pull our team together to accept it).
- o After the declaration of impasse, we instructed our fisheries managers on the west coast to begin informal consultations with Canadian managers so as to keep the lid on things as best we can.
- o We assume that sometime this summer we should sit down on a government-to-government basis to discuss some of this and to try to shape Commission discussions next fall. But we shouldn't do that until some time has passed, and we have had a chance to set the stage for a productive meeting.
by doing what?
- o (Final Note: As a means of indicating Canada's political interest in this Commission process, it has appointed Yves Fortier as its lead Commissioner. Fortier is a high-profile Canadian, former U.N. Ambassador, "trouble-shooter," friend of the Prime Minister and partner in a prestigious Montreal law firm.)

Attachment III

Talking Points On Pacific Salmon Commission

- o I am happy to have your perspective on these Pacific Salmon Treaty issues..
- o On our side, the states and tribal governments must concur in decisions which affect state waters and their management authority.
- o Our constituent interests do not believe Canada is doing enough:
 - to share the burden in solving stock conservation problems; and
 - to share the benefits of increased production as a result of mutual efforts.
- o On equity:
 - A rigid fish by fish, value by value approach to this issue is not going to work.
 - Canada cannot expect the U.S. to accept Canada's contention that the original treaty was out of balance.
 - The Administration is prepared to discuss the equity question on a government-to-government basis at an appropriate time.
- o On process:
 - We will keep lines of communication open; however, it would be premature to schedule meetings until we have a better idea of where we both could come out.