

HEARINGS ON THE DECISION-MAKING PROCESSES  
AND INTERAGENCY COOPERATION OF THE  
NATIONAL MARINE FISHERIES SERVICE NORTH-  
WEST REGION

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HEARINGS  
BEFORE THE  
SUBCOMMITTEE ON FISHERIES CONSERVATION,  
WILDLIFE AND OCEANS  
OF THE  
COMMITTEE ON RESOURCES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FIFTH CONGRESS  
FIRST SESSION

JULY 24 AND AUGUST 15, 1997—WASHINGTON, DC

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# OVERSIGHT HEARING ON THE DECISION- MAKING PROCESS AND INTERAGENCY CO- OPERATION OF THE NATIONAL MARINE FISHERIES SERVICE NORTHWEST REGION

THURSDAY, JULY 24, 1997

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS, COMMITTEE ON RESOURCES, *Washington, DC.*

The Subcommittee met, pursuant to notice, at 10:07 a.m., Room 1334, Longworth House Office Building, Hon. Jim Saxton (chairman of the subcommittee) presiding.

## STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. SAXTON. Good morning. The Subcommittee will come to order. The purpose of today's hearing is to review the authority and decisionmaking process of the National Marine Fisheries Service's Northwest Region. As many in this room know, the Columbia River Basin is the focus of much debate and controversy regarding the appropriate actions needed to restore the declining salmon populations.

Our colleague, Mr. Crapo of Idaho, has been grappling with the problems surrounding this issue for many years. We are holding this hearing at his request so he can get specific answers to questions about interagency dynamics, tribal concerns, interstate cooperation, and the interests of commercial and recreational fishing sectors, as well as those of environmental organizations.

I am looking forward to this hearing and hearing from our witnesses. Thank you for traveling to Washington today to share with us your expertise and your feelings on these matters. At this time, I will turn to the Ranking Member, the gentleman from Hawaii, for any opening statement he may have.

[Statement of Mr. Saxton follows:]

STATEMENT OF HON. JIM SAXTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Good morning. The Subcommittee will come to order.

The purpose of today's hearing is to review the authority and decision-making processes of the National Marine Fisheries Service's Northwest Region. As many in this room know, the Columbia River basin is the focus of much debate and controversy regarding the appropriate actions needed to restore the declining salmon populations. Our colleague, Mr. Crapo of Idaho, has been grappling with the problems surrounding this issue for years. We are holding this hearing at his request, so he can get specific answers to questions about inter-agency dynamics, tribal con-

cerns, interstate cooperation, and the interests of the commercial and recreational fishing sectors, as well as those of environmental organizations.

I am looking forward to hearing from our witnesses. Thank you for traveling to Washington to share your expertise with us.

[Memorandum may be found at end of hearing.]

[The prepared statement of Mr. Young follows:]

STATEMENT OF HON. DON YOUNG, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALASKA

Mr. Chairman, this is a very timely and necessary hearing being held at the request of Congressman Mike Crapo.

The National Marine Fisheries Service is the Executive agency responsible for the revitalization of the Columbia River Basin salmonid populations. Congressman Mike Crapo represents areas in Idaho that have a major interest in any recovery efforts implemented by the National Marine Fisheries Service to restore these declining Columbia River Basin salmon populations.

We will hear testimony today commenting on the National Marine Fisheries Service's leadership and their ability to implement recovery options. I am interested in hearing the views of our witnesses on how their concerns were reflected in the agency's decision making and how we can improve the consultation process in the future. It is clearly in our nation's interest to rebuild and revitalize the salmon stocks of the Columbia River Basin.

Thank you, Mr. Chairman.

**STATEMENT OF HON. NEIL ABERCROMBIE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF HAWAII**

Mr. ABERCROMBIE. Thank you, Mr. Chairman. I would just like to incorporate your remarks as my own and look forward to the hearing. Thank you very much.

Mr. SAXTON. Thank you very much. I would like to turn at this time to the gentleman from Idaho who is, obviously, very interested in this. He may wish to make an opening statement and introduce panel number 1.

**STATEMENT OF HON. MICHAEL CRAPO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO**

Mr. CRAPO. Thank you, Mr. Chairman. I appreciate very deeply your holding this hearing on the decisionmaking process of the National Marine Fisheries Service and hope that we can use this hearing as an opportunity to not only delve into the issues at hand, but to help educate members of this committee and their staff on some of the critical issues in the Pacific Northwest.

I noted when I attended one of the hearings we held with regard to the fishing issues in Hawaii a month or two ago how I was very unaware of those issues before the hearing but fascinated with what I learned. And I hope that that same process can take place with regard to the issues we face in the Pacific Northwest with regard to other members of the Committee.

It is my pleasure today to welcome several citizens from Idaho and others from the Pacific Northwest who are here to discuss the issues and to point out that under the Endangered Species Act the National Marine Fisheries Service has the authority in the Pacific Northwest to be the lead agency for the recovery of the endangered Pacific Northwest salmon stocks.

I acknowledge that this issue is very complex and divisive and could produce many losers, one of which could be the salmon. For the salmon to be recovered, it is imperative that consensus within

the region be found and that public support be gained. There is growing concern in the region that NMFS has not recognized the power of a consensus decisionmaking process for salmon recovery.

There is great concern that the National Marine Fisheries Service is developing a public policy that will not recover salmon, while failing to take into account the other interests and concerns of the region. This growing concern and frustration has caused the State of Montana and four of the 13 Indian tribes of the region to withdraw from the regional forum dedicated to finding consensus on salmon recovery.

These fish are incredible creatures. The salmonids are hatched in streams and tributaries of the Columbia and Snake River and swim sometimes over 700 miles to the ocean where they will spend the majority of their lives. Not only must they migrate such a long way to the ocean, they must then at the end of their lives migrate back up the river system.

These streams and tributaries provide water that is the lifeblood of irrigation, recreation, power production, and transportation industries of the Columbia and Snake River system. The majority of the region's population live and work around some form of water in the watershed. And an adequate and dependable supply of water is the backbone of the region's economy. The streams and tributaries that empty into the Snake and Columbia River weave throughout the Pacific Northwest.

Because the salmonids are hatched in and use the streams and tributaries of the Columbia and Snake River as their highway to the ocean, NMFS has oversight over all land and water use policies that could potentially impact salmonid migration to and from the ocean. This includes oversight over irrigation, mining, grazing, timber harvesting, river transportation, energy production, and recreation.

NMFS has a virtual veto over many aspects of the Columbia and Snake River systems that are the economic base of the region, and many times some of us have felt that NMFS has made decisions in a vacuum without taking into consideration the benefits to the fish or the impact to the economy.

I recognize that the objective of the Endangered Species Act as written is the recovery of endangered or threatened species, and I agree with that objective. However, the bottom line is that there is a legitimate concern that the fish will not be recovered and that collateral damage will be caused to the region's economy.

Today, we have invited individuals, representatives of two tribes, representatives of State government, business, and environmental interests. These people have been invited because they and the interests they represent constitute the critical mass of consensus that must be achieved if we are to succeed in recovering the species.

Given that the National Marine Fisheries Service is intending to make a policy decision in early 1998, it is imperative that we evaluate the processes involved well enough in advance of the decision in order to improve the odds of success.

This is the first of two scheduled hearings on this issue. There were far too many people who have shown an interest to testify to be accommodated here today, and Chairman Saxton has been gracious in allowing another hearing to be held in Boise, Idaho. This

hearing will give more affected interests the opportunity to be heard, and this hearing will include the testimony by NMFS.

Again, Mr. Chairman, I thank you for your attention to this very important issue. And Senator Dirk Kempthorne from Idaho has asked if there would be permission for his statement to be entered into the record.

Mr. SAXTON. Let me just ask unanimous consent at this point that all members' statements be included in the record, including the Senator's.

[The prepared statement of Senator Kempthorne follows:]

STATEMENT OF SENATOR DIRK KEMPTHORNE, A SENATOR IN CONGRESS FROM THE  
STATE OF IDAHO

Good morning Mr. Chairman, ladies and gentlemen. Thank you for holding this hearing on salmon recovery and the National Marine Fisheries Service's performance as the lead Federal agency in salmon recovery efforts. I would like to share with you my recent experience with the NMFS.

On April 16, 1997, I wrote to Will Stelle, Administrator for the Northwest Region of the National Marine Fisheries Service to object to the National Marine Fisheries Service's (NMFS) decision to disregard the consensus proposal on steelhead and salmon migration promoted by the State of Idaho. At a meeting of the Executive Committee for recovery of Columbia/Snake River salmon and steelhead the consensus proposal to transport Chinook Salmon and Steelhead was rejected by the National Marine Fisheries Service. Instead, the NMFS adopted daily full transport of the Chinook and the Steelhead.

I asked Mr. Stelle to explain to me the biological basis of this decision. With the advice of some of the best biologists, water managers, and stakeholders Governor Batt had devised a plan for "spreading the risk" between in-river migration and barging. This plan was subjected to a facilitated negotiation process that involved stakeholders from throughout the Columbia/Snake River Basin. The resulting proposal deserved to be considered for its ability to recover two of our regions most important fish species, and for its ability to bring together stakeholders from throughout the basin.

I urged Mr. Stelle to reply to me quickly as the migration was in full swing. I needed to know why we were transporting such a high percentage of fish during this good water year. Ironically, I support transport of a high percentage of the fish. The National Academy of Sciences in their report on the salmon crisis in the Northwest has described transport as the best interim solution to getting smolts downstream until we have developed better technology for getting them around the dams. But, because this "spread the risk" policy is the result of an Idaho effort, supported by Idahoans, and negotiated with the best fish managers in the region, I support them and their efforts.

As time went by, I repeatedly contacted Mr. Stelle's office. On June 5, 1997 I wrote Mr. Stelle again to express my concern about the National Marine Fisheries Service's (NMFS) decision to disregard the 1997 consensus proposal on steelhead and salmon migration. And, I must admit I was frustrated by the lack of a response. After all, the NMFS had chosen to transport more fish rather than fewer during this good water year. During the time he had failed to respond to my letter, or to my staff inquiries, ever higher numbers of fish were transported down the Snake and Columbia Rivers.

I am sorry to report that the apparent strategy to ignore me and the stakeholders who worked together to obtain a compromise until the migration season was over seems to have worked. The NMFS letter from Mr. Rollie Smitten purporting to explain their actions, dated June 9, 1997, finally arrived in my office on Friday the 13th of June.

Frankly, the letter and the studies which it cited did little to convince me that the NMFS acted in a thoughtful way using data that supported their position under these water conditions. Without taking the Committee's time with detailed comment and rebuttal, suffice it to say that the decision-making ability of the NMFS, as demonstrated by this incident is seriously in doubt. Most importantly, it appears to me decisions that should be made by the fish managers on the scene are regularly being made in Washington DC by people in the Administration.

Mr. Chairman, I would like to submit my letters and Mr. Smitten's reply for the record. In addition, I would like to include the analysis of the NMFS letter by Idaho Fish and Game.

Mr. Chairman, thank you for your time.

[Additional material submitted by Senator Kempthorne follows:]

April 16, 1997

William Stelle  
Administrator, Northwest Region  
7600 Sand Point Way  
BIN-C15700, Bldg. 1  
Seattle, Washington 98115-0070

Dear Mr. Stelle:

I am writing you about my strong concerns regarding the National Marine Fisheries Service's (NMFS) decision to disregard the consensus proposal on steelhead and salmon migration. It is my understanding that at the recent meeting of the Executive Committee for recovery of Columbia/Snake River salmon and steelhead that a consensus proposal to transport up to 42% of Chinook Salmon and 54% of Steelhead on alternate days from Lower Granite, Little Goose and Lower Monument Dams was rejected by the National Marine Fisheries Service. Instead, the NMFS adopted daily full transport from the same sites for up to 67% of the Chinook and 84% of the Steelhead.

Will, If my information is correct, I need to understand the biological basis of this decision. Governor Batt, with the advice of some of the best biologists, water managers, and stakeholders devised a plan for "spreading the risk" between in-river migration and barging. This plan was subjected to a facilitated negotiation process that involved stakeholders from throughout the Columbia/Snake River Basin. The resulting proposal deserved to be considered for its ability to recover two of our regions most important fish species, and for its ability to bring together stakeholders from throughout the basin.

This year we are blessed with abundant water to flush fish down the rivers and to the ocean. We may or may not be so lucky next year. I need to know soon if the NMFS knows of some sound biological reason why we should transport such a high percentage of fish.

Thank you for your attention to this issue. I look forward to your timely reply.

Sincerely,

Dirk Kempthorne  
UNITED STATES SENATOR

DIRK KEMPTHORNE  
IDAHO

United States Senate  
WASHINGTON, DC 20510-1204

June 5, 1997

William Stelle  
Administrator, Northwest Region  
7600 Sand Point Way  
BIN-C15700, Bldg. 1  
Seattle, Washington 98115-0070

Dear Mr. Stelle:

I am writing today to express once again my concern about the National Marine Fisheries Service's (NMFS) decision to disregard the 1997 consensus proposal on steelhead and salmon migration. And, I must share with you my frustration over your failure to promptly answer my mid-April letter to you.

On April 16th I wrote to you about your decision at the Executive Committee for recovery of Columbia/Snake River salmon and steelhead to ignore the Idaho consensus proposal on the transport issue. Instead, you adopted daily transport from Salmon River dams for up to 67% of the Chinook and 84% of the Steelhead. I asked you to explain the biological basis of this decision.

Governor Batt, with the advice of some of the best biologists, water managers, and stakeholders devised a plan for "spreading the risk" between in-river migration and barging. This plan was subjected to a facilitated negotiation process that involved stakeholders from throughout the Columbia/Snake River Basin. The resulting proposal deserved to be considered for its ability to recover two of our regions most important fish species.

Yet, you chose to transport more fish rather than fewer. If there is a good biological reason for your decision, you have failed completely to inform me and other stakeholders who contributed their time and energy to working together toward a common goal. During the time you have failed to respond to my letter, or to my staff inquiries, ever higher numbers of fish have been transported down the Snake and Columbia Rivers. Estimates are that when the spring migration ends later this month, 58% of the wild salmon and 68% of the wild steelhead will have been barged.

Is it your strategy to ignore me and the stakeholders who worked together to obtain a compromise until the migration season is over? I understand fully that at some point there will be no need to respond at all to my letter or to the others who are concerned about this issue. Frankly, this is only the most recent failure on your part to respond promptly and fully to my inquiries.

I look forward to your timely reply.

Sincerely,

DIRK KEMPTHORNE  
UNITED STATES SENATOR

DK:tate

cc: Governor Batt





UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
NATIONAL MARINE FISHERIES SERVICE  
1335 East-West Highway  
Silver Spring, MD 20910  
THE DIRECTOR

JUN 9 1997

The Honorable Dirk Kempthorne  
United States Senate  
Washington, D.C. 20510

Dear Senator Kempthorne:

Thank you for your letter to William Stelle, Administrator of the National Marine Fisheries Service (NMFS) Northwest Region regarding the 1997 operations of the Federal Columbia River Power System (FCRPS) and the Idaho Plan. I appreciate your interest in this important subject and your firm focus on the science underlying the decisions of the NMFS in its recommendations on the 1997 operations.

Let me first observe that Governor Batt and the State of Idaho, working through Mike Field, one of the state's members on the Northwest Power Planning Council, have played an important and constructive role in helping forge agreements on improving salmon and steelhead survivals in the Columbia and Snake Basins. Last year, the Governor was instrumental in developing an agreement relating to summer operations that resulted in adjustments in operations to improve salmon survivals while mitigating summer impacts on other uses of the system. His efforts this year, while not completely successful, reflected a similar constructive approach.

Please allow me to describe the basis of the decision regarding 1997 smolt transportation out of the lower Snake. As you know, the State of Idaho, together with Idaho environmental groups and several of the Treaty tribes, earlier this year proposed the "Idaho Steelhead Plan." In essence, the Plan consisted of a proposal to leave two thirds of the spring/summer chinook and steelhead in the river for their downstream migration with the remaining one third transported in barges around the dams. The fundamental premise of the Idaho Steelhead Plan was that more of the fish would survive if left inriver because there is some evidence that inriver survivals improve with high flows. The Idaho plan did not address habitat restoration, fishing



impacts or any other elements of the steelhead life cycle.

The Federal, state and tribal fishery managers in the Implementation Team discussed the Idaho Plan extensively in late March and early April. Within the Implementation Team, a number of alternatives were considered. The Team came close to agreement on two "spread-the-risk" alternatives, but NMFS and other Federal representatives objected to one that would have resulted in collection of less than half of the spring/summer chinook, and Tribal representatives objected to one on the grounds that the Tribal policy favored no transportation. The Implementation Team then elected to elevate the matter to the Executive Committee for resolution.

On April 4, 1997, the Executive Committee met to consider the matter. A representative of Idaho presented the Idaho two-thirds inriver proposal and its technical foundation, and a representative of NMFS offered a summary of the discussion of the Implementation Team and a review of the current scientific information pertaining to the relative survivals of transported and inriver migrants. The members of the Executive Committee discussed the matter throughout the morning and early afternoon and did not reach a consensus. Several of the Federal and state representatives favored a spread the risk approach and the tribal representatives and Idaho supported the Idaho proposal. In short, an agreement was not reached.

In the absence of that consensus, we recommended that the U.S. Army Corps of Engineers and the Implementation Team adopt a set of guidelines governing the 1997 migration that would manage the ratio of transported to inriver migrants in the range of 50-60 percent, with the stipulation that it not go below the 50 percent floor. Later that week, as per the operating guidelines for the Regional Forum, we conveyed the decision and a description of its scientific basis, in writing, to all the Members of the Executive Committee.

The Endangered Species Act requires Federal agencies to make decisions based upon the best scientific information available, and we remain committed to that principle. The 1995 biological opinion summarizes the results of the relevant NMFS studies (pages 56-64), and the resulting rationale for NMFS' decision in the biological opinion to, in general, transport all fish

collected, but to provide for in-season decisions to return some fish to the river under certain circumstances (pages 104-112).

In summary, the scientific information includes 24 separate truck and barge transportation studies that were conducted on spring/summer chinook at various dams on the Snake River between 1968 and 1980. In 10 of the studies, significantly more transported fish were recovered as adults than control fish, indicating higher survival for the transported group. In only one study, significantly more control fish were recovered than transported fish. In 13 studies, adult recoveries were too few to identify statistical differences in returns between transported and control fish. The ratio of transport to control fish in those studies ranged between 0.7 and 18.1 with three studies reporting ratios below one.

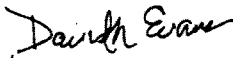
More recent results on Snake River spring/summer chinook salmon juveniles transported by barge in 1986 indicate a ratio of 1.6 transported fish returned for each inriver fish. The 95 percent confidence interval was between 1.01 and 2.47. Another study in 1989 indicated a benefit ratio of 2.4 to 1, with a 95 percent confidence interval between 1.4 and 4.3. Results of spring/summer chinook studies conducted at McNary Dam in 1987 and 1988 were similarly positive. Results of steelhead transportation studies have also consistently demonstrated benefits of transportation comparable to or better than results for spring/summer chinook.

Based on this information, NMFS concluded that transportation has demonstrated benefits for Snake River spring/summer chinook under the conditions tested. Accordingly, NMFS concluded that it is appropriate to continue to rely on transportation as a major means to mitigate the effects of the Federal Columbia River dams. At the same time, however, NMFS recognized the validity of concerns raised by the states, tribes and others both about the absolute benefits of transportation under conditions more favorable than those tested, and its ultimate efficacy as a recovery tool. Accordingly, the biological opinion provides for spill and operational flexibility at collector projects to increase the number of fish left to migrate inriver, while at the same time improving the survival of those fish by increasing spill throughout the system.

It is also significant to note that more than one scientific panel has concluded on the basis of the available scientific evidence that transportation provides a survival advantage over inriver migration under current conditions. The Recovery Team recommended maximum collection and transport. The National Research Council's (NRC) Report *Upstream*, on the other hand, recommended we continue to rely on transportation as long as data indicate higher survival than that of inriver migrants. The NRC also supported spreading the risk by recommending that not all fish be treated in such a way that failure of one treatment can have catastrophic consequences for the entire population.

In closing, I appreciate your interest in this matter and would welcome an opportunity to discuss it further with you or your staff.

Sincerely,

  
(s) Rolland A. Schmitten  
Assistant Administrator  
for Fisheries

In short, the scientific information includes 24 separate truck and barge transportation studies that were conducted on spring/summer chinook at various dams on the Snake River between 1968 and 1980 (Matthews, 1992). In 10 of the studies, significantly more transported fish were recovered as adults than control fish, indicating higher survival for the transported group. In only one study, significantly more control fish were recovered than transported fish. In 13 studies, adult recoveries were too few to identify statistical differences in returns between transported and control fish. The ratio of transport to control fish in those studies ranged between 0.7 and 18.1 with three studies reporting ratios below one (Ebel et al. 1973; Ebel 1980; Park 1985; Slatick et al. 1975).

More recent results on Snake River spring/summer chinook salmon juveniles transported by barge in 1986 indicate a ratio of 1.6 transported fish returned for each inriver fish. The 95 percent confidence interval was between 1.01 and 2.47 (Matthews et al. 1992). Another study in 1989 indicated a benefit ratio of 2.4 to 1, with a 95 percent confidence interval between 1.4 and 4.3. Results of spring/summer chinook studies conducted at McNary Dam in 1987 and 1988 were similarly positive (Achord et al. 1992). Results of steelhead transportation studies have also consistently demonstrated benefits of transportation comparable to or better than results for spring/summer chinook.

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State of Idaho  
Department of Fish and Game  
Boise, ID 83707

June 26, 1997

**M** E M O R A N D U M

TO: Mitch Sanchotena  
FROM: Ed Bowles  
SUBJECT: Comments on Schmitten letter to Kempthorne re: '97 transportation issue

I apologize for not responding sooner to your request for input regarding letters exchanged between Senator Kempthorne and NMFS on the 1997 smolt transportation issue. I have attached my original draft letter written for Governor Batt on the issue (I assume you have the final version that was sent out) and a summary written by Charlie Petrosky and Steve Pettit that covers their input on the issue as well. In addition to these attachments, I also have some specific comments on the letter from R. Schmitten.

The third paragraph has several inaccuracies regarding the "Idaho Steelhead Plan". The steelhead plan was Idaho's comments back to NMFS on the proposed listing of Snake River steelhead, and *did* include recommendations for habitat, harvest, hatcheries and other hydrosystem effects, in addition to the recommendation for allowing 2/3 of the smolts to migrate inriver. The "1997 Migration Policy" is a separate document developed specifically for migration issues for *both* salmon and steelhead, and obviously did not include the other three "Hs". This document also specified a policy of allowing 2/3 of the 1997 migrants to remain inriver.

The first paragraph on the second page starts out within the context of Salmon Managers discussions, but then states that "...NMFS and other Federal representatives objected to one that would have resulted in collection of less than half of the spring/summer chinook...". These other "federal representatives" were not salmon managers, but instead the COE and BPA. In fact, the other federal salmon manager -- the USFWS -- turned out to be in support of our proposal.

The second paragraph on the second page, discussing the April 4 EC meeting, also has inaccuracies. Most of these problems you can pick out of the draft Governor Batt letter attached (or the final copy sent out). The Schmitten letter failed to acknowledge that NMFS was the *only* Salmon Manager that objected to Idaho's request on the basis that it allowed too many salmon to migrate inriver. Eleven of the twelve Salmon Managers *did not* object to the Idaho proposal. It is pretty weak to say that in the lack of consensus, NMFS had to weigh in with their decision, when the only reason for lack

Memo to M. Sanchotena  
 June 26, 1997  
 Page 2

of consensus was NMFS' objection!

The third paragraph mischaracterized the decision made by Will Stelle at the EC meeting. This issue is covered in detail in the Batt letter. At the EC meeting Will Stelle was specific in his language regarding listed fish, and in his desire to allow the other salmon managers to strive to reduce the percent of steelhead transported, as long as the proportion of listed chinook transported did not drop below 50%. Overriding this commitment in a follow-up letter is not acceptable.

The letter then fails to complete the '97 transportation saga which saw NMFS overturn another consensus by the Salmon Managers to stop transport at Little Goose and Lower Monumental in order to reduce steelhead proportions without dropping transport of listed chinook below 50%. The draft letter from Governor Batt to Will Stelle covers this issue in detail. The Schmitten letter recognized the flexibility within the BiOp to allow more fish to migrate inriver, which begs the question of why NMFS then failed to allow this process to occur through their own formal TMT/IT process.

The rest of the Schmitten letter discusses NMFS' biological rationale for wanting more fish in the barges. Charlie's response covers this issue, with the primary flaw being NMFS' lack of acknowledgment that there were no transport studies applicable to the high flow and spill conditions anticipated for 1997, -- and that the best match to smolt migration conditions expected for 1997 were in 1982 and 1984. These years of high flow and spill, coupled with low transportation, produced the best adult returns of wild fish since completion of the hydropower system. The Schmitten letter also highlighted their interpretation of "scientific panels" that supported transportation, but failed to acknowledge other peer reviewed studies that concluded that transportation benefits are questionable, particularly under high flow conditions. He failed to mention NMFS' own study (Mundy 1996), that recommended less than 30% transportation under flow conditions similar to 1997.

I recommend that this issue be used to not only firm up the transportation issue, but also to accentuate the process and jurisdictional concerns that NMFS' actions raise. This process and jurisdictional issue is ripe for congressional interest and intervention, given the tribal and Montana pull-out from the process.

Hopefully these comments have been constructive. Let me know if we can assist further.

cc: Huffaker, Petrosky, Pettit

s:\bortolomigg\lasertran.wpd



Mr. William Stelle, Jr.  
Regional Administrator  
National Marine Fisheries Service  
7600 Sand Point Way, N.E.  
Bin C15700, Bldg. 1  
Seattle, WA 98115-0070

*Draft*

DRAFT

Re: 1997 Smolt Transportation Policy

Dear Mr. Stelle:

I am disappointed with the recent decision by the National Marine Fisheries Service to reinstate transportation of chinook smolts at Little Goose and Lower Monumental dams on the lower Snake River. This decision raises concerns on several fronts. First, it overrode operations that were consistent with your transportation decision made at the April 4, 1997, Executive Committee Meeting. Second, it overrode a consensus among all other salmon managers<sup>1</sup> for transporting smolts from Lower Granite Dam only. And third, the decision pivoted on non-listed chinook smolts, which NMFS has no ESA jurisdiction over except within the context of Section 7 and Section 10 permitting issues.

The State of Idaho has committed to trying to resolve salmon and steelhead recovery issues within a regional forum. I hope you agree with me that the State of Idaho has remained faithful to that process during the past two years. These three points raise serious concern regarding NMFS' credibility within the regional decision making process, NMFS' willingness to work cooperatively with the states and tribes, and NMFS' authority for unilateral decisions regarding unlisted fish. These points undermine our collective efforts to work toward an effective joint decision making process for salmon recovery and river governance.

As you are aware, the State of Idaho developed a 1997 migration policy that allowed two thirds of springtime migrating salmon and steelhead smolts to remain inriver during their journey to the ocean. This policy was based on the desire to take full advantage of this year's snowmelt, and the relatively good adult returns that resulted from similar runoff conditions and low transportation proportions during 1982-84.

The State of Idaho brought this policy to the Regional Forum for consideration last winter. After extensive discussions, a compromise transport recommendation was elevated to the Executive Committee for resolution. There was consensus among 11 of the 12 salmon management sovereigns within the Basin for implementation of Idaho's compromise request or for allowing even more fish to migrate inriver. NMFS was the *only* salmon manager that objected to Idaho's request on the basis that it allowed too many salmon to migrate inriver.

As a result of this objection, you resolved the dispute by stating NMFS' compromise decision

<sup>1</sup> The Salmon Managers are state, federal and tribal entities who have legally recognized mandates and jurisdictions to manage salmon resources in the Columbia River Basin.

DRAFT

that:

"...targets a spread-the-risk 50% transport objective for listed fish, said Stelle. This operation, however, shall not result in less than 50% of the listed fish being transported. I would also like to give the TMT the flexibility to develop a scenario that, recognizing the interests of Idaho, tries to adjust Alternative 6 to reduce the percentage of steelhead transported as well." April 4, 1997, Executive Meeting Minutes (4/30/97)

Although Idaho was disappointed that NMFS chose to override the rest of the Salmon Managers, we recognized your ESA authority to do so. Idaho also appreciated your compromise decision to allow the other salmon managers to strive to best meet their transport objectives, as long as those operations did not reduce transportation of listed fish below 50% for the 1997 spring migration season.

Midway through the spring migration season it became apparent that additional operational steps could be taken to more fully meet our objective without stepping outside of NMFS' sideboards established at the EC meeting. NMFS agreed with the other Salmon Managers to recommend stopping transportation at Little Goose and Lower Monumental dams. This operation was overturned a few days later at an unscheduled emergency TMT meeting which had no representation from Idaho. The basis for the decision was that the overall proportion of chinook transported would drop below 50% for the spring season if hatchery fish were included. At the previous TMT meeting, Idaho's representative objected to that concern because most of the hatchery fish are not listed, so the total proportion of listed fish transported would remain above 50%.

Once Idaho learned of this action several days later, we immediately submitted another System Operation Request into the Regional Forum to correct the mistake made at the emergency TMT meeting and once again stop transportation at Little Goose and Lower Monumental dams. The request was elevated to the Implementation Team for resolution. Once again, NMFS exerted their ESA authority to override a consensus for the request among all other Salmon Managers. NMFS made this decision in spite of calculations provided by Idaho showing that their request would not reduce transport of listed fish below 50%.

NMFS' stated rationale for their decision was that: 1) a follow-up letter after the April EC meeting did not distinguish between listed and non listed fish for transportation decisions, and 2) the calculations previously used to aid transport decisions did not split out listed and non listed fish. On the first point, I find it disturbing that a follow-up summary letter could be interpreted to override a decision made at the Executive Committee meeting that explicitly focused on listed fish. Although NMFS may have co-management authority for unlisted fish, you cannot use your ESA authority to make unilateral decisions that pivot on unlisted fish, unless those decisions are based on Section 7 or Section 10 concerns.

As for the second point, the technical groups analyzing transport proportions did not initially anticipate a significant difference between hatchery and wild salmon. Most of the unlisted salmon are hatchery fish, because hatchery and wild fish were assumed to have similar transportation

rates, there was little need to distinguish between listed and unlisted salmon. As it turned out, hatchery salmon are transported at a lower rate than wild salmon, with hatchery fish slightly below 50% and wild fish slightly above. All that was needed to resolve this dispute, and ensure that the transport operation was consistent with your April 4, EC meeting decision, was to distinguish between the listed and unlisted fish. This is a relatively simple calculation, which Idaho provided at the IT meeting. Regrettably, this approach to resolving the transportation dispute was not acceptable to NMFS.

I do not expect or anticipate NMFS to change their transportation decision for this year. The spring migration season is all but over. But I do request serious consideration of the process and jurisdictional concerns that I have raised. Collectively we made significant progress this year in handling different opinions and objectives regarding the transportation issue. I am very appreciative of your help and flexibility in this effort, but am concerned that these latest issues I have raised undermine our collective efforts to build and maintain intersovereign trust and commitment to a joint process for salmon recovery and river governance.

Thank you for your prompt attention to this matter.

Sincerely,

DRAFT

### 1997 Migration Plan Implementation

Petrosky comments June 25, 1997

Steve Huffaker requested at staff meeting on 6/23/97 that I provide input to assist with providing the requested information to ISSU and other interested parties regarding letters exchanged between Sen. Kempthorne and NMFS on the 1997 spring smolt migration decisions. The following are: 1) C. Petrosky's comments on the 6/9/97 response letter from R. Schmitt (NMFS) to Sen. Kempthorne explaining NMFS' 1997 operation decisions on transportation; and 2) S. Pettit's summary of events and management decisions made during the spring 1997 migration season. Pettit indicates that he has a copy of all relevant documents in his files, except the April 10 letter (Ed, do you have that one?).

1) I cannot find in the Schmitt response letter any clear answer to the question why the NMFS made the decision to change operations during the season. The Schmitt letter cites the Biological Opinion's summary of several transportation studies and states that, based on this information, NMFS concluded that transportation has demonstrated benefits for Snake River spring/summer chinook and steelhead "under the conditions tested." It ends by stating that two scientific panels (Recovery Team and National Research Council-NRC) concluded that transportation provides a survival advantage over inriver migration under current conditions, and also that the NRC supported spreading the risk.

This response misses the point of the 1997 migration management issue. NMFS makes this argument without distinguishing between past conditions tested and the high flow and high spill conditions experienced in 1997. For instance, the highest recorded T/C ratio (18.1:1) was in 1973 under extremely lethal inriver conditions (5% inriver survival; Raymond 1979). In addition, NMFS' response neglected to acknowledge the numerous methodological problems in these past transportation studies which were identified by independent peer reviewers (Mundy et al. 1994) and others. While it may be true that transported fish have usually survived *relatively* better than inriver fish, the *absolute* survival of transported fish has been very poor, and inriver conditions have been lethal since completion of the hydropower system.

The Salmon Managers recognized early in 1997 management discussions, that there were *no transportation studies applicable to the high flow and spill conditions* anticipated for 1997, but that both smolt survival and smolt-to-adult returns have been highest under these types of conditions. The best match to smolt migration conditions expected for 1997 were 1982 and 1984, years when wild salmon and steelhead experienced the best smolt-to-adult returns since completion of the hydropower system. Migrating smolts in 1982 and 1984 experienced high flows and spill, and relatively few were transported. There were no transportation studies in those years for either spring/summer chinook or steelhead.

#### 2) Chronological List of 1997 Transport Decisions:

Mar 18 Final Draft of Idaho (Transport Recommendation) Plan. IDFG presents a fish transport proposal and justification, and requests A/T SOR (System Operations Request) be submitted calling for alternate day transport and bypass at three Snake River dams. Justifying their request were data that showed approximately 85% of wild steelhead would be transported under existing BiOp transport operations.

Mar 18 IDFG presents their recommendation to TMT (Technical Management Team). Proposal is not adopted by TMT; and IDFG requests it go to IT (Implementation Team) on Mar 24.

Mar 24 IT considers Idaho Transport proposal and requests TMT to assign "work groups" to: 1) develop transport/inriver proportions for each transport scenario, and 2) look at impacts and facility capabilities for each scenario. Petrosky and Pettit are assigned to these "work groups".

Mar 28 TMT transport work groups report results of transport/bypass scenarios.

Apr 1 Results and findings from IT assignments are reported to TMT. TMT fails to adopt a transport scenario, issue is moved up to IT's next meeting on 4 Apr.

Apr 4 IT meets at CRITFC, Bowles attends. NMFS (W. Stelle) states that ESA/BiOp allows for "spread-the-risk" management and indicates that as long as 50-60% of listed chinook are transported, there is flexibility surrounding transport operations that can be examined for reducing the proportion of wild steelhead transported. It is left for TMT and its work groups to select alternative.

Apr 10 NMFS sends letter to EC (Executive Committee) clarifying their position on listed salmon and transport management. Pettit participated on "special" TMT conference call (transport work group with C. Henriksen). The participating members selected a transport/bypass option that called for bypassing B-side separated fish (mainly steelhead) back to the Snake River at LGO and LMO dams. This was not Idaho's preferred option. We had requested that Alternative 6, alternate day transport, be adopted at all three Snake River collector projects (LGR, LGO, LMO). Since Cindy Henriksen was on the conference call the transport alternative (#9) was immediately activated by the COE.

May 6 FPAC hold its weekly conference via phone, and Pettit brought up latest transport/bypass proportions (FPC data) which indicated that current transport operations would result in over 75% of wild steelhead being transported by end of migration. Bowles also joins the conference call, and FPAC members elect to submit SOR #97-12, calling for 100% bypass at both LGO and LMO. This operation would not affect BiOp's goal of transporting 50-60% of listed chinook. SOR is implemented on May 7 by TMT.

May 13 FPAC submits SOR #97-14, a request for continuation of 100% secondary bypass at LGO and LMO. This is implemented by TMT on May 14. April 10 NMFS letter is attached to Internet minutes of TMT meeting for 5/13/97.

May 16 Federal Agencies held "emergency" phone conference without IDFG of State of Idaho participation to discuss transport. New information is provided by NMFS, indicating that total chinook (listed and non-listed stocks) originating above LGR might fall below 50% transport is 100% bypass continues at LGO and LMO. A decision was made by mostly federal operators that transport should return to B-side only bypass, which was implemented immediately.

May 21 Bowles questions transport decision (May 16 phone conference) at weekly TMT meeting. Brian Brown (NMFS) states that NMFS letter (4/10/97) referred to aggregate of chinook migrants originating above LGR, not solely to listed stocks. Idaho objects strongly.

Mr. CRAPO. Thank you, Mr. Chairman. Would you like me to introduce the first panel? Thank you, Mr. Chairman. In our first panel, we have with us today Mr. Jim Yost, who is the Senior Special Assistant to the Idaho Governor's Office, Idaho Governor Phil Batt; Mr. Dave McFarland, who is Chairman of the Lemhi Riparian Conservation Agreement; Mr. Samuel Penney, the Chair of the Nez Perce Tribal Executive Committee; and Mr. Lionel Boyer, the Fisheries Policy Representative for the Shoshone-Bannock Tribes. And I certainly welcome each of you here and thank you for the time and attention you have given to this matter. And, Mr. Chairman, I turn the time back to you.

Mr. SAXTON. Well, Mr. Crapo, we want to thank you for framing this issue for us. Those of us from other parts of the country, obviously, have not lived with or dealt with this issue as you have. And so we are, obviously, anxious to be helpful in helping you and your constituents and others who are interested in this issue come to a successful resolution.

Let us turn at this point to panel number 1. Just to give you an idea of the ground rules, we have three little lights there in front of you. One is green, one is yellow, and one is red, and the colors of those are that way for obvious reasons. However, you have come a long way to share your thoughts with us. So when the red light goes on, you will know that your 5 minutes has expired.

However, we can grant some latitude so that you can finish your thoughts in a constructive way. So, Mr. Yost, why don't you begin, and then we will move across the table, and we are anxious to hear your thoughts on this which is a very important matter. You may begin.

**STATEMENT OF JIM YOST, SENIOR SPECIAL ASSISTANT,  
IDAHO GOVERNOR'S OFFICE**

Mr. YOST. Thank you, Chairman Saxton, Congressman Crapo, and Congressman Abercrombie. The Governor of Idaho extends his pleasure at having had the opportunity to send someone to visit with you about these issues.

One of the primary issues that the Governor asked me to represent to you is that Idaho does care about anadromous fish and resident fish, and we are making every effort and we are proud of the effort that we have made thus far in trying to participate in the regional forum within the area.

The problem is compounded in the region because of the decisions and the time lines that have been established thus far in fairly much a uniform and mutual-consented arena. That is, we have a biological opinion on anadromous fish listed under the Endangered Species Act to be decided in the spring of 1999. There is an effort underway at this particular time to advance that time line into the spring of 1998.

There isn't a real concern that the region will make decisions in the proper time line. However, we are finding it very difficult to reach any type of decision in the region because of the forum that is currently established.

Originally, there were three or four different efforts being attempted, one through the Northwest Power Planning Council, another through the NMFS forum or the National Marine Fisheries

or Federal agencies forum, and we participated in all of those hoping that there would be an ultimate regional forum that we could build consensus and reach some of the decisions that are important for the region.

That process is not working. It is marginal at best, and it seems to be crumbling a little bit more each month as we go by. The struggle is being made now to restore a regional forum, and the Governors are becoming more involved from the four States—Idaho, Oregon, Washington, and Montana. But there are too many avenues in which to try to reach a regional forum to reach consensus in which to make some of those decisions that the region needs to make and in the time line that they have.

Specifically, when you look at the NMFS forum, the technical management team level, the implementation team level, which is midpolicy decisions and the Executive Committee process that has been established, which is higher level decisionmaking, the process is extremely complicated in that the representation has not been well-defined, and there are some folks who are not adequately represented and who have withdrawn their representation from that process.

The time that it takes for the four States to send their representatives to participate in that process is extensive, and they are willing to make the effort. But the process then becomes convoluted because once you reach a regional consensus with the participants at the table, then as an example, Idaho has developed an Idaho strategy for operations for this year. Idaho was able to get consensus from all of the participants in the region—the Corps of Engineers, BPA, and the four States—the State fish and game—all of the participants at the table except NMFS.

Somewhere along the process of three or 4 months, NMFS should have said that they were not going to agree with the process instead of waiting until the very end to veto the decision that was reached by consensus for the rest of the region.

The timing of NMFS is, obviously, slow. The Hanna Slough issue that was recorded in my testimony—the length of time that it took for NMFS to make a decision there was too lengthy. It was an important, critical area. They just were unable to make a decision at the local level. They weren't even able to make a quick decision in an expedient manner at a higher level in Portland.

The same event occurred on Salmon River floaters where we had commercial tubing and activities on the Salmon River, and everyone agreed that there was a process that would have been in place for 3 years, and NMFS restricted that unilaterally.

I guess if there was one message that I would like to present today is that the NMFS makes unilateral decisions without actively participating in the consensus building at the local level. The process either needs to be changed, or we need a different regional forum within the region. I thank you very much, Mr. Chairman.

[Statement of Governor Batt can be found at the end of the hearing.]

Mr. SAXTON. Thank you, Mr. Yost. Mr. McFarland.

**STATEMENT OF DAVE McFARLAND, CHAIRMAN, LEMHI  
RIPARIAN CONSERVATION AGREEMENT**

Mr. McFARLAND. Mr. Chairman, Committee members, my name is Dave McFarland. I represent the people of Lemhi County, Idaho, as an agent of the county commissioners. As a rancher with Federal grazing permits, I also represent those interests.

During these hearings, you should hear plenty of negative testimony concerning National Marine Fisheries Service. I concur. In Lemhi County, recovery of endangered salmon is a laudable and very popular goal. Yet, National Marine Fisheries Service is held in lower esteem than the IRS.

Mr. SAXTON. Excuse me. That is pretty low, isn't it?

Mr. McFARLAND. That is true. NMFS decisions seem to occur in a vacuum. Nevertheless, some good decisions have been made by National Marine Fisheries Service personnel, and some of these have occurred in Lemhi County. I have observed that many of the best solutions have occurred when the best communication happens.

We propose these suggestions for improving dramatically protection of endangered salmon and improving National Marine Fisheries Service's effectiveness. One, National Marine Fisheries Service must actively participate with diverse interests to make optimum decisions. Decisions openly made are easier to implement, less divisive, and generally meet their goals better.

Number 2, instead of hiring more people, NMFS should ally with or in some other manner use the expertise already hired by other Federal agencies. The Endangered Species Act is not about building kingdoms. It is about protecting species. I have talked to many flora and fauna experts in the Forest Service and BLM who would be glad to guard the interests of the ESA.

I back my points with the following: several years ago, Lemhi County residents developed a method of communication with Federal and State management agencies. It is a semiformal method whereby the agencies and county representatives meet to discuss long and short-range planning for all of Lemhi County. Although not perfect, the process has succeeded spectacularly.

By being included in the process, we have given Federal and State land managers information to make better decisions. By keeping us informed and involved, we have been able to support difficult decisions like road closures, changes in management practices, and so forth. Throughout this entire process, all participants have been aware of the need to protect our natural resources and endangered species, even prior to listing.

Graphically, I refer you to the orange booklet given members of the Committee. This is a trend report on riparian conditions from 1988 through 1995. Note the quick-to-reference charts on the gains in riparian conditions, and then also peruse the photos. As you do that, please note the different management schemes.

As we explored ways to contend with species listings in many of our planning sessions, two things became apparent. Number 1, single species management could not be the best recovery strategy. There are too many species and too many unknown variables. And, number 2, intense management of Federal land alone would probably fail. Only 8 percent of Lemhi County's approximately 4 million



acres is privately owned, but that contains 90 percent of the occupied salmon habitat.

From these two tenets, we arrived at our Riparian Habitat Agreement, which is appended to this testimony. I urge you to glance through it. It is a simple but powerful document. Basically, the signatories agree to protect riparian habitat to the best of their knowledge and ability. Importantly, the county and its residents freely offer private land to the same scrutiny Federal lands are required to have.

On the signatory pages, the absence of National Marine Fisheries is conspicuous. We have repeatedly asked them to actively participate. On two occasions, NMFS has met with us primarily to tell us they won't actively participate. I submit to you that this reduces their effectiveness.

The last point I would like to make is that soon Congress must make a political decision. It seems evident that bull trout may be listed in the Northwest streams. This will put NMFS, U.S. Fish and Wildlife Service, and the Federal agencies all in charge of the same small stream reaches.

We ask that you, as Members of Congress, designate U.S. Fish and Wildlife Service as lead agency under the ESA for inland streams. They have already shown greater experience, plus they have demonstrated the ability to communicate with our interests. The budget outlay for their management should also be less. Respectfully submitted, Dave McFarland.

[Statement of Mr. McFarland can be found at the end of the hearing.]

[Conservation agreement will are being held in the Committee files.]

[Progress report can be found will are being held in the Committee files.]

Mr. SAXTON. Thank you very much, Mr. McFarland. Mr. Penney.

**STATEMENT OF SAMUEL N. PENNEY, CHAIR, NEZ PERCE  
TRIBAL EXECUTIVE COMMITTEE**

Mr. PENNEY. Thank you, Mr. Chairman. Good morning to the members of the Subcommittee. My name is Sam Penney. I am the Chairman of the Nez Perce Tribal Executive Committee. I would like to thank you for this opportunity to testify on our views on the recommendations of the National Marine Fisheries Service and their role in salmon restoration efforts especially in the Pacific Northwest.

From the Nez Perce Tribe's point of view, reversing the decline of Columbia basin salmon is more than just a matter of professional interest or a legal obligation or a cost of doing business. Since time immemorial, our people have fished for salmon in Nez Perce country, which originally encompassed over 13 million acres in what is today known as north central Idaho, southeastern Washington, and northeastern Oregon. Salmon have always been and continue to be intricately linked to our people's way of life, our economy, our beliefs, and our culture.

The Nez Perce Tribe's legal basis for its role in salmon restoration efforts stems from the supreme law of the land, our treaty of 1855 with the U.S. Government in which we expressly reserved the

right to take fish. The United States also owes a trust or fiduciary duty to the Nez Perce Tribe.

The United States' trust responsibility permeates every aspect of the Federal Government's relations with the Tribe and imposes a duty on the Federal Government to safeguard natural resources which are of crucial importance to Indian people. I will provide a copy of the paper entitled, "Columbia River Treaty Fishing Rights" to the Subcommittee so you will understand the legal and moral obligations of the United States to the Nez Perce Tribe, as well as other tribes.

The Nez Perce Tribe is committed to doing everything we can to ensure that these declines of salmon are reversed and that all species and all stocks of salmon are restored. We know in our hearts that our vision and plan for salmon restoration will provide a sustainable fishery resource for the benefit of all peoples in the Pacific Northwest and Alaska.

We recognize that we have more to lose than anyone if these declines are not reversed. It is from this perspective that we provide the following observations in hope that the National Marine Fisheries Service will have the opportunity to respond to our concerns that we and others are bringing before this Committee today.

First, I would like to address the Endangered Species Act's role in salmon restoration. Although the Endangered Species Act has received a great deal of attention for its potential role in the recovery of salmon in the Pacific Northwest, the ESA is but one legal commitment that is relevant to salmon restoration efforts. The ESA operates like an emergency room focused on recovery of the listed fish.

The ESA does not guarantee fulfillment of the 1980 Northwest Power Act's promise of parity between salmon protection and hydroelectric generation and that Act's call for a program to restore fish and wildlife populations to the extent affected by the development and operation of the Columbia basin hydroelectric system, nor does the ESA guarantee fulfillment of the United States' treaty promises to our people to protect our aboriginal right to take fish at all usual and accustomed fishing places or the Federal Government's trust obligation to the Nez Perce Tribe.

In contrast to the ESA, the Nez Perce Tribe's vision for salmon restoration, shared by other Columbia River treaty tribes and contained in the Spirit of the Salmon, is substantially broader. Our peer-reviewed plan, which I will provide to this Subcommittee, is focused on restoration of all species and all stocks to provide harvestable populations of fish for our people, as well as the citizens of the Pacific Northwest and Alaska.

One would think that the purposes of the ESA could be read consistently with the Northwest Power Act, the Tribe's treaty reserved fishing rights, the Federal Government's trust responsibility to the Tribe, as well as with the case law principles developed in *United States v. Oregon* and *United States v. Washington*, and the rebuilding program envisioned by the *United States v. Oregon Columbia River Fish Management Plan* and the *Pacific Salmon Treaty*.

Second, I would like to address the Nez Perce Tribe's standard for evaluating whether NMFS is properly implementing its authori-

ties under the ESA. This standard may simply be stated as follows: NMFS's decisions must be consistent with the biological requirements of salmon, emphasize reductions to the largest sources of salmon mortality, equitably allocate the conservation burden, and be consistent with the United States' legal obligations.

Our written testimony details our experience with NMFS's implementation under ESA over the last 6 years. NMFS has not effectively recognized our treaty-reserved fishing rights and the Federal Government's trust obligation.

I would like to quickly summarize our concerns with the National Marine Fisheries Service. First, we are concerned that NMFS has accepted an extremely high level of risk in its short and long-term recovery strategy. We are also concerned that NMFS failed to consider the best available science in the initial biological opinions on the Federal Columbia River Power System.

We are concerned that NMFS designated an ESA implementation process that failed to recognize the Tribe's treaty rights and the Federal Government's trust obligation to the Tribe. We are concerned that NMFS is not taking action necessary to ensure protection of salmon habitat.

We are concerned that NMFS is not assembling the data necessary to make the long term recovery decision concerning modifications to the hydrosystem through natural river drawdown or major improvements in the barging program and may be approaching this as solely an ESA issue.

We are concerned that NMFS is stifling responsible supplementation programs designed to restore salmon. We are concerned that NMFS may unlawfully attempt to restrict tribal harvests in violation of treaty right principles, and Federal Government's trust responsibility to the tribe.

Now, I would like to conclude by offering a few recommendations for our future relationship with NMFS and its administration and also concerns implementation of the ESA. We hope that the NMFS will honor the Federal Government's obligation to the tribes, and we believe that this commitment would result in a better decision-making process in further decisions and would help alleviate many of the concerns we have presented as mentioned by the previous witnesses.

There have been many meetings which tribal input is not seriously considered. We are one of the tribes that did withdraw from the NMFS process, and we would hope that in the future that NMFS would recognize the input not only of the tribes but all the others that are involved as well so that there can be some consensus in the Northwest.

And also to Congressman Crapo—the Power Summit, I think, on Energy Deregulation also adds to this issue as well, the uncertainty of the deregulation of the utility industry in the Northwest further complicates the problem. But I would like to thank you for this opportunity, Mr. Chairman, and members of the Subcommittee.

[Statement of Mr. Penney can be found at the end of the hearing.]

[Columbia River treaty can be found at the end of the hearing.]

Mr. SAXTON. Thank you, Mr. Penney. Well, you may have just heard the buzzers and so on. That means we have to go vote on the House floor. It will probably take us about 15 or 20 minutes to get there and back, and when we come back, we will hear your testimony. And then at the conclusion of that, we will begin to ask some questions which we each have beginning with Mr. Crapo. Thank you.

[Recess.]

Mr. SAXTON. We kept our word to get back as quickly as possible, and so we will now proceed with Lionel Boyer. You may proceed, sir.

**STATEMENT OF LIONEL BOYER, FISHERIES POLICY  
REPRESENTATIVE, SHOSHONE-BANNOCK TRIBES**

Mr. BOYER. Thank you, Mr. Chairman, and members of the Subcommittee. My name is Lionel Boyer, Fisheries Policy Representative for the Shoshone-Bannock Tribes of the Fort Hall Indian Reservation located in southeastern Idaho.

I come here today to express my tribes' frustration with the National Marine Fisheries Service's representation of the trust responsibility of the United States to the Shoshone-Bannock Tribes. The lack of equitable management of the Endangered Species Act with my tribes' rights that are guaranteed under provisions of the Fort Bridger Treaty of 1868.

The Shoshone-Bannock Tribes have taken the position that the ESA does not apply to our people. To enforce the ESA on tribes would be an abrogation of our treaties unless there was proper consultation leading into an agreement or understanding as to how and what would apply to tribes. Otherwise, the treaty, which is the supreme law of the land, would be enforced.

We have said unofficially that we would work within the ESA provided it serves our concerns. The Shoshone-Bannock Tribes did use the ESA to petition for the listing of the depleted runs of the redfish lake sockeye salmon, and today we have within our fisheries program a recovery effort to save this magnificent animal for the future generations. I might add that the redfish lake sockeye would have become extinct if the Shoshone-Bannock Tribes had not acted to petition for the ESA listing.

Mr. Chairman, I would like to talk briefly about the concerns that are in the written testimony that is before you. There are many more concerns that we have, but this is a few of them in conjunction with the National Marine Fisheries Service.

NMFS's failure to significantly improve the migration corridor. NMFS has continuously failed to give a jeopardy opinion against the dam specifically—the four lower Snake River dams. They continue to annihilate from 80 to 99 percent of the juvenile fish migrating to the main Columbia River and then to the ocean.

NMFS has continued to allow the slack waters created by the dams to increase in temperatures that is deadly for any cold water fishes. The NMFS has continually allowed the Shoshone-Bannock Tribes' position to breach, mothball, or remove the dams to fall off the tables of discussion.

The NMFS has continually pursued the flawed position of transporting the juvenile fish in barges past these dams. This is and was

a band-aid approach of 20 years or so. It has not brought any recovery of the runs, only added costs and a continued misguided belief that it would bring about recovery.

Recent studies indicate a positive probability of recovery with breaching of the dams would occur, but NMFS continues to maintain status quo and the continued expenditures to maintain the studies, approve construction of unproven methods on the very problems that continue to destroy the runs and the dams.

NMFS's failure to provide equitable harvest opportunity to the Shoshone-Bannock Tribes. The data clearly shows that about 57 percent of the salmon that enter the Columbia River were destined for the Snake River. NMFS allowed harvest grades for downriver fisheries in 1997 that could not be maintained by the Shoshone-Bannock Tribes.

The Shoshone-Bannock Tribes had a biological analysis of the Shoshone-Bannock Tribes' proposed harvest of salmon presented to NMFS since early spring. This was approved by them, but when the Shoshone-Bannock Tribes were preparing their tribal regulations, NMFS all of a sudden had a problem. We had to scramble and go through the process to have a technical review by the Technical Advisory Committee. The Technical Advisory Committee did not see any conflict with our proposal but NMFS did; consequently, no consensus.

We had to call for a review by the USB Oregon Policy Committee. Again, the policy committee had no problem with the numbers but NMFS did; again, no consensus. Our next step was to take it before the Master of the Federal Court, Judge Marsh. Before our appointment with the Court, we had a hurried meeting with NMFS and was able to get an interim harvest for an interim period with the Biological Opinion which was to be presented for signature.

The technical review of the numbers returning updated the data which clearly indicated that the NMFS was using data that no one else had and also that it was flawed. The Shoshone-Bannock Tribes did request an increase in the harvest because of the large numbers of salmon that was returning, but we continually ran into conflict with the NMFS.

The State was approved to have its sport harvest by NMFS, and today there is fish returning that far surpass the hatchery quota, and now they, the State, are proposing outplanning for sport harvest in the Boise and Payette Rivers. The Shoshone-Bannock Tribes are still having to jump through the hoops that NMFS has placed for our treaty and ceremonial harvest.

But the State can do what they want. What happened to the concern of recovery? Now, it is a bathtub fishery with what they call surplus fish. With so many fish returning, they should be used for supplementing the weak spawning areas to recover the salmon, not to put more dollars in the State's coffers.

NMFS's failure to designate adequate critical habitat for recovery. Designated ESUs—they are arbitrary and without merit scientifically and technically—simply a means to eliminate and exempt historic and natural production areas to keep them out of the purview of the ESA. NMFS has failed to promote and assure the recovery of the Snake River salmon by eliminating the Middle

Snake River which historically produce 70 percent of all the listed stock ranges.

NMFS's failure to provide adequate production opportunities. The wild stocks continue to plummet in the Snake River. NMFS does not allow the Shoshone-Bannock Tribes to increase production, NMFS's definition of 150 individual fish being the minimum viable population. The returns of the wild salmon number less than 100 in historic stream and river systems.

The Snake River salmon are effectively or genetically eliminated in many areas. NMFS refuses to improve the migration corridor. NMFS must allow substantive reintroduction by using hatchery populations. NMFS is arbitrarily separating wild fish and wild fish production areas from hatchery fish.

NMFS's failure to fulfill trust responsibility to tribes. Each year, the Biological Opinion is held in abeyance by NMFS to delay our ceremonial and subsistence fisheries. This year, the fishery opportunities are more than half over, and we still have not received the complete Biological Opinion.

The tribes' right to fish is provided in the Fort Bridger Treaty of 1868, and NMFS continues to protect industry and other causes through the demise of the salmon and refuses to bring a jeopardy opinion against the dams, but continues to abridge the Shoshone-Bannock Treaty of 1868.

The NMFS does not have the authority to abrogate my tribes' or any other tribes' treaty. Rendering a treaty null and void is not within the agency's right or authority. The NMFS cannot define a tribe as a person as they are attempting in their administering of the ESA. Ours is a tribal sovereign right, not an individual right.

In conclusion, as I state in my testimony, we have other concerns about the recovery of our brother, the majestic salmon, and we can provide potential solutions to these questions in the near future if requested. Again, we believe our concerns would be appeased and that the salmon would quickly be recovered if NMFS provided a natural corridor through the Lower Snake River.

Again, I thank you for this opportunity to express some of our concerns about the continued demise of the still majestic salmon. We need to wake up and provide for our future generations the continued existence of these great fish or forever be haunted by the loss of them. Thank you.

[Statement of Mr. Boyer can be found at the end of the hearing.]

Mr. SAXTON. Thank you very much, Mr. Boyer. Let me just express my appreciation to all four of you for very articulate testimony wherein you not only point out the facts of the case, but also your frustration with the seeming inability of the Federal agency to play a productive role. We are going to each have some questions for you at this point, and we will begin with Mr. Crapo.

Mr. CRAPO. Thank you very much, Mr. Chairman. I would like to start out, Mr. Yost, with you. As you may recall, were you at the hearing in I believe it was Lewiston which we held in May, which Chairman John Doolittle of the Water and Power Subcommittee held with regard to drawdowns?

Mr. YOST. Mr. Crapo, no, sir.

Mr. CRAPO. At that hearing, I asked virtually every witness from whatever perspective they may have come whether they felt that

the process that NMFS was following was allowing them and their point of view to be adequately heard, and virtually every witness said no.

Now, I realize that whenever you are the lead agency on an issue, you are going to face discontent and concern by the various parties who are concerned. But it was remarkable to me that every witness, whether it was from one angle, one perspective or the other felt that the process was not working in terms of allowing them to have access and feeling that their point of view was being heard.

The reason I lead in with that is that Idaho has in the last year or two developed a salmon migration plan or policy that it has proposed in the negotiations. Is that not correct?

Mr. YOST. Mr. Chairman, Congressman Crapo, yes, sir. Idaho tries to bring all of the affected and interested parties in Idaho together each year to formulate a river operations strategy for that particular year because the State of Idaho's position is that in an effort to restore salmon and assist resident fish that we utilize the resources that we have in the best available manner.

Those resources change year by year; that is, the amount of rainfall and snowpack we have depends on the amount of flows that come out of Idaho that are used to assist salmon. Also, the number of smolt that go out each spring is different year to year. So each year we develop a particular river operation scenario for that particular year, spring and summer.

Mr. CRAPO. And in the last 2 years, it has been very successful in terms of at least achieving the agreement of all of the major interests involved. Is that not correct?

Mr. YOST. Mr. Chairman, Congressman Crapo, that has been correct. We have had a major component of our proposal accepted by the region. All of the interests in the region have accepted the majority of our proposal.

Mr. CRAPO. And when that proposal was presented at the appropriate time and location with the National Marine Fisheries and other managing agencies and so forth, it is my understanding that it was very broadly accepted by most, if not all, of the other parties present. Is that correct?

Mr. YOST. Mr. Chairman, Congressman Crapo, 12 of the 13 participants accepted that. The only dissenting vote was the National Marine Fisheries Service.

Mr. CRAPO. So in the face of virtually all other participants, the National Marine Fisheries rejected the policy?

Mr. YOST. Mr. Chairman, Congressman Crapo, that is correct.

Mr. CRAPO. Mr. McFarland, would you describe for me your experiences with National Marine Fisheries personnel as you have tried to work with them or reach agreement on habitat protection?

Mr. MCFARLAND. Generally, it has been very difficult to get any positive participation from National Marine Fisheries. They constantly have the excuse that they have no personnel. They don't have enough people. But when the time comes that we do get some people to our meetings to work with us, they show up in droves. I mean, I am calling three a drove. But we would much rather have one three times than three one time.

There are some positive things going on though. We have finally got through to some of the lower echelon units. And since we have begun communication, there are some positive things going on in our area.

Mr. CRAPO. All right. Thank you. And, Mr. Penney, the Nez Perce Tribe and three other tribes have pulled out of the National Marine Fisheries Executive Committee, and I think that you have explained in your testimony the reasons for that. Could you tell me what it would take for you to come back into the process, if you have authority to state what it would take for the Tribe to come back into the process?

Mr. PENNEY. Mr. Chairman, Congressman Crapo, on June 3 in Portland, Oregon, there was a meeting between the various Indian tribes and the State Governors, which I felt was very productive for a first meeting. But at that meeting also, the Governor of Montana expressed his concerns on the process as well.

I think our concern from the Nez Perce Tribe is the NMFS process itself—it seemed like every meeting that either myself or our staff attended—supposedly a consultation meeting to decide some of these issues that some of these issues were already in place, and we were simply informed what was going to take place.

And we didn't think that was a very productive forum for the Columbia River Tribes, including the Umatilla, Yakama, and Warm Springs Tribes. We decided that the forum was no longer productive for us, and we would not participate in that forum unless there were changes made in how it was structured.

Mr. CRAPO. Would you participate in some type of a forum that involved—what I am hearing you say is that you felt the decisions were made and that your participation did not really impact the decisions. Is that correct?

Mr. PENNEY. Well, I believe the tribal input, as I mentioned in my testimony, that a lot of the best available data, science are not fully considered when those type of decisions are being made. And when we do get to the meetings, we are informed that this was the direction NMFS is going to take.

Mr. CRAPO. Do you feel that a decisionmaking process that gave decisionmaking authority to a regional body of some type that represented the sovereigns in the region would be acceptable?

Mr. PENNEY. Mr. Chairman, Congressman Crapo, I think that was the intent of our June 3 meeting, that the States, the Federal Government, and the tribal governments need to be fully involved in any decisions that are made. In fact, the title of that meeting was the meeting of the three sovereigns, Federal, State, and tribal. And I believe that is the proper way to address this regional—especially the Northwest issues.

And I think going back to some of the issues that have been stated previously that we want to keep it a regional issue. As mentioned earlier, the bull trout, the steelhead, there are a number of other stocks that are in trouble at this time. So we need to reach a regional consensus among those—

Mr. CRAPO. If that approach were taken, what about—how would the interests such as irrigators or the transportation concerns or fish and wildlife advocates—how would their interests be represented in the decisionmaking body?



Mr. PENNEY. Well, I co-chair the Snake River Basin Adjudication as well for the Nez Perce Tribe, and all of those interests are represented under the State. And I would assume there would be representatives of the State under the umbrella of the State.

Mr. CRAPO. All right. And, Mr. Boyer, I note that the Shoshone-Bannock Tribes have not withdrawn from the process at least at this point. I assume, however, that you share the same concerns from your testimony. It appears you share very many of the same concerns that the Nez Perce Tribes do. Is that correct?

Mr. BOYER. Mr. Chairman, Mr. Crapo, correct. The Shoshone-Bannock Tribes, as the other tribes have, since the formation of the Executive Committee have opposed the Executive Committee. It is a committee that was—as in your briefing here is an informal committee. However, being an informal committee, it develops policy decisions without our participation. That is our concern.

It was presented to the Members Committee of Columbia River Basin Fish and Wildlife Authority in 1995—it was presented, and the members at that time, which is made up of the 13 tribes, the four States, and the Federal agencies, minus the Corps of Engineers and the Bureau of Reclamation, sitting at one table. It was presented and at that particular time the 13 tribes did not accept that process.

Mr. CRAPO. Thank you. I just have another question or two of Mr. Yost, if I might, Mr. Chairman. Mr. Yost, in the discussion that we just had with regard to regional decisionmaking or changing—moving to a process where the decisions were actually able to be made in a regional decisionmaking body of some sort, there has been a lot of discussion, as we just had, with regard to whether the sovereigns ought to be the ones that make up that decisionmaking authority, or whether it ought to be a more broad-based decision-making group that involved representatives of different interest groups. Do you have a position on that?

Mr. YOST. Mr. Chairman, Congressman Crapo, I think that the regional forum that currently exists has to be radically changed. Either NMFS has to change the way they operate now, or there has to be a completely different regional forum established. I think the region can decide who should be on the committee or how it should be established.

I think they can come to an agreement within the region as to who should be on the—participate in the regional forum. There is a difference of opinion now, but it is being discussed between the three sovereigns, as was mentioned—the Federal, State, and tribal sovereigns. It is either going to have to be done in the region, or Congress or the Courts will have to decide what happens.

Mr. CRAPO. Does it appear to you that the National Marine Fisheries Service views the research and data from the States and the tribes and other sovereigns on the same level and accuracy and usefulness as it views its own research data?

Mr. YOST. Mr. Chairman, Congressman Crapo, no. The National Marine Fisheries Service does not consider scientific data or scientific opinion from the other Federal partners or their sister agencies in the Federal Government—the Corps of Engineers, BPA, or the Bureau of Reclamation, nor any of the tribal fish and game de-

partments, nor other information and data that is available from the private sector.

And that is part of the problem. If they have to go out and research and prove all of the—or disprove all of the data that is there, they want to make their own decisions. The problem with that is is that there is a diversity of information and data within the region. If I can reach consensus in the region with everyone but NMFS, are they part of the process? Are they part of the solution? Are they participating in the process? Or are they making unilateral decisions?

I think the evidence that you hear today and the evidence we have experienced in the last 2 years in that regional forum will indicate that they make unilateral decisions. Either they want their science—to use their science to promote their principles or objectives, or they want to pick up their marbles and go home.

Mr. CRAPO. Thank you. I just have one final point to make again with you, Mr. Yost. I started out asking you about the consensus that had been reached with regard to the Idaho proposal, the Idaho policy. And it seems to me that the decision that NMFS made to move in a different direction has resulted in an immediate and long-term threat to many water uses along the Snake and Columbia River system—threats to irrigation, commercial, residential water users, and the entire regional economy—a threat that is not justified by the science, nor designed in my—or likely, in my opinion, to have a significantly positive impact on salmon recovery.

And it is also an immediate and long-term threat to State water sovereignty and not just with regard to the State of Idaho either. And I just would like to have you comment on it. And I am going to talk to the next panel about that as well.

But would you please comment? Do you agree with my observation there with regard to the impact of the current policy being pursued by NMFS and its potential implications for water sovereignty and other water uses in the region?

Mr. YOST. Mr. Chairman, Congressman Crapo, the issues are very critical when you are dealing with river governance in the State of Idaho. Those issues are so sensitive and so volatile and so critical to the entire livelihoods of everyone in the Northwest. It has a tremendous impact on power and how power is used. You can't separate the operation of the river system in power that pays for fish mitigation.

We have to have the biological solution to save the fish and to restore the salmon runs. We have jurisdictional issues and sovereignty issues that have to be maintained. Each issue is critical and is complex. And, of course, those decisions will be best for the region that are made within the region with as much consensus as possible. We need to have NMFS as a player, not as someone who would make a unilateral decision regardless of the consensus reached by the other participants in the process.

Mr. CRAPO. Thank you very much. And, Mr. Chairman, I would yield back my time at this point.

Mr. SAXTON. Thank you, Mr. Crapo—excellent questions. Mr. Abercrombie.

Mr. ABERCROMBIE. Thank you. Mr. Chairman, before I get to individuals, I want to comment to you and to Mr. Crapo and I guess

to the panel and those upcoming as someone who is very much interested in trying to be a useful catalyst in this process to you, in just thinking about, very frankly, Mr. Chairman and Mr. Crapo, a water distribution question that we are dealing with in the Island of Oahu right now.

You can imagine the parallel interests that I would have when you are an island in the middle of the Pacific utterly and totally dependent upon an aquifer, which must remain pristine, cannot in any respect be contaminated except at the immediate peril of everyone there, and a competition for the use of such water right.

But I was thinking to myself I thought that was complicated until I got to this today. Now, just in—I haven't covered it by any means, but, Mr. Chairman, I detect so far five Federal agencies, five States, 13 tribes, three categories—I don't even want to break the categories down, but they include commercial and environmental and recreational—leading to legislative acts from which plans come, opinions, systems, committees, teams, and boards—almost all in the plural. And in order to deal with the acts, plans, opinions, systems, teams, committees, and boards, there are councils, groups, authorities, and forums, regional, State, tribal, et cetera. Have I got it so far?

Mr. CRAPO. Mr. Chairman, Mr. Abercrombie, I think you have been a very quick read on this. The only thing you left out was there was another foreign nation as well, the Nation of Canada, that is also involved.

Mr. ABERCROMBIE. Oh, that is a nation. OK. Right.

Mr. CRAPO. Add a nation to your list.

Mr. ABERCROMBIE. Right. So I have an idea that the National Marine Fisheries Service has either by default or design or both become the czar in this and is pretty much regarded by everybody the way the czar was regarded in 1917 or 1918.

As of yet, apparently, the head of the National Marine Fisheries hasn't suffered the same fate as the Romanovs, but that is not necessarily out of the picture, apparently. So by no means am I trying to make light of it or go into a Pontius Pilate mode and wash my hands of it because it is complicated and detailed.

But I do think—would I be correct, Mr. Yost, Mr. McFarland, Mr. Penney, and Mr. Boyer—would it be fair to say then that the human dimension in this, obviously, causes great strain in trying to deal with all of these abstract categories? I think that that is—everybody would agree.

So the question then becomes, for me, is it possible to achieve a consensus, not agreement—not so much a consensus agreement, but a consensus approach on how we would deal with this legislatively? Because I have an idea that as odd as it may sound, the Congress might prove useful in this because we could act as an honest broker.

I mean, I realize it is fashionable these days to trash government, but we are here after all under the Constitution a free people trying to decide on the basis of what is good for the community, what is good for the polis, what is good for us as a Nation. And, obviously, this is a national resource.

I am correct, am I not, that all interested parties here regard the issue at hand here as something which involves a national treasure

and resource, as well as the individual attachments that people may have? That being the case, my suggestion, Mr. Chairman, is rather than ask questions, I think, as you mentioned, all of the people have made their positions very clear.

But I think there is a common theme running through all of the testimony, at least that we have seen so far, which is that there is an agreement that there is a decline in the salmon stocks, that the elements which have to be taken into account include ocean conditions, the dams themselves, water use, overharvesting, habitat destruction, hatchery impacts, and the question of the reservoirs associated with the dams.

It would seem to me then, Mr. Chairman, that perhaps we could devise some legislation which would cross the various entities here and the various jurisdictions in a way that would help us to come—help the decisions to be made which would advance the cause of increasing the stocks and access to them in a reasonable way which takes historical necessities into account.

My bottom line on this would be, Mr. Chairman, that representing as I do a State which has a history of native peoples not being taken into account, any solution that we come up with I think, Mr. Chairman, has to have as a fundamental proposition recognition of an adequate attention paid to the rights in a modern context of the native peoples.

I don't think it is possible probably given the fact that you have eight dams and significant change in the actual physical characteristics of the river to apply literally and rigidly the terms "usual and customary" with respect to tribal use. But we certainly can have as an ongoing admonition that maximizing the intent of customary and usual use for tribes should be foremost in whatever legislation appears.

Mr. CRAPO. Thank you. Would the gentleman yield?

Mr. ABERCROMBIE. Certainly.

Mr. CRAPO. I appreciate your approach to this, Mr. Abercrombie. Many times I have said and one of the things that I am advocating is that we need to find a decisionmaking process I believe focused in the Pacific Northwest so that all of the people and interests and concerns in the Pacific Northwest are represented in the process and feel represented in the process and actually have decision-making impact in that process. And I feel not only your interest but your offer of the fact that perhaps Congress needs to help find that solution is a wise and helpful observation.

Mr. ABERCROMBIE. Well, the final thing I would say then—thank you very much—is that perhaps the National Marine Fisheries Service is not the best agency to be the final arbiter, if you will, but I have an idea that no matter what entity is either selected or created that that entity, as I think you indicated in your commentary, is likely to be the villain.

So I don't think that that is not an argument against coming to a legislative conclusion. If anything, it should spur us to say, "Look, then let us try and figure out a way that everybody can agree allows for participation, and then having had that participation, I think you have to make decisions and not just string it out and let the difficulty of it prevent us from coming to a conclusion."

And then we support it with appropriations if that is what is needed or legislation or both.

But I certainly would pledge my every effort to you and to the Chairman and to our guests here today to try to be a constructive force in achieving a just and fair conclusion which will advance the cause I think that everybody ultimately has allegiance to.

Mr. CRAPO. Thank you and I look forward to working with you on that.

Mr. SAXTON. Thank you, Mr. Abercrombie. Let me just make a couple of observations and ask some questions for purposes of my clarification. Mr. Yost—well, first of all, let me say that my two colleagues who are here with me today know that I am from New Jersey, and one of the things about resource management that I have learned since I have been in Congress is that resource management works best when the resources that affect the people who are the closest are managed by those people. In other words, local decisions mean an awful lot in terms of the success of whatever resource it is that we are trying to manage.

In New Jersey, for example, the most densely populated State in the country, we take some degree of pride in the degree of environmental protection that we have been able to provide for our resources, but we have done it out of necessity, quite frankly, because there are so many people who have decided or inherited this little piece of real estate called New Jersey. And we have found out that out of necessity we have to be very careful of our resources because there are so many of us who can muck them up real quick.

So we have a Department of Environmental Protection and environmental protection laws that are very, very burdensome as compared to States that are less densely populated. But it works because New Jerseyans decided that that is what we needed to do. And I suspect or know that other parts of the country have the same kind of desire to manage resources appropriately for that region of the country.

Now, a week or so ago, we all participated in trying to help straighten out another issue where local people had some desires and a management plan that they tried to put in place and were foiled by another Federal agency known as the U.S. Forest Service. A plan was developed by Mr. Herger, the gentleman from northern California, and his constituents.

And the Forest Service played NMFS, and we ended up a week or so ago legislating a law that we knew—a bill that we knew as the Quincy Library Group proposal to put in place legislatively a management plan that was developed by local people because that is what we believe ought to happen.

Now, Mr. Yost, you indicated that there were 13 agencies or 13 parties to an agreement—potential parties to an agreement. Is that right?

Mr. YOST. Mr. Chairman, there were 13 participants at the Executive Committee in the region who had agreed to—who were at an Executive Committee meeting. Twelve of those supported us. There were those who—the only one who opposed us in the region at that particular vote was the National Marine Fisheries Service.

Mr. SAXTON. All right. Now, were there other Federal agencies in attendance represented?

Mr. YOST. Mr. Chairman, yes, the Bureau of Reclamation, Bonneville Power Administration, Corps of Engineers, U.S. Fish and Wildlife Service.

Mr. SAXTON. And they were among the 12 that agreed with a plan that would have managed the river resources for a season or a year. Is that correct?

Mr. YOST. Yes, sir, Mr. Chairman.

Mr. SAXTON. And there were local participants to that potential agreement as well?

Mr. YOST. Mr. Chairman, there were the representatives of the—there were representatives of three States. Montana had withdrawn from the process, but there were representatives from three States. And the downstream tribes approved that as well. There was no objection from the tribal sovereigns.

Mr. SAXTON. So there were 12 parties to the agreement that had worked through a series of negotiations, along with the power company association which, obviously, made some concessions. The way I understand that agreement, and I don't mean to oversimplify it, and you can correct this if I am oversimplifying it, but it provided for something like a 6-week period of time when the river would be is the correct word open? Freeflowing more or less?

Mr. YOST. Mr. Chairman, it was a combination of providing flows when the smolts were in the river, and it also included a scenario for the amount of fish that would be barged versus the number of smolts or percentage of smolts that would be allowed to go downstream in river.

Mr. SAXTON. And, obviously, there must have been some biological considerations and conservation considerations which the U.S. Fish and Wildlife Service is not an easy agency to deal with, and apparently they agreed as one of the 12 parties that this was a good conservation plan?

Mr. YOST. Mr. Chairman, that is correct. Even Will Stelle of the National Marine Fisheries Service agreed with the percentages. He just reneged on that situation later. What is what I am saying—is that Idaho doesn't expect to get everything it wants. I am not here to complain that Idaho didn't get their proposal 100 percent.

What I complain about and what I am concerned about is that Idaho can go into the region and get consensus of other Federal agencies, of tribes and States, and fish and game departments from the States. I can get consensus there except for NMFS, and they unilaterally make a decision when all of the other entities or participants have kind of agreed. No one was really happy with the agreement. There were those on both sides who wished it would have been something different, but at least we had reached a consensus except for NMFS.

Mr. SAXTON. Now, since NMFS is not here today, it would be appropriate to be kind to NMFS. They are actually here—observers are here, but the spokesmen are not here today. So can you shed any light on or find a reason or explain to me why it is that NMFS was the outparty and couldn't agree?

Mr. YOST. Mr. Chairman, the response from NMFS for the request was that they considered that they wanted more chinook salmon barged than were allowed to go downstream in river. What they did was take into account hatchery fish that are not listed

stocks. And National Marine Fisheries Service does not have jurisdiction over hatchery stocks. They are not listed. They are not on the endangered species list.

Only native wildfish are on the endangered species list and listed under ESA. Those are hatchery-produced fish out of Idaho for supplementation, and yet we can identify those fish and we do. All we ask was that there were more hatchery fish and steelhead smolts allowed to go inriver because of the excellent conditions for inriver migration for this particular year because of the runoff.

Mr. SAXTON. So I am not sure that I get into the—I don't mean to use the wrong word here but, you know, the biological minutia of one fish from another, but I don't understand that logic I guess is what I am saying. Maybe Mr. Crapo would like to help me understand.

Mr. YOST. Mr. Chairman, we didn't understand it either.

Mr. CRAPO. Yes. I believe what it boils down to, and at our next hearing we will have NMFS present and can ask them these detailed questions, but without trying to speak on behalf of NMFS, I think what it boils down to is that they believe that the dams are one of the major causes of mortality of the smolt.

And there is a disagreement by the NMFS officials as to the best way to get the smolt around the dams. They tend to believe in what is called transportation or the barging, whereas there are other advocates who wanted to have a larger percentage of the fish left inriver and spilled over the dams.

And many of us don't know the answer but felt that this would be a good year to even out the percentages because we had the waterflow that could get the spills successfully accomplished, and then we could have better studies on which approach worked more effectively. Is that a good explanation of it, Mr. Yost?

Mr. YOST. Mr. Chairman, Congressman Crapo, that is correct. There are certain years in Idaho when we have high flows. River conditions are excellent to carry the smolt downstream. When we have those types of conditions, it seemed to us to make more sense to leave the smolts in a natural setting inriver rather than collecting them at the facilities, putting them in barges, and transporting them downriver.

Mr. ABERCROMBIE. Would you yield, Mr. Chairman, a moment? Mr. Yost, we are going to have to vote soon. I want to make sure I get this. You mean to say this whole thing went up the chute because you were arguing over the detail of what by definition—I guess by definition is a scientific impossibility right now? You don't know these things. It has to be worked out.

Isn't that something that if you had the overall agreement year by year you could try to decide which approach you were going to take depending on the riverflow and all the rest? Why on earth would you knock down the agreement of the whole over the detail of how it was going to be implemented when by definition that would change from year to year?

Mr. YOST. Mr. Chairman—

Mr. ABERCROMBIE. Have I missed something?

Mr. YOST. [continuing] Congressman Abercrombie, no, sir. You haven't missed it. NMFS agreed that we could have up to 50 percent of the fish inriver and 50 percent in barges. The regional con-

sensus was a little bit higher than that but at least there was agreement that we wanted to have more fish in the river and less in the barges.

Mr. ABERCROMBIE. But my point is is that couldn't you get an overall agreement of something nailed down in writing then that this is the way you would do it every year? You have your vote; you come out; you get your consensus. You are able to achieve that.

Now, we don't know whether you were going to be right or wrong, but that is not the point in this, right, because this is an inexact science—make the parallel to the case I mentioned on the Island of Oahu. I am not sure whether you got the exact number of millions of gallons per day of water that are going through. Maybe we will be off. Maybe it needs an adjustment, that you could make a mechanism for doing that. But once you have this in place, it seems to me that that should have been it and that should be the ongoing institutional way of dealing with this.

Mr. YOST. Mr. Chairman, Congressman Abercrombie, we had an agreement in the region from everyone except NMFS.

Mr. ABERCROMBIE. OK.

Mr. YOST. And even NMFS agreed at one time and then they changed their mind a few weeks later.

Mr. ABERCROMBIE. Thank you.

Mr. SAXTON. Now, let me just clarify a couple of other things. You have talked about NMFS at one point in the process being in agreement with the plan, and then they for some reason changed their mind and, in effect, vetoed the plan. Do representatives from the National Marine Fisheries Service work along with you through the process in trying to arrive at a conclusion with regard to some plan?

Mr. YOST. Mr. Chairman, yes. NMFS agreed on several various components as we tried to negotiate what the specific numbers would be inriver and in the barges. We had NMFS agreeing with Idaho and other members on various components. But the plan that reached the most consensus NMFS objected to.

Mr. SAXTON. Were they a productive worker along the way?

Mr. YOST. Mr. Chairman, I would say that they were able to agree with us on certain issues. Why they changed their mind at the last minute, I don't know.

Mr. SAXTON. Well, thank you. As you can see, we are going to have to go vote again. It disturbs me that one Federal agency in the context of what I gather, and correct me if I am wrong on this, but every player that I have heard referred to is trying to save or rebuild the salmon stock.

Without exception, NMFS has as its mission the same thing, and I find it quite amazing and, in fact, disturbing that NMFS apparently was the showstopper in trying to arrive at a locally conceived plan to accomplish those goals.

And, Mr. Crapo, I think, you know, the next hearing will be extremely interesting. In fact, let me suggest that you and I not wait until the next hearing. Why don't we see if we can get a private meeting with the folks from NMFS between now and the time we go home—

Mr. CRAPO. I would appreciate that, Mr. Chairman.



Mr. SAXTON. [continuing] to see if we can find some answers that may be helpful. You are not alone in your frustrations I must say to the four of you and others who are here from the Northwest. NMFS is not just less popular than the IRS in the Northwest, it also happens to occur to a large degree in the Northeast. And so we will try to work with NMFS here in the next week or so to try to get a quick meeting to try to see if we can't make some progress on this matter.

We are going to have to go vote again, and so I want to thank all of you. I assume that we can say that you have been extremely helpful in that we don't have further questions for this panel. So we thank you, and, unfortunately, I have a 12 o'clock appointment that I must keep so, Mr. Crapo, if you would chair the hearing when you return, and I will try to catch up with you in the next 45 minutes or so. Thank you very much.

Mr. BOYER. Mr. Chairman, I do have some news articles that recently came out of the Boise Statesman. Congressman Crapo probably has access to it. It is a three-part series on the problem that we are discussing here today.

Mr. SAXTON. OK. Thank you very much. I would love to be able to have that, if I may.

Mr. BOYER. I have two parts. I don't have a third part.

Mr. SAXTON. Thank you.

[News articles follow:]

[Recess.]

Mr. CRAPO. [presiding] The hearing will reconvene. We apologize. This is sort of standard operating procedure around here. We are having more votes than usual because there is a bunch of fighting going on on the floor so we apologize for that.

Mr. Abercrombie and the Chairman both had luncheons to go to, and Mr. Abercrombie and I are both involved in an amendment on the sugar part of the Farm bill later on. So they are going to try to get back, and we will do our very best to move ahead expeditiously.

Let me introduce the second panel now and welcome Mr. Joseph Rohleder of the Northwest Sportfishing Industry Association; Mr. Stan Grace, Council Member for the Northwest Power Planning Council; Mr. Bob Deurloo from the Meridian Gold Company; Mr. Justin Hayes of the Save Our Wild Salmon Coalition; and Mr. Norman Semanko of the Twin Falls Canal Company and the North Side Canal Company.

We welcome you all, and I would just remind you to try to stay as close as you can to the 5-minute window there because of the timing problems we have in this hearing. But please feel free to make your points as well. And we will start out with you, Mr. Rohleder.

#### **STATEMENT OF JOSEPH ROHLEDER, NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION**

Mr. ROHLEDER. Thank you, Congressman Crapo. My name is Joe Rohleder. I live in Waldport, Oregon. I am testifying today on behalf of the Northwest Sportfishing Industry Association and the Association of the Northwest Steelheaders.

NSIA consists of hundreds of businesses and thousands of jobs in the Pacific Northwest dedicated to keeping our rivers, lakes, and streams healthy and full of fish. The Steelheaders are the largest angling group in Oregon. Sportfishing generates over \$3 billion per year to the overall economic health of the Pacific Northwest States.

My background—I am a trained geologist. Since 1986, I have operated ocean charter boats, fishing boats, and tour boats on the Oregon coast and in southeast Alaska. This last year I worked extensively with the Oregon legislature for adoption and funding of Governor Kitzhaber's Oregon Coastal Salmon Restoration Initiative. During that process, I worked regularly with National Marine Fisheries Service.

Thank you for inviting fishing businesses and sport anglers to testify today. Our businesses literally live or die by how well National Marine Fisheries Service does its job. As we see it, that job is restoring fishable populations to Northwest salmon. Only fishable populations contribute to economies, communities, and cultures.

In brief, here are some of the concerns of fishing business people and the Steelheaders. Salmon are not being restored. The measures taken by National Marine Fisheries Service to date would have to improve by 500 percent in order for adult returns to sustain recovery. The numbers of Wild Snake and Columbia River salmon and steelhead are lower now than when NMFS took over in 1992.

In the Columbia basin, NMFS invests too much effort going after small sources of human mortality—harvest and hatcheries—and too little going after the large sources—Federal dams and reservoirs. NMFS has drastically reduced sports, commercial, and tribal harvest to salmon in many cases to virtually zero. They have also focused substantial resources analyzing and regulating hatcheries.

Meanwhile, the Federal hydrosystem, which is responsible for from 60 to 90 percent of the human caused mortality of Snake River salmon, has only slightly changed operations under National Marine Fisheries Service direction.

NMFS communication and outreach to anglers, businesses, and communities is about the worst that we have seen. Now, the groups I represent work with several dozen agencies including other agencies that regulate us like National Marine Fisheries Service does. Our approach in all cases is to seek to be effective partners because that is good business, it is the right thing to do, and it is the only way that we are going to solve the Northwest salmon crisis.

More than any other agencies, National Marine Fisheries Service has not effectively built partnerships with anglers and fishing businesses. The agency does not communicate well. They don't listen well. They don't share control well, nor do they build consensus well. This is true on the Columbia and on the Oregon coast.

National Marine Fisheries Service's scientific credibility is very low. An example of the apparent misuse and premature information release occurred this year with the preliminary results of the 1995 PIT-tag study. A PIT-tag is a tag that is put into the fish that is an interactive transponder.

The study is incomplete. The data has not been peer reviewed by State, Federal, tribal managers, and it is just one study amongst many that the National Marine Fisheries Service is doing right

now. Yet, high NMFS officials are publicly releasing preliminary data to the media and to Congress claiming that it shows fish bargaining worked in 1995.

The National Marine Fisheries Service is not exerting effective leadership with the other Federal agencies, with the Northwest States and Indian tribes, or with Northwesterners in general. There will not be recovery without regional unity. But instead of building institutions and attitudes to achieve it, National Marine Fisheries Service has alienated partners away from the table.

We acknowledge that creation of the regional unity is not just NMFS's responsibility, but the Administration must lead the effort, and NMFS is the Administration's designated agency in charge of salmon.

We appreciate this Committee's attention to Northwest salmon, and we look forward to working with you in the future. Our suggestions briefly are there must be upward accountability on the Columbia. NMFS has neither the will nor the full authority to make decisions and then enforce those decisions on other Federal agencies.

The majority of Federal resources must focus on the primary causes of mortality, habitat degradation especially caused by Federal dams. NMFS and the Federal hydroagencies must recommit to a scientific partnership with Northwest States and tribes. And NMFS and the Administration should embrace now the scientific principle that fish need rivers.

We just restore more natural watershed processes, recreate damaged habitats, and restore fishable populations of salmon and steelhead. The groups I represent stand ready to assist and partners in these efforts whenever and wherever appropriate. I thank you very much, Mr. Chairman.

[Statement of Mr. Rohleder may be found at end of hearing.]

[Disclosure requirement may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Rohleder. We appreciate your testimony, and I understand that you may have to leave early. If we don't finish by the time you have to leave, please feel free to excuse yourself.

Mr. ROHLEDER. Thank you very much, sir.

Mr. CRAPO. And next, Mr. Stan Grace for the Northwest Power Planning Council. Mr. Grace.

**STATEMENT OF STAN GRACE, COUNCIL MEMBER,  
NORTHWEST POWER PLANNING COUNCIL**

Mr. GRACE. Thank you, Mr. Chairman. My name is Stan Grace. I am a Montana member and former chairman of the Northwest Power Planning Council. In the council's planning, we were required to balance the needs of fish and wildlife against the hydroelectric system. We treat the Columbia River and its tributaries as a system as we were required by law.

I am also Montana's representative on the Executive Committee, an advisory forum of river interests created by the National Marine Fisheries Service to assist in decisionmaking about Columbia and Snake River operations.

My message today is that in my experience, the NMFS decision-making process fails in two ways. First, the NMFS fails to take

into account the impact of Columbia and Snake River recovery operations on Montana's fish and wildlife, particularly the impact of reservoir drawdowns to augment flows downstream for endangered Snake River salmon.

Second, related to the first, there is a definite lack of cooperation between the NMFS and Montana. This stems from the lack of consideration by the Fisheries Service for Montana's fish and wildlife resources. Montana is unique in this respect. We have no salmon, but we do have bull trout, cutthroat trout, and sturgeon on our Columbia River tributaries.

These fish are adversely affected when the Fisheries Service orders drawdowns at Libby and Hungry Horse reservoirs to augment Columbia River flows. These drawdowns also impact the ecology of two major reservoirs on these tributaries—Lake Koocanusa behind Libby dam and Hungry Horse reservoir behind Hungry Horse dam, as well as 125 miles of river below the dams.

Because the Power Planning Council treats the Columbia and its tributaries as a system, the council adopted operating guidelines for Libby and Hungry Horse dams that protect fish and wildlife, provide flood control, and meet hydropower requirements, as well as contributes significant amounts of water to salmon recovery efforts.

These protections developed in the public process are called integrated rule curves. They are operating rules for Libby and Hungry Horse dams that limit the depth of reservoir drawdowns and strive to avoid refill failures.

This significant investment in time, manpower, and money has been ignored by the Fisheries Service in its Biological Opinion on hydropower operations. The Fisheries Service claims that drawdowns at Libby and Hungry Horse dams boost water velocity in the Columbia River and that the additional velocity helps juvenile Snake River salmon migrate to sea.

In truth, the velocity increase is insignificant. There is no scientific proof that this marginal increase benefits salmon recovery efforts. However, the adverse impacts from 20-foot drawdowns on resident fish at Libby and Hungry Horse are real and they are documented.

Montana attempted to participate in NMFS river operations forum, but the Fisheries Service repeatedly ignored our concerns about the drawdowns imposed by the Biological Opinion at Libby and Hungry Horse dams. Our frustration with the NMFS process led to our withdrawal from a forum that offered us no opportunity for relief.

Montana is also concerned that the Fisheries Service intervened in recovery planning for Kootenai River white sturgeon in an attempt to discredit the integrated rule curves despite unanimous support for these operational curves by the scientists working on sturgeon recovery.

In conclusion, Mr. Chairman, Montana believes that NMFS managing Montana's resources through the Biological Opinion is managing, and that this amounts to management by a damage standard. In other words, NMFS does not seek to protect the needs of native fish in Montana, but rather manages to what they have determined to be a level of the "acceptable impact."

After repeated attempts to have our concerns heard in the NMFS process, Governor Racicot suspended Montana's participation. We now seek legal remedies as our alternative. The National Marine Fisheries Service charges with implementing the mandate of the Endangered Species Act in the Columbia River basin must take a broader view in choosing recovery actions.

We will continue to work for the recovery of the three listed salmon stocks, but measures to recover them should not be detrimental to other native species. We hope this Committee, as well as the Administration, will urge the Fisheries Service to implement an ecosystem approach to Snake River salmon recovery. Thank you very much for your invitation to speak today.

[Statement of Mr. Grace may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Grace. We appreciate your traveling to get here, and we know that you had to make special arrangements in your schedule to do so. Next, Mr. Deurloo.

**STATEMENT OF ROBERT DEURLOO, MERIDIAN GOLD  
COMPANY**

Mr. DEURLOO. Mr. Chairman, I am Bob Deurloo. I am General Manager of Meridian Gold Company's Beartrack Mine near Salmon, Idaho. Beartrack employs 160 people, and we contribute approximately 20 percent to the economy of Salmon. We are located on Napias Creek which flows into the Panther River which flows into the main stem of the Salmon River.

We have spent literally millions of dollars to ensure clean water, and I join probably everyone in this room in desiring the return of the salmon. And I would say the Napias Creek is in better shape now than before the mine started construction 3 years ago primarily because of wetlands rehabilitation which was damaged by past mining practices.

We have dealt with National Marine Fisheries for over 4 years, and I have some specific examples of our dealings. We are frustrated, number 1, by the timeliness of their decisions. By statute, they have 135 days for consultation.

In our case, it took over twice as long, and we almost missed the short summer construction season at 7,000 feet up in the mountains and almost were delayed for another year till the next construction season. And we would have been delayed had not our elected Representatives intervened and pressed NMFS to make a timely decision. We didn't ask for any special considerations, just a timely decision.

When we did finally get the Biological Opinion, National Marine Fisheries found that Beartrack was not likely to affect the salmon, but that we were in critical habitat, which leads me to our second major frustration. We feel the National Marine Fisheries don't follow their own rules and regulations, and I will elaborate.

As you know because you have been there, Beartrack is located seven miles above a falls on the Napias Creek. No one has ever documented or seen a salmon above these falls. We have found three government studies from 1938 on that have examined these falls, and all have described the falls as impassable cascades.

One of those in 1938 by the Bureau of Fisheries, which is a predecessor to NMFS, found that they were impassable. These falls are

also natural which can be seen by the huge boulders, and the tree up on top the falls is over 200 years old.

National Marine Fisheries regulations state that all areas above natural and passable falls are not critical habitat. And critical habitat is defined in their own regulations as areas currently occupied by the species at the time of listing. Areas outside that occupied at the time of listing shall be designated as critical habitat only if such areas are essential for the conservation of the species.

I think we all know that habitat is not the limiting factor for salmon conservation. Nevertheless, when our Biological Opinion was issued, National Marine Fisheries found, "These are cascades with resting areas within them and are not a vertical waterfall. The possibility of chinook salmon passage is increased. The site visited by National Marine Fisheries staff verified the possibility of chinook salmon once spawning upstream from the cascades.

"Therefore, until conclusive data are available to confirm that the cascades were historically impassable, National Marine Fisheries will assume for the purposes of defining critical habitat that the upstream habitat was accessible." So, the regulations say if it is not currently occupied, it is not critical habitat. But NMFS says it may have been possible once upon a time so it is critical habitat.

According to NMFS, if we want to change the designation, we must prove that no salmon were above the falls prior to 1860, or we have to prove that the falls are not passable and none of man's activities have negatively influenced this passage.

So we spent considerable time and money trying to comply with their dictates. We have performed geomorphology studies which we prove that the falls are natural, and I think NMFS has bought off on that. We have also performed extensive hydraulic and gradient studies which our fish biologists feel prove that the falls are impassable. But when presented to National Marine Fisheries, their response is, "That is all well and good, but you would be amazed at what a fish can do."

Our only appeal is to petition the Secretary of Commerce for habitat redesignation, which we have done, but we don't know if we will get an impartial hearing, and this process could take years. So here we are, tightly regulated. We must seek NMFS's permission for all of our activities, and their decisions are slow in coming.

Mining is a dynamic process. Prices change, conditions change, reserves are added. Even with minor changes, we are threatened, "Well, this will reopen your Biological Opinion." And with this, we would be in a whole new ballgame. This happened to Hecla, and now they have to curtail their operations during periods of wet weather. A similar restriction on our operations would threaten our \$80 million investment.

So we feel National Marine Fisheries needs to be more timely, more reasonable. They shouldn't be solely focused on only salmon considerations, but also should consider other factors as well. We also feel there should be a better appeal procedure rather than just suing in the Courts.

We feel the National Marine Fisheries should reevaluate their regulatory chokehold on small interior operators that have minor effect on salmon; instead, concentrate on fixing the dams and then the salmon won't be endangered. Thank you.

[Statement of Mr. Deurloo may be found at end of hearing.]

[Disclosure statement may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Deurloo, and you are correct. I have been there at those falls, and, you know, in my questions I want to go into that a little further with you. Next, Mr. Hayes.

**STATEMENT OF JUSTIN HAYES, SAVE OUR WILD SALMON COALITION**

Mr. HAYES. Thank you. I am the conservation scientist and DC area representative for Save Our Wild Salmon. Save Our Wild Salmon is a coalition of 47 conservation, fishing, and fishing business organizations.

As you know, the National Marine Fisheries Service is charged with overseeing efforts to restore the federally listed Columbia basin salmon. Since NMFS took on this task, salmon have continued to decline. In fact, several additional stocks of salmon, several stocks of steelhead, and the seagoing cutthroat trout have now been proposed for listing on the Endangered Species Act as well.

Why with the attention by the Federal Government, years of effort, and the expenditure of hundreds of millions of dollars have these species continued to decline? Why? Because the National Marine Fisheries Service has failed to take the active leadership role required to recover these fish.

Currently, there are three separate recovery plans—a Federal, a State, and a tribal plan. Over the last 3 years, NMFS has failed to exert the leadership required to reconcile the differences and merge these three documents into a single binding recovery plan.

In the absence of a single agreed-upon plan, the Northwest salmon recovery effort has virtually self-destructed. In addition, NMFS has focused far too narrowly on fulfilling only the procedural requirements of the Endangered Species Act. As a result, the recovery plan the National Marine Fisheries Service has put forth focuses on procedure rather than substance.

The National Marine Fisheries Service's plan, even if implemented, will not result in the recovery of the Snake River salmon to self-sustaining harvestable levels. Their own studies prove that under their plan not even juveniles are surviving to adulthood and returning.

Another stumbling block has been NMFS's failure to incorporate other Federal agencies, the States, and the tribes into the decision-making process. Substantive issues raised by others are infinitely passed from one meeting to the next because the National Marine Fisheries Service or the Army Corps of Engineers objects. This process has become such an obvious waste of time that many of the tribes and the State of Montana have withdrawn.

The National Marine Fisheries Service's failure to bring the region's Federal, State, and tribal agencies together has created a leadership vacuum. As a result, many agencies in the Northwest have staked out their very own salmon turf. There is no better example of this than the U.S. Army Corps of Engineers. The Corps has decided that it is the ultimate authority over the management of the dams that are killing the salmon.

This is so even when the operations of their dams directly contradict the management plans of the National Marine Fisheries

Service. As a result, the Corps has managed the river poorly for fish, spending hundreds of millions of dollars on controversial projects.

NMFS is like a deer frozen in the headlights. Rather than make a decision, it chooses to stand right in the middle of the road in the path of the oncoming truck. This fear has resulted in the National Marine Fisheries Service's pursuance of process over substance. They refuse to work cooperatively with others on substantive issues. They do not seem to want to pursue these issues and reach a solution.

Recently, the State of Idaho and many of the region's tribes brought forth their proposal for managing the 1997 salmon migration. This plan called for leaving more young salmon in the river to benefit from the expected high water. As you know, this plan was widely supported and scientifically very credible.

An extensive report by NMFS's own independent scientific advisory board cautioned NMFS against its continued use of widespread, large-scale barging of juvenile fish. This report stated that there has never been any evidence that the practice of barging fish will lead to the eventual recovery of the salmon.

At the Executive Committee meeting level, only the National Marine Fisheries Service objected to the Idaho and tribal proposal. In spite of overwhelming support, NMFS made the unilateral decision to barge many more juvenile salmon than other members of the committee thought was acceptable. Thus, the National Marine Fisheries Service ignored its own best scientific evidence, and it overruled the wishes of the other sovereigns in the region.

The National Marine Fisheries Service's very poor leadership and its process over substance approach is not recovering and is not leading toward the recovery of the basin's salmon. It does not satisfy the requirements of laws or treaties which commit this Nation to restoring Columbia basin fish.

Likewise, it does not satisfy the needs of the thousands of families dependent on commercial and recreational salmon fishing for their livelihood, and it does not satisfy the needs of the hundreds of thousands of recreational anglers who pump money into the economies of the Northwest.

For this issue to move forward, several things must occur. First, the Administration needs to make a higher level presence felt in the region. It needs to have a presence in the region that is capable of giving orders to the other Federal agencies.

Second, the Federal, State, and tribal plans need to be pulled together into a single binding recovery plan, and the States and tribes must be given co-management authority. Third, until these previous two occur, recovery efforts, especially spending, need to focus on components found in the three plans. This needs to be done so as not to prejudice one plan over the other in future decisions.

And, fourth, the authoritative, scientific views of the National Marine Fisheries Service's own independent scientific advisory board need to be given more credence by NMFS itself and by the Administration. This is the best science available, and they are ignoring it. Rather, NMFS relies far too much on the decidedly unindependent scientists that are in charge of its own fish barging



program to create their future policy. I thank you very much for the opportunity to speak before you, and I will gladly answer any questions when this panel is done. Thank you.

[Statement of Mr. Hayes may be found at end of hearing.]

[Disclosure requirement may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Hayes. We appreciate your testimony. And, finally, Mr. Semanko.

**STATEMENT OF NORMAN SEMANKO, TWIN FALLS CANAL  
COMPANY AND NORTH SIDE CANAL COMPANY**

Mr. SEMANKO. Thank you, Congressman Crapo, Mr. Chairman, members of the Subcommittee, ladies and gentlemen. I am here today representing the Twin Falls Canal Company and the North Side Canal Company. I am an attorney with the law firm of Rosholt, Robertson & Tucker in Twin Falls. We appreciate the opportunity to be here today and testify regarding NMFS and their role in the recovery of salmon in the Northwest.

I appreciate being here today. I have been in this room several times as a staff member, and things haven't changed here much, and, unfortunately, neither has the status of the salmon since Larry Craig was in this Committee room.

Mr. CRAPO. And the fact that they call votes in the middle of your testimony, right?

Mr. SEMANKO. Would you like me to proceed, or do you want me to—

Mr. CRAPO. No. Please go ahead and proceed.

Mr. SEMANKO. Our primary concern with NMFS is the role that Idaho water, including water from Federal reservoirs, is being asked to play in recovery of the salmon. The current Biological Opinion requires that 427,000 acre-feet be provided each year from the Upper Snake; that is, above Brownlee reservoir.

The bulk of this water has been provided from reclamation reservoirs in Idaho. This is despite the fact that the listed salmon do not exist in this part of Idaho and, above Shoshone Falls, have never existed.

While Idaho irrigators do not believe that there is any scientific or legal justification for this, they have, nonetheless, cooperated; in fact, going so far as to support legislation at the State level in 1996 that specifically allows this amount of water to go out of the State through the year 1999.

Nineteen ninety nine is the year that NMFS is scheduled to make some type of major decision with regard to the system. Are they going to go to a drawdown or a breaching of the dam-type of system, or are they going to go with an enhanced transportation system?

The long-term solution, as stated in the 1995 Biological Opinion, is not to include flow augmentation. Flow augmentation has been framed as a temporary solution to the problem—a stopgap measure to get us by. And it is perhaps worth noting that if you read the Biological Opinion, and maybe this is where some of the frustration comes from today, the period between 1995 and 1999 is meant only as a period in which to avoid extinction of the salmon.

It is not supposed to be that way, but they decided that they need to run an adaptive management program, an experiment to

see which process, neither of which is really being implemented right now, is better to save the salmon sometime after 1999.

Somehow, the fact that flow augmentation should be a temporary solution is being lost in the mix. Last year, several environmental groups, joined by the State of Oregon and some of the tribes, sued NMFS and other Federal agencies in a case entitled *American Rivers v. NMFS*.

And the gist of the concern was that the flow targets at Lower Granite and other places on the Snake and Columbia Rivers are mandatory targets which must be met each and every day of the season. There was also a concern that NMFS had not and the Bureau had not consulted on Upper Snake River project operations; that is, those dams that are above the Lower Snake River.

The Judge, in an April 3 opinion, rejected all claims and decided that, "no," these flow targets are not something that need to be met every day. The way NMFS and the region are trying to manage the process is that when the fish are there and the water is available, then we will go ahead and use it. They aren't firm targets.

Despite this resounding victory, and I think everyone at the time regarded it as a victory for NMFS, NMFS and the Bureau have nonetheless decided to give the environmentalists and the other parties involved exactly what they asked for. One of the things they asked for was consultation on the projects in the Upper Snake. We are, frankly, baffled at this prospect.

Why? I think with regard to one of the issues that we're talking about this morning, why did NMFS decide that they want to barge more fish and not have more fish in the river? The reason for that as I understood it, one of their arguments—an easy one to lean on—was, "Well, the Biological Opinion says we are doing an experiment. We need to share the risk. It needs to be 50/50 so we can have an accurate experiment and decide which one to go with." Whether that is a good decision or not, they decided to rely on the Biological Opinion.

In the Biological Opinion, it also says, "Bureau of Reclamation, if you and in cooperation with the State of Idaho and irrigators can provide 427,000 acre-feet through the year 1999, you are not going to have to consult on Upper Snake operations. If you can't do that, if you can't get significant progress on that, then you will have to consult."

So what has happened? We have had significant progress on securing that water. It has been provided every year of this Biological Opinion. And all of a sudden now NMFS and the Bureau decide we need to consult on those Upper Snake projects anyway. We don't know what the rationale for that is, frankly, other than perhaps politics.

Our very clear message for NMFS and the Bureau today is that this consultation process cannot and should not be used as a vehicle to increase the 427,000 acre-foot requirement. We have been assured at certain levels that this will not happen, that what goes in the front door of the consultation will come out the back door, but we are still skeptical.

Rather, the consultation should confirm that operation of the Upper Snake River basin reservoirs does not adversely impact the

salmon. The problems exist, as has been noted here today, downstream and in the ocean and should be addressed at the source.

In addition, the NMFS/Bureau consultations should not remove the requirements in the 1995 Biological Opinion that water be acquired only from willing sellers and only in accordance with State law. Flow augmentation is a temporary solution. We ask for congressional oversight on that issue.

I have also detailed in the testimony, which I won't go over, some concerns about the downstream recovery concerns and also about the expanding role of NMFS. But the last comment I would like to make is with regard to this decisionmaking process. There has been a lot written and said about having a regional forum.

And we would like to point the Subcommittee, certainly Mr. Crapo, to an example of what is going on in the Upper Colorado basin. There effectively what the agency—in that case, the U.S. Fish and Wildlife Service—has done is stepped back away from the process, allowed the other players—the States, et cetera—to go forward with the process and stay as much as possible out of the way. And, in our opinion, that is what needs to happen in the Northwest. The States need to be allowed to take the lead and decide on what the proper regional forum should be. Thank you.

[Statement of Mr. Semanko may be found at end of hearing.]

[Disclosure requirement may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Semanko. And I believe that this is probably the time I am going to have to slip out and go vote. Perhaps Mr. Abercrombie and Chairman Saxton will be able to get back for the questioning period. And regardless of whether they do or do not, I think you could tell from their questions earlier they are very interested in this issue.

And they and their staff are going to review the testimony very carefully. And I am confident that this Committee is going to pay very careful and close attention to what it can do to help find a solution here.

I apologize for the disjointed manner in which we have had to run the Committee today. But if you will please excuse me to run and vote, I will get back as soon as I can. And I do have some very important questions to ask so I would encourage you to all stay here. I slipped out during the last vote and got a candy bar and a pop. Feel free to do that. You have got time.

I know that we have held you now till well into or maybe past your lunch hour and will probably go a little longer. So why don't you take this break as an opportunity to get a little bit of something to eat if you can, but please try to be back in about 10 or 15 minutes at the most. Thank you.

[Recess.]

Mr. CRAPO. I think we will go ahead and get started even though I got back faster than I thought I would, and Mr. Semanko has followed my advice and slipped out for a minute. And, Mr. Rohleder, I will start out with you just in case you do have to slip out to an airplane or anything. And the first question I have for you is what impact does the steelhead and salmon fishing contribute to the region's financial base?

Mr. ROHLEDER. Mr. Chairman, our best guesstimate is that the sport salmon and steelhead fishing in Oregon, Washington, and

Idaho contributes about \$3 billion in economic impact every year. My testimony includes a fact sheet on economic impacts. It is near the end of the package.

Mr. CRAPO. OK. Is that the one with the charts in it?

Mr. ROHLEDER. Yes, sir, that is correct.

Mr. CRAPO. Now, do these charts include any kind of assumptions, or is this based on the current circumstances, or does this include assumptions with regard to having a fully recovered stock of salmon and steelhead?

Mr. ROHLEDER. These are based on fully recovered stocks. We figure that we have lost half of our economic input because of the lack of recovery in the Pacific Northwest.

Mr. CRAPO. So currently we are at about half of these figures in terms of what is happening today?

Mr. ROHLEDER. Yes, Mr. Chairman, that is correct.

Mr. CRAPO. OK. And, Mr. Grace, what are your recommendations to improve the communication process between the Northwest Power Planning Council and the National Marine Fisheries Service? Do you have some recommendations on what could be done?

Mr. GRACE. Mr. Chairman, at this time, probably I don't have specific—as a member of the State of Montana and the Governor's Office, we are willing to go anywhere where we have assurance that there is a fair balanced sort of structured process that everybody can be heard in. And there need to be rules for participation and rules for dispute resolution.

Our Governor also believes that the Northwest Power Planning Council with some adjustment may be a better body as a forum for the region. However, as far as the Power Planning Council dealing with National Marine Fisheries, we have had limited success there. We don't really have any current communications going on along that line.

Mr. CRAPO. And I realize that you probably don't have authority to answer this on behalf of the State of Montana, but just in your personal opinion, what do you think it would take for the State of Montana to get back involved in the process or a process?

Mr. GRACE. Oh, I think I can speak for the Governor there, and that would be the assurance that you had a fair opportunity to be heard. Frankly, I was the one that asked or told the Governor that I thought that the process the National Marine Fisheries had and the Executive Committee was flawed, that it was, in my words, akin to playing in the house poker game or the house cut to deal the cards and then make the rules after the deal. It just wasn't a fair process.

Mr. CRAPO. In terms of this concept of a regional decisionmaking process, you alluded to a dispute resolution process or something like that. Do you agree with me that the decisionmaking authority for this issue or this group of issues should be one in which the ultimate authority to make the decision is vested in a regional body or a regional group of some sort rather than in a Federal agency?

Mr. GRACE. I certainly do because I guess our bottom line is that the National Marine Fisheries under the ESA have a very narrow approach to the problems of the region—I mean, by mandate the ESA. And although those—and there need to be a broader look across the region. Again, we think that we should be looking at the

total fish and wildlife community when we make the decisions to——

Mr. CRAPO. Even though the total fish and wildlife community may not include all endangered species——

Mr. GRACE. Right.

Mr. CRAPO. In other words, all the species involved in that look may not be endangered or——

Mr. GRACE. That is right.

Mr. CRAPO. [continuing] threatened. Do you believe that that would require an adjustment to the Endangered Species Act or at least some type of a special authorization for this regional decision-making body to operate under different rules or to adjust its evaluations in some way that it is not allowed now by the Endangered Species Act?

Mr. GRACE. I believe so, sir.

Mr. CRAPO. Do you believe that Federal agencies should be participants in such a project or such a body, or should they be the implementors of the decisions that are made by that body?

Mr. GRACE. In my own personal experience, sir, I think they should have some—they should be in that process, but they should be co-managers, not, as they were referred to earlier in the questioning, as czars of the region.

Mr. CRAPO. OK. And one last question. There seems to be a significant amount of concern—on this topic—there seems to be a significant amount of concern about whether if we move to a regional decisionmaking authority whether that authority should be made up solely of sovereigns—for example, the Federal Government entity or entities, State governments, tribal governments, and so forth—or whether it should be broader and should include interest groups such as salmon advocates, transportation concerns, irrigators, and so forth.

Do you have an opinion on what the makeup—and I am not asking you for details necessarily, I am more talking concept here—but how should the makeup of this decisionmaking body be approached?

Mr. GRACE. In my mind, sir, I believe that we still have to deal with the three sovereigns that otherwise we would get too unwieldy. I know in the State of Montana we do our utmost to represent the other interests as far as the environmental commercial interests that otherwise I don't know how we could bring it to bear.

Mr. CRAPO. Mr. Rohleder and Mr. Hayes from the—I kind of put both of you in the camp of salmon advocates or steelhead advocates. Could you respond to the same question, the question being if we move to a decisionmaking body of some sort in the region, should that body include only sovereigns and then we expect the sovereigns will represent the various interests of the region? Or should that body be broader and include interest advocates such as your groups or transportation advocates or irrigators or miners and so forth?

Mr. ROHLEDER. Mr. Chairman, it has been my experience working with these situations that you can't have every special interest group represented on the governing body. You are always going to have somebody who is not represented. So if you had this govern-

ing body be the sovereigns, then they would have the responsibility to represent and to interface with the special interest groups.

In other words, we, the environmentalists, the sportfishermen, the irrigators, the farmers would work together with our elected representatives to shall you say lobby or input our States, and then our States would be expected to represent our views. And I agree with Mr. Grace. I think that anything else would be unwieldy.

I personally feel pretty good about working with the farmers and the irrigators on several task forces that I have been appointed to by the Oregon Governor. And then we present our findings or our views to a State body, and then they legislate. Thank you.

Mr. CRAPO. Thank you. Mr. Hayes? And I am going to ask the same question to Mr. Deurloo and Mr. Semanko as well but, Mr. Hayes?

Mr. HAYES. I think it is safe to say that I would agree with everything that Joe said but maybe highlight a little bit more the need for, you know, some below the decisionmaking level but, you know, some organized meetings or participatory bodies where interest groups can have a say.

And then there needs to be some assurances that their say will be translated into something that moves up the chain, not that they will just, you know, stand up in a room and shout into open space that, you know, "We think salmon need to be considered. Thank you very much," and then that message never gets conveyed up the chain.

Mr. CRAPO. So you are talking about something more than—I think our current system where you have a public hearing and you come in and each side says what they want to say and hopes the press reports it—you are looking for something more than that?

Mr. HAYES. Yes. That is a nice forum to sort of air your views, but it has absolutely no impact on policy, in my opinion. You know, I can say whatever I want there, and I can write whatever comments I want to an impact statement, and they are virtually meaningless beyond, you know, taking up my time.

Mr. CRAPO. All right. Thank you. Mr. Semanko, do you have any thoughts on that?

Mr. SEMANKO. In fact, I do. One of our concerns is that NMFS just simply doesn't get down to the citizen level, and States and the tribes are able to do that. We do believe that irrigators and environmental groups should be involved in the process. But in the decisionmaking, that has got to be done by the sovereigns.

I mean, the goal of this thing I hope will be to reach consensus among all of the sovereigns. If you try to reach consensus among all the constituencies of those various sovereigns, you are never going to do that. But you may be able to appease most of those so that you as a sovereign feel comfortable in going and agreeing to something, and I think that that is the best that we can do. And each State or each sovereign should be left to figure out how to do that.

An example, what is going on with TMT right now, as I understand it, they are trying to make some decision on the timing of the 427,000 acre-feet from Idaho. If I wouldn't go on the Internet and look and see the minutes from the last couple of meetings, I would have no idea about that. So I am confident that the State

of Idaho would bring us into that process more fully—just that as an example.

Mr. CRAPO. Thank you. Mr. Deurloo, do you have anything to add to that?

Mr. DEURLOO. I would echo what these people said. I think a group of special interests would be pretty unwieldy, and we would trust someone like the Governor's Office to represent our interests in the council.

Mr. CRAPO. All right. Thank you. Mr. Deurloo, let me go to you next with regard to Napias Creek, and let me first by way of introduction and clarification to the other people who are here in the hearing room indicate that I have been to the location and have observed it and have contacted NMFS directly about the issue.

But if I understand your testimony correctly, and if I understand what I observed there correctly, there is no evidence that salmon ever have been able to pass the falls at is it Napias Falls?

Mr. DEURLOO. Yes, it is Napias Falls and that is correct. We know of no evidence that there have ever been salmon or steelhead above those falls.

Mr. CRAPO. And you referred to a tree there. If it is the one I remember, I have actually stood right at the base of that tree, and there is a rock around—I guess it grew up through the rock. Is that correct?

Mr. DEURLOO. Yes. Its roots are wrapped around the rock, and, you know, National Marine Fisheries—one of their points was that these rocks could have been placed there by roadmaking activities in the 1860's, and, you know, this tree was there long before the road was in place.

Mr. CRAPO. So you can date the life of the tree?

Mr. DEURLOO. We have. We have corded the rings.

Mr. CRAPO. And by that you can tell that the rock was there at some time before the tree was there. Is that correct?

Mr. DEURLOO. Correct.

Mr. CRAPO. And the tree has been there how many years?

Mr. DEURLOO. Over 200 years.

Mr. CRAPO. OK. So if there was a road—if man did create this falls, which is I think quite a stretch from what I have seen at the location, he did it more than 200 years ago?

Mr. DEURLOO. Correct.

Mr. CRAPO. And yet you were being asked by NMFS to prove that some humans didn't create this falls after 1860?

Mr. DEURLOO. That is right. The falls were not negatively influenced by man's activities ever.

Mr. CRAPO. Again, I have already asked you this, but I want to be very clear about this. There is no evidence on which NMFS relies to require you to prove—in other words, to suggest that there were salmon above this falls at anytime. It is just that you are being asked to prove that they weren't?

Mr. DEURLOO. Yes. We are being asked to prove the negative. They say that there is the possibility it may have happened once, and now it is up to us to prove otherwise.

Mr. CRAPO. Now, wouldn't you believe that—I mean, first of all, if I was told that, I would think that an agency was being flippant

with me because it would seem to me that they were asking me to prove the impossible?

Mr. DEURLOO. That is our feeling.

Mr. CRAPO. Except then you come up with a tree that is 200 years old that proves that the rock that the tree is growing through was there at least 200 years ago, and that that is one of the rocks that supposedly through some theory man put there. And it seems to me that that is evidence—I wouldn't have thought you could have come up with any evidence, but it seems to me that that is pretty good evidence.

Mr. DEURLOO. But in defense of NMFS, I think they bought off that maybe the falls were natural, but then we are put in the position of, "Well, now prove that the salmon can't get up there." And there is no evidence as to what exactly a salmon can do.

I mean, will it jump 30 feet or jump 10 feet, or, you know, how fast the water—scientifically, salmon is not well-defined. So we do all the measurement of the water and the falls and the grading and everything else, but then we are told, "Well, you would just be amazed at what these salmon can do."

Mr. CRAPO. Well, I remember we discussed that when I was at the location, and I remember walking up the falls area and looking at areas where perhaps the salmon could make it. And I saw a few pools that you could by a stretch believe that a salmon could somehow get from one to the other.

But it seems to me there were a couple of them, like two or three or four in different locations, where you would have had to assume the salmon could literally leap out of the air very significant distances in order to make it. Is that not correct?

Mr. DEURLOO. Right. There is at least an 11-foot jump at the head of the falls, but the thing is there is really no pool at the bottom of that to get a run to make the jump. I mean, a salmon probably can jump that kind of height where they can get a run at it, but here there is just not that opportunity.

Mr. CRAPO. So, in other words, you are being asked—and I assume that the impact of this decision is not minor or you wouldn't be worrying about it so much?

Mr. DEURLOO. That is right. I mean, everything we do is totally regulated. We have found some possible additional reserves that will extend the life of the mine 2 years, which will require additional permitting. But we don't know whether the hassles will be worth it.

Mr. CRAPO. And so you are being asked to incur significant economic as well as other practical burdens where there is no evidence that salmon ever existed above this falls and where it is only a stretch to assume that a salmon could make it up the falls?

Mr. DEURLOO. That is correct. But, you know, I don't know how we were put into this position to begin with. And the critical habitat is not supposed to be designated in areas that aren't currently occupied by the species. And there are clearly no salmon there.

Mr. CRAPO. So the next point is—probably the first point that should be made is that the very standard you are being asked to meet is one that is not authorized by the regulations?

Mr. DEURLOO. That is correct.



Mr. CRAPO. Now, on the timeliness, I recall that the request that you had of me was simply to encourage the agency to respond to you. Is that not correct?

Mr. DEURLOO. That is right. I mean, we were ready to start construction in 1994. We were ready to go, and you just have a narrow window of opportunity up there in the mountains of Idaho to do dirtwork in the middle of the summer. And this decision just kept dragging out and dragging out and dragging out, and finally we pulled all the strings we knew to pull just to get a decision.

Mr. CRAPO. If I remember correctly, one of the—I won't use the word threats, but one of the statements that was made to you was that if you wanted them to go back and look at this, they would have to reopen the entire Biological Opinion. Is that correct?

Mr. DEURLOO. We hear that statement quite a bit.

Mr. CRAPO. Does that dampen your interest in taking strong contentions with the agency?

Mr. DEURLOO. Well, we do have to deal with National Marine Fisheries for the life of the mine, and we would rather it be a harmonious relationship rather than a contentious one.

Mr. CRAPO. All right. Thank you. Let me go on, Mr. Hayes, to you for just a moment. As a representative of the environmental organization that you represent, were you supportive of the Idaho I guess I call it policy that was put together last year that we had discussed earlier in the hearing? Was your organization supportive of that policy?

Mr. HAYES. Yes, sir. You know, the Governor's plan was not the end-all, be-all, and there were things that we would have liked to have seen incorporated into it and, frankly, some things that we would have liked to have seen not in it. But we took the document as a whole.

You know, we agreed to the concept of moving forward on this issue. We have seen NMFS and the Corps of Engineers drag their feet for too long and make no progress and maybe even move backward on this issue. We are very appreciative of efforts by the Governor's Office and others in the State to, you know, take the bull by the horns and come to a conclusion, that we think that they did an excellent job of rounding up all the interest groups in the State and really many of them in the region and incorporating their input into the plan.

And it would be nice to see this sort of cooperative working relationship that they have developed used as a model by the National Marine Fisheries Service or, frankly, some other, you know, administration or agency moving forward with this. We need to, you know, get moving.

The thrust of my testimony was that there is absolutely no leadership at the National Marine Fisheries Service on this issue. And I think that while the members of the various panels may disagree as to exactly what needs to be done, we can all agree that the National Marine Fisheries Service is not doing any of it.

And I did or our organization did support the Governor's plan in many components, and we were with him in spirit at the Executive Committee meeting arguing for it. And we were working with the other sovereigns in the region to try and get that passed.

Mr. CRAPO. And I take it that that is one of the reason why you would feel comfortable in your answer to my earlier question in saying that you feel that your interests could be adequately represented through the State sovereign in a decisionmaking body?

Mr. HAYES. You know, we need to be careful that we feel that our interests are, in fact, being represented, but I think that, you know, the imperative is there that we need to move forward on this issue, and that if every interest group has a voting seat at the table, this issue will not move forward.

Mr. CRAPO. I see kind of a difficult but interesting issue to address here. If we determine that we need to move to a regional decisionmaking body, the question I asked earlier about whether that should be sovereigns only who make the final decision, certainly moving that direction solves the problem of complexity and of deciding how many interest groups get to be at the table and getting the table too large and all of those concerns.

On the other hand, I think that there are interest groups who are currently raising strong concerns about that model because they are saying that there is no assurance that their point of view will be represented by the sovereign. An example—and I am not going to refer this example to any current politician, but some people would not trust one Governor to represent their interests as opposed to a different Governor depending on how the outcome of an election were.

And so I am struggling in my own mind with the way to try to make sure that people are confident that their point of view will be represented at the table by an advocate or at least that their point of view will be worked into the process in a way that is much more than just an opportunity to go to a hearing and submit some testimony but not get the project too complex.

Mr. HAYES. May I jump in here?

Mr. CRAPO. Yes, please.

Mr. HAYES. That is a very valid concern and one that I share and that many of the organizations that I represent here today share. I think that as long as the process moves forward grounded in science with the ultimate goal of recovering these species to self-sustaining harvestable levels, you know, that is a pretty good road to be driving down. You may wobble back and forth on each side and get on the shoulder a little bit, but as long as we are moving forwards utilizing the best available science, you know, there are sidebars in place.

Not everyone is going to get everything that they want. My organization wants to see sustainable harvestable populations of salmon on that is mandated under Federal law, State law, and treaties with other nations and Indian tribes. And I think those are pretty good sideboards. I hope that the fish won't get lost in the forest on this one.

Mr. CRAPO. I understand that concern. Let me move to you, Mr. Semanko, and I want to talk water. That doesn't surprise you. As I said earlier, I am very concerned that the policy direction that the National Marine Fisheries Service is taking on salmon recovery issues represents an immediate and a long-term threat to irrigation, commercial, and residential water users, and to the entire regional economy and does not represent much of a gain, if anything, and

maybe even a negative gain for salmon and steelhead. And it is also an immediate and long-term threat to State water sovereignty. And I am not just referring to the State of Idaho in these comments. First of all, do you agree with me on that?

Mr. SEMANKO. I do agree with you on that. There is an immediate threat through the current consultation that is going on, and there is an underlying threat with the fact that NMFS seems to suggest that they are giving us a concession by saying, "We will acquire water under State law only because we say we want to do that. If we didn't say we wanted to do that, we could go ahead and just take it." There is that underlying long term and short-term concern.

Mr. CRAPO. Has NMFS ever put into writing any kind of a statement, to your knowledge, as to what authority it has or does not have with regard to taking water for purposes of salmon and steelhead recovery?

Mr. SEMANKO. Yes. Mr. Chairman, during 1993 I believe it was, the Regional Director for the Bureau of Reclamation, John Keys, asked the Solicitor's Office for an opinion on what his authority would be to acquire water for salmon, whatever amount that would be.

And of the several responses—several alternatives that went back to Mr. Keys in the response was the alternative to release water held under contract. In other words, water that is held in Federal reservoirs that irrigators have contracted and paid for could be released. It doesn't even go on to state whether compensation would need to be paid or not. So that has been put in writing. It is often referred to as the 1993 Solicitor's Opinion.

And I would be remiss if I didn't say after that opinion came out, there was an uproar, and some meetings between the congressional delegation and NMFS and others resulted in the appeasement in the current Biological Opinion that it would be acquired only under State law and from willing sellers.

Mr. CRAPO. That is correct. I was in those meetings between our congressional delegation and various Federal officials, and you are correct. They did make the verbal assurances that they would not exercise the authority that the Solicitor's Opinion declared that they had. And, therefore, supposedly there was no problem. The problem I see is that that is only a verbal assurance for this Biological Opinion, and even that could be changed. Am I correct about that?

Mr. SEMANKO. I think you are right, although it is in writing in the Biological Opinion that the water will be acquired under State law from willing sellers and is one of the reasons why we are concerned about the current consultation.

Mr. CRAPO. Well, I can tell you from being in the meeting that my understanding of what was said in the meeting was that although assurances were made by the various Federal officials that they would seek to acquire water only on a willing buyer/willing seller basis under this Biological Opinion. I don't believe that there was any relinquishment of authority to take water if that decision were to be changed.

And given that context, I am referring now to a letter of May 19 from Will Stelle, the Regional Administrator of NMFS, to Elizabeth

Ann Moler, the Chairman of the Federal Energy Regulatory Commission. Are you familiar with that letter?

Mr. SEMANKO. Yes, I am.

Mr. CRAPO. Without objection, I would place this letter into the record.

[Letter of Mr. Stelle may be found at end of hearing.]

Mr. CRAPO. I am going to refer to the second paragraph on the second page, and I am not going to read it all. But parts of it state that, "The effectiveness of the efforts to protect operations seeking to achieve the Biological Opinion in riverflow objectives is dependent on water diversion activities in the Middle and Upper Snake River basin and upon the operation of the Hells Canyon Project situated in between."

And then a little further down, "Specifically, the Biological Opinion adopted the council's requirement for immediate provision of 427,000 acre-feet and progress on securing additional water from the Middle and Upper Snake River and specific drafting levels for Brownlee reservoir of the Hells Canyon complex in May, July, August, and September."

What I am getting at here is it seems to me that this letter, which is a very recent letter, very specifically opens the door, if not openly states, that the National Marine Fisheries Service is evaluating seeking additional water from the Middle and Upper Snake River regions beyond the 427,000 acre-feet that we have been dealing with in the past. Do you read the letter the same way?

Mr. SEMANKO. I do, Mr. Chairman. An overall concern about this letter is that it is a letter from NMFS to FERC telling FERC that they strongly suggest that they, FERC, begin consultation with NMFS. The overall concern there is that FERC is the one that should make that decision.

Second of all, the first sentence of the paragraph, you are talking about effectiveness is dependent upon water diversion activities in the Middle and Upper Snake River basin. To us, that is signal language. That is a signal to a recently completed study by the Bureau of Reclamation called the Cumulative Effects Study.

And in the Cumulative Effects Study, basically what NMFS and the Bureau are saying is that but for irrigation diversions, we would meet the flow targets at Lower Granite almost every summer. The concern there is twofold; one, the validity or nonvalidity of flow targets; and then, second, how they are interpreting that "but for irrigation diversions."

What they are saying is if you had no impoundments, you had no storage reservoirs in the Upper Snake at all and no irrigation at all, the effects—the flows would be about the same as they are now. But if you take those reservoirs that have been built and you change their function from irrigation and flood control to helping the salmon—in other words, send all the water down—then you can meet the flow targets in the summer. Now, if that is their interpretation of how we are impacting the Snake River salmon, then we become very concerned.

Mr. CRAPO. Assuming that you are correct, and that is the way I read it as well, have you heard estimates of how much additional water may be sought for those purposes?

Mr. SEMANKO. We have heard none. There are numbers to look at for guidance, but we have heard none.

Mr. CRAPO. Have any groups made claim or suggestion in either litigation or in notices of intent to sue or in negotiations of the amounts of water that they would like to see from the Upper Snake River?

Mr. SEMANKO. There are certainly a lot of numbers to look at. The Northwest Power Planning Council's plan that was adopted in December 1994 looks for 1.427 million acre-feet from the Upper Snake.

Mr. CRAPO. One point four two seven.

Mr. SEMANKO. One point four—it would be a million acre-feet more than what currently comes from the Upper Snake.

Mr. CRAPO. Essentially, a million and a half or close to a million and a half?

Mr. SEMANKO. The tribal plan and also the tribes' position in the American Rivers would suggest that they are looking at a number even bigger than that. And I will caveat that with, of course, their position is that the dams would be breached, and perhaps that would reduce the reliance on water. But as long as those dams are there, then perhaps that water will be needed. So I don't want to say they are looking for that water under all conditions, but certainly that—

Mr. CRAPO. As an alternate position in the litigation?

Mr. SEMANKO. That is correct. But with the way the system is configured right now, I think that is their position, which leads me to a side issue. I want to point out because of the attention that the Idaho Statesman's 3-day editorial is going to receive in our State, and that is that one of the justifications that the Idaho Statesman puts forth for supporting the breaching of the Lower Snake dams—and we don't have a position one way or the other on that—but the justification—one of them is that that will relieve the pressure for Upper Snake water, that no Upper Snake water will be required. And where they got that assurance we would like to know. We have never heard a decoupling of those two, that if you breach the dams, there would be no more requirement for Upper Snake water.

Our concern is that if you do that and you begin to rely on velocity, what happens in the low-flow years? You are going to need water to augment that flow anyway. And I am not saying there would be water required or that there wouldn't be, but we have never seen that meaningfully addressed.

So if we are going to go into looking at that option, we would like to know the answer to that question. This was also a question that we asked about the Andrus drawdown plan. Is that going to require water? And that was never really meaningfully addressed.

Mr. CRAPO. Mr. Hayes, I don't know how closely you were paying attention to that answer there but—

Mr. HAYES. Very closely—taking notes actually.

Mr. CRAPO. Do you have an opinion on that?

Mr. HAYES. I share those concerns and view them all as valid. I think that, you know, I represent a coalition, and, as such, it is very difficult to speak for all parties. It is a little bit like hurting snakes or cats or whatever the saying is.

But I think that historically we can look at the flow of the Snake River, and perhaps we can base—you know, if those dams were removed—I am not saying in their current configuration, but if those dams were breached, I think it would be appropriate to look at the historical flow patterns of the Snake to see what types of water we need to be talking about.

And historically late summer or early fall has been relatively low-flow periods in that river system. Somehow the fish manage to survive for thousands of years in that environment. Of course, the dams weren't there. But if those dams were removed, it seems appropriate to once again go to a lower-flow environment.

Mr. CRAPO. I think you answered the question I asked or what I was seeking to get at, but I want to be sure. And so both Mr. Hayes and Mr. Semanko, I would like to ask you to respond to this. Recognizing that you, Mr. Semanko, just said you want to have some assurances on where this approach came about, whether moving to a more natural river would reduce the need for flows, and what I heard you just say, Mr. Hayes, is that you would tend to think that that would be generally correct?

Mr. HAYES. It sounds very reasonable to me. I am unfortunate in the position that I cannot give you a definitive answer and speak for all the members of our coalition.

Mr. CRAPO. I guess you just answered what I was going to say then, Mr. Hayes. I just wanted to know, in general, if that is what you expected to be the general relationship; namely, that there would probably not need to be much or as much water for flow augmentation needed if there were some type of a natural river option pursued?

Mr. HAYES. If the natural river option was undertaken, I, for one, would work like crazy to make sure that this issue was resolved appropriately.

Mr. CRAPO. And, Mr. Semanko, what I understood you just to say is that you want some real strong assurances of that, and I recognize that. Are you aware of any reason why we would expect for more flows to be needed if we moved to a more natural river option?

Mr. SEMANKO. I am not aware of any, but I am also not a scientist or a technical expert. And I would like to flip the Biological Opinion over for a minute and say also if the long-term decision in 1999 is to go with the enhanced transportation alternative, we would also like to know what justification there is for providing water or additional water for that scenario.

And the question we would hope could be asked of NMFS at the next hearing is: "In 1999 you are looking at two different options. How does either one of those require water from Idaho, and if it does, what amounts are we talking about?" Because right now we are providing the 427,000 as part of a band-aid stopgap approach that in theory isn't going to be around after 1999. So those are the kinds of questions we are struggling with.

Mr. CRAPO. Thank you. And, Mr. Semanko, back to you again on the water issues—could you excuse me 1 second? Let us just take the Power Planning Council numbers you gave me a minute ago that would essentially if pursued from 1994's figures would require another million acre-feet, if another million acre-feet on top of the

427,000 acre-feet that is already being provided were called for, what kind of an impact would that have on irrigated agriculture?

Mr. SEMANKO. Well, first of all, the 427,000 acre-feet that is being provided is being provided for the most part because we have had good water years since the Biological Opinion was enacted. If that weren't the case and we had two dry years in a row, we would be having real problems. And a large chunk of that water comes from rental water that irrigators don't need; because of the conditions they are able to put it into the water bank.

Mr. CRAPO. So you are saying that just at the 427,000 acre-foot level there is no major impact assuming normal water years?

Mr. SEMANKO. That is true.

Mr. CRAPO. OK. Let us assume that. Let us assume normal water years. Then what would be the impact of an additional one million acre-feet?

Mr. SEMANKO. Well, the only reliable estimate I have to go on is one that was put together by the Bureau of Reclamation. It is contained in a November 22, 1994, report of the Actions Work Group to NMFS as part of the aftermath of the 1993 decision where Judge Marsh struck down the old Biological Opinion.

And what the Bureau said was that in acquiring 1.427 million acre-feet with any reasonable assurance, you would have to dry up somewhere in the neighborhood of the same number of acres—that is, 1.4 million acres—in the Upper Snake River basin.

Mr. CRAPO. And I don't know if you have this kind of information, but can you give me kind of a percentage or a comparison as to what that is with regard to the entire acreage being farmed in the basin?

Mr. SEMANKO. I don't have those exact figures. My round math that is in my head tells me that there is about a million acres in Idaho that is irrigated from groundwater and about 800,000 to 900,000 that is irrigated by surface irrigation. Now, there is also irrigation, of course, in eastern Oregon which is part of the Upper Snake basin. But those are the numbers that come to mind for me. There are approximately I believe 8 million acre-feet in the Federal storage system above Brownlee and about 4.1 million acre-feet above Milner.

Mr. CRAPO. Which could be used if another million acre-feet were called for?

Mr. SEMANKO. I am sorry?

Mr. CRAPO. Well, let me get to it this way. If I understood you correctly, there is the possibility of 1.4 million acres of irrigated agriculture going out of production if 1.4 million acres of water were used. Did I understand that correctly?

Mr. SEMANKO. If I am correct, those are the Bureau's numbers from that report I referred to. Yes.

Mr. CRAPO. Let us assume that it is not even that much. I mean, what I am hearing you saying is that hundreds of thousands of acres of irrigated farmland would have to be taken out of production in southeastern Idaho. Is that accurate?

Mr. SEMANKO. And what the Bureau looked at is all the available water data that there is for the last 60 or 80 years or whatever it is. And if you are going to have that as a long term recovery mechanism and provide that each and every year for the next 24 years

or 48 years or whatever the recovery period is, and you want a 95 percent reliability probability of that, then those are the numbers they threw out.

There are millions of dollars that would be spent directly by the Federal Government to acquire that water. There would be even more millions of dollars of indirect effects on the farm economies, and yes, there would have to be irrigated acres dried up. In effect, the purposes of those projects would be shifted, at least in part, from irrigation to salmon recovery. So you would see a loss in irrigation.

Mr. CRAPO. All right. And let me ask you this. Given the current political climate—and not the political climate so much as the current circumstances that we face with regard to the decisionmaking process as it is moving along, do you expect that there will be a claim for or a request for more water from NMFS than the 427,000 acre-feet?

Mr. SEMANKO. I am afraid that we do. This letter that you have referred to is starting to play a little bit loose with the current Biological Opinion, in my opinion. It states specifically the Biological Opinion calls for the immediate provision of 427,000 acre-feet and progress on securing additional water. What the Biological Opinion actually says is “427,000 acre-feet to be secured by 1998 and then an additional amount as may be necessary for recovery to be acquired after that.”

Now, they are not saying “as may be necessary for recovery.” They are assuming that there needs to be more water acquired, and nobody is explaining to us, and maybe we will get this in the consultation, why that additional water is needed, especially in light of the fact that the Biological Opinion said, “If you can provide the 427,000 through 1998, we are not going to require consultation.” So we see that. We don’t have any firm numbers. We don’t have any firm conclusions out of NMFS or the Bureau at this point, but we are highly suspect because of what is going on.

Mr. CRAPO. Thank you. Mr. Hayes, there has been some discussion about encouraging NMFS to move its decisionmaking date from 1999 up to 1998. Can you tell me if your organization supports that?

Mr. HAYES. Many of the organizations in our coalition do support that. We feel that a significant amount of money is currently being spent on projects that will be wasted if a decision is made in 1999 that is not in line with their current spending priorities. We would like to save that money that amounts to hundreds of millions of dollars of taxpayers’ money.

We would like to, you know, keep that in the pot for salmon recovery later on and not just throw it down the pipes. We also would like to see those decisions be made utilizing the best available science which NMFS currently is not doing even though some of their own scientists are urging them to do so.

Mr. CRAPO. All right. Thank you very much. Please excuse me for just 1 second. All right. Nobody has any more questions that they want to be sure I get into here. So I will conclude my questions. And again as I said earlier, although Mr. Abercrombie and Chairman Saxton have not been able to get back, each time we went out to vote we had some very interesting discussions. And



they are very interested in this issue. I am sure they are going to review the record, and we are going to have some more discussions of all of the issues that we have raised here today.

I think it is important to quickly summarize. At this hearing today, I think we have addressed a number of issues that I hope get a lot more public attention, the first being the question of how NMFS is operating in the Pacific Northwest and whether we are seeing the kind of cooperation and proper implementation of process to effectively resolve the myriad of issues that we face as we move toward salmon and steelhead recovery.

The second being what type of a decisionmaking process really should we have? And we didn't get into it a lot in this hearing because it is not an exact jurisdiction of this Committee, but I think it is very interrelated to issues that go beyond salmon and steelhead and reach out to issues such as power production and the entire electric energy restructuring debate that is going on in other committees in this Congress.

The third issue that I hope we have brought some significant public attention to is the question of water, State sovereignty, and the implications on the management, allocation, and use of water in the States as we proceed forward in the path that is apparently being pursued by the National Marine Fisheries Service, a path which I think I have already strongly indicated and others have indicated they do not believe is the correct path for the recovery of the salmon.

So I believe we may be seeing a path pursued that is not designed to support or effectively recover or is not going to effectively recover salmon and steelhead but is headed toward very significant, negative impacts in the short term and the long term on water and other uses and allocations of water, including but not limited to irrigation.

And I believe it is very critical that the region focus on that issue, as well as the power issues and the salmon and steelhead issues which then get wound back into the decisionmaking question as to how we should approach the management of the river.

I appreciate the time and the attention that you witnesses and the others who testified here today have given. I know that the interruption in schedules that it requires to travel to Washington, DC, and to put together testimony before a Committee like this.

I want to assure you that it is not only appreciated, but that it will be carefully reviewed and evaluated as this Committee evaluates what options it might pursue to bring proper resolution to these issues. And with that, unless there are any other—no other questions from members of the Committee, if there are any other issues, then this Committee will stand adjourned. Thank you.

[Whereupon, at 1:40 p.m., the Subcommittee was adjourned.]



**FIELD HEARING ON REVIEWING THE AUTHORITY AND DECISION-MAKING PROCESSES OF THE NATIONAL MARINE FISHERIES SERVICE NORTHWEST DIVISION**

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**FRIDAY, AUGUST 15, 1997**

HOUSE OF REPRESENTATIVES, SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE, AND OCEANS, COMMITTEE ON RESOURCES, *Garden City, Idaho*.

The Subcommittee met, pursuant to notice, at 9:08 a.m., in the Garden City Council Chambers, 201 E.50th Street, Garden City, Idaho, Hon. Michael Crapo presiding.

Member present: Representative Crapo.

Ladies and gentlemen, we welcome you here this morning.

The Subcommittee on Fisheries Conservation, Wildlife, and Oceans will come to order. The Subcommittee is meeting today to hear testimony on one of the most important issues in the Pacific Northwest, particularly related to the role of the National Marine Fisheries Service and other Federal and State agencies, as well as interested parties, in reaching resolution of the—I guess I would describe it as the overall issue of salmon and steelhead recovery and the related issues to water management that are posed by that aspect of the issue that is facing us here in the Pacific Northwest.

Under Rule 4(g) of the Committee rules, any oral opening statements are limited to the Chairman and the Ranking Minority Member, neither of whom are present today, and so I will, as the designate of the Chairman of the Committee, make an opening statement. And I should indicate to you on his behalf—he told me that he truly wanted to be here but because this is the August recess and members have jam-packed schedules in their own districts primarily during the August recess, he asked if I would carry this hearing forward. And frankly, it was one that we asked him if he would allow us to hold in Idaho, rather than holding it in Washington, because we wanted to let people who could not make it to Washington have a better opportunity to testify. And with that understanding he agreed, recognizing that he may or may not be able to make it here, and ultimately was not able to do so.

I do want to indicate on behalf of both the Chairman and the Ranking Member, Mr. Abercrombie, that as a result of the first hearing that we held on this issue in Washington, DC, both are extremely interested in this matter and we have had a lot of discussions outside that hearing afterward to evaluate the issue and I am confident that both the Chairman and the Ranking Member are going to be very interested in the record today as well as in the

submission of written testimony that the witnesses have brought with them.

I would like to make just a brief opening statement and then move forward quickly to the testimony. But before I do so, I would like to lay out a few ground rules for those who are going to be witnesses today and to tell you how the hearing will proceed.

If you have seen a copy of the witness list, you will realize that this is a very full hearing, and we are, because of that, going to be extremely pressed for time. And I am one of the members who likes to ask a lot of questions, which is going to make an even more full hearing, and because of that, I believe that it is going to be very important that we adhere to the time limits.

Each of the witnesses who has been invited to speak has been advised in advance that there will be a 5-minute time limit on the presentation of your oral testimony. Each of the witnesses also has been requested to provide written testimony. I will tell you that those who have already submitted it, I have already read your testimony and those who will submit it today or subsequent to this hearing, I will read your written testimony in its entirety.

I believe that the other members of the Committee, particularly the Chairman and the Ranking Member are also going to be dedicated to that and will review this record very carefully.

What I am getting at is I would like to ask you—we are going to have this system of lights here, which will be green for 4 minutes, then it will turn yellow for the last minute and then red when the time is up. When the red light comes on, I would ask you to please summarize your remarks. And if you are like me, your 5 minutes is going to go a lot faster than you thought it would, and you may not be done at that point in time. I would encourage you to recognize that I have read your written testimony, and to use the 5 minutes to summarize the succinct points that you would like to be sure are made. And as I said, when the red light comes on, so that we can move ahead expeditiously and have time for question and answer and interaction, would you please try to summarize your remarks as quickly as possible after the red light comes on.

#### **STATEMENT OF HON. MICHAEL CRAPO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO**

Mr. CRAPO. I would just like to indicate at this point in time that, as I started to say at the beginning, this is a very critical issue for the entire Pacific Northwest, and a number of issues with regard to the decisionmaking process about how we deal with the critical issues of water, salmon and steelhead recovery and the system of dams on the Columbia and Snake River and their role in whatever recovery plans are put together, and the entire set of issues that we address is perhaps one of the most important issues facing us in this community, the Pacific Northwest, today.

I have often said, in talking about this issue of electric energy restructuring, that it is probably the biggest issue we face, but that is because I believe that it must necessarily include as one of its elements resolving the issues of river governance that will include much more than simply how we govern the river with regard to power production. It will include how we govern the river with re-

gard to all of the traditional uses of the river, including irrigation, power production, flood control, recreation, fish and wildlife, and in particular as the focus of this hearing, the tremendously important issue of restoring the salmon and the steelhead runs, and transportation. The list just goes on and on in terms of how we—what we expect in the Pacific Northwest from the water, the Snake and the Columbia River system in which we live.

As a result of that, I think the issues we will discuss today are going to have an impact on the lives of people in the Pacific Northwest in multiple ways and that is one of the reasons why I have asked our Subcommittee to make this an issue of primary focus, and I was very glad to see the attention that our Chairman and our Ranking Member, Mr. Abercrombie, gave to this issue when we held our first hearing in Washington, DC. They are both very adept and well-informed on these issues in general, and were very quick on the uptake in terms of the issues that we presented specifically from the Pacific Northwest. I am pleased that they have agreed to give such an important focus on the issues that are so critical to us in the Pacific Northwest.

With that, I will tell you that we have had a bit of a change in the schedule and we are going to add an additional panel at the very beginning. So everybody who thinks that they are on a certain panel, you are on the next one.

So panel No. 1 will now be—and do I pronounce this Mr. Eluid Martinez? Did I get it right?

Mr. MARTINEZ. That is right.

Mr. CRAPO. The Commissioner of the Bureau of Reclamation from the Department of Interior and he is accompanied by Mr. Ken Pedde, his Assistant Regional Director.

They will be panel No. 1. Everybody else will be one panel higher than you thought you were on, except that—I had better make a couple of other corrections to get this correct—Dr. Casavant from the Northwest Power Planning Council, you will be on panel three instead of what would have been panel four. And for those who are here, I should also advise you that Mr. Jay Nelson, the Special Assistant from the Commissioner's Office of the Alaska Department of Fish and Game will not be able to make it to today's hearing. He has submitted written testimony.

And then one final announcement and then we will get on with the business of the hearing. Because we were successful in getting the Chairman to agree to hold this hearing in the Pacific Northwest, we have had a tremendous amount of interest and requests from people who would like to have testified. You can see that we tried to accommodate that with the numerous panels and the extensive—and the size of the panels. We believe we accommodated most of the people in terms of at least allowing someone from their point of view an opportunity to testify, but there may be those here who still were not allowed to be on any of these panels and who would like to say something. In that regard, the rules of our Subcommittee and our Committee do not allow us to put your testimony into the written record of this hearing unless you submit it in written format. I will rely on my counsel support here, if those who are here who were not allowed to testify would like to submit

written testimony, the record will be open for 30 days for you to do that.

In addition, as an accommodation for those who still made it here, even though they were not given the opportunity to testify, after the hearing has concluded, we will allow for 1 minute for anyone who would like to say something who was not allowed to testify. That 1 minute statement will not be a part of the permanent record. Because of the rules of the House, we can only put on the permanent record the formally invited witnesses. So if you would like to say something for 1 minute for the edification of those here, we will allow that and we will try to keep that to a strict time limit because we will have some pretty significant time constraints today.

And again, if you would like to have your written statement a part of the formal record, you will be allowed to do that if you submit it within the next 30 days.

So, with that, Mr. Martinez, would you like to proceed?

**STATEMENT OF ELUID MARTINEZ, COMMISSIONER, BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR ACCOMPANIED BY KEN PEDDE, ASSISTANT REGIONAL DIRECTOR, BUREAU OF RECLAMATION**

Mr. MARTINEZ. Good morning. Thank you for accommodating my schedule this morning. I appreciate the opportunity to be here today for a couple of reasons, one is to present some testimony. I have got some written testimony for the record, so I will not go into that specifically. But the other reason is to provide me the opportunity to be here with you today and within the time I have available before I catch a flight, to listen to the issues and the concerns of the community and the folks involved in this important issue.

As you might or might not know, I was a State engineer for the State of New Mexico before I went back to Washington as Commissioner of Reclamation. And in the American Southwest, we do not have salmon or steelhead, but we do have squawfish and blunt nose shiners and silvery minnows, endangered species, that are impacting the way rivers are managed and how people have exercised their rights to water resources in the past and how they will exercise those rights in the future.

What I find surprising is, notwithstanding the fact that if you have a stream system that is lacking water or one that has what people perceive to have a lot of water, these issues are impacting the ability to divert water and utilize water the way it has been done in the traditional way in the past.

So this stream system, the Columbia system, is not alone in trying to address these issues. These issues are playing out not only throughout the American Southwest, but also internationally.

I think what I would sort of like to stress is that you are not in it alone and these are very, very important issues that need to be addressed.

I would like to say that the Bureau of Reclamation has a good working relationship with the National Marine Fisheries Service and we expect that relationship to continue. What I would stress is that whatever solution takes place to address this issue needs to be based, in my opinion, on good science, should result from an

inclusive process, in that whatever the solution will be, it will not meet the full expectations of any given party. I think those are givens.

The best that we can hope is that we will hopefully come up with a solution, if that is the appropriate word, that will accommodate, as best it can, competing demands. Mr. Ken Pedde, the Deputy Regional Director from this area is available to answer specific issues and questions with respect to what Reclamation is doing and will be doing in the future. My understanding is that Reclamation's involvement to date has involved acquiring water from the upper Snake in the quantity of about 427,000 acre-feet for flow augmentation and we are doing that pursuant to State law and will continue to do that until the 1999 date, which I understand is a date that hopefully we will have an answer as to how we will move forward from there.

It would appear to me that we would follow, in the future, the same approach, that if additional waters are necessary for flow augmentation, that we would acquire them pursuant to State law and pursuant to hopefully an initiative and a solution that will come from a consensus process involving the stakeholders in the stream system.

With that being said, I stand ready to answer any questions you might have, Mr. Crapo.

[The prepared statement of Mr. Martinez may be found at end of hearing.]

Mr. CRAPO. Thank you very much, and you finished without using your entire 5 minutes. I appreciate that.

First, I am very interested in the comments that you just made about the acquisition of the water for flow augmentation purposes. I assume you are aware that the Bureau and the National Marine Fisheries have commenced consultation on the operation of the Bureau's upper Snake River reservoir.

Mr. MARTINEZ. That is my understanding, yes.

Mr. CRAPO. The question I have is the 1995 biological opinion for the Snake River salmon provides that section 7 consultation will be commenced on the Bureau's upper Snake River projects if the Bureau fails to achieve the 427,000 acre-foot requirement. And as you just testified, and as you know, John Keys, with the cooperation of Idaho and the Idaho irrigators, was successful in obtaining that flow augmentation water. In addition, in recent litigation, Judge Marsh did not require upper Snake consultation in the American Rivers v. National Marine Fisheries Service in which he stated in his order that I reviewed this morning that the allegations in that regard were too speculative and unripe. I assume he was referring to the fact that the requirement of the biological opinion had been met and that any further decisions were not yet ripe for court review.

The question I have then is why has the Bureau decided to initiate consultation on the upper Snake River projects? Is that not contrary to the biological opinion itself and to the Judge's statement in his order?

Mr. MARTINEZ. I will defer to Ken for the specifics on that, but let me try to answer it generally this way: It is my understanding that there was a notice of intent to sue the Bureau of Reclamation

for the operation of those facilities. It is my understanding that after we reviewed that intent to file and the background, it appeared that we, the Bureau of Reclamation, might have been—might have some exposure as to our procedural aspects of how we moved forward with this initiative back in 1995, that might have put us at risk in litigation. So a decision was made that it would probably be best for the system and for the Bureau of Reclamation and the way it operates its reservoirs and projects, to move forward with this consultation.

I believe that notwithstanding that consultation, we will probably wind up at the same point we are today, of a requirement not in excess of 427,000 acre-feet.

So it was a decision that was made based on information available to me and our risk of not prevailing in a legal challenge, but I will—Mr. Pedde might want to elaborate on that.

Mr. CRAPO. Mr. Pedde.

Mr. PEDDE. Mr. Crapo, the Commissioner has essentially stated it correctly. There was—we reviewed the record, we found procedurally—with our attorneys, reviewed the record and found that there were some procedural holes. And I would cite for example that back in 1992 when this process was beginning, we requested a list of species from the National Marine Fisheries Service, which is the initial act in beginning consultation. We could find no record that we ever received a response. There were other gaps, if you will, in the record, and again, our attorneys, our legal advisors, felt that there was some considerable risk. Courts are not at all reluctant to send agencies back to jump through the procedural hoops, and as a result we have decided to enter into consultation to address those procedural issues.

Mr. CRAPO. In that regard, if I understand what you are saying correctly, the consultation is directed at assuring proper procedural implementation of the current biological opinion, is that correct?

Mr. PEDDE. Yes, sir, that would be a fair statement. We will describe an operation that includes provision of 427,000 acre-feet through 1999. We have called it really an interim consultation until further decisions are made on configuration of lower Snake dams, things of that nature.

Mr. CRAPO. And it is not a consultation then on procedures or operations subsequent to or following 1999?

Mr. PEDDE. I believe there are some major decisions out there, sir, that may affect water out of the upper Snake, a number of issues that may change. So at this point, we do not know what those decisions will be or where we might head from there, so we will just have to wait and see.

Mr. CRAPO. You are not consulting on that in this consultation?

Mr. PEDDE. No, sir. I guess we all would expect that even in 1999, there may be some unanswered questions and hopefully our biological opinion, our consultation, will be sufficient to extend beyond 1999, if we need it, but that is not the intent at this point.

Mr. CRAPO. Well, as you know, there are requests and certain proposals or different approaches, and in fact I think National Marine Fisheries Service is current evaluating different approaches that could result in much higher levels of flow augmentation, up into the one to two million acre-feet levels.



So I guess the question I am getting at is, is your consultation that you are currently undertaking addressing those decision—that aspect of the decision?

Mr. PEDDE. As I mentioned earlier, our operation that we will describe will talk about 427,000 acre-feet.

Mr. CRAPO. Okay. And Mr. Martinez, in your answer to my question, you indicated that you did not expect that the 427,000 acre-foot requirement would be changed as a result of the consultation. Is that because you are consulting only on the current biological opinion requirement?

Mr. MARTINEZ. You know, you cannot second-guess the answer, but I am advised by knowledgeable staff that they do not believe that that will change.

Mr. CRAPO. All right. Are you aware of what the Snake River Resources Review is?

Mr. MARTINEZ. No, I am not.

Mr. CRAPO. Could I ask Mr. Pedde, are you aware of the Snake River Resources Review?

Mr. PEDDE. Yes, sir.

Mr. CRAPO. What is its purpose?

Mr. PEDDE. The purpose of that review was to develop tools and a data base by which we could address changes as they may be requested in the future. I would say, for example, Mr. Crapo, that the Boise Valley here is rapidly urbanizing, we have no tools that fairly address concerns, issues that will arise from that. We have issues related to groundwater recharge, conjunctive use, and so forth. The hydrologic models we use now were developed a number of years ago and there are better tools available. The purpose of this is to develop modeling tools, data bases that could be used in addressing questions in the future.

Mr. CRAPO. And where does its funding source come from?

Mr. PEDDE. The funding source is derived under our construction program and was originally related to ESA issues.

Mr. CRAPO. Does this review provide technical advice to the Bureau in the consultation process we just discussed?

Mr. PEDDE. Technical advice—sir, we will use what tools are available, and we may not have everything done. The Snake River Resources Review was not intended to be completed until about 2000, so we may not have all of the tools ultimately we would like to have. But such tools as are available, for example, if we have an improved groundwater model or some better relationships between surface and ground water, we would certainly use those tools in making any kind of evaluations.

Mr. CRAPO. All right. And back with regard to the funding sources, do you have the ability in your budget to provide the Committee with a clear review of the sources and expenditures for the review since it was begun?

Mr. PEDDE. We do have that information. I do not have it with me, sir, we could provide that.

Mr. CRAPO. Could you provide it, please?

Mr. PEDDE. Yes, sir.

Mr. CRAPO. Thank you.

Mr. Martinez, in your statement, you indicated that it was your understanding that in 1999, there will be further decisions and at

that point you may or may not be required to take further action with regard to obtaining additional water, is that correct?

Mr. MARTINEZ. That is my understanding, yes.

Mr. CRAPO. I was listening very carefully. You indicated that if that occurred, you would seek to do so pursuant to State law?

Mr. MARTINEZ. That is correct.

Mr. CRAPO. Did you also mean—or let me ask you very specifically, in that context, would any such water obtained be obtained under a willing buyer-willing seller arrangement, as is imposed by the current biological opinion?

Mr. MARTINEZ. That would be my recommendation.

Mr. CRAPO. And is there any way that you could assure us of that at this point?

Mr. MARTINEZ. I do not know if I could bind the Federal Government, but that would be my recommendation and that is my understanding of how we would proceed.

Mr. CRAPO. It is correct, is it not, that there is a Solicitor's Opinion from the Bureau that if it has to obtain water, that it could essentially take water?

Mr. MARTINEZ. That is the John Leshe opinion.

Mr. CRAPO. Yes.

Mr. MARTINEZ. The official policy of the administration has been and will continue to be that we would do it under willing buyer-willing seller, under State law.

Mr. CRAPO. So that is current policy, but that policy is not required by law.

Mr. MARTINEZ. As I understand, the Leshe memorandum says by law—pursuant to law, you have certain options. The policy decision, the administrative decision, was that we would move under the willing seller under State law. That is still our policy, notwithstanding the legal opinion.

Mr. CRAPO. And your recommendation, regardless of the outcome—of what any 1999 decision is, is going to be that the Bureau will continue that policy with regard to any water acquisition required in the future?

Mr. MARTINEZ. That would be my recommendation.

Mr. CRAPO. Thank you very much. I have no further questions of this panel, and Mr. Martinez and Mr. Pedde, you are excused and we appreciate your attendance.

While the panelists are coming forward, let me apologize to you. The table is a little small for the size of the panel but I think if you are able to squeeze in there, we will be able to fit everybody in.

This panel includes Mr. Scott Campbell—and we will have you testify in this order—Mr. Scott Campbell representing the Idaho Farm Bureau; Mr. Bruce Smith from Rosholt, Robertson & Tucker; Mr. Peter Wilson from the Port of Lewiston. It appears that Mr. Herb Curtis is not present. Is Mr. Curtis present?

[No response.]

Mr. CRAPO. Mr. Curtis is the Project Supervising Engineer from the Wells Project. Okay, and Mr. James Grunke, Executive Director of the Orofino Chamber of Commerce.

We will proceed in that order, and Mr. Campbell, you may proceed.

# **STATEMENT OF SCOTT CAMPBELL, IDAHO FARM BUREAU**

Mr. CAMPBELL. Thank you very much, Congressman Crapo. My name is Scott Campbell, I am a shareholder with the Boise, Idaho law firm of Elam & Burke. I am Chairman of the Environmental and Natural Resources Section of the firm and I am here representing the Idaho Farm Bureau Federation and its over 47,000 member farm families.

I am a native of Idaho. My ancestors have made Idaho their home since the 1860's. I am very fond of this State, its people and its history and because of this fondness, it is with great sadness that I address you today.

Idaho and some of its hardest working citizens are basically under siege by the Federal Government. They are under attack by what I consider to be insensitive, insulated Federal bureaucrats who have two primary agendas—self-preservation and central control and regulation of any economic activities involving land, water or air. I would like to give you two concrete examples of what I am referring to.

The first involves the Columbia River, Snake River salmon and steelhead recovery process. I will not focus upon the history of the ESA problems with the salmon. Instead, I will focus upon the current operations of the Federal facilities in Idaho under the NMFS biological opinion.

Because of the requirement for 427,000 acre-feet of flow augmentation water to avoid a jeopardy finding for operation of the Columbia River power projects, the Bureau of Reclamation has embarked upon a very aggressive and in my judgment, unreasonable approach to acquiring that water. While they have followed the State law requirement of acquiring the water through willing seller-willing buyer arrangements, they have begged, borrowed, cajoled, cursed and threatened Idaho water users to obtain that water. One particular example that I would like to refer to is pertaining to existing storage contracts which two of my clients possess for water in Lucky Creek Reservoir. We have commenced the process for renewing those storage contracts, the Bureau has indicated very clearly that it is unlikely that those storage contracts will be renewed. They currently run until the year 2004 and we have been told that that water will not be available because of the need for the salmon. Those storage contracts in Lucky Creek Reservoir are critical to the operation of the facilities which my clients operate.

That is just one example, there are many others. That water, which is acquired for salmon flow augmentation purposes in drought cycles is critical to the production of agricultural products which my clients and other rely upon for their income. Frankly, because of the actions of the Federal Government in this respect, I and my clients feel that they are under siege by the government.

The other concrete example which is somewhat related because it also involves the operation of the Endangered Species Act is the Bruneau-Hot Springs snail. While that does not involve NMFS, it does involve its sister agency, the U.S. Fish and Wildlife Service.

Because of the basically predetermined decision of the Fish and Wildlife Service to list the so-called Bruneau-Hot Springs snail, the impacted area farmers in the Bruneau Valley banded together with

the assistance of the Idaho Farm Bureau Federation, the Idaho Cattle Association and the Owyhee County Commissioners to sue the Federal Government in U.S. District Court based upon procedural violations as well as substantive violations of the listing process. I was asked to represent that coalition of affected farmers.

The U.S. District Judge invalidated the listing because of procedural problems, procedural flaws, finding that the Fish and Wildlife Service had violated the procedural due process rights of those clients. Unfortunately, two environmental litigation groups appealed that decision to the Ninth Circuit Court of Appeals, which reversed, mainly on the basis of its need, its perceived need to protect the endangered species even though the procedural due process rights of the affected farmers had been violated. We are currently in a re-examination, a relisting process, subject to the corrected procedural requirements.

The reason I point that out, Congressman Crapo, in the context of your hearings, is that it illustrates again the basic philosophy, the basic mindset of the Federal agencies that the impacts to people, the impacts to the economy, the impacts to the real lives of the citizens of this country in the administration of the Endangered Species Act is not the focus, the focus is upon the species. And the consequences to real live people is irrelevant.

And with that, I see my red light. Thank you very much.

Mr. CRAPO. Thank you, Mr. Campbell. Mr. Smith.

[The prepared statement of Mr. Campbell may be found at end of hearing.]

#### **STATEMENT OF BRUCE SMITH, ROSHOLT, ROBERTSON & TUCKER**

Mr. SMITH. Good morning, Representative Crapo. My name is Bruce Smith, I am a private attorney here in Boise. My clients include businesses in the timber, mining and agricultural industries. I am not here speaking on behalf of any individual client this morning, but I would like to point out that they share one common theme. Because they are businesses, their approach to salmon recovery is similar to their approach to business. They are interested in problem solving.

My comments today come from my perspective, having worked on the salmon issue since prior to the time the petitions to list were filed. I was one of the participants in Senator Hatfield's salmon summit process which, for those who are new to the issue, was an attempt to develop a regionally based approach to the recovery effort. Based on this experience, my comments today are focused on NMFS' problem solving efforts.

I would like to leave you with two main messages today. NMFS cannot solve the salmon recovery problem unless it focuses its efforts on solving the problems at the dams. Two, through the use of some new tools, NMFS has an opportunity to recharacterize its relationship with State and private entities from that of a regulator to that of a partner and in the course benefit the recovery effort.

Now, we learned two important lessons from the salmon summit. One, the problems at the dams are the main obstacles to salmon recovery. Two, those problems cannot be compensated for by using Idaho water or by over-compensating with regard to other factors.

The reasons are simple. There is simply not enough water in the State of Idaho to overcome the problems that arise because of the present configuration of the dams. Furthermore, it is unquestionable that there is already a significant amount of good quality, unoccupied habitat in the State if the fish return.

Personally, I believe NMFS has gone off track somewhat with regard to where it focuses its recovery efforts. It has done this by under-emphasizing the solutions to the dam problems and trying to over-compensate with regard to habitat factors. Let me give you two specific examples.

In its present biological opinion on flows, NMFS has accepted mortality of 21 percent for spring/summer adults, 39 percent for fall adults, 24 to 86 percent for juvenile sockeye and for juvenile fall chinook, a mortality of 62 to 99 percent. Now this is the biological opinion on the major factor affecting salmon decline and recovery. So how does NMFS handle their management activities affecting habitat? NMFS has concluded in another biological opinion that grazing on one allotment on the Boise National Forest would jeopardize the continued existence of spring/summer chinook. In its Incidental Take Statement which goes along with the biological opinion, NMFS imposed a zero level of take associated with cows stepping on redds. When constructing fences to protect the salmon or to protect the salmon redds, NMFS required that no more than 20 minutes of temporary displacement occur. Now when I sit down and compare these two biological opinions, something seems out of balance to me.

Another example showing a shift to habitat measures is NMFS' presently proposed rule on what is called Essential Fish Habitat. What this rule does is set up an elaborate consultation scheme that largely mirrors ESA consultation efforts and again focuses on habitat. Now I do not think, from my investigation, that NMFS has any additional money to implement the EFH measure, which raises for me the question of whether NMFS is going to have to shift recovery resources to the Essential Fish Habitat effort. Quite frankly, I think the Essential Fish Habitat rule is so complex and far-reaching—it is a nationwide application—that the Subcommittee should consider some additional oversight hearings on that issue alone.

As I have investigated it, there are substantial impacts associated with other Federal agencies. I have yet to talk to a Federal agency that understands or realizes the implications of the Essential Fish Habitat rule. They do not know what it is.

I have attached to my testimony some excerpts of 1950 Congressional Records that show that the success of efforts focused on trying to compensate for the cumulative impacts of dams was suspect even before the dams were constructed. This goes to show that trying to over-compensate for the problems of the dams cannot be done by focusing on these other factors affecting the salmon.

Let me quickly turn to my second point, which I see as a real opportunity for NMFS. Although I think NMFS is over-compensating with regard to habitat issues, that does not mean that habitat management should be ignored. To the contrary, there are several policies in place, primarily on Federal lands, that deal with habitat. These are the PACFISH and INFISH protocols. However, there are new policies being proposed called Conservation Agreements with

Assurances and Safe Harbor Agreements that offer new opportunities for NMFS to recharacterize its relationship with private and State landowners. This is a real opportunity for NMFS to seize on these new policies and change its approach to doing business. I think that NMFS should be encouraged to embrace those policies and try to implement them in a way that will effect recovery.

Thank you.

Mr. CRAPO. Thank you, Mr. Smith. Mr. Wilson.

[The prepared statement of Mr. Smith may be found at end of hearing.]

**STATEMENT OF PETER K. WILSON, VICE PRESIDENT, PORT OF LEWISTON**

Mr. WILSON. Congressman Crapo, my name is Peter Wilson and I am Vice President of the Port of Lewiston Commission, Lewiston, Idaho. I have been a member of the Port Commission for 9 years. Although it is not supposed to be a full time job, I spend as much of my time on port business as I do trying to make a living raising a few cows.

As this testimony has been submitted, the written, I think I will deviate a little bit from that and bring up a few points.

Transportation is a very important part of Idaho and river transportation is an integral part of that. I think we need to reiterate that the balance of trade without ag exports would be much larger than it is.

Another thing is on the flow augmentation. As a youth in the 1930's, I used to swim in the Clearwater River. The Clearwater River, they had the log drives in there, the log drives come with the high water and the high water was generally considered a week plus or minus Memorial Day. Now we have got to take water out of the Dworshak to keep the Clearwater River, the lower 30 miles of it, at a much higher level than it ever was before. To me, it is not natural. When I was swimming in the Clearwater River, there was no dams up there. We used to swim at Spalding and it was a major accomplishment of the youth to swim the river. It was not really that far, but it was an accomplishment. Now the water is cold as they draw the winter water out of Dworshak, and as I say, it is higher. It does not make sense to me—does not make sense to me.

Food—the ag production, I need to push that a little bit. I remember in the 1970's, Khrushchev was over here and they had him visit a cornfield in Iowa, and he was aghast at the ag production, he thought if he could do that back in his country, he would be more of a world power than he already was.

I think that is about all I have to say.

Mr. CRAPO. All right, thank you very much, Mr. Wilson. Were you finished?

Mr. WILSON. I was just going to say the light is green, you know, so I will quit while I am ahead.

[Laughter.]

Mr. CRAPO. All right. Thank you, Mr. Wilson. Mr. Grunke.

[The prepared statement of Mr. Wilson may be found at end of hearing.]

**STATEMENT OF JAMES W. GRUNKE, EXECUTIVE DIRECTOR,  
OROFINO CHAMBER OF COMMERCE**

Mr. GRUNKE. Thank you, Congressman Crapo. I would like to thank you for the opportunity to speak here. I am the Executive Director of the Orofino Chamber of Commerce and my name is James Grunke.

We in Orofino think we have a fairly compelling story to tell and really welcome this opportunity. We are one of the few communities in the entire northwest, and the only one in Idaho, that feels the direct impacts of salmon recovery every year.

When Dworshak Dam was constructed, it was authorized for five purposes—flood control, power production, fish and wildlife, recreation and transportation. Transportation being log transportation down the reservoir. In exchange for this, the damming of probably the most productive steelhead river in Idaho, the North Fork, certain promises were made, such as continued log transportation and to be able to maximize the recreational opportunities to offset this.

Also as part of that in the mitigation, they constructed Dworshak National Fish Hatchery, which is the world's largest steelhead fish hatchery. So there were tradeoffs that were made and the community I think grudgingly accepted this and it did become a very prime recreation source. It is the only pristine, undeveloped, forested lake in the State of Idaho to this extent, it is 53 miles long, no commercial development is allowed, it is a beautiful facility.

Things were going good for Orofino and then they decided to list salmon. Our experience with the listing of salmon and the control of NMFS has been an absolute failure. I would say we would view the flow augmentation strategy as completely ill-conceived and it has resulted in every summer draining the reservoir down, this year they will go down 100 feet, it has been down as low as 115 feet, for salmon recovery. This has resulted in an unusable mud bog that nobody would want to use to recreate. But this has had more impacts than just to the recreation. Resident fish have been dramatically impacted, not only in the reservoir but in the Clearwater River. It is not natural when the main stem of the Clearwater River right now in August is running nearly 70 degrees, that the fish swim along and they are running into 48 degree water. It is impacting the fish hatchery because the water is too cold. So it is retarding the growth of steelhead in the fish hatchery.

So to compensate that, rather than using the selector gates that were designed to provide the constant cool water for the fish needs, they have decided in their wisdom to spend over a million dollars to build boilers to warm the water, when we already know what we could do. I think we have absolutely seen steelhead impacts. We drain the water in the summer, we no longer have any water left in the fall months to use not only to cool the river in the month of September, but also to attract the fish up from lower Granite pool. There is evidence from the National Marine Fisheries Service, their own study, that the cool water has impacted or retarded the growth of fall chinook in the main stem of the Clearwater River. And it has had devastating impacts to the community of Orofino. We were fortunate enough to have the Corps of Engineers conduct an economic impact study for us in 1995 that demonstrated losses in excess of \$7 million a year in the summer economy. That is also

a tradeoff because these efforts have declined the number of steelhead and that resulted in a closure of the fall steelhead season in 1996. So we are losing on every side.

So then we need to look at the benefits and I have asked this question it seems like now for years to NMFS, but does—the question seems fairly straight-forward—does draining the reservoir produce more salmon, and if it does, how many? The answer is we do not know, we think that it does. I do not think that we are unwilling to participate, but we are unwilling to share the sole burden for these salmon recovery efforts. NMFS actually has no idea if they are helping or hindering, they think this is going to work, but have we seen any results?

I would like to conclude by saying the current operation—the current system of who is in charge is an absolute rudderless ship, there is so many agencies, nobody is in charge. We need some clear direction and this is, I think, the real role for Congress, is to give the Northwest some clear leadership and get the process moving.

Thank you.

[The prepared statement of Mr. Grunke may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Grunke.

What I would like to do is go through some specific questions I have for each witness and then I am going to go back and talk in general about an issue I would like to get into a discussion with the panel in its entirety on.

But first of all, Mr. Campbell, I was interested in your testimony where you indicated in your written testimony, I cannot remember if you covered it in your statement, in your oral statement, but you indicated that the project authorization statutes for a number of the dams require the Bureau to comply with State water law. I assume you are aware of the Solicitor's Opinion which the Bureau has which indicates that under the Endangered Species Act, it can essentially take water if necessary. Are you aware of that Solicitor's Opinion?

Mr. CAMPBELL. Yes, Congressman Crapo, I am aware of that opinion.

Mr. CRAPO. I am not going to ask you for a legal evaluation here, but do you believe that there is any conflict between the authorization statutes and that Solicitor's Opinion on the operation of the Endangered Species Act?

Mr. CAMPBELL. Congressman Crapo, I believe that there is a clear conflict between that so-called opinion, the memorandum that I think you are referring to is basically a two-page or one and a half page brief letter to the Commissioner of Reclamation at that time, Daniel Beard I believe, and John Leshe basically informed the Commissioner that there would be consequences of any action to release water, notwithstanding the approval of the contract space holders or the affected irrigators or municipal users, but he felt, under the Endangered Species Act, that those consequences were something that the administration would just have to put up with.

The analysis was questionable, there was no analysis, it just said there will be consequences. I view the Reclamation Act of 1902—and I think all water lawyers who have examined this issue



agree—that State law is absolutely required, mandated by the Bureau as it relates to the water which is stored in those facilities. Moreover, the specific Congressional actions which had to be taken for the construction of those Reclamation facilities in the State of Idaho, specifically provided for the project uses, the types of uses of the water which could be stored in those facilities. In virtually none of the project authorizations by Congress does it provide for releases of water for flow augmentation purposes.

So from my view—and the U.S. Supreme Court has held that the water rights which actually are being exercised by the use of those facilities are really held, the true beneficial owners are the irrigators, the municipal users, whatever. So if NMFS or the administration determines that it can release water from Bureau facilities notwithstanding no approval, no consent by willing sellers, willing buyers, I think they will violate vested property rights, they will violate specific Congressional actions by those project authorizations, and they will be subject to condemnation proceedings, inverse condemnation proceedings or injunctive relief by Federal courts. That is my view.

Mr. CRAPO. And would you—your opinion that you have just expressed here is with reference to Bureau projects, is that correct?

Mr. CAMPBELL. No, it is with regard to any Federal facility.

Mr. CRAPO. So it would include—

Mr. CAMPBELL. Primarily—excuse me, Congressman Crapo.

Mr. CRAPO. Sure, go ahead.

Mr. CAMPBELL. Primarily Bureau facilities as they relate to the clients I represent; however, Lucky Peak reservoir was constructed as a Corps of Engineers facility with coincidental irrigation uses as well. The Dworshak Reservoir was a Corps facility.

Mr. CRAPO. That is what I was getting at.

Mr. CAMPBELL. That has a specific project authorization and because of that, any—in my view, any action by the Bureau—by the Corps of Engineers, which is contrary to that specific Congressional authorization is arguably invalid.

Mr. CRAPO. Let me for just a minute shift over to Mr. Grunke. Are you aware of whether a legal challenge has been made to the Corps' operations, which appear to be in conflict with its authorization statute?

Mr. GRUNKE. Yes, sir. In fact, in 1995, the Orofino Chamber of Commerce as well as the City and Clearwater County sued in Federal court, the Corps of Engineers over this issue that they had exceeded their Congressional authorization.

Mr. CRAPO. And has that litigation been resolved yet?

Mr. GRUNKE. It is on appeal now to the Ninth Circuit Court. It was ruled that they were within their parameters.

Mr. CRAPO. So in that case, the Court ruled in favor of the—basically that the Endangered Species Act requirements superseded the statutory authorization?

Mr. GRUNKE. The ruling was that as one of the project purposes was fish and wildlife, they were still adhering to that and yes, you could still recreate and could produce power and flood control. It is just they were not all equal.

Mr. CRAPO. So I guess what I am getting at is that in this case, the Court did not address the specific issue of whether the Endan-

gered Species Act will allow essentially the violation of the requirements of the authorizing statute.

Mr. GRUNKE. That is correct.

Mr. CRAPO. Would you pass the microphone back to Mr. Campbell?

Mr. Campbell, are you aware of any judicial decisions that would—that have focused on this issue more specifically than the Dworshak case?

Mr. CAMPBELL. Congressman Crapo, I am not aware of any pertinent judicial authority which has addressed this issue.

Mr. CRAPO. And you indicated that the Solicitor's memorandum that we have been discussing did not contain a legal analysis or have attached to it a legal analysis, is that correct?

Mr. CAMPBELL. That is entirely correct. It was basically a letter addressing the options available to the Commissioner of Reclamation with no citation to any statutes, any case decisions of the Federal courts, merely saying that these are your options and including release of water, notwithstanding the objections of impacted water users who have valid storage contracts in these facilities, and there will be consequences. But under the Endangered Species Act you have that authority, without any legal analysis, in my judgment other than the conclusion.

Mr. CRAPO. Are you aware of any legal memoranda or briefs or analyses made by the Bureau or any other Federal agencies in this regard?

Mr. CAMPBELL. Congressman Crapo, I am aware of various memos which discuss the issue. I am not aware of any dispositive internal ruling or binding legal opinion from the Solicitor's Office that directly addresses the issue, no.

Mr. CRAPO. All right, thank you very much. How about handing the microphone to Mr. Smith.

First of all, Mr. Smith, you are a water lawyer as well. Do you have anything to add to the discussion we have just had?

Mr. SMITH. I do not believe so.

Mr. CRAPO. Then I would like to focus with you on a few items in your testimony. One of the key points that you made in your testimony was—and I will read it to you, you made this in your oral testimony as well—“Despite the fact that problems with the dams on the Columbia and lower Snake Rivers remain the foremost obstacle to the salmon recovery efforts, NMFS appears to be searching for a solution based on using Idaho water and habitat management measures to overcome these problems.”

Would you elaborate for just a moment on your comment there about the fact that despite the fact that the problems with the dams on the Columbia and the Snake River remain the foremost obstacles, NMFS appears to be searching for a solution based on Idaho water?

Mr. SMITH. The debate during the salmon summit, which was quite extensive in terms of looking at the problems and trying to figure out what the major problems were, as well as NMFS' analysis of what the problems are, there was very little disagreement about the fact that the hydro impacts—the 4 H's—hydro, habitat, harvest and hatcheries—that hydro was the major factor responsible for the decline and was a major factor or the major factor in

terms of recovery. When you look at the configuration of the dams in trying to use flow augmentation to overcome those problems, when the focus gets to be on Idaho water, one of the things that is often overlooked is that despite the storage capacity in the upper Snake, that in drought years when that water is used, you cannot just look at it on an annual basis. You have to look at the ability of the system to recover. So when NMFS turns and starts looking at the use of Idaho water to try and overcome the problems at the dams, to look at it on an annual basis is very risky. What I was specifically referring to were the attempts to gain more water, it was through the section 7 consultation that you referred to earlier in which NMFS and the Bureau have entered into consultation in which it, quite frankly, appears to me that they are attempting to use the consultation process to either ratchet up or try to secure more water through means of either a jeopardy opinion and reasonable and prudent alternatives or some other measures that would require additional water above and beyond the 427,000 acre-feet.

Mr. CRAPO. And you were here during the testimony of Mr. Martinez and Mr. Pedde about the consultation, were you not?

Mr. SMITH. Yes.

Mr. CRAPO. Do I understand you to be saying that notwithstanding their assurances that that consultation is not aimed at securing additional water, that you still have concerns about what direction that consultation is heading in?

Mr. SMITH. Yes, I do, because once the Federal agency, pursuant to section 7 of the Endangered Species Act, enters into consultation with the National Marine Fisheries Service, there is quite a bit of discussion, or let me put it this way, a concern over the ability of private parties to participate in the consultation process. That process under section 7 largely involves the Federal agencies. So when you are sitting out there representing clients, contract holders who use that water, there are serious questions about whether they will be able to participate in the consultation process. When NMFS then does its analysis, renders its opinion, they will come up with—if it is a jeopardy opinion, they will come up with a reasonable and prudent alternative. Their obligation at that point is to—or excuse me, if they have a jeopardy opinion and they try to come up with a reasonable and prudent alternative to avoid the jeopardy, they will attach conditions, if you will, that seek to make it a non-jeopardy opinion. And that is the risk that I see that once that biological consultation starts forward, that you will get terms and conditions imposed on the Bureau of Reclamation that might seek to increase the 427,000 acre-feet, which has been voluntarily, under the willing buyer-willing seller provisions, been made available to this point.

Mr. CRAPO. I want to do a quick little sidetrack here on something you said and then get back to this, but you indicated that one of the problems with the consultation is that it is essentially consultation among Federal agencies.

Mr. SMITH. Correct.

Mr. CRAPO. And that private parties or other interested concerns, whether they be those who are concerned with salmon recovery or steelhead recovery or those who are concerned about irrigation or transportation, are not in the consultation, is that correct?

Mr. SMITH. Correct.

Mr. CRAPO. Do you perceive that to be a significant problem in the decisionmaking process that we are operating under?

Mr. SMITH. Absolutely. Because as you are going through the consultation process—and let me point out, there are provisions in the regulations that deal with consultation that allow participation by applicants for a Federal license to participate in consultation. But quite frankly, I have represented the timber industry on a number of matters in which we have had to assert ourselves aggressively to try to participate in the consultation process and it is one of those areas that is, quite frankly, a little unclear. But in order to get the best information that is available and in order to make sure that all the interests that could be affected are heard, I think it is almost mandatory, it is critically important, that all those interests be heard.

Mr. CRAPO. That is an issue that I want to talk about with the whole panel, but before I do that, I want to get back to the line of questioning I had with you. It seems to me that, focusing on this consultation process, that the failure of the Federal family or the Federal agencies in essence, to seriously deal with the mainstem dams will be paid for if the current direction that we see developing continues—will be paid for by heavy volumes of upper Snake River water. And that that failure will likely result, in addition to taking a significant amount of water from the upper Snake River and the economic impacts that that would cause, will likely also result in the extinction of the fish, or at least in a failure of recovery efforts for the salmon and the steelhead.

I would just like to ask you your observation or to add your comments on that. Do you agree with the concern that I raise in both contexts, in the sense that if we do not seriously address the issue at the main stem dams, that we will then see—if what we now see from the current direction, that we see from the National Marine Fisheries Service, that we will see a look instead to significant volumes of Idaho water? Let us start with that. Do you agree with that?

Mr. SMITH. Yes, I think that is a real possibility, because as NMFS is trying to find a solution—if you have a problem at the dams, as they are presently configured, and you want to solve it, you go to the dams and try to figure out what we can do to make those things—to reduce mortality. Are you going to go away from the dams to try and come up with a bandaid approach to try and fix that problem or do you go to the dams where the problem is and try to fix it at that site?

If you are going to approach it from the water standpoint by basically securing more and more water from the State of Idaho, eventually you are going to run out of bandaids and you are not going to be able to solve the problem.

Mr. CRAPO. Let us go to the second part of my comment. I indicated that I also believe that the failure to focus where the problem is will—and to focus on basically an increased flow augmentation approach, will ultimately not help the salmon. Do you agree with that?

Mr. SMITH. I have not seen any evidence to suggest it will.

Mr. CRAPO. Now currently NMFS has rejected the Idaho policy that was worked out as an effort to try to look at something other than an increased emphasis on flow augmentation. And NMFS will be able to testify for themselves later today, but I believe that their position is that the current status of the scientific record or the science, is that we must continue with a flow augmentation approach at this time until we figure out how to deal with the dams. I know that is not exactly how they would say it, but do you have any comment on that response or on that issue?

Mr. SMITH. I do not know if that is the way they would say it or not, but I think that is what their approach has indicated, that we are going to continue to do these interim steps without focusing on a final solution. And I recognize that the solution—it is a difficult question. NMFS has had to struggle with trying to resolve the question, but I think that what we are seeing are interim approaches without starting to focus on trying to solve the problem.

Mr. CRAPO. I am shifting gears here. You indicated in your testimony that you felt that a significant part of the solution might be more reliance by our Federal managers on conservation agreements and safe harbors and that you thought those were pretty significant. What do you think it will take to successfully implement those types of agreements?

Mr. SMITH. It is going to require NMFS to take a look at itself and think about the way it approaches doing business with private parties and non-Federal entities. A lot of their effort to date has been focused on their relationship with other Federal agencies such as the Bureau of Reclamation, the Forest Service and the BLM. Private parties and States have a different role to play under the ESA, as far as I am concerned. I think it is going to take clear direction from the higher levels of the NMFS administration to tell the people at the field level that look, these are new tools, these give us new opportunities and we are embracing the use of these, so that when the field people or the people in the field offices get ready to come out and try to work with private parties, that they are encouraged to do that, they know they have support from higher up that they can use these new tools in different innovative fashions. It is critical.

Mr. CRAPO. All right, thank you. I see from the 1950 historical report excerpts that you attached to your testimony that the problem that we are talking about today was identified clear back in 1950.

Mr. SMITH. Correct.

Mr. CRAPO. And at that time only the Bonneville Dam, of those we are discussing, was in place, is the correct?

Mr. SMITH. That is correct.

Mr. CRAPO. Did you want to amplify on that at all?

Mr. SMITH. That document that I attached to my testimony was a report to Congress back in 1950 and what it did was raise the specter that these programs to try and augment salmon populations by focusing on non-dam-related matters was suspect. It raised the concern that the program to try and compensate for the infrastructure that was going into place on the Columbia and lower Snake Rivers might not work. That was a document that came out during the salmon summit and it generated quite a bit of comment,

mostly along the lines of what you indicated, that we are sitting here discussing things that are not new.

Mr. CRAPO. All right, thank you. Could you hand the microphone to Mr. Wilson?

Mr. SMITH. Thank you.

Mr. CRAPO. Mr. Wilson, I was interested to note your testimony about the need for a regional consensus-building process and that is the general issue that I want to get into a bit of a panel discussion with you here in a minute.

But could you tell me a little more what you might have in mind in terms of a regional decisionmaking process? How could we accomplish that?

Mr. WILSON. I think that the tools are already in place with the Power Planning Council, that group. I do not see any need to put another layer above or below.

Mr. CRAPO. Do you believe that—in my discussion with Mr. Smith, we just talked about the fact that a process that involves only Federal managers excludes not only other governmental entities but also excludes other interests. Would you agree with that?

Mr. WILSON. I think I would have to say yes.

Mr. CRAPO. Now I know that one response to that might be that the Federal managers are trying to bring together in a decision-making process all of the affected—at least affected governmental entities. Would it be satisfactory to have a decisionmaking process in place that only—that involves all governmental entities—let us say it would involve Federal agencies, State governments and their agencies and tribal governments, and I guess that would be it. Would that approach be acceptable to you?

Mr. WILSON. Well, yeah, I think that we feel that the tribal—that has to be recognized.

Mr. CRAPO. Do you—well, let me move to another question here. I was also interested in your oral testimony about your experiences with the Clearwater from your youth. And if I understood you correctly, under the current flow augmentation regime by which we are now managing the flow in the rivers, you are telling us that the rivers are not running as they used to run when they were natural.

Mr. WILSON. Absolutely.

Mr. CRAPO. Could you give me some time lines there? You said this, but I did not pick it up, what times of the year are they higher than they used to be?

Mr. WILSON. The high water, generally the people along the Clearwater or the mid Snake I guess we would call it in the Lewis and Clark Valley, those people always said Memorial Day plus or minus a week. And this was very difficult to predict because when Potlatch had their log drives, the success of that depended upon hitting the high water. And when the river is on a rise, the center is high and when it is on a decline, the center is low. So as they would bring those logs down the river, if the river is on the rise, they are in the center and they are in the mill pond pronto. If they hit a slack time and it goes down, the logs all go to the outside and they pile up and have their jams.

So it is not anything that anybody can really predict, when that high water is going to be, but generally Memorial Day plus or

minus a week, then your flows diminish, as the snow melts, you know, and depending on what the snow pack is.

Mr. CRAPO. All right. I remember the question that I forgot a minute ago. With regard to the decisionmaking process—back to the question of how we make decisions. It seems to me that one of the big questions we are going to need to ask is whether the decisionmaking authority should continue to be centralized in the Federal agencies or whether some other decisionmaking entity should be created. Do you have an opinion on that?

Mr. WILSON. I think the decision should be made in the Northwest with Northwest people.

Mr. CRAPO. I agree with you.

Why do you not pass the microphone—oh, by the way—yes, did you want to add something?

Mr. WILSON. And on the lighter side, we made up a little quiz. Lots of chinook showed up in the rivers this year, so the question is—multiple choice—how did they get there? Did they get there by barge, were they railed in, were they trucked in or freight, or did they just slam and swim over the dam?

Mr. CRAPO. Good point. And by the way, I know that both you and Mr. Grunke—this is a comment to both of you—I know that both the Port of Lewiston and the Orofino Chamber of Commerce supported Governor Batt's initiative and his effort to find some consensus on salmon and steelhead recovery in the 1997 Idaho Policy, and I just want to thank you for that because we have all been working very closely with Governor Batt and we realize—we all realize that with the multitude of interests at stake here, that it is very difficult for people to come, in a collaborative decisionmaking process, to an agreement, but it was done and you were both—you and your groups that you represent were both integral players in that and I appreciate that. I just wanted to let you know that.

Mr. WILSON. Thank you.

Mr. CRAPO. Mr. Grunke, you indicated that—let me turn to your testimony—in your testimony under recommendations, your very first sentence says “Put someone in charge.” Would you like to elaborate on that a little bit?

Mr. GRUNKE. I think the biggest problem that is facing our region is that there are too many overlapping areas of authority and jurisdiction and that the system, as it is designed now, cannot function to develop a solid, cohesive salmon recovery plan. We have Corps authority and NMFS authority and Reclamation and then the States and the tribes and the Power Planning Council and everybody with their different plans, and there is not one driving force and so we should expect to have the result that we have because of the way the current system is.

Mr. CRAPO. And do you have a—well, if I could hold that question back until we get into it with the panel a little bit—but I assume that Orofino benefited from this year's salmon season, is that correct?

Mr. GRUNKE. Yes, sir.

Mr. CRAPO. In the debate that we have over what approach to salmon recovery, often economics comes up and, you know, one group will say well, there are jobs in this area that we cannot ignore, irrigation for agriculture and agriculture jobs, or transpor-

tation jobs or in this case—and another group will say there are jobs related to a healthy recreation in the salmon and steelhead industry. I guess the question I have to you is does this year's experience with the salmon and steelhead runs—or the salmon runs—give you—cause you to have an opinion on whether if that were able to be sustained over a period of time that it could be a significant economic boost to your particular community?

Mr. GRUNKE. I would say this gave our community a taste of what the potential would be for a strong, vibrant steelhead and salmon season, but I would not say that that is going to be our sole answer or that it is going to be the new strength of our economy. It is too unpredictable and what type of jobs is that providing for us. Is it service or is it jobs that are stable for our community, or high paying. It currently is an important part of our economy, the steelhead season, and the salmon would benefit it, but I am curious—whenever I see how great the benefits would be, I see numbers thrown out all the time, but never any documentation how they got there. The Idaho Statesman said it would be worth \$248 million to the State of Idaho, according to somebody, but no citation.

So I do not know. I know what we lose during the summer because of the Corps study, and I do not believe that the steelhead and salmon season would result in comparable economic gain, that would be a wash. So if we are losing \$7 million in the summer, we would need to be gaining \$7 million in the winter, just to stay even, and that is not occurring. And I do not think it will.

Mr. CRAPO. I am aware of all the points you just made, in this debate that we constantly have about jobs and what the impact will be, so I thought I would just ask somebody from one of the communities that got to experience it a little bit this year, what your opinion was. Are you aware of any type of studies that your community has done or that have been done with regard to your community that would give a handle on what you, in your community, the people who live there, believe would be the economic impact?

Mr. GRUNKE. No, sir. The only study that I am really aware of is a number of years ago there was a study by the Idaho Fish and Game when they had a limited season on salmon in the Rapid River Hatchery and the economic impact to the community of Riggins, and this very small window was in excess of \$200,000. And I think if you extrapolate that out, I think you could get some gains, and I think we will see some interesting studies done this year on both Orofino and—or the Clearwater River and the Riggins area, to be more concrete, but at this point, there is not a study that has been done that I am aware of.

Mr. CRAPO. I would just like to conclude with this panel by asking a general question that any of you can jump in on if you would like to.

One of the concerns that I have is literally, as Mr. Grunke said, that there is no one in charge—no one in charge. The buck does not stop somewhere in this whole process of decisionmaking that we have. And I am convinced that we need to have a system of decisionmaking in place that allows for decisions to be made, for accountability to be enforced and I guess another aspect of it would



be for meaningful participation by the people in the Pacific Northwest in the decisionmaking. I assume that no one on the panel is going to disagree with those broad statements. If anybody does, let me know and we will explore that.

But the question I would like to ask you to jump in on, if you have an opinion, is how do we do that. Do we take the current system and tweak it or do we move to a new decisionmaking model? I am looking for ideas here as to how we can get to a system that has accountability, the ability to make decisions and to involve the people of the Pacific Northwest in those decisions. If anybody has any thoughts or comments, I would welcome them.

Mr. SMITH. Representative Crapo, having gone through the salmon summit process, I have to say it was a real education. I think if we look at a broad-based coalition, a group if you will, that does represent the people in the Northwest, that that is our best chance of coming up with a plan, and of having some accountability. Right now, things are so spread out that there is very little accountability. My concern is that the process that we have now has basically generated huge amounts of litigation and a huge amount of decisions, but it is so spread out that it is difficult for me, working on it on a day-to-day basis, to even keep track of all of it.

In order to come up with the kind of plan that will allow us to move forward, it is going to require a lot of cooperation. I think that mandates that we have participation, and heavy participation, from the State level.

Mr. CRAPO. Any others?

Mr. SMITH. Could I make one other comment?

Mr. CRAPO. Sure.

Mr. SMITH. Awhile ago when you were asking about the consultation process—

Mr. CRAPO. Yes.

Mr. SMITH. [continuing] and I approached it pretty much from the point that if the consultation on the upper Snake projects goes forward, and we had a jeopardy opinion. Let me add to that, regardless of whether it is a jeopardy opinion or a non-jeopardy opinion, whatever NMFS includes in that is going to put tremendous pressure on the Bureau. I am not going to predict how that would come out, but I think it is important that we recognize that when the Federal agencies are dealing with one another under section 7 of the Endangered Species Act, the pressures that are generated on the action agency, which would be the Bureau in this case, are tremendous.

Mr. CRAPO. Does that mean that NMFS—I am looking for somewhere the buck stops. Does the buck stop at NMFS or can NMFS then say well we are just consulting?

Mr. SMITH. No, NMFS could say we are just consulting. Biological opinions are advisory, they are not mandatory. So NMFS' response, and I agree with this, is that under the ESA the biological opinion is advisory. The action agency has a choice of whether it is going to or not going to follow that opinion. But I will tell you from my experience that I have yet to see a Federal agency that did not comply with a biological opinion. The pressure is too great.

Mr. CRAPO. Is that sort of a safe harbor for the Federal agency?

Mr. SMITH. That is a good way of describing it.

Mr. CRAPO. Or at least safer than other harbors?

Mr. SMITH. It is a response that you are going to get.

Mr. CRAPO. But you do not get out of litigation by supporting the biological opinion either, by following it either.

Mr. SMITH. No. I mean biological opinions will generate litigation, the terms and conditions that are imposed will generate litigation. And that is the problem, that we are focusing on things that are not solving the problem.

Mr. CRAPO. Thank you. Did anybody else want to comment on the question I had?

Mr. CAMPBELL. Congressman Crapo, I concur totally with Mr. Smith's comments concerning the involvement of the States in any kind of resolution process. I think one of the primary concerns that I have had throughout the last 6 or 7 years that the salmon issue has been really on the forefront of Idaho and the Northwest Natural Resource law issues is that the Federal agencies, despite the fact that they are numerous and diverse in their interests and their duties, have primarily ignored the States, and as a consequence, ignored the actual citizens of the States. So unless the States have a more participatory role and have direct authority in any decision-making process, not just through the Northwest Power Planning Council, but in resolution of the problem, I think we are a train heading for a wreck. And that is regrettable because when you get right down to it, the only winners in the current situation are the consultants hired by NMFS and the other agencies, and the attorneys that are hired by the people who are ultimately impacted by these decisions. And that is not a very positive product for our society. It helps me and it helps Bruce and other attorneys involved in it because it generates more income for us, but from a societal standpoint, it is very negative. And I think if we can avoid those kinds of conflicts, we are going to be better off.

One other comment I would like to add from a factual standpoint in the context of the consultation issue with the Bureau of Reclamation, approximately 6 months ago, NMFS requested, actually initially they were going to have it outsourced by a consulting company, but the Bureau of Reclamation volunteered to provide NMFS with a very bare bones study addressing the issue of what water from Idaho would be made available from conservation issues or from the elimination of irrigation diversions. That study was not, according to John Keys of the Bureau of Reclamation, was not designed to tell the NMFS that this would not have any negative impacts, yet because of that study, which was very bare bones and merely a hydrologic evaluation, NMFS has now, from what I have been told, focused upon the end result that yes, if you stop all diversions in Idaho, you will meet—99 percent of the time, you will meet all of the flow targets, the flow goals, that NMFS is looking at in the biological opinion, which would require termination of two million—excuse me, two million acre-feet of storage, as far as use in Idaho. So we are talking about the use of two million acre-feet of water presently used in the Idaho economy to accomplish that purpose. That study, according to John Keys, was not intended for that result, yet NMFS is relying upon that study to accomplish that end goal. That is very disconcerting to Idaho water users, it is very disconcerting to the people who would be directly impacted.

Mr. CRAPO. Thank you. Did either Mr. Grunke or Mr. Wilson want to add anything?

[No response.]

Mr. CRAPO. Let me go back then to Mr. Smith and Mr. Campbell and ask you, do either of you see a legislative solution? I am back on the how do we get a decisionmaking authority in place that involves people effectively. Do you see a legislative solution, even the broad outline of anything that we ought to be looking at?

Mr. SMITH. Do you mean a legislative solution to the decision-making process?

Mr. CRAPO. Yeah. What I am thinking is, is there some decision-making process that we can legislatively create. I do not believe that Congress ought to start making these decisions, it ought to at least—if it does anything, it ought to start trying to figure out what the right process for decisionmaking should be.

Mr. SMITH. I remember Senator Hatfield's original address to the salmon summit, he said do not look to DC for the solution, that it is going to be dependent upon the region and the people in the region to come up with the solution. I have been at this long enough to recognize that we will have direction, participation, cooperation, whatever, from DC. I think legislative direction that focuses on solving the problem in the Northwest, by people in the Northwest, is probably where we are headed or where we should head.

Mr. CRAPO. Both of you have said that you believe the States should be involved. I assume you would agree that the tribes should also be involved?

Mr. SMITH. Absolutely.

Mr. CRAPO. There is a debate, as I understand it, as to whether that is enough. I mean there are groups I believe that feel that there should be, in addition, representation on whatever decision-making body is created, of the specific interest groups who have something at stake in the issue. Others say well, their interests should be represented by whatever government they are a part of and that it would be very complicated to try to identify a decision-making process that had legal decisionmaking authority that identified non-governmental entities as part of that process.

Could you comment on that issue?

Mr. CAMPBELL. Congressman Crapo, from my standpoint, I think it will be impossible to ever reach any kind of consensus decision to resolve the salmon-steelhead issues if the process mandates the involvement of other groups outside of the State government level. And I would like to expand upon that just a moment.

If the process allows participation—including the tribes, I did not mean to exclude the tribes—if the process allows private entities, private interest groups to have a seat at the table, then how do you make the decision as to which private interest groups are going to have that seat or how many seats do you have. And if you have 15 environmental groups and 15 water user groups and 15 municipal groups and 15 industrial groups, as soon as you turn around, it does not take very much legal work to form a new organization, a new private, non-profit corporation that is focused on one little aspect of this or has a new name. And then that group has to be involved.

So I think unless you restrict it to the State governmental entities, you know, I have—just reacting here to your comment, I am certain it is too simplistic, but my concept is get a statute passed in Congress that directs the State Governors of the four States impacted—Idaho, Washington, Oregon, Montana—to concur on the appointment of one individual who would drive the process and not involve the Federal agencies except from the standpoint of information to that process, so that you have the four State Governors who represent all of the citizens.

Mr. CRAPO. And the tribes.

Mr. CAMPBELL. And the tribes, excuse me, yes and the tribes, who represent the citizens in the impacted sovereign entities in this region. Reach a consensus as to that one person and then that one person drives the process forward and that one person is vested with the authority to come up with a solution which has the input from the Governors and the tribes.

Mr. CRAPO. And in your scenario there, would that one person—I assume it could be a person or a board or would you say just one person?

Mr. CAMPBELL. Well, I think you could have a board, but if you have more than three members on the board, you are asking for trouble. And I think if you have one person, then all the participants, all the Governors and the tribal entities, would have to agree upon one who would represent all. So you would have less likelihood of having one who represents this group, one who represents that group—a three member panel, you would have the splintering.

Mr. CRAPO. I see what you mean. And then that person or group, whatever it may end up being, would have decisionmaking authority.

Mr. CAMPBELL. With regard to overall solution, keeping in context that that solution would have to incorporate and consider all of the property rights of the various interests throughout the Northwest and evaluate those in the context of the States who are represented in the process.

Mr. CRAPO. And if I hear you right, that decisionmaker would not be given the ability or the authority to ignore current law.

Mr. CAMPBELL. No.

Mr. CRAPO. The decisionmaker would have to make his or her or its decisions consistent with applicable Federal and State law.

Mr. CAMPBELL. Correct.

Mr. CRAPO. So the legal parameters would not change, but the decisionmaking process would be changed.

Mr. CAMPBELL. Correct.

Mr. CRAPO. All right. Mr. Smith.

Mr. SMITH. I had not honestly thought of this until you asked the question. I am used to dealing with corporations, with businesses. Maybe an arrangement setup like a board of directors with a CEO is the kind of approach that might be feasible. I absolutely guarantee you there is accountability in that setup, and if you have a board that is made up of the respective interests, and a CEO or something like that, that may be the type of approach that you are looking at.

And I will tell you, I firmly believe that the tribes have a tremendous role to play in this, they cannot be left out of it, they have too many interests, they have legitimate rights to be there, and they are key to coming up with a solution to the recovery effort. So maybe a board of directors and a CEO.

Mr. CRAPO. Well, I appreciate your willingness to speculate with me here and to kind of brainstorm, because one of the things that we want to do with this hearing is to generate ideas and maybe on further reflection those ideas will turn out to be good ones or bad ones or have to be modified or adjusted, but we are trying to figure out a path forward and what the proper role of Congress is in trying to help that path develop and become real. And I appreciate your observations.

Mr. SMITH. And of course the CEO stock options are going to be something to be seen, so—

Mr. CRAPO. That is right.

One last question and this is to Mr. Campbell. I wanted to followup on your statement about the study with the two million acre-feet of storage water that was identified. Do you have any—let us assume that that two million acre feet were—that the diversions for those two million acre feet for irrigation were stopped. Do you have any information that would indicate to you what type of an impact on irrigated land that would cause? Would it cause some irrigated land to go out of production?

Mr. CAMPBELL. Congressman Crapo, I have not seen anything that analyzes the impact upon the State of Idaho, but I do know that Idaho has, if I am correct, approximately 5.6 to 6 million acre-feet of storage capacity in its various facilities, Federal facilities primarily. So if you remove two million acre-feet out of a total of six million acre-feet, you are cutting out a third of the productive capacity of the State's agricultural economy, recognizing that some of that water is not just for agriculture, it is for municipal use, industrial use, et cetera.

Mr. CRAPO. So there will be impacts beyond agricultural impacts.

Mr. CAMPBELL. Oh, certainly, no question about that. The primary impact that I think most people fail to realize is that with the priority system that currently is in place in the State of Idaho for regulation of water rights, if you take out the storage water from the existing systems, then the older priority water rights come into play and those older priority water rights can force termination of more junior, newer groundwater rights including the rights of the cities like Treasure Valley. The United Water of Idaho supplies virtually all of the municipal water for the city of Boise and all of their water rights are much newer, much more junior than the old river rights on the Boise River. And if there is elimination of some of the storage contracts or attempts by NMFS to force the Bureau to release water from the storage reservoirs, I have no doubt that I would advise my clients to exercise those prior rights to force termination of groundwater withdrawals for cities that have potential impacts on those supplies.

Mr. CRAPO. And this impact would not just be in southeastern Idaho, this would be all along the Snake River.

Mr. CAMPBELL. Oh, the entire southern portion of the State, no question about it.

Mr. CRAPO. Mr. Smith, you wanted to comment?

Mr. SMITH. Yes. In looking at another issue recently on this question of taking lands out of production in order to increase flows, I will get you the specifics later if you would like, but my recollection is that to increase stream flows or provide a million acre-feet, required taking 400,000 acres out of production.

Mr. CRAPO. And that is a million on top of the 427?

Mr. SMITH. Yes.

Mr. CRAPO. So you would be taking 1.427 million acre-feet of water would reduce irrigation by 400,000 acres?

Mr. SMITH. Well, I have to go back, I am not positive about that. I remember the million acre-feet of additional water, whether it was on top of the 427 or not, I do not know. Now that I am thinking about it, I suspect it was not, because I think the study was done prior to the 427 figure coming up.

Mr. CRAPO. Okay, if you could get us that information.

Mr. SMITH. I think for a million acre-feet, 400,000 acres.

Mr. CRAPO. And you could get us that study?

Mr. SMITH. Yes.

Mr. CRAPO. Would you please do that?

Mr. SMITH. Yes.

Mr. CRAPO. All right, thank you very much. I have no further questions and this panel is excused.

Okay, our next panel is panel No. 3. All right, panel No. 3 is Mr. Ken Casavant—excuse me, Doctor—

Mr. CASAVANT. I answer to anything.

Mr. CRAPO. I answer to Mike, so—of the Northwest Power Planning Council; Mr. Charles Ray, Idaho Rivers United; Dr. Steve Bruce, President of the Idaho Steelhead and Salmon Unlimited and Mr. Jim Little, who is a grazing permittee. Jim, are you representing the Idaho Cattle Association today?

Mr. LITTLE. Yes.

Mr. CRAPO. And Dr. Rick Williams, Chairman of the Independent Scientific Advisory Board.

Gentlemen, we welcome you here and we will proceed in that order.

#### **STATEMENT OF DR. KEN CASAVANT, COUNCIL MEMBER, NORTHWEST POWER PLANNING COUNCIL**

Mr. CASAVANT. Chairman Crapo, members of the Committee, my name is Ken Casavant. I am one of Washington's two members on the Northwest Power Planning Council. I also serve as the Chair of the Council's Fish and Wildlife Committee. I am here today speaking not for the Council, but for the State of Washington.

By trade, I am an agricultural economist and have taught ag econ at Washington State University for the past 25 years.

When I was asked to come before you to provide my thoughts on how we might better govern the Columbia River, the economist in me immediately saw an opportunity to theorize and give you, on one hand or the other—as you know, we economists love to theorize. However, the novice politician in me took over and suggested I lay out for you some of the strengths, of which there are few, and weaknesses, of which there are many, of the current amalgamation of governing entities and venues. The first part of my presentation

will cover this ground. I will then try and give you my thoughts on what the best single Columbia River governing body would look like. I then will conclude, depending on time, with a description of what the Council and its partners are doing in the meantime to ensure that the region gets what it is paying for.

As you know, Mr. Chairman, there are three separate sovereign governments with jurisdiction over some part of the Columbia River system—the States, primarily through the Northwest Power Act; the Indian tribes through their treaties and trust relationships with the U.S. government; and the Federal Government via the ESA. The jurisdictional and philosophical conflicts between the Power Act, the ESA and treaties are indeed the crux of our regional controversies.

Historically, the Federal Government's presence on the river was limited to the Army Corps of Engineers, the Bureau of Reclamation and BPA, all of which either ran dams or sold the power from those dams. In 1991, NMFS listed the Snake River sockeye as endangered and the political atmosphere in the Columbia Basin probably was forever changed. As new species continue to be listed, as in the recent steelhead listing, NMFS' authority only expands and solidifies. For all intents and purposes, NMFS, through the ESA, runs the Columbia River.

This is not a very positive outcome for many in our part of the country. Some believe the ESA does too much for listed fish at the expense of people, jobs and resident and unlisted fish. Others believe that NMFS is not doing enough to restore healthy fish populations to the basin. The nature of this debate over river management eventually caused NMFS to create what is called the Executive Committee, a group of high level representatives of the Federal, State, tribal governments with a stake in the implementation of the biological opinion. This is supported by the implementation team, comprised of high level staffers which have been quite successful in resolving most disputes and disagreements. While not a cure-all by any means, the Executive Committee process has been a relatively effective creation in that it has provided a more open forum for discussion and disagreement among the sovereigns than had previously existed.

Make no mistake, the ESA and NMFS are firmly in control of river operations and decisionmaking. As my friend and colleague from Montana, Stan Grace, told you a couple of weeks ago, NMFS' decisions this year on hydro operations left Montana asking for relief from summer releases from water from two of its large storage reservoirs. After consultation with the Executive Committee, NMFS did not grant that relief and Montana saw fit to exit the Executive Committee for other options, including Federal legislation. The four lower Columbia River treaty tribes soon followed suit, but for entirely different reasons. Such is the state of Federal management of the river.

The States' role over the past decade and a half has been represented primarily by our Power Planning Council, which was directed by the Power Act to prepare a program to protect, mitigate and enhance fish and wildlife and related spawning grounds and habitat that have been affected by the construction and operation of hydroelectric dams in the Columbia River Basin.

Our fish and wildlife program does not address solely the recovery of listed species, rather it focuses more broadly on the health and diversity of fish and wildlife populations. This generates clear conflicts between the ESA and our responsibilities under the Power Act. Our program is often trumped by the implementation of operations consistent with NMFS' biological opinion. We need more authority to implement the fish and wildlife program of the Council.

The Indian tribes' roles are more difficult to describe. They are co-managers of fish and wildlife on the State level. They have reserved the treaty rights to fish at usual and accustomed places, they expected fish to catch. As the runs declined and fewer fish were caught, the Federal courts have been the most familiar venues for tribal involvement. While I cannot speak for them, I have heard tribal leaders express an increased willingness to exercise the rights they reserved in the Treaty of 1855.

To hasten resolution of the governance crisis, the region's four Governors recently requested representatives of the three sovereigns to come together to try and develop a prototype for regional government. I represent the State of Washington on that and interestingly enough, one of the five options is a broadened non-ESA focused process, including alternative dispute resolution that we are looking at.

My personal opinion is that we need a focus, we need an inclusive process, one that puts the State and tribes on equal footing with the Federal Government. We are attempting to do that now.

I can see I have gone over my time limits, so I will conclude my oral testimony here. I have submitted copies to the staff. Thank you.

Mr. CRAPO. We have those copies and we will have time during questions to get into this concept a little more fully, so thank you.

Mr. Ray.

[The prepared statement of Dr. Casavant may be found at end of hearing.]

#### **STATEMENT OF CHARLES RAY, IDAHO RIVERS UNITED**

Mr. RAY. Thank you. My name is Charles Ray, I represent the members and the Board of Directors of Idaho Rivers United, a private, non-profit conservation organization. We are working to restore salmon and steelhead populations, the ecosystems on which they depend and with that we are also working to restore the economies, cultures and traditions that depend on healthy, self-sustaining fishable runs. I thank you for this opportunity to be here today.

The National Marine Fisheries Service has been in charge, in one way or the other, for salmon and steelhead management on the Columbia River for over 20 years. It has been nearly 6 years since salmon were listed for ESA protection and it is probably going on 6 days since Idaho steelhead were listed. After all that time, the fish are nearly gone. If the early predictors prove true, the 1998 return of salmon will be the new lowest in history. It is clear to us that NMFS has failed in its primary mission to protect and restore the species and the habitat on which it depends.

The continued decline of these fish runs has caused an immense disruption of entire riverine ecosystems, it has nearly bankrupted



the Pacific Northwest sport and commercial fishing industry, loss of harvestable runs abrogates treaties with tribes going back to 1855 and it threatens resolution of the current U.S./Canada treaty dispute.

The Federal Government's inability or unwillingness to keep the promises that it made dating back to 1855 of protecting and restoring the fish has further eroded public confidence in the government and its elected officials. I think there is a big role for Congress to play. I do not think NMFS has demonstrated the ability, the willingness or the institutional courage to begin climbing out of this mess we are in right now.

We certainly appreciate this Subcommittee's interest in the performance of NMFS. We invite continuing oversight, we think there is a lot of opportunities for Congress to step in. We recommend six measures that need to take place right now to put us on the road to restoring these fish, the habitat and the economies that depend on them. Four of those are detailed in my written comments, I will go over those briefly, and I will add two more.

NMFS must prioritize the focus of the recovery actions, No. 1. As we have heard, NMFS looks equally with one cow stepping on a redd as compared to 99 percent mortality inflicted by the dams. That cannot go on.

I think it is time for Congress to step in and help NMFS eliminate its juvenile fish barging program. The agency—the fish barging program is an invention of NMFS, they cling desperately to it and they will not put it down unless they are forced to, despite overwhelming scientific evidence that it will not bring the fish runs back, despite the total lack of evidence indicating that barging could achieve 2 to 6 percent smolt adult ratio that is necessary to restore the runs.

NMFS must preserve the integrity of the 1999 decision that we are approaching, particularly NMFS must state clearly, if it is able to, exactly what it means by the improved transportation alternative. What is it, what will it yield, what promise does it have of success.

No. 4, Congress must clarify the authorization of Federal dams to allow modification of structure and operation needed to improve salmon and steelhead survival. The Corps continually hides behind this wall that they have created of lack of authorization to do anything other than the status quo. I do not believe that, it has not been tested in court, but I think Congress could remove this obstacle real easily just by clarifying the Corps' authorization. I think that might also, as a byproduct, instill a little more institutional courage in NMFS to buck the Corps.

No. 5, I think it is time right now for the salmon managers, the fishery managers, of the NMFS, the Power Planning Council and the tribes, to reconcile the three recovery plans that we have on the table right now. After those three plans are reconciled into one scientifically credible plan that promises restoration of these fish, then I think it is time to overhaul the governance system that we have right now. The TMT-ITEC process is clearly a failure, it is clearly unworkable and on the basis of a reconciled recovery plan, I think we can put together the three sovereigns, the States, the tribes and the Federal Government, in equal co-management roles

to implement, as soon as possible and as expeditiously as possible, the single recovery plan that will restore these fish.

Thank you.

Mr. CRAPO. Thank you. That was your No. 6, right, the three sovereigns in equal roles?

Mr. RAY. Yes, that is No. 6.

Mr. CRAPO. All right.

Mr. RAY. No. 5 is to reconcile the plans.

Mr. CRAPO. Right, thank you. Mr. Bruce.

[The prepared statement of Mr. Ray may be found at end of hearing.]

**STATEMENT DR. STEVEN M. BRUCE, PRESIDENT, IDAHO  
STEELHEAD AND SALMON UNLIMITED**

Dr. BRUCE. Representative Crapo, I would first like to thank you for holding this Subcommittee meeting here in Boise and allowing me to testify on this important issue.

My name is Steve Bruce, I am a practicing dentist in Boise and I am currently representing Idaho Salmon and Steelhead Unlimited. I am currently serving as President of this organization.

ISSU is a non-profit educational, scientific and charitable organization formed in 1985 in an effort to unite all concerned citizens in the State of Idaho into one cohesive group for the purpose of restoring, protecting and preserving Idaho raised salmon and steelhead.

This past Tuesday, the National Marine Fisheries Service announced that Snake River steelhead, as well as several other west coast steelhead stocks, were being listed as threatened under the Endangered Species Act. This has occurred in spite of the fact that NMFS listed Snake River salmon 6 years ago and has been ultimately responsible for their recovery since that time. The frustrating part of this whole scenario is that Snake River salmon and steelhead migrate, spawn and rear in the same rivers and streams and anything that is done to benefit Idaho salmon will almost always benefit Idaho steelhead as well.

While it is true that Idaho enjoyed a good return of hatchery salmon this year, it is still a fact that our wild runs are in very bad shape. The predictions for the runs the next several years are dismal, to say the least. The wild runs of steelhead are also in very critical condition. All of this is occurring while we have a NMFS administered recovery plan in place which is supposedly going to recover our salmon runs.

If a management team working for a major corporation had a track record similar to this, I have no doubt they would be replaced. We feel that it is time that NMFS be replaced.

We feel that under the current system, the best recommendations from State and tribal scientists are often ignored. A good example of this was a regional plan developed this spring by the States of Idaho, Oregon and Washington as well as the tribes. This plan called for leaving more smolts in the river to migrate to the ocean rather than be collected and trucked or barged down the river. With the abundant water we had this spring, it was felt by the scientists that leaving more fish in the river to migrate naturally would result in better returns as adults. Unfortunately,

NMFS paid little attention to this plan and went about business as usual—that is, collecting and barging the majority of juvenile fish.

We certainly need to get away from the current system where it seems that many different entities are making decisions which sometimes are contrary to each other. With NMFS, BPA, the Army Corps of Engineers, the Northwest Power Planning Council, the States, the U.S. Forest Service and others, all coming up with different plans, it is no wonder we have generated literally thousands of studies, reports, et cetera while our fish continue to slide closer to extinction.

We feel that it is time that the regional experts be given the responsibility of recovering Columbia River salmon and steelhead. These experts that work for the fisheries departments of the States of Idaho, Oregon and Washington and the tribes are the best qualified for the job. These salmon managers should be responsible for all recovery efforts once the salmon enter fresh water.

It would seem logical that NMFS would retain responsibility for recovery efforts in management of salmon stocks while in the ocean. It would also seem logical that a representative from the U.S. Fish and Wildlife Service would be part of this freshwater team. They would be able to coordinate Federal and State efforts and since they are responsible for other listed species such as bull trout, white sturgeon, grizzly bears, et cetera, it would seem that they would be the obvious choice.

The issue of the salmon cost cap is another topic that we feel needs to be discussed. We appreciate the fact that only so much money is available for salmon recovery, but we feel that the public should get an honest explanation of this cost cap. Much of the reported \$450 million cost for salmon and steelhead recovery is in foregone revenue. That is, dollars that were not received because water was allowed to pass over spillways rather than through turbines.

Obviously the past 2 years of higher than normal flows have resulted in this figure for this foregone revenue being much lower than in drought years. Why has the public not heard about this? Are these dollars that were not used toward the cost cap available in low water years? When is the government also going to let the public know what the value of foregone revenue is for irrigation withdrawals, navigation locks operation, et cetera? Why is it that foregone revenue is charged only to fish and not to other water users?

In recent years, many millions of dollars have been spent and are proposed to be spent on the fish barging system. We feel this is a mistake and will continue the gold plating of this system, thus giving prejudice to the transportation scenario versus in-river migration when the scheduled decision is ultimately made in 1999.

Barging proponents have recently been stating that the barging is more successful than in-river migration based on early PIT-tag studies. Unfortunately, the smolt to adult return ratio of one-half of 1 percent for barged fish is far below the 2 percent ratio that the independent scientific group says is necessary to halt their decline and is not even close to the 4 to 6 percent ratio needed to restore them.

Unfortunately the National Marine Fisheries Service's claim that fish barging works is based on asking the wrong question. NMFS asked if barging and trucking worked better than leaving fish in a river made lethal by dams and slack water reservoirs. The right question is will barging and trucking salmon and steelhead ever restore fish populations as required by law and treaty and as demanded by the citizens of the Northwest. Our choice cannot be between a failed barging strategy and a lethal river, neither of which will restore the fish. The decisionmakers should be asking what fish need, under what conditions do they thrive and how can we expand those conditions.

In conclusion, I would like to thank you once again for this opportunity to speak with you today and I trust that you will make the right decisions to protect this unique resource, which has been such a special part of our Idaho heritage for many generations.

Thank you.

Mr. CRAPO. Thank you, Mr. Bruce. Mr. Little.

[The prepared statement of Dr. Bruce may be found at end of hearing.]

#### **STATEMENT OF JIM LITTLE, GRAZING PERMITTEE, IDAHO CATTLE ASSOCIATION**

Mr. LITTLE. Thank you. Good morning, Congressman Crapo, my name is Jim Little and I am a third-generation rancher from Emmett, Idaho. I am a grazing permittee that has a forest permit to graze livestock during the summer months on Bear Valley Creek on the upper end of the middle fork of the Salmon River in the Boise National Forest. This area is prime spawning ground for the spring chinook salmon that is currently listed as endangered by the National Marine Fisheries Service. I also serve as Idaho's obligatory member on the Pacific Fisheries Management Council and I am a past chairman of the Private Property Rights and Environmental Management Committee of the National Cattlemen's Beef Association.

I am here today to comment on the process of dealing with the Endangered Species Act as it pertains to salmon and the National Marine Fisheries Service.

The middle fork of the Salmon River has long been noted as prime spawning and rearing habitat for the wild spring chinook. It takes on additional significance because there have been no hatchery fish put into that gene pool that would dilute their significance. In the 1980's, the Forest Service put a lot of significance on the importance of enhancing and restoring stream and stream bank health and through that heightening of our awareness, we jointly developed a grazing system that would allow us to maintain an economically viable cattle operation. The spring chinook was officially listed in the early 1990's and from that time forward, our grazing in that allotment has become much less certain.

The Boise National Forest, through a commitment by then Supervisor Steve Mealey, set up an elaborate and extremely expensive monitoring system that was supposed to let them as well as us know if we were on the right track toward improving the habitat necessary for the fish to have a better hatching and rearing survival than current documentation showed. NMFS, as the agency

in charge of anadromous species, became a serious impediment to the certainty that we need when making management decisions. They would delay until the very last minute giving the Forest Service an answer as to whether their planned grazing strategy had the blessing of the regulators in charge.

In 1996, the Elk Creek Grazing Association was denied the right to graze because Boise National Forest and NMFS could not agree on an acceptable grazing strategy. This was done through a lawsuit filed by several environmental groups on behalf of NMFS. This would be our worst nightmare, at the last minute being denied a place to graze our breeding herd during a severe down market and virtually no other options available.

In our cattle operation, as in nearly all in the west, we have a year-around plan. This plan includes summer grass that rests the winter range so that it regains vigor and has the necessary rest to sustain itself during the months of livestock use. Without that rest, the winter range becomes stressed and the pasture quality declines, as well as the wildlife habitat that goes with that land mass.

Currently, the grazing permittees in the Bear Valley Basin, the National Marine Fisheries Service, the Boise Forest and the National Riparian Review Team are involved in a process to determine whether we can continue to graze in Bear Valley. On a 3-day tour this past week, the above representatives as well as a staff member from the Pacific Rivers Council and a staff person from U.S. Senator Dirk Kempthorne's office attended and we learned that nearly all of the stream banks in question were on an improving trend, which tells me that the grazing strategy that we and the Boise Forest put together and we as grazing permittees agreed to is proper. The descriptive term that is used, however, is functioning at risk, and that is not enough to satisfy the NMFS people. So the national team will be back next month to see if there is a way to give us a certainty that we either can or cannot return to Bear Valley in the future.

One suggestion by the NMFS representative was to put in 16-miles of fence in an allotment that is mainly used in the Frank Church Wilderness. This would preclude use of any mechanical equipment in that fence construction, which would make the proposed project totally cost-prohibitive and it is doubtful that this type of outlay would satisfy the regulators enough that they would give the grazer any longer term assurances and that he would be left alone.

One other wildcard is the reintroduction of wolves by the U.S. Fish and Wildlife Service that could potentially harass the livestock and run them through any fence that might stand in their way.

Congressman, we have purchased these grazing permits to allow us to graze our livestock. While the U.S. Forest Service does not recognize permit value, let me assure you that the Internal Revenue Service does, and so we are left in a very uncomfortable position wondering if we will lose these assets. We have always spent money every year doing maintenance and improvements to continue to enhance the value of our allotments, but in this period of uncertainty, we are not interested in spending a dime over the bare

bones minimum to get by. As an example, our log cabin needs maintenance, but if we are not given any more assurance than we currently have, I do not want to put money down a rat hole. If the agencies involved do not come to terms, I can only envision walking away from all the improvements and investment that we have put in and maintained and even though the cabin is on Valley County tax rolls, it is on U.S. Forest Service property and will have no value.

I seriously believe that the involvement of Senator Kempthorne's office has done more to get this process moving than anything else that has happened. In the past year, NMFS has given the impression that they were arrogant and would give the Forest Service an answer whenever they were good and ready and not before. This kind of lack of caring by the managing agency is one of the reasons that Senator Kempthorne is working on the reauthorizing of the Endangered Species Act to make the process function better.

In conclusion, we as permittees on the Boise Forest feel that progress is finally happening toward clarifying where we stand in regards to our future as grazers in critical habitat. Our problems are in some fashion repeated all over the northwest and we deserve reasonable certainty that we will be able to continue making a living off the land while doing our part to restore the anadromous fish runs in the northwest.

Thank you.

Mr. CRAPO. Thank you, Mr. Little. Mr. Williams.

[The prepared statement of Mr. Little may be found at end of hearing.]

**STATEMENT OF DR. RICHARD N. WILLIAMS, CHAIRMAN,  
INDEPENDENT SCIENTIFIC ADVISORY BOARD**

Dr. WILLIAMS. Congressman Crapo, members of the Subcommittee, it is a pleasure to see you this morning and to be able to speak with you.

My name is Dr. Rick Williams, my academic and research background lies in ecology and genetics of salmon and trout species native to western North America. I serve as Chair of the ISAB, the Independent Scientific Advisory Board, and the ISRP, the Independent Scientific Review Panel, and speak to you today in that capacity.

I am going to talk today briefly about the role of science in salmon recovery, an existing scientific consensus about how to move forward on salmon recovery and finally on the need for a single regional recovery plan.

The Northwest Power Planning Council and the National Marine Fisheries Service created the ISAB in 1996 to provide scientific advice on salmon recovery issues to the Pacific Northwest. The ISRP was formed in early 1997 as a result of a Congressional amendment to the Northwest Power Act. The ISRP assists the Power Council in peer review of its fish and wildlife program and of specific projects.

The 14 members of the two science groups are all senior scientists from the United States and Canada with wide expertise in fisheries, ecology, statistics and economics. We differ from other

groups of scientists in the basin due to our independent nature, our non-representational status and a consensus mode of operation.

The Northwest Power Planning Council and the National Marine Fisheries Service are committed to using the best available scientific information to guide program development for salmon recovery. Both groups have worked closely with us toward that end. Recent reviews of the Council's fish and wildlife program, be they ISAB and ISRP, which are attached to this testimony, appear to be influencing the program's future direction. Interactions between NMFS and the ISAB have also been positive to this point and indicate that our reviews are influencing their program emphasis and direction as well.

The positive interactions are in contrast to reactions from some agency and tribal constituents who have offered sharp criticisms of our reports, even to the point of calling for a complete rejection of the reports and dismissal of the ISAB or ISRP. Although the region has uniformly advocated using peer review and the best available science to guide program development and implementation, to do so is clearly a difficult task with hard choices that may affect many traditional fisheries management actions and programs.

To a great degree, salmon recovery actions within the region have been forestalled by a continuing intractable debate that centers unnecessarily on scientific uncertainty or a perception of disagreement among scientists. The focus of the debate needs to shift to implementation of recovery actions in areas where scientific consensus exists and to the design of specific research projects that resolve issues where disagreement or uncertainty exist.

Recent reviews of the salmon problem by the ISAB, a National Research Council panel and others identify substantial areas of scientific consensus where the region could move forward on effective restoration actions.

The Northwest Power Act of 1981 and the Endangered Species Act form the basis for regional salmon recovery efforts. The Northwest Power Act suggests a broad perspective calling for the river to be treated as a system and addresses broad-scale problems resulting from hydro-electric development. In contrast, the ESA focuses more narrowly on restoration of specific populations listed under the Act, although it includes all factors affecting these populations, not just hydropower development. Consequently, the restoration programs of the Council and NMFS are not well-coordinated. Additionally, the emergency nature of actions under the ESA has resulted in near abandonment of the broader regional restoration objectives of the Council's program. However, the perspective of the two laws and goals of the two administering organizations are not incompatible and indeed, should be complementary.

Measurable progress toward regional salmon recovery is unlikely with the existence of several recovery plans which compete for limited funds. The region needs a single salmon recovery plan that encompasses the differing needs of the Power Act, the ESA, as well as treaty obligations to the tribes. A single plan must additionally have the support of all constituents in the basin in order to have the political support necessary for it to persist and to provide a likelihood of success. The plan must also be based on the best available science. Too often political pressure and compromise has

led to implementation of less viable alternatives that not surprisingly fail to achieve the desired objectives.

A recovery plan based on the best available science, backed by the support of all regional constituents, and implemented with rigorous monitoring and evaluation, would be a powerful force for salmon recovery. The architecture for such a recovery program is in place. Scientific and technical groups such as the ISAB, the ISRP and PATH have already identified and can continue to identify the best scientific information and analyses to aid and guide salmon recovery efforts.

The role of the Northwest Power Planning Council in guiding implementation of salmon recovery measures has recently been expanded through the Congressional amendment to the Power Act. Ongoing ESA listings argue that NMFS' role in implementing actions to recover weak stocks will continue to increase. Therefore, it seems paramount that a forum be identified whereby the recovery goals of the Council's fish and wildlife program, NMFS' ESA driven actions and tribal obligations can become complementary parts of a single unified salmon recovery program.

The biggest challenge facing the region is not the biological uncertainties associated with salmon recovery efforts, but is whether the region is willing to face the fact that we can no longer have our cake and eat it too. Restoration of fish and wildlife in the Columbia River Basin will require difficult decisions and will test whether the region's policymakers, elected officials and management institutions can find the political will and strength necessary to endorse and implement a scientifically sound salmon recovery program.

Thank you for the opportunity to speak today.

[The prepared statement of Dr. Williams may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Williams, and I thank all of the members of the panel for their testimony.

As I did before, I want to go through with each of you just a couple of specific questions and then have a discussion with the panel on some of the issues that have been presented.

Dr. Casavant, you indicated, as have some of the others, that for all practical purposes, NMFS runs the Columbia River. Am I correct about that?

Mr. CASAVANT. The direct components and the hydro operations, that is correct.

Mr. CRAPO. And is that essentially because NMFS basically has the ability to control the biological opinion and the other operating agencies, for one reason or another, comply?

Mr. CASAVANT. That is correct, under the existing statutes.

Mr. CRAPO. Mr. Williams just indicated that there is not necessarily a conflict between the Northwest Power Planning Act and the Endangered Species Act, but that we need to move—and I do not want to put words in Mr. Williams' mouth, but we need to move toward a system in which those acts are more effectively operated together.

I take your testimony to say that you do not believe that the Northwest Power Planning Council has sufficient authority in terms of the management decisions that need to be made with re-



gard to fish and wildlife and hydropower management, is that correct?

Mr. CASAVANT. That is correct, and in two ways, Congressman.

Mr. CRAPO. Would you please elaborate?

Mr. CASAVANT. The first is that the relationship of the Power Council to the operating agencies has always been one of almost advisory capacity where the operating agencies, the BPA, are to take into account our program. But we have always had the responsibility but not specific authority to call forth the full implementation of our fish and wildlife program.

Secondly, relative to NMFS, we are looking at the entire Columbia and Snake River basin, we want to restore, rebuild, protect, mitigate, enhance throughout that region. At times, the activities concerned with saving the listed stocks may create conflicts with resident fish up river or in other areas, or non-listed anadromous fish.

Mr. CRAPO. You just said at times that conflict occurs. Does that happen regularly?

Mr. CASAVANT. The potential always exists. Periodically, whether it is impacts of hydro operations on Lake Roosevelt Reservoir in my State or in the two storage dams in Montana, we think we do see impacts on resident fish, whether through entrainment or nutrient retention times.

Mr. CRAPO. Okay, and Mr. Ray, if you could take the microphone for a minute.

Mr. RAY. Yes.

Mr. CRAPO. You also indicated—and I just wanted to make sure I understood this correctly—you also indicated that you believed essentially for 20 years or so in one way or another, but especially since the Endangered Species listing that National Marine Fisheries Service has effectively controlled the management of the river; is that correct?

Mr. RAY. I do not believe they have been very effective in managing the river at all. If so, we would not be here today.

Mr. CRAPO. But that they have, for all practical purposes, controlled the management of the river.

Mr. RAY. I believe in reality, the river is still controlled by the Bonneville Power Administration and the Corps of Engineers.

Mr. CRAPO. And how do you square that with your comments as well as those of Dr. Casavant with regard to the influence that NMFS has over the management and control of the river?

Mr. RAY. I believe NMFS has some influence. NMFS makes suggestions. I think the bottom line, when it comes right down to it, the Corps does what it wants to and NMFS is seldom able to buck what the Corps wants to do. That is why I believe that Congress could exert a great deal of influence by clarifying the authorization of these dams on the lower Snake and Columbia Rivers to make the Corps a little more amenable to changes that are necessary to restore these fish. And it needs to be done quickly too.

Mr. CRAPO. All right. And you gave six recommendations in your testimony.

Mr. RAY. Yes.

Mr. CRAPO. In your recommendation No. 2, you indicated that NMFS must eliminate its juvenile fish barging program and return

the fish to a significantly less lethal river and you stated that there was very little evidence in support of NMFS' current emphasis on barging. It is my understanding—and again, NMFS is going to be able to testify later today about this—but it is my understanding that NMFS' contention is that given the current status of information we have, that the barged salmon return more effectively than the salmon which were not barged, do you have a comment on that?

Mr. RAY. I believe NMFS can probably trot out some numbers to that effect and whether or not they are scientifically valid—probably Dr. Williams would be a better judge of that.

Mr. CRAPO. I am going to ask him too.

Mr. RAY. But I have never seen NMFS or anybody else come forth with any kind of—not a single shred of evidence that indicates that barging can achieve a 2 to 6 percent smolt to adult ratio that the Idaho Department of Fish and Game and I believe the PATH members concur is necessary to restore these fish runs.

Mr. CRAPO. Do we have data—were you finished?

Mr. RAY. Pardon me?

Mr. CRAPO. Were you finished?

Mr. RAY. Yes, I am.

Mr. CRAPO. Do we have data on—or significant data—and by the way, I am going to come back to you with these questions, Mr. Williams, so remind me to ask them to you if I forget. But do we have data on the effective returns of fish who are allowed to go through basically the spill program that the State of Idaho was proposing to be studied more effectively in the last proposal? Here is the question I am getting at. The National Marine Fisheries Service indicates that the current data they have show that the barged fish return more effectively. What I understood you to just say and what I understand Dr. Bruce to be saying also is that we do not have data on a river that is more normative and I understand that, but do we have—there has been a debate over whether to spill fish or whether to barge fish. Do we have data on the spill issue? Do you see what I am asking?

Mr. RAY. Yes, I do see what you are asking. If my recollection is correct, Harza Engineering put forth some preliminary work on that and it had to do with fish that—juvenile fish, PIT-tag juvenile fish that were not detected anywhere down the system, which presumably means they were spilled going down the river, compared to those same fish coming back as adults. If my recollection is correct, Harza concluded that those fish come back fairly successfully. The numbers I do not remember.

Mr. CRAPO. All right. Before I forget these questions, Dr. Williams, let me move to you for just a moment, and we will come back to you, Mr. Ray.

Dr. WILLIAMS. I could just follow up on what Charlie is talking about.

Mr. CRAPO. Why do you not just follow up on that line of questioning.

Dr. WILLIAMS. I think several things are being confused here. The first item is that yes, NMFS does have data that appear to be scientifically valid that now show, based on this year's returning class of fish, using the current PIT-tag technology, about a two-to-

one benefit ratio of transported to in-river passage. So the simple answer is yes, it looks like the transported fish have a higher survival. But that is not to say—and I think that is the point that Charlie was trying to get at—that that level is sufficient to lead to restoration. It still does not get us to the 2 to 6 percent return, adult return rate that is necessary for restoration. And many people in the region tend to confuse those two points.

The second thing is the discussion about spill and the Harza data do indicate, and our own analysis that the ISG did in Return to the River, was that spill is in fact the most benign method of passage for juveniles around a hydro project—over it, I guess it would actually be. But a fish left to move down the river in-river will not necessarily go around each dam by spill. They can also possibly go through the turbines, through the bypass systems and there are, in many instances, dam-specific higher mortalities associated with those alternate routes of passage.

So to simplistically talk about fish that are better off in-river versus the dams confounds the different routes of passage that in-river fish can have through the projects, some of which are benign and many of which are not. We have had a very hard time as a region gathering data on those routes of passage until the advent of the PIT-tag technology, which you and I had a chance to see at Lower Granite, and that information, particularly as we move forward in installing additional PIT-tag detectors throughout the system, we should gain considerably more insight into mortalities associated with various routes of passage.

Mr. CRAPO. Well, here is the question that I am trying to get straight in my mind, because I have these conversations with different points—people with different points of view on what is the best route of passage. And as you know, in the Idaho plan or Idaho policy, there was significant consensus that we should do more spilling. NMFS did not agree with that, and if I understand their position correctly, it is because of this two to one ratio that they have showing that barging—barged fish return better. The question I have is is the two-to-one ratio, barging versus spilled fish? You are saying no. Could you explain that?

Dr. WILLIAMS. No. Again, it gets back to, it is the comparison of those transported versus those that have gone in-river. And as I just commented, in-river could be spill, turbine passage, bypass system passage, and both turbine and bypass passage in many instances are particularly tough on smolts.

Mr. CRAPO. Did I hear you say that it is your opinion that the most benign form of passage of a facility is spill?

Dr. WILLIAMS. Yes. However—

Mr. CRAPO. However, you cannot make sure that all fish are spilled at all dams?

Dr. WILLIAMS. Yes, that is part of it and then the other thing is that in high to higher water years, as several of the last years have been, gas saturation starts to buildup as spill builds up. So there is clearly a fine point, probably in the mid-range of flows, where spill is the optimum route of passage. At low water years, bypass around the facilities is difficult for the smolts, period. There is not enough water to spill and so the fish are faced with either turbine bypass, going through the bypass systems or the barge transpor-

tation system. At very high water, we get gas saturation levels at some facilities that will reach 140 to 145 percent. There is great argument in the region right now about what level smolts can withstand but there is general agreement that anything over 125 and certainly levels up toward 140 are lethal.

Mr. CRAPO. So tell me if I can correctly restate what I am learning here. In your opinion, if we could assure that all fish were spilled at all dams, that would be preferable to barging the fish.

Dr. WILLIAMS. Assuming it was within the——

Mr. CRAPO. And assuming the gas levels—were within the right saturated gas levels.

Dr. WILLIAMS. Right. And indeed the new work on surface collectors is built on that premise, that we need to find a mechanical means of increasing the ability of smolts to find the spill bypass route.

Mr. CRAPO. Do you believe we should continue the effort on the surface collector research?

Dr. WILLIAMS. At this point, yes, but neither I or any of our group have seen any of this year's data. Reading the summary statements from Mr. Stelle's testimony, it appears that the results from the first 2 years were not very promising, but it is based on a sound biological premise and at least the preliminary data that I saw this spring during a site visit, were very encouraging. So that needs to be followed with very rigorous monitoring and evaluation of whether those systems are worth what they are costing us in terms of time and money.

Mr. CRAPO. All right. Now I do not know whether you are in a position where it is proper for you to take a position or whether you have already done this, but I will ask you and you can tell me whether you feel that it is beyond your prerogative at this point, but have you taken a position on the Idaho policy that the State of Idaho worked out with Governor Batt?

Dr. WILLIAMS. No, we have not.

Mr. CRAPO. Are there any studies that try to resolve this flow survival relationship that are currently underway?

Dr. WILLIAMS. No, although there has been a great deal of discussion, of course, about the need for that and we have had discussions with both Council members, Council staff and NMFS staff about the need for it. It has been intimated that the ISAB would be asked to try and help reach resolution on the flow issues. We have some new analyses we have been doing ourselves while we are trying to finalize publication of Return to the River. But we have not had a formal request to try and resolve that issue and no one else, to my mind—PATH probably has done a great deal of work on that issue as well, but it has not been definitively looked at.

Mr. CRAPO. And is there any effort to develop data regarding managing hatchery stocks versus the wild fish?

Dr. WILLIAMS. Actually there have been a number of efforts, including some of our own work, to try and address those, but there has yet to be a good comprehensive review and evaluation of hatcheries and their impacts on wild stocks. Such a review would help define how—what we might expect to gain from hatcheries, how viable supplementation is, whether it is viable at a large scale, as

envisioned by some people, and should provide considerable guidance for future use of hatcheries. It is my understanding that language calling for that kind of a review is in Congressional appropriations language at this moment.

Mr. CRAPO. Well, that gets to one of my questions. With regard to both the question of the flow survival relationship and then the hatchery versus wild fish studies, why are we not doing those studies?

Dr. WILLIAMS. Well, from a very literal point of view representing the groups that I chair, we have not been asked to. But that probably begs the larger question. I think we are on the verge of doing both of those. I think the hatchery one, actually there is enough interest in the region, particularly with the really profound failure of the draft programmatic EIS earlier this year to address those issues, I suspect that the region will call for a comprehensive review of artificial production, whether Congress mandates it or not.

Mr. CRAPO. Well, who needs to ask for those studies to be undertaken?

Dr. WILLIAMS. Again, it depends on what level. Certainly the language, the Congressional appropriations language I have seen so far, if passed, would be more than adequate to get that hatchery review, the artificial production review rolling. As far as the way our independent science groups work, formal requests for reviews or participation come to us from either the Council or NMFS, and either one of those authorities could ask us to undertake or supervise or broker a review of those subject areas.

Mr. CRAPO. And then would they provide the funding for it if they requested the study?

Dr. WILLIAMS. Yes, it comes out of the larger salmon cap and some of the money that funds our group anyway.

Mr. CRAPO. All right. You want to hand the microphone back to Mr. Ray? I interrupted, did you want to add anything further to what we were discussing, Mr. Ray?

Mr. RAY. Just a bit, still on that subject. I do not think NMFS is willing to put down barging on its own. And I think as long as barging is the treatment of choice down there on the river, needed change is not going to happen. So in order to facilitate change and to get us away from the status quo, I think it is quite appropriate and quite timely for Congress to put an end to barging, either through legislation or through the budget process, because I do not think any of the Federal agencies are going to do it on their own.

Mr. CRAPO. And I wanted to go to your No. 3 request, which was—one of the subparts of that, if I read it correctly, was that you do not believe there has been adequate disclosure of the specific details of the improved transportation alternatives.

Mr. RAY. Not at all—not at all. Nobody has ever told me what comprises improved transportation, what smolt to adult ratios can be expected with improved transportation and what evidence exists today to indicate that improved transportation might achieve those SARs. It is a big unknown. We know a lot about breaching dams, we know all the horror stories that can be generated. We do not know anything about improved transportation.

Mr. CRAPO. And I understand your statement here to be that there are several alternatives that NMFS is looking at, and that alternative, you do not have the information to know what it is they are evaluating.

Mr. RAY. No, and I have not been able to get that information, even at the hearing that occurred a couple of months ago in Lewiston, COL Griffin went into great details about the breach option and then he made a very cursory mention of the improved transportation option and I guess the third option is the status quo, just to continue to let these fish dwindle to extinction. That is the only three options I have seen on the table. And nobody has ever been able to tell me or show me specifically exactly what they mean by improved transportation. How much more Idaho water does it take, what results will it achieve and what evidence indicates that those results are achievable.

Mr. CRAPO. Is it your opinion that the transportation approach, the barging approach, will require more Idaho water than other alternatives—than the other alternatives?

Mr. RAY. Oh, absolutely. And I think that has been demonstrated quite well in the past few years. You know, if it is truly better to take the fish out of the lethal river and to remove them from this environment that is definitely killing them, then why do we need the 427,000 acre-feet in the first place? Is it simply to get them through lower Granite Reservoir? I do not think so. Why do we have flow targets that NMFS makes a minimal effort to achieve on some days in some seasons? Why do we even have flow targets if NMFS' policy, which they demonstrated quite readily, their policy is to barge every single fish they can catch. If we are taking them out of the river, why do we need to put more water in the river?

Mr. CRAPO. I want to go into your No. 5 and No. 6 issues, but I want to do that in terms of the broad discussion we have.

Mr. RAY. Okay.

Mr. CRAPO. So I would like to go to Mr. Bruce right now.

Mr. Bruce, you and your organization supported the Idaho policy, is that correct?

Dr. BRUCE. Yes, we did.

Mr. CRAPO. In your testimony, you indicated that you thought a more accurate explanation of the cost cap should be made available to the public in terms of what foregone revenue it really is and I understand you to be also saying that you felt that that concept is applicable to more than simply fish. Correct?

Dr. BRUCE. What I am saying is I have had, over the years, I have had a lot of people comment to me and say gosh, \$450 million is a lot of money to spend on salmon and we are not getting very good results. And I agree it is a lot of money. But I think people need to understand that it is not \$450 million in hard dollars actually and they need to know what the foregone revenue is. In the last couple of years there has been very little discussion about it, but I do not think that that foregone revenue amounted to nearly \$450 million or whatever the amount was before. I think the public needs to know that. That is my concern.

Mr. CRAPO. Do you believe that the concept of foregone revenue as applied to power is a proper concept in terms of evaluating or making management decisions on the river? And I want to give you

a little more explanation of what I am saying. You could use foregone revenue in terms of—you said yourself, you could use foregone revenue in terms of fish, which is being done, or you could use it in terms of irrigation or transportation or I suppose you could use it in terms of power, if that water were being taken away from some other use that could generate revenue. Is the decision to utilize it for power purposes a proper utilization of that concept?

Dr. BRUCE. Well I guess I think that if we are going to talk about foregone revenue, we should apply it to—we are using it for fish and power purposes, but we also should talk about water that goes out for irrigation, for drinking water, that goes through the navigation locks, et cetera. It seems that right now, the only user in the river that is charged is the fish, yet there is a lot of other water that goes out for other purposes that does not get charged.

Mr. CRAPO. Have you seen any studies or are you aware of any group that has done a study to evaluate those other uses of that concept?

Dr. BRUCE. I cannot say that I have, no.

Mr. CRAPO. Are you aware of any efforts to try to make barging salmon more successful? This gets back a little bit to the discussion Mr. Ray and I were having about not knowing the details of what is the improved barging alternative.

Dr. BRUCE. I also do not know what their improved barging alternative is. I have heard about it, I have heard it talked about. I assume that the surface collectors, newer, better barges, but I am of the same opinion, that after 20 years of barging these fish, we have not been successful and I do not think we are going to restore this fish by barging these fish, no matter how improved it is at this point in time.

Mr. CRAPO. Now I have been a big supporter of the surface collector. Do you support the surface collector research?

Dr. BRUCE. I guess I could perhaps support the research, but at this point in time, from what I understand, as Dr. Williams said, it does not seem like they have been terribly successful and I have a concern that no matter what you do with surface collectors or whatever, once you collect and handle these fish, particularly the salmon smolts, I do not know that we fully understand what this handling does as far as stress and so forth. Just that handling alone and collecting them, running through tubes and so forth, how does that affect their chances for survival? I do not know that we understand.

Mr. CRAPO. The reason I have supported surface collection is because it seems to me that—and I just want you to comment on this with me—it seems to me that it is a technology which, if successful would enable us to move in any direction in terms of where the fish would need to be guided in the river. That could include using it for spill, could be—I assume it could be used for barging, which it is now being used for or some other alternatives if something else came up. The question I have is, it is my understanding that Idaho Steelhead and Salmon Unlimited—and I do not want to speak for the group, so you need to clarify this for me if it is not the organization's position, but it is their concern that the surface collection devices have been being researched and developed only for the pur-

poses of facilitating barging, and that that is a strong concern about the continued research and utilization of those facilities.

Dr. BRUCE. That is a concern, we are concerned that if they continue to put millions of dollars into surface collectors and new barges and so forth that that will prejudice that 1999 decision. But I guess that I am concerned that even if we have effective surface collectors and we are able to decide if we want to put those fish in a barge or if we want to spill them, in low water years, I am still concerned that we are not going to have enough flow through those slack water reservoirs, even though we have spilled those fish, for them to have good survival rates, without having to try to take so much Idaho water, which we do not agree with, and I do not think there is enough Idaho water to achieve that flow and that velocity that is necessary.

Mr. CRAPO. So you are saying the surface collector would not really work anyway in those circumstances?

Dr. BRUCE. I do not personally think that in those low water years, it would be very effective in that circumstance.

Mr. CRAPO. Dr. Williams, could you respond to that as well? On the surface collector; first of all, is the surface collector a good idea for facilitating effective spill?

Dr. WILLIAMS. It could be and it has looked promising. I would not, I guess, be overly concerned about the lack of really positive results the first couple of years. I am concerned about it, I do not want to make light of it, but it seems that with every new technology we step into, there is a much steeper learning curve than we typically anticipate and it takes a lot more fine-tuning, a lot more time, a lot more dollars to fine tune it, and our visit to Wells Dam really highlighted that for me. It is now the icon that the rest of the basin holds up for benignly spilling smolts and achieving, what is it, 90 percent passage of smolts with 3 percent of the water coming in? But it took them 20 years to fine tune it to get it to that point. And I would agree with Charlie that we do not have 20 years right now to do that. So I guess it is a cautious endorsement but it is an endorsement that needs to be followed up by rigorous evaluation and if a year or two from now no promise is being observed, we will be right at that 1999 decision point.

Mr. CRAPO. Dr. Casavant, do you have an opinion on the surface collector issue? Do you want to add anything?

Mr. CASAVANT. I would just like to add that Wells is the prototype, Wells project, works very well there. It has been tried at the Rocky Reach Dam and the Wanapan Dam for the last 2 years with varying results. Both of those projects had enough positive results that the PODs decided to continue on with the effort. Along with Rick, I am a little concerned with not very positive response first couple of years, but I also believe that it took us a longer time to learn about other technologies, it will take us time to test and reshape this.

Mr. CRAPO. All right, thank you. Why do you not hand it down to Mr. Little. I do not mean to leave you totally out of this discussion, Jim.

Mr. LITTLE. I have been busy passing this microphone back and forth.

[Laughter.]



Mr. CRAPO. I just want to clarify and make very obvious, there is no question in your mind that the Idaho Cattle Association strongly supports salmon and steelhead recovery.

Mr. LITTLE. Oh, yes, that is correct.

Mr. CRAPO. And can your livestock operations coexist with a properly implemented anadromous fish restoration project?

Mr. LITTLE. I hope so. This team that is reviewing what we are doing now, I think will probably come up with something, and at least three of the people that are participating in it are in the room now and it is a pretty in-depth process and I think it can be. I think with the improving trend, I think the Forest Service has done a lot of work and we have—and the monitoring costs, you know, they are really exorbitant it seems, but it is the only way we are going to know. And I think that they are showing that we are coexisting. I am real concerned about the take provisions, that we got zero take tolerance. As I said in my testimony, the feds have decided to have an experimental population of wolves and we have got three of them hanging around our cow camp and we have not had any documented losses, but we are sure exasperated by it and if they get to pursuing this cattle, about any structures we put up to try to keep the cattle away to have a zero take, will not mean much.

Mr. CRAPO. It sounded to me from your written as well as your oral testimony that a significant part of the concern that you raised dealt with process as much as substance of whatever the recovery plan might be. Am I correct about that?

Mr. LITTLE. Yes, and again, it seemed like for so many years that we needed an answer, because as I said in the testimony, we have a year-round operation and if we find out we cannot go at the last minute, we are in a desperate situation because in a State that is 70 percent owned by either the Federal or the State government, there is not a lot of alternative economic ways of managing livestock other than through summer grazing. And so we have been hung out lots of times until the middle of June and while we get assurances from the District ranger, he is a small part of this thing. There is an awful lot going on that he does not have a clue about. So we just have to wait until the Fisheries Service makes a decision and that is what we thought was the process it turned out, it was not. The USFS would submit the next year's plan in December and we would not get answers, and we thought there was some sort of response time, but we found out that under existing law that was not the case, and it sure left us hung out and we are still terribly uncertain as to whether we can go from one year to the next. And fence maintenance, we just do the minimum. We just do not want to put money into this thing and then be just starved out of it, and that is our concern.

Mr. CRAPO. Well the concerns you raise are very consistent and similar to concerns that I get from a number of those in the cattle and wool growing industries who talk with me through the Second Congressional District, and the concerns generally are—I want you to tell me if I am right about this and to comment on it further—the concerns are that in working with the managing agency, whether it be the Forest Service or the Bureau of Land Management, that they generally have been able to work things out with

whatever the requirements were, but that then they were not able to get finality until approval from the National Marine Fisheries Service, and that that approval in some cases never came or came after very long delays and no time lines that anyone was bound by or made aware of or required to follow. And it just seemed as though when the answer came, the answer came and that was what you were going to get.

Is that what you are trying to—did I correctly restate the experience you have had?

Mr. LITTLE. Yes, you did. And that has been our frustration because in my brief tenure on the Pacific Fisheries Council, I realized that NMFS has a full plate of issues to deal with on the ocean side of the issue, and this is a new area for them moving this far in-river, to suddenly be the managing agency and I think in their defense, that has been part of the problem. But how they have handled it has been, as far as I am concerned, less than exemplary. And that has been my great frustration with the way this process has gone.

Mr. CRAPO. So when we talk about the process for making decisions on the broader scale of how you decide how to govern the river, a specific part of that is that we need to, right down on the ground, so to speak, where we are making decisions about permit operations and so forth, we need to have some time line requirements, we need to have some finality and some fairness to the process.

Mr. LITTLE. That is what I feel. You know, from a historical standpoint, the country that I graze in was used and abused for a lot of years and way before the advent of the Forest Service, and then as we got to looking at the process, we were concerned about the uplands, and so we put our emphasis on trying to design a grazing system to make the watershed healthier and not realizing the importance of the riparian areas. And that has been the learning curve for everybody in the agency, the society of range management and everybody else. And so, there is times we feel like we are being put upon for maybe the unknown sins of our forefathers and we are trying to do the right thing and, you know, this is something that we really work toward, but we sometimes get a bum rap.

Mr. CRAPO. All right, thank you. I have a couple more questions for Dr. Williams and then I want to get to the general discussion.

Dr. Williams, there are some questions I want to ask you, I think you have already answered it to some extent in our previous discussion, but is there sufficient scientific consensus for us to move ahead and do as Mr. Ray and many others have suggested, and that is consolidate all the different competing recovery plans and move ahead?

Dr. WILLIAMS. I believe so. There are two clear recovery plans. One is the Fish and Wildlife Program of the Council, the other is the Biological Opinion, the suite of documents that NMFS oversees, which is the forthcoming Snake River recovery plan, the Biological Opinion, so forth. And then there is also the tribal plan and then a number of other more specialized, smaller scale plans. They have strong themes in common and these emerge from some of the other reviews and other symposiums on the salmon problem. Everyone recognizes the problems with habitat and the hydropower system.

There are areas of strong contention and disagreement and uncertainty and certainly our discussion this morning highlights one of them and that is transportation. Another one is the need for flow augmentation and flow survival relationships. Another critical uncertainty is the role of artificial production, and indeed that is probably the area that the tribal plan differs the most from the other plans.

So we can move forward on areas that we know there is agreement on problems, and what—a lot of what Mr. Little just talked about reflects our increasing understanding of habitat problems, riparian problems, the needs for fish, those areas. We can design research to tackle the other issues.

It is not going to be a simple task at all to create a single unified plan that all the constituents buy into, but it is my strong belief along with all of my group that the region cannot move forward on salmon recovery without a single plan that everyone can get behind.

Mr. CRAPO. You indicate in your testimony that—well you talked about both the ISAB and the ISRP. I understand the genesis of both of those science groups. Is their membership significantly the same?

Dr. WILLIAMS. Eight of the ISAB members currently serve on the ISRP.

Mr. CRAPO. And how many members are there on the ISRP?

Dr. WILLIAMS. There are actually 11 members in each group, so there is a total of 14 people involved, 8 shared members.

Mr. CRAPO. So there is significant overlap.

Dr. WILLIAMS. Yes.

Mr. CRAPO. Do they have essentially different functions?

Dr. WILLIAMS. The charges of the groups differ. The ISAB is largely a review and technical body that provides assistance usually on requests from topics by either NMFS or the Power Council. The ISRP actually does not interact with NMFS at all, it is a creature of the Council—not a creature of the Council, but an advisory body to the Council formed by the recent amendment to the Power Act, with a much more specific charge than the ISAB, and its charge is to review the fish and wildlife program and its related projects.

Mr. CRAPO. Okay, and getting to the areas of consensus that you identified in your testimony, your first point was that salmon decline comes from many causes and there is no silver bullet. Many people say that given the fact that there are many possible causes, there is one source of the decline that is much larger than any other source, namely the dams. Is that correct?

Dr. WILLIAMS. I believe so, particularly for Snake Basin stocks. However, there is an emerging opinion and a heated debate about the role of ocean productivity in that as well, and that is a legitimate debate. But to ascribe the salmon's problem completely to the dams or completely to ocean productivity is an over simplification of it.

Mr. CRAPO. And you have probably heard of the 4 H's—harvest, habitat, hydropower, and what am I forgetting?

Dr. WILLIAMS. Of course. Hatcheries.

Mr. CRAPO. Are those 4 H's still a pretty good general approach to what the issues are in salmon recovery?

Dr. WILLIAMS. They actually are. I know our group—they have become such icons in the way we view the river that they have almost become trite in some ways and yet our group struggled to actually find a different approach to the salmon problem and that is a pretty good approach. It captures a lot of the problems. The one really strong point I would like to make though, as we talked earlier today about comprehensive review of artificial production and subsequent reform of our use of hatcheries. That will be a fairly pointless exercise if we do not do harvest reform at the same time, because the harvest management drives the hatchery program in the basin.

Mr. CRAPO. I am working on trying to get a hearing on that issue specifically, but we will do that in another hearing probably, hopefully.

For both Dr. Casavant and you, Dr. Williams, it seems to me that so much of what National Marine Fisheries Service seems to be focused on and doing in its proposals assumes the current configuration of the dams. And I guess the question I have is do you think our region in developing a salmon proposal should assume the current configuration of the dams?

Dr. WILLIAMS. I do not believe that, nor do the other members on the ISAB. In fact, when you boil it all down, if we are going to maintain the status quo, particularly in the lower Snake, which is what a lot of this discussion is focused on, transportation probably—the National Research Council panel that reviewed the salmon problem probably said it best. They said that basically in the status quo, transportation is probably the best option fish have to get down the river alive. However, the transportation system alone will not bring about salmon recovery. So the bottom line of that is if we are not willing to change the river in a fairly major way, we probably are going to lose the salmon in Idaho.

Mr. CRAPO. And before I go to you, Dr. Casavant, let me followup. Your second point in the consensus that you believe that science has now given us says that the replacement of salmon or salmon habitat by artificial means such as artificial propagation and supplementation has in many cases not lived up to its expectations. In spite of individual and minor successes the current approach to salmon recovery has failed to reverse or even halt the decline of salmon.

I assume that what you are saying there is that—what you just said, that the current focus on transportation, without other changes in the configuration of the river, of the dams and the management of the river, will not result in salmon recovery.

Dr. WILLIAMS. That is correct.

Mr. CRAPO. Will it cause the extinction or will it ultimately result in extinction?

Dr. WILLIAMS. Don Chapman probably put it best, he said it is going to slow extinction.

Mr. CRAPO. It will slow extinction down but not make extinction—but not stop extinction.

Dr. WILLIAMS. That is correct.

Mr. CRAPO. Thank you. Could you hand the microphone to Dr. Casavant. Doctor, the same question, if you would, please.

Mr. CASAVANT. First, I assume that Will Stelle will talk about it, but I am not so sure that NMFS has assumed the configuration of the dams will not change.

Mr. CRAPO. That is a fair comment and I am sure he will correct me on that.

Mr. CASAVANT. The 1999 decision will be in front of us and they are in the range of possibilities. I personally do not think we had better assume that no changes will occur to the dams, whether it be breaching or lowering of some of the pools behind those dams. If we eliminate all those off the table scientifically and as management folks, we have greatly narrowed the possibility or the options that are available to us.

Mr. CRAPO. Now let us clarify here, this does not necessarily mean bypassing the dams.

Mr. CASAVANT. You mean as in breaching?

Mr. CRAPO. Breaching, yeah.

Mr. CASAVANT. No. Let us see, that is an option that is out there obviously, but the configuration of the dams that people really are talking about is either lowering or drawing them down either on the Snake and/or John Day pool on the lower Columbia.

Mr. CRAPO. All right. Back to you, Mr. Williams, I am sorry to keep—yes, go ahead.

Mr. CASAVANT. If I might while I have this great microphone here, on the hatcheries and production, the Council is currently and will be finalizing probably at our next Council meeting a task force, a regional task force to look at hatcheries and production and its relation to the wild stocks. The Fish and Wildlife Committee has been working on this for 4 or 5 months. Now it has been spurred on by the report of the ISRP that says a regional assessment, not just of those that are under the BPA dollar mandate, but all of the hatcheries in the region should be undertaken. Then the potential appropriations language further pushes in that area, so we will in the next months, let us say, be scoping and developing a task force on hatcheries and wild stock interaction.

Mr. CRAPO. All right, thank you and I appreciate that. One last question to Dr. Williams and then we will go to this broader discussion. Doctor, your last paragraph states that the biggest challenge facing the region is not the biological uncertainties associated with salmon recovery efforts, but whether the region is willing to face the fact that we cannot have our cake and eat it too. What do you mean by—describe what you mean by having our cake and eating it too.

Dr. WILLIAMS. Basically the status quo. You asked Charlie an interesting question earlier today. You asked if he felt NMFS had been running the river for the previous 20 years. And what I think he said was no, but probably in the last 6 since the listings. What has been running the river for the last 20 years is largely economic industrial status quo in the basin and the fish have generally taken the hit and that is really why we are all here today and why we are in the situation we are with all the increased listings. So that is essentially what I meant by that statement, is that we are going to have to change—if we sincerely want fish back and we

commit to having a salmon recovery program that is based and driven by the best available science, we clearly cannot keep using the river the way we have been.

Mr. CRAPO. All right, and that gets me to the discussion that I would like to pursue, right back to Mr. Ray's proposal but that does not mean anybody else cannot have input or a proposal or suggestion, but Mr. Ray, you suggested that before—if I understood your point 5 and point 6 correctly, it was that yes, Congress should figure out a process of decisionmaking, but before it does that, we should have our current salmon managers reconcile the three plans into one. Am I correct about—

Mr. RAY. Yes, that is correct. And I want to clarify something. I do not think—well, to go back to point 5, I think I agree that it is essential that we have one unified plan, that is a scientifically derived plan, not a politically derived plan, but a scientifically derived plan. What these fish need, what has to happen to keep the promises, to restore the runs. Then in order not to decide whether or not we are going to implement the plan, but to decide how we are going to implement the plan, we need the three sovereigns, in my opinion—the States, the Federal Government and the tribes—each with an equal seat at the table, to figure out not whether to implement the plan as the prior Council spent the last 17 years deciding whether to do something, not how to do it but whether to do it. NMFS does the same thing. After we have the plan on the table, we do not decide whether to do it, we know we are going to do it, we decide how best to do it in the most expeditious manner.

Mr. CRAPO. And do you believe it is possible to reconcile the three plans into one plan, given the current decisionmaking process under which we are operating?

Mr. RAY. No, I do not. I do not think the current decisionmaking process is going to reconcile anything.

Mr. CRAPO. Anybody else want to comment on that, or what I would like to do is throw it open right now on the issue of what should Congress do, if anything, to identify a path forward, and I am assuming we are talking about a decisionmaking process here.

Mr. RAY. Since I have got this microphone in my hand, I want to step back to something that does have a bearing on this question that is on the table right now.

I think NMFS does have a pretty good idea what they are going to do in 1999. I think they are foreclosing alternatives really quickly and in order for you and for Congress to find out really what NMFS intends to do in 1999, I think you need to follow the dead fish and follow the money. The biological opinion that we have on the table right now, which is the trial run for the NMFS recovery plan, allows 24 to 86 percent of juvenile sockeye to be killed at the dams, 24 to 86 percent of juvenile spring and summer chinook and 62 to 99 percent of fall chinook. It allows the Corps—NMFS says it is okay, Corps, for you to kill all these fish, and even if you do kill all these fish, it does not jeopardize the species. That is the trail of dead fish you should look at.

The second thing you should look at is the trail of money. The Corps' 5 year spending plan devotes nearly \$500 million to measures almost solely capital expense measures that are intended to

almost solely complement the transportation program only. And NMFS has given its blessing to this Corps spending plan.

So to me, it is fairly obvious where NMFS is heading.

Mr. CRAPO. Hence your recommendation about Congressional action in that area.

Mr. RAY. Absolutely. Thank you.

Mr. CRAPO. Dr. Casavant, did you want to—

Mr. CASAVANT. Well, I suggested in my testimony, both the written and the oral, that what we are after is indeed a mutually agreed upon plan in the region. Then that plan is implemented by the authorities under their existing statute of rights and obligations. But within that, and here is where Charlie and I might split the sheets a little bit, in the process, the economic, social and commercial folks have to be brought into the process, whether it is by the State governments through their State representatives or through an open public policy discussion such as the power counsel has. I am the only remaining person who voted for the 1994 fish and wildlife program. That was DOA and it was DOA not because anybody proved scientifically it was bad or it did not do enough, it was that the political support was not there in the region. We have got to build—it would become even messier, but if we can build like we are trying to do right now, a three sovereign effort to get a plan and in that development of the plan, we have public process, I think then we will have something that will stand, either support from the legislature, legislative action, or the region itself stand behind it.

Mr. CRAPO. Let me explore that a minute, and I welcome anybody to jump in here, just stick your hand out and claim the microphone if you would like to say something. But it seems to me that the issue you have just raised is a very critical one, we do need to have the three sovereigns involved. And their testimony in the earlier panel indicated that the practical problems with trying to give decisionmaking authority to a group that did not involve sovereigns. And I think there really is a practical problem to reach that. In fact, I have run into that practical problem when I have tried to just hold meetings and invite every interest group that thinks they should be at the meeting, and sure as shooting, I do not invite somebody that thinks they should have been there, and I hear about it. So I know—you know, we sit down and have meetings about how to be sure we invite everybody to the meeting. So I understand how that works.

On the other hand, I also believe that you will not, whether it is three sovereigns or one sovereign or whatever, you will not get a plan that can be effectively implemented until you have public support for the plan, and collaborative decisionmaking is something that I strongly support in terms of getting the involved interests and groups to have a meaningful participatory role in the decision-making process.

In a sense, those two are competing concerns. I am not convinced that there is not a way to reconcile them, but I would certainly welcome comments on that issue. Dr. Williams has claimed the microphone for first shot here.

Dr. WILLIAMS. I think that you have just identified what is the kernel of this whole issue, which is how does the region craft a sin-

gle unified plan that has the political support of all the necessary constituents and primarily the three Federal, State and tribal sovereigns, because without that kind of political support behind a plan, it is predestined to failure.

But the second caveat on that is how do you craft the plan, which is that plan with that support, which is also based on the best science, because biologically if it is not based on the best science, it is also likely predestined to failure. That is the fine line that is going to have to be walked.

Mr. CRAPO. Yeah, you have got to add science to the—

Dr. WILLIAMS. And too often the science gets laid out and then compromised through the political process, so this is going to have to hold up both the science and the political support as equal icons, as the plan is developed. It will be very, very difficult.

Mr. CRAPO. That is a good observation. Anybody else want to jump in?

Mr. RAY. I agree with Dr. Williams, but I think the sequence of doing these things is important and it is essential to have a scientifically credible plan that lives up to the promises to restore the fish and then come up with a process, again, not whether to implement it but how to implement it. And that is—I do not have much confidence in the consensus idea because I do not think you are ever going to reach consensus on taking the hard steps and making the tough decisions. And if a process is set up to rely on consensus, I think it is doomed from the start to failure.

Mr. CRAPO. I was actually very pleased to see that Idaho did generate the consensus, but that was one State. Other States did ultimately end up supporting that to some extent and I have wondered whether we would be able to reach consensus, but I also believe that even when you do not reach consensus, the fact that the public is very involved enables people to feel that at least their procedural rights were honored and that they were given a meaningful—and I emphasize that word—meaningful opportunity to participate in having their point of view seriously considered. So I understand what you are saying and I am not sure that you are wrong or right, but there is a lot of important consideration that must be given to the public involvement in the decisionmaking process if Congress moves forward to evaluate that.

I do not know the right path yet, that is why I am asking these questions. I do not have a predetermined outcome in my mind. Mr. Bruce.

Dr. BRUCE. Yes, I think that we have heard the science, I think we know the science is there. I think at this point it is a societal issue and I wish I knew how to get to that decision and how to get there quickly, and obviously it is going to take some consensus. I think it needs to be done on a regional basis, but I guess more than anything, I am concerned that over the years this has—you know, we have spent so much time, we do not have that much time any more. Whatever we do, I think we need to do it rather quickly. I think a lot of our stocks right now are very close to extinction in the next couple of years, whether it be Pistol Creek or Sulphur Creek, there will not be any salmon up there any more and we do not have a lot of time to go through years and years of process. We need to figure out soon what we are going to do.



Mr. CRAPO. Dr. Casavant.

Mr. CASAVANT. At the present time, the Governors are—they consider the Council as their representatives and they have put their governance—the Council is their governance structure. But they are also supporting a three sovereign effort that is underway concurrently right now, in that we are meeting to identify options on governance, options on fish and wildlife activities. The five options under discussion range from enhanced role of the Power Council, and that is frankly in three of the options, to an enhanced role for National Marine Fisheries Service to one that simply takes and creates a new body. In the next—again, in the next month or so, that subcommittee will be coming together and trying to end up on one recommendation. So I am hopeful, whether it is the task force or this, that in the next month or so, we will have some information to help you in your deliberations.

Mr. CRAPO. Is that information available currently, is there a report or document?

Mr. CASAVANT. We have a rough draft of the five options, I could make that certainly available, Congressman.

Mr. CRAPO. I would certainly appreciate looking at that. You know, the previous panel—a couple of members of the previous panel discussed the idea of having a board of directors with a CEO type approach where the sovereigns, the States, the tribal entities and the Federal Government would create a, I guess, managing entity, whether it be one person or a person backed up by a board. Any comment on that idea? I mean, the reason I am asking this is because I strongly believe the buck has got to stop somewhere and as a Member of Congress, I want to know who. And right now, I do not. In fact, this panel has given me different answers to that question.

Mr. CASAVANT. I think this panel is aware of it, and what I am certainly aware of is that the existing system is not offering the solution we are after, but a lot of us are conscientiously and honestly trying to find a resolution. I am a little worried about the CEO. Some might call them the benevolent dictator or some day he might not be. Depending on the goals of what you are trying to achieve, and really that goal structure underlies the problem of the three entities that are trying to restore salmon.

Mr. CRAPO. Good point. Any other comment on that?

[No response.]

Mr. CRAPO. All right, that is all the questions that I have. I appreciate this panel and your time and attention to this issue.

We are going to take a 5-minute break here, I need to take a break, and then we will call up our next panel. Is Mr. Curtis here?

[No response.]

[Recess.]

Mr. CRAPO. Let me check again, did Mr. Herb Curtis ever show up?

[No response.]

Mr. CRAPO. Okay, well let me get my papers organized here and we will continue. All right, we will go ahead with this panel and we have here with us Mr. Doug DeHart, Mr. Ed Bowles, Mr. Ted Strong and Mr. Will Stelle. We appreciate all of you being here with us today and we will proceed in that order. Mr. DeHart.

**STATEMENT OF DOUGLAS A. DEHART, CHIEF OF FISHERIES,  
OREGON DEPARTMENT OF FISH AND WILDLIFE**

Mr. DEHART. Good afternoon, Congressman. For the record, I am Dr. Douglas DeHart, Assistant Director and Chief of Fisheries of the Oregon Department of Fish and Wildlife.

Mr. CRAPO. Where is the microphone, we ought to get that over there so that the people in the back can hear.

Mr. DEHART. I wish to thank you for the opportunity to speak with you today about Oregon's interactions with the National Marine Fisheries Service concerning restoration of Columbia River salmon populations. As you requested, I will highlight what Oregon believes are outstanding issues that if resolved would significantly improve coordination among key stakeholders in salmon restoration decisions in the region.

Let me preface my comments with a general observation. Much attention has been focused on the forum and the process needed to resolve current problems. This energy may be misplaced. Although there are problems with process, the more significant issues involve the substance of the issues that we need to make. The bottom line is that the region, whether through joint decisionmaking or through the National Marine Fisheries Service, the U.S. Army Corps of Engineers or the Bureau of Reclamation, must make informed decisions based on the best available technical and scientific analysis. Existing processes have fostered discussions, information exchange and consensus building. With some changes, those processes are also capable of establishing the type of accountability for decisions needed to move salmon restoration efforts forward.

Our concerns relate to three main areas. First, how Federal decisionmakers can be held more accountable for the decisions they make that affect salmon. Next, how the information used to make decisions can be improved. And finally, how the region can better articulate and reach agreement on what we are trying to accomplish.

Federal decisions affecting salmon restoration need to be made in an open process that fosters deliberate discussions among managers of the resources affected by those decisions. Salmon restoration efforts need to meet the requirements of recovery for the Endangered Species Act, but they also need to meet the mitigation responsibilities of the Federal Government for the loss of fish due to hydro development. These decisions must be supported by detailed explanations of why they are the right thing to do.

In our opinion, the Federal Government, through NMFS leadership, has improved accountability for the decisions that they make. However, the Federal Government must better explain what information influenced their decisions and how that information was weighted and used to make decisions. Likewise, the Federal Government must explain what alternatives it considered and equally important why at times it has rejected alternatives put forward by State and tribal resource managers.

The Federal Government can improve the credibility of its decisions, we believe, by supporting them with regionally accepted technical and scientific analysis.

We commend the National Marine Fisheries Service for the role it has played in establishing a regional analytical forum called PATH, a Plan for Analysis—yes—a Plan for Analysis and Testing of Hypotheses. Almost caught me on an acronym. This forum involves scientists from the Pacific Northwest and from throughout the region and is charged with describing and testing the various hypotheses put forth concerning salmon restoration. It is a scientifically rigorous process that includes independent peer review of analyses by outside experts and it has played a significant role in evaluating the scientific merit of competing hypotheses and setting the stage for well-informed decisions about the long-term course of action. We urge NMFS and the other Federal agencies to stay the course in their commitment to supporting and using that process to support decisions.

In concluding my statement to you today, I turn to the most important issue dogging efforts to restore salmon; namely, the lack of agreement on what we are trying to accomplish regarding that restoration and how we go about achieving those objectives. This effort would be greatly facilitated by a deliberate effort by the Federal Government to clearly interpret ambiguous measures in the biological opinion on the operation of the Columbia River Federal power system. This ambiguity has significantly hampered some decisionmaking and encouraged debate and delay in many instances.

There are three issues that seem to underlie this:

The first of these is that there is no common regional understanding of what the ultimate goal is regarding survival and recovery standards.

The second is that there is no common regional understanding of the specifics of the measures in the biological opinion to avoid jeopardy. This leads to varying interpretations among Federal managers and these differences have been the source of considerable disagreement over how the opinion is to be implemented for listed stocks.

Finally, there is no common regional understanding of how actions to recover listed salmon relate to and complement actions to protect and restore non-listed salmon and other listed fish and wildlife in the region. The recent listings of steelhead in Oregon, Washington and Idaho and in particular the listing in eastern Washington of steelhead, only focuses more attention on this need to integrate and balance the protection of each of these species.

In conclusion, Congressman, we do not believe the National Marine Fisheries Service is the problem. The complex and high-stakes decisions facing a region on the verge of losing a precious heritage present a significant challenge to all of us. The focus should not be on assigning blame or spending valuable time and resources on constructing new processes in which we may better argue and debate the issues at hand.

We must move ahead with informed decisions that describe what we seek as the ultimate outcome for salmon and what risks we are willing to take that that outcome is a reality.

Thank you, Congressman.

Mr. CRAPO. Thank you, Mr. DeHart. Mr. Bowles.

[The prepared statement of Mr. DeHart may be found at end of hearing.]

**STATEMENT OF EDWARD C. BOWLES, ANADROMOUS FISH  
MANAGER, STATE OF IDAHO DEPARTMENT OF FISH AND  
GAME**

Mr. BOWLES. Congressman Crapo, my name is Ed Bowles, I am the Anadromous Fish Manager for the State of Idaho Department of Fish and Game. Thank you for the opportunity to discuss Snake River salmon and steelhead recovery efforts. Your interest and initiative reflect highly on your commitment to solving this decades-old tragedy.

We have heard much today on NMFS' process for handling salmon recovery, ways the process might be improved and who should be in charge. These are important questions, but do not get at the root cause of our continued collective inability to solve the salmon dilemma. This inability stems from a focus on process and justifying the status quo, rather than on leadership and commitment to finding solutions and securing societal acceptance of these solutions. We do not need a solution to the process debacle, we need a solution to the salmon and steelhead decline. As long as we are more concerned about process than we are about solutions, it does not matter who is in charge or who is involved, we will likely fail.

The Snake River salmon and steelhead dilemma is akin to a ball and chain on the ankle of northwest prosperity. Multi-million dollar fisheries have been lost from local and regional economies. A centerpiece of our northwest cultural, recreational and ecological heritage is crumbling. A third of a billion dollars is spent annually in our attempt to save these fish, with little, if any, success to show for the effort.

Agency, industry and public resources are severely strained participating in the process. Irrigation and recreation from upper basin storage reservoirs are threatened. The status quo is not cheap or benign.

So far, the salmon recovery process has focused on how to make the ball and chain more comfortable and less obvious, instead of finding solutions to remove the ball and chain. The primary motivation has been to preserve the status quo rather than finding a lasting solution that meets the biological needs of the fish and find ways to keep vital economies whole. Without this leadership and collective vision, repackaging the recovery process will do little to save the salmon.

Snake River salmon and steelhead recovery pivots on the 1999 decision point. This is the process that should be our primary focus and concern. As a result of litigation, NMFS committed to a decision path to finalize a long-term recovery strategy by 1999. The first step to ensure the 1999 decision points toward recovery is to stop debating whether the fish should be in the river or in barges. This controversy is one of the primary reasons the NMFS recovery process has little to show for its effort. Available science indicates that sustainable recovery requires an in-river solution and that the solution must recreate normative conditions.

I refer you to my written testimony which covers the scientific debate in more detail. The sooner the region can come to terms

with this biological reality, the sooner we can focus our collective efforts on helping society find ways to truly meet the needs of the fish while maintaining northwest economies, cultures and prosperity. This is where we need to focus our efforts if we are to help society and decisionmakers prepare for the 1999 decision; not continuing to try to rationalize recovery through transportation and flow augmentation.

Perhaps the biggest threat to successful recovery and NMFS' ability to lead us there is NMFS' prejudice toward transportation and flow augmentation as a preferred recovery path. This prejudice is both regrettable and unacceptable. It is regrettable because this unprecedented opportunity to work collectively toward meaningful recovery may soon be lost. It is unacceptable because there is no scientific peer support or an empirical or theoretical basis for concluding that wild Snake River salmon and steelhead are likely to recover if we follow the non-normative path of full transportation and flow augmentation. NMFS' bias toward transportation and flow augmentation seriously detracts from their ability to provide leadership toward in-river solutions and focus the recovery process on finding ways to keep vital affected economies whole.

The 1999 decision point is just around the corner. We cannot afford to let recovery slip away by continuing to debate the science. This is not a biological issue, it is a social and economic issue. The recovery process should focus on providing the best possible economic information so that society and decisionmakers can determine how best to keep vital economies whole as these biological solutions are implemented.

How to meet the biological needs of the fish is not the important question. We know what the fish need. The important questions are: In meeting the biological requirements of the fish, can we provide an economical and effective way to get commodities to market? Can we maintain an economical energy source? Can we reduce the threat to irrigation water? Can we reduce loss of recreation opportunities in up-river storage reservoirs? Can we reduce or eliminate the ongoing financial burden of the salmon recovery process industry? Can we help ease burdens and uncertainties associated with energy deregulation? These are the sort of questions that the 1999 decision point really pivots on. If they go unanswered, society will not be in a position to make informed decisions for or against salmon recovery and will likely default to the continuation of expensive and ineffective status quo operations.

I am not convinced that the current process or leadership is headed in this direction or committed to an honest and open debate of these issues.

Thanks once again for including me in this important discussion. I hope my comments have been constructive.

Mr. CRAPO. Thank you, Mr. Bowles. Mr. Strong.

[The prepared statement of Mr. Bowles may be found at end of hearing.]

**STATEMENT OF TED STRONG, EXECUTIVE DIRECTOR,  
COLUMBIA RIVER INTER-TRIBAL FISH COMMISSION**

Mr. STRONG. Thank you very much, Congressman Crapo. On behalf of the Columbia River Inter-Tribal Fish Commission and our

member tribes—the Yakima, Umatilla, Warm Springs and Nez Perce, I appreciate the opportunity and the tribes extend their gratification to you for the leadership you have demonstrated in this issue and appreciate the efforts to resolve some of these issues.

The tribes want to express, first of all, Congressman Crapo, that there are deep philosophical differences that divide Indian and white interpretation of what should be done, how things should be done. At the beginning of time, before there was any kind of electronic media or any other races of people, there were in our legendary times the fish and birds and other creatures that had voice and had dominion over everything. And in making way for the arrival of the humans, the salmon gave themselves to the humans that were here at that time and in turn we gave ourselves to the salmon for their life-giving properties and the religion and the sovereignty that they provided to us. In that sense, Congressman Crapo, the salmon and Indian people belong to each other.

It was never meant to be presided over by any makeshift process or committee or structure. The human laws that have followed have been disastrous toward the natural environment. Human laws made by Congress and enacted in Federal courts have destroyed Indian spiritualism and culture and for that there is no compensation that can ever take the place of what was destroyed. And yet we are here today thinking that these industries and these human made laws are paying for the way of salmon. It is the other way around, Congressman Crapo.

The memorandum of agreement that was signed said it was helping salmon. The MOA was clearly a limitation that excluded the most viable salmon restoration alternatives because the Bonneville Power Administration and other Federal agencies needed to maintain their financial viability. The salmon are still subsidizing the corporate industries along the Columbia River and they are not appreciated for that. Instead, they are in many ways insulted by saying that it is the economy, it is the region's jobs that are important first and foremost. But that is the arrogance of human life today in America.

Even the Endangered Species Act, which was supposed to protect the species is designed today so that all of our discussion is centered around money, economy and other capitalistic purposes. The Endangered Species Act passed by Congress does nothing to protect the specie, and it seems only some of the environmentalists, recently some of the cattle ranchers, loggers, those who work with nature and the Indian people fight, even in courts, to protect the salmon.

The National Marine Fisheries Service has come out here to preside over the most deadliest of rivers where salmon can live. They have a losing job, they are not going to win that fight. And instead of declaring that this deadliest of all killers of salmon is a jeopardy, the National Marine Fisheries Service has maintained that they are allowed to operate and it is best to take the fish out of that deadly river. That is not being truthful toward the Endangered Species Act, it is not being respectful toward the salmon, it is not living up to the agreements made by the United States of America and sovereign Indian nations.

We deplore these actions, we think that the United States and the States in the northwest should say what they mean and mean what they say, get on with salmon restoration in a very meaningful fashion. We have done nothing but tinker around the edges of this deadly hydro system and yet, since 1964, tribal and non-tribal peoples have had a moratorium on commercial fishing on summer chinook, to let them rebuild. A surplus of 2,000 returned to the south fork of the Clearwater, they will be destined for killing unless the tribes sue over them.

Since 1977 the tribes and non-tribal fishers have had a moratorium on commercially fishing spring chinook. The State of Oregon passed a contrived wild fish policy recently. Those surplus 144 spring chinook to the Imnaha will be killed unless the tribes sue over them, and we intend to sue in order to protect these salmon. These spring chinook at Imnaha will be in a trash pile somewhere, they will not be allowed to spawn and they will not be allowed to procreate as the natural law has intended.

So the tribes are here to say that we believe that a lot better can be done and whatever it takes, whether it is in court or anywhere else, the tribes are here to advocate for the salmon.

Thank you.

Mr. CRAPO. Thank you, Mr. Strong. Mr. Stelle.

[The prepared statement of Mr. Strong may be found at end of hearing.]

**STATEMENT OF WILLIAM STELLE, REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE**

Mr. STELLE. Thank you, Mr. Chairman. I will submit my written testimony for the record and touch on a number of major points in my oral remarks.

Let me offer a couple of general observations, then speak to the issue of hydro power, the 1997 Idaho Steelhead Plan and my decision on it and then the bigger picture.

As a general observation, first of all, let me emphasize that at NOAA Fisheries, we are dedicated to the restoration of salmon and steelhead stocks in the Columbia Basin and to the restoration of the aquatic health of this basin. There are enormously deep differences of views on what the problems are and how to remedy them, particularly as it relates to the hydro system, and as the testimony before this Subcommittee demonstrates. Finger pointing among the various participants dominates the public discourse and that is a shame.

NOAA Fisheries is dedicated to using the best scientific information available when making its decisions on implementing the Endangered Species program here in the basin. Science-based decisionmaking is perhaps the single most important principle we have. Given the deep divisions that exist and the stakes involved, we must stick to the science. If we do not, we will be rudderless, adrift without direction, and lost.

Salmon and steelhead recovery must be comprehensive if it is to be successful. Recovery must include efforts to protect and improve the habitat, fix the dams, modernize the hatcheries and ensure

that we do not harvest too many fish. A single focus will not solve the problem.

Further, do not expect miracles. It has taken generations to drive these stocks down and it will take time to restore them. It will not happen overnight and we must be prepared to stay the course if we are to succeed. Statements complaining that the Endangered Species Act has been invoked for 3 or 4 years and the salmon are still not back ignores this most basic biological fact. The region can do this, but it will take time, and we must stay the course.

On hydro power, improving survivals in the hydro power system is essential to long-term recovery, and we are dedicated to doing so based upon the best science we can muster as a region.

Secondly, there remain, obviously, deep divisions within the region on how to fix the dams, ranging from leaving them alone to taking out at least five of them. We have developed a strategy which was contained in the 1995 biological opinion for the hydro power system for resolving this dilemma which has three facets. A set of interim operations, given the current configuration of the dams, to improve survivals, continuing research on where precisely we are losing the fish through very robust evaluations of mortalities associated with each of the four Snake dams, and a thorough evaluation of the different options for fixing the system and the biological and economic impacts of each option.

We firmly believe that this course is the correct course. We are gratified that the States of Washington, Oregon, Idaho, Montana and Alaska have all called for the full implementation of this path in the recent American Rivers litigation challenging the biological opinion. We are furthermore pleased that a recent Federal court decision upheld that pathway. Given the degree of differences on that subject, this is considerable progress indeed.

Further, we are committed to working directly with the State and tribal governments as we implement the year-to-year interim operations and as we develop the range of alternatives for the long-term fix. We furthermore are committed to working with State and tribal governments for the selection of that preferred remedy for the system in 1999.

We believe that any remedy will be worthwhile only if successfully implemented. Successful implementation will require broad agreement among the governments in the Pacific Northwest that it is the right remedy.

Let me turn to the bigger picture, my time has almost expired.

Mr. CRAPO. You have taken such a hit in these hearings, you can have a little extra time.

Mr. STELLE. Well, if I may, Mr. Chairman, let me just describe a couple of points on the recent decision on the 1997 transportation scenario. First, the State of Idaho, let me point out and emphasize, has been a solid participant in the day-to-day hard work of implementing changes to the hydro power system, along with the States of Oregon and Washington, reflecting I believe the States' commitment to a regional approach. We appreciate that, we applaud that and we encourage the State to continue at all levels.

In 1996, NMFS and the other salmon managers worked successfully with the State of Idaho under the State's leadership on ad-



justments in reservoir operations to accommodate some interests pertaining to Dworshak.

In 1997, Idaho proposed its steelhead plan which called for leaving two-thirds of the juvenile steelhead in the river rather than transporting them down around the eight downstream dams. After considerable review and discussion among the salmon managers at various levels, I decided that we could only accommodate the Idaho plan up to a certain point reflecting the, quote, spread-the-risk strategy which we adopted last year in consultation with the salmon managers and reflecting a similar strategy called for in the Northwest Power Planning Council's fish and wildlife program. I made this judgment based upon my best professional judgment that placing more fish in this river would only subject them to a higher rate of mortality, an outcome that is not consistent with our obligations under the Endangered Species Act. The above decision reflects, in my judgment, the best scientific information available. It is consistent with the findings and recommendations of the Snake River Recovery Team, the National Academy of Sciences and the recent report of the Independent Scientific Advisory Board. It is a situation where, unfortunately, the best science is not always the most popular. We must stick with the science.

On the bigger picture, progress on protecting and restoring habitat, modernizing hatchery practices and properly managing fishing must and will proceed. Progress in each area is essential for long-term success. The governments of the region should and must work hard to develop a set of options for fixing the Federal hydro power system. That process is underway and it deserves to proceed. The governments must also work very hard to examine if broad agreement is possible on a remedy, because it will be the best for the fish and for the region.

There is in fact a large confluence of agreement on many, many aspects of a salmon recovery program and I would surmise that in looking at our draft recovery program for salmon in the Snake, that there is probably an 80 percent plus overlap with the fish and wildlife program of the Northwest Power Planning Council. Most of the basics are agreed to. We must not get distracted by those issues that require further resolution.

To an interest which I understand you are particularly interested in. In the upper Snake, the Bureau of Reclamation and NMFS have reached an agreement in the 1995 biological opinion that resulted in the contribution of an annual additional 427,000 acre-feet of water from the upper Snake through 1999, acquired on a willing buyer-willing seller basis. The Bureau, with the support of the State of Idaho, has been successful in meeting these commitments and we encourage that progress to continue.

In light of pending litigation on the matter, we have also agreed to undertake a consultation on the activities of the Bureau of Reclamation and are currently progressing with that consultation.

The resolution of the issues on the lower Snake and John Day and the Federal dams may also have a direct bearing on the long-term role of flow augmentation from Montana reservoirs and the upper Snake basin. It is therefore our preference to work with the parties to develop a larger conservation agreement that might encompass issues associated with the operation of the Reclamation

projects in the upper Snake and the Hells Canyon complex as the governments address the question of what to do about the Federal dams in the lower river so that through this larger agreement certainty and stability is provided to the basin and we succeed in our long-term efforts at salmon recoveries.

We have broached these options informally with a number of the parties and will continue to explore them in the coming months.

In conclusion, let me state simply that the issues associated with salmon recovery are extraordinarily complicated and controversial, Mr. Chairman. The divisions within the region on certain aspects of the recovery effort run deep and the emotions run high. In this most difficult setting, going to the issue of leadership, our role and responsibility, in my view, is to articulate a clear pathway for fixing the hydro power system, as clear as we believe is possible, to base that pathway on the best science available, to provide an open collaborative process with the other governments in the region to implement it, and to stick with it.

Given the winds of controversy that buffet this subject almost daily, consistency and a commitment to a clearly articulated pathway based on good science is absolutely vital.

Thank you and I look forward to what I anticipate to be a few questions.

[The prepared statement of Mr. Stelle may be found at end of hearing.]

Mr. CRAPO. Thank you, Mr. Stelle.

Let me start out with you, Mr. DeHart, we will pass the microphone back your way.

As I read and listened to your testimony, tell me if I correctly understood it. It seems to me that with regard to the issue of what process for decisionmaking we need to follow, that you are basically saying that the current system we have, with maybe some refinement, is a good system and that the—and I construe that system to mean that there is basically a Federal decisionmaker with collaboration with the other governmental entities, but that the final decision is made by the Federal sovereign. Do you understand it that way and have I correctly characterized your approach to the issue?

Mr. DEHART. Congressman, my view is that this issue does not primarily turn on process and that you will not solve it through process. I do not believe that the process to date has served us well, it has led to conflict and stalemate, but the right parties are generally at the table, they are sharing information. What we lack are the ways to drive those decisions to a conclusion with clearly understood justification that will make those widely acceptable and then move into implementation. I do not think you will solve that problem just by a different process structure. We need to work on the substance of how we make decisions and how we resolve disputes.

Mr. CRAPO. How would we work on that, how would we achieve that last step that is necessary?

Mr. DEHART. Concerning disputes, Congressman?

Mr. CRAPO. Yes.

Mr. DEHART. We have suggested, and indeed are working with the Federal Government, as one outcome of the American Rivers

lawsuit, a dispute resolution process that we hope will get around what has been something of a stalemate to now, where each agency retreats behind its own statutory responsibilities and the limits on those. And that is showing some progress, though it will require that the Federal Government I think stretch out somewhat further than it has before in its decisionmaking.

Mr. CRAPO. Some differences of opinion have come up today in terms of who really has the decisionmaking authority in the region. Some have said NMFS effectively controls the decisionmaking because nobody really, for one reason or another, dares violate it or go contrary to the biological opinion. Others have said that there are agencies who are very willing to do that, the Corps of Engineers being one.

Do you believe that there is effectively a Federal decisionmaker?

Mr. DEHART. No, Congressman, not in the sense that you mean it. Certainly the biological opinion is now driving river actions in a way that they were not controlled before toward fish protection, but as I mentioned in my testimony, because of some of the uncertainties in how those measures are implemented and what they really mean, that has created a great deal of gray area and we have seen Federal river operators freely take advantage of that and that is what has led to many of the disputes that have characterized river operations in the last several years.

Mr. CRAPO. Okay. Why do we not move to Mr. Bowles for just a minute.

Mr. Bowles, you indicated that you think the root cause of the problem basically is that we are focused too much on—I do not want to say this wrong, I have it written down in my own words here—the process and basically pursuing the status quo; is that correct?

Mr. BOWLES. Yes, basically the default operation is to try to figure out how to do something for the fish without significantly altering the status quo. And I feel that is flawed and somewhat dishonest to the public, because this is not a cheap or benign status quo. And if we cannot recover the fish with any semblance of the status quo, let us be honest with the public, put what is biologically required for the fish on the table and put our efforts not into figuring out just how much to tweak the status quo, but put our efforts into figuring out what is socially acceptable and how do we keep society whole on these various interests. And that is where we are really falling short. The process is one of debating the science and figuring out interim activities during this pre-1999 period. All our effort is put into figuring out how to plod along tweaking the status quo, and very little, other than the PATH group, is really focused on getting society prepared for the 1999 decision.

Mr. CRAPO. One of the comments that I think both you and Mr. Stelle have made is that science needs to be critically evaluated. You have a disagreement on science, I think it is pretty obvious. One of the questions that I have is—I am going to be asking you this later on, Mr. Stelle also—we have had a lot of testimony here today and a lot of discussion over the years about how important it is to make sure that our recovery plans include good science. In fact, I used to say that all the time—I still do. But I have found

out over the years that everybody believes in good science, and everybody has their science.

Now Mr. Williams, if he is still here, is a part of a team that is hopefully going to resolve that for us, but are we not now at a point where we are competing with different interpretations of what the science says we ought to do?

Mr. BOWLES. Actually I do not feel we are. The main roadblock in science consensus right now is pretty much limited to one group and that is NMFS' own science group. The consensus on most of everything else is that the dams are the problem and that transportation or an out-of-river type solution is not going to work, from all of the sovereigns involved, those that have statutory authorities for the management of the fish. The scientists associated with NMFS, none of the other groups are adamantly holding up a defense that transportation does work, believe that it does work, it does mitigate for the hydro system and that the reason that we are in decline is because of the killer ocean. PATH is resolving that debate and it will resolve that, and we are, I guess, somewhat content to let the PATH process do its job and I am very confident in its results. But what is regrettable is that the focus on debating NMFS' views has left us short on being able to prepare society for the 1999 decision. All our efforts are on debating the science—and this is really a social and economic question. Instead of debating the science, let us figure out how to do it socially and economically and keep these entities whole.

Mr. CRAPO. Thank you. Let me ask you to give the microphone to Mr. Stelle for just a moment here.

I want to give you a chance to give your response to the same question, but if I understand your testimony correctly, Mr. Stelle, you took your position against the Idaho policy based on your conclusion that the clear weight of the scientific information did not support what Mr. Bowles says—I think he would be saying—that he thinks the clear weight of the scientific information did support. Do you want to clarify that, Mr. Bowles and then we will get to Mr. Stelle.

Mr. BOWLES. We need to be careful, Congressman, that we do not confuse long-term recovery with interim measures to do what is best for the fish. And the 1997 transportation debate focused on what was best for the fish, given the configuration of the dams and the flow that we had from mother nature in 1997. Okay? What I am speaking to, what my comments focused on was more of the long range vision of how do we get truly to recovery. And as we have heard from Dr. Williams and others, you are unlikely to get there through a transportation approach.

Mr. CRAPO. So you are not saying that NMFS' decision not to accept the Idaho policy was a part of or an indication of NMFS' intention?

Mr. BOWLES. No, I am saying it is an indication of their prejudice, but what I did not want you to get confused is that the in-river versus transport issue on a year-to-year basis before we get to 1999 is tied in to the long term, directly. There is an indirect link to the long term and it does show where our heart is, but that issue was more specific to what is best for the fish given this year's

situation, and we do differ quite radically on our interpretation of what was best for the fish.

Mr. CRAPO. On the short term.

Mr. BOWLES. On the short term, yes.

Mr. CRAPO. Okay. Mr. Stelle, do you want to respond or has he clarified that or not?

Mr. STELLE. Yeah, I would like to respond. First of all, Ed is correct that it is very important to distinguish what is best for downstream migrating juveniles through the eight dams as we currently have them configured—basically what do we do right now—from whether or not, for instance, transporting fish around the dams can provide for long-term recovery. Those are two completely separate issues. The issue this year, was given the current configuration of the dams and, Congressman, you stated it quite precisely and you were correct in your formulation, given the current configuration of the dams, what is the weight of the scientific evidence? Does it—is the weight of the scientific evidence that it is safer for fish to put them in this river, or not? And I think it borders on the unequivocal that it is safer to keep the fish—to collect and transport the fish around these eight dams than leave them in the river, and I have not seen any specific information that would argue to the contrary.

I would also cite to you the fact that the National Academy of Sciences looked at this very closely, and although people will attack the National Academy of Sciences' report because of all of the hysteria on this particular topic, they were not born yesterday and they are very sophisticated scientists and they agreed.

Mr. CRAPO. So if I understand the two of you, there is a strong difference of opinion on what the science says for short term.

Mr. STELLE. To be honest with you, Congressman, I listened very closely to Ed's presentations before the Executive Committee on this subject and Idaho at that time was not arguing—the biological argument was not that more fish will survive, it is that as a general matter, in-river survivals are better in better flow—in years of better water. We do not dispute that.

Our view though, and again, I have to emphasize that in my view and I think Rick Williams corroborated that this morning, that given the current configuration of this river, this river kills fish.

Mr. CRAPO. But did you not just say that you accepted the argument that in a high flow year, transportation was not the—how did you say that?

Mr. STELLE. The data that we have indicates that when flows are better, in-river survivals are better. That is a very different question than whether or not, nevertheless, given both routes of migration, are fish likely to die more in-river through the dams and the pools or die through being collected and transported. And again, on that question, I believe some pretty robust empirical information tells us that putting fish in the river will kill fish.

Mr. CRAPO. Is that information not based on low flow years?

Mr. STELLE. No, it is a range of years. There are about 22 or 24 transportation studies over the last 15 years, the most recent ones being by far the most robust, and they cover a range of conditions.

Mr. CRAPO. Do you agree—I will stick with Mr. Stelle for a few minutes because he has got me thinking about some things.

Mr. STELLE. Congressman, could I make one point?

Mr. CRAPO. Sure.

Mr. STELLE. It is, I think, to reinforce what Ed's perspective is or one of Ed's points. A judgment about what kind of survival benefits you can bilk out of the system as it is current configured, and whether or not you can bilk more survival benefits from collecting and transporting them around the dams or leaving them in the river is one thing, and it gives us some guidance on what we should do today and tomorrow and the next day, because we have the system as we inherited it.

That is a completely separate issue from whether or not the survival benefits you are able to secure from either route of migration is going to be enough to support long-term sustainable rebuilding of these runs. That is the key issue.

This minor issue of how many fish you put in a barge in 1997 is just that, it is a sideshow. The big issue is given the current configuration, what are reasonable expectations of what kind of survival benefits we can get through transportation, through in-river migration, through improvements in the surface collectors, et cetera, et cetera. That is the bigger issue.

Mr. CRAPO. Would you agree then with the comment that was made by one of the earlier witnesses who I believe attributed it to Dr. Chapman, but since he is not here we will not hold him to that. But the comment that said that essentially sticking with the current configuration of the dams will only delay extinction.

Mr. STELLE. I think my view on that is that that precise issue is probably the most important issue that the PATH process needs to resolve. And what the rate of survivals are that will be necessary to avoid extinction and support recovery is the essence of the scientific debate that is going to occur now. My own view is that, given what I understand today, at best we will continue to bump along the bottom of the recovery barrel.

Mr. CRAPO. All right, and——

Mr. STELLE. But again, that issue is really central to the analytical work now being done by the group that Doug DeHart described, the PATH analytical group.

Mr. CRAPO. Okay. Do you want to hand the microphone back and we are going to come back to that, but let me finish with Mr. Bowles first.

When you indicated then, Mr. Bowles, that you felt that NMFS' approach is basically perpetuating a failed solution, explain that a little more to me, what is it exactly that you were saying?

Mr. BOWLES. Well, it actually starts from a fundamental difference in a founding premise, I guess if you will, as a salmon manager. Mr. Stelle stated that they have a very strong empirical data base that the fish do better in the barges. I disagree with that, the only official scientific peer review of transportation disagrees with that assessment.

Mr. CRAPO. Which one is that?

Mr. BOWLES. This is the Mundy report, the only ones that officially took on transportation. And where I am getting at is for high-flow situations—his statement was that under all conditions,

fish do better in the barges. The issue that Idaho brought to the table was that under the bounty that nature provided in 1997, where is the compelling evidence that tells us to take these fish out of the river and put them in the barge? There is none. The data set on high flow years similar to what we had, similar to the 1982 through 1984 situation where we had good adult returns and high flows, there is no transport benefit information.

Given that, we would like to err on the side of keeping the fish in the river under that uncertainty, or at least—we did not want to put all the fish in the river, we just wanted what we considered a more equitable balance.

Mr. CRAPO. Let me interrupt a minute. Mr. DeHart, do you agree with that, with Idaho's approach on that issue?

Mr. DEHART. Oregon and Idaho have not always seen exactly eye-to-eye on in-year decisions and we did have some disagreements this spring on elements of the Idaho plan, to be fair. But on the issue that we are talking about here, I think we see this very much the same, and frankly when I look at the data set that is available to us right now and when I look at survival of those fish, which is the important issue, what I see is that survival of not only in-river fish goes down in low-flow years, but survival of barged fish also goes down in low-flow versus high-flow years, a very important point. And that is today, if you think barges are going to solve the problem of low flows in the Columbia and Snake River, you are wrong, and there is plenty of information there right now to show that.

Likewise when you look at the issue of how much of an increase in survival it would take to bring about recovery, and here the PATH analysis has helped us a lot already, the answer is almost a 10-times increase, and the actual experience over 20-plus years of trying to improve survival of barged fish has actually been, if anything, somewhat of a downward trend in survival, certainly not any significant increase through years in altering the methods of handling and moving fish.

So I think there is enough information on the table now, and I think Idaho and Oregon are in agreement there, that you could draw a final conclusion on where that technique fits in the strategy. I think that is the main thing that is wrong with barging at this point and how it fits in the debate, not the question of how we can use it in 1997 and whether that is the best part of the mix, but do we continue to push it forward and spend time, energy and political capital on it, or do we set it aside and say no, that is not the path to recovery and now let us figure out which viable paths are out there and start building a consensus and a case for one of them.

Mr. CRAPO. Keep the microphone for a minute, Mr. DeHart. I am going to ask you and Mr. Bowles and Mr. Strong the same question I asked Mr. Stelle, and that is do you believe that if we maintain the current configuration of the dam; in other words, maintain the status quo with the configuration of the dams, that that will simply—I have got to get this said right—simply delay—any other options we might undertake, whether it be barging or spill or whatever, will simply delay extinction?

Mr. DEHART. If our objective is the objective of the Endangered Species Act, to restore naturally spawning runs of fish to upriver areas that can sustain themselves, I do not believe you can get there without major changes in the system of dams and reservoirs in the Columbia and Snake River.

Mr. CRAPO. But you are not ready to say that if we do not do something, we will see extinction?

Mr. DEHART. Oh, I am ready to say that, yes. I mean extinction in the sense of losing natural populations. We can maintain the genetics of some of these fish through captive brood programs, through supplementation, through some other means, but we will lose natural, self-sustaining populations.

Mr. CRAPO. Okay, Mr. Bowles.

Mr. BOWLES. I agree. I think the science is pretty unequivocal on the risk and that is the reason for the threatened status and the fact that it should have gone to endangered for spring-summer chinook but it was just an administrative oversight. So that aspect speaks for itself of where these fish are. I do not think they are going to go extinct tomorrow or the next day. I think they will continue to drain the resources and the talent and creativity of the Northwest, that is the ball and chain analogy, for the next probably two-three decades. And the lower the numbers get, the more expensive it is going to be, like we are seeing with sockeye.

Mr. CRAPO. Thank you. Mr. Strong, do you remember the question? The question is if we do not do something with the dam configurations, the current configuration of the dams, will we simply delay extinction.

Mr. STRONG. Science has been attendant since the dams were built and every generation of scientist that came along bragged about the ability to make life better and improve upon things. And we have seen nothing but destruction. These dams have already killed many, many stocks of salmon in the Columbia Basin. I do not know how much more evidence it takes before we believe what is happening before our eyes, and it is only because we want to make ourselves feel good somehow, that we have such a guilty conscience that we believe that if we put some more science out there, that we are going to make ourselves feel good enough that we are actually doing something, when we are just appeasing our political conscience and we are not doing anything for salmon.

These dams and everything else that are associated with this development are driving all of these salmon into extinction. Of everything that has been killed, we have a very small percentage of those salmon left and we are playing with them. And we are going to lose them and unless somebody steps up to the plate and says that enough is enough, we may as well bid all of these salmon and other species that are associated with them in this river system goodbye.

Mr. CRAPO. So I took the answer from the three of you, in one context or another, to be that we have got to do something about the configuration of the dams in order to restore the species. What? Why do we not go back across. And when I say that, I am not asking you to—I suspect that some of you may know exactly what you want to do, but I am not asking you to say exactly, and I am going to give you, Mr. Stelle, an opportunity to answer the same question



a little later. But options, you know, when we say the current dam configuration is not acceptable, then what are the options we have to look at? Mr. Strong?

Mr. STRONG. When it was first of all stated that perhaps harvest was the problem, I mentioned the moratorium on summer and spring chinook in 1964 and 1977, you heard testimony that when the Federal Government felt that a cow was perhaps capable of killing one salmon, they were forbidden, somebody is supposed to train the cow not to step on these redds or train that cow not to kill a salmon. But all of the science that engineers have brought to these dams, they should be smart enough to know what to do about it. They will not accept what is right because it costs them money. That is what is driving this.

Barging was brought in to help alleviate the problems and shield us from embarrassment because these dams are killing the salmon. What is better than barging in terms of configuration is breaching these dams, let the water flow around the dams, decommission them, they are not needed for electric development here in the Snake River. They are there for another specified purpose, many of them are not even needed for flood control. The Idaho Statesman recently commented about the cost of decommissioning versus the benefits from decommissioning. But somewhere, if the authorities do not rest clearly with the people in the region, and the people in the region are relying upon political leadership, that political leadership is going to have to step forward.

I do not know how much more volume we can turn up our voices before Congress and the Corps and others say I think we have heard enough, I think we have seen enough, history has told us how we should reconfigure. I think that the choices are not that difficult to make out there.

Mr. CRAPO. Thank you. Mr. Bowles, what options do we have?

Mr. BOWLES. Well, as I have said many times before, I view this as somewhat of a biological no-brainer. Just 30 short years ago, we had 120,000 wild salmon and steelhead coming into Idaho. That is not that long ago, that was with four dams in place, and viable fisheries, viable, healthy, sustainable runs.

So there is no doubt that the fish are going to do much better, in my opinion and what PATH is coming to, and have a high probability for recovery under a natural river condition in the lower Snake. But this is not a biological issue, that is not what this is pivoting on, that is what it has been cloaked behind but it is really not the essence of this. It is a social and economic one.

So for me to say what we need to do biologically, to me that is very easy. Let us start with something like that, let us get together with the social groups, the local communities and let us aggressively pursue ways of keeping these sectors whole. I think the solutions are there and I think if we put our effort into that instead of debating the science, we will find a solution nearby.

But that is the place to start. If there are areas that are unacceptable, backup to less of what the fish require until we get to something that is socially acceptable. But let us first give it a fair chance to do the right thing for the fish and find a way to balance this with societal needs. But you cannot do it without societal acceptance. For the Federal Government to come in and try to lever-

age something like that would be extremely flawed, it has got to come from social problem-solving, you know, community-based problem solving.

Mr. CRAPO. All right. Mr. DeHart.

Mr. DEHART. I would agree with Ed that I do not think the real issue here is science. It is fairly easy to lay out a suite of different alternatives that clearly would have biological benefits, and you have heard several of those just now. There is no way around the fact that returning stretches of the river to its pre-hydro power condition as a free-flowing river, however you did that, would be biologically beneficial to fish. It is clear because we are facing a cumulative mortality problem that if there were fewer dams on the river, that would be biologically advantageous. It is clear if the projects, dams and reservoirs were smaller, they would have less impact on fish than they do now.

The only scientific question there is how far do you have to go in doing that to bring about the recovery objective that you have. So I think Ed is right in pointing to the fact that science will only take you part way here and then it is a political and economic and social decision.

But also just a comment at the risk of being accused of practicing engineering without a license I guess, the hydroelectric system of this region is aging and wearing out at this point. Even if you wanted to maintain the status quo, that will require huge new investments in those projects. So fortunately for us, we have the opportunity to ask the question how do we want to make that investment. If it is not in the status quo, well then in what alternative. And that is an important point because it means that some of these alternatives really are not as expensive as they sound at first blush, because you have to subtract off what you would have spent anyway.

So that is a perspective I think that is worth considering.

Mr. CRAPO. What timeframe are the facilities, you say they are wearing out. Is there a timeframe you are talking about?

Mr. DEHART. Well, we are looking right now at the replacement of the turbine units at the original powerhouse at Bonneville Dam. We have had frequent failures of turbine units at Ice Harbor Dam and at John Day Dam. Those are projects that approximately 30 years old at this point, the last two. The first one is more like 50 years old. Wells Dam just replaced all of its turbines, so this is a problem that the Corps of Engineers is dealing with and planning for and budgeting right now, in how they replace and rebuild these facilities. So it is a fairly short-term issue.

Mr. CRAPO. All right, thank you. Back to you, Mr. Bowles.

On page three, I believe it is, of your testimony—

Mr. BOWLES. Oral or written?

Mr. CRAPO. Your written testimony. You indicated that even the proponents of the bad ocean argument have found no evidence for different distribution patterns of closely related stocks. Although the ocean environment is a powerful regulator of salmon abundance, this sort of extremely selective phenomenon has no plausible basis in fact. I think you were referring to the fact that chinook runs in the lower Columbia River in some areas have to negotiate fewer dams than others, and they are doing better. Is that right?

Mr. BOWLES. That is correct. This is based on the PATH analysis and their conclusions document.

Mr. CRAPO. The reason I raise that with you is because I have had people tell me that that is not the case. In other words, that the explanation must be in the ocean because fish that have to negotiate a lot of dams are not doing any better than fish that do not have to negotiate any dams or very few dams. Are you saying that the science now is suggesting otherwise or that that is not a correct analysis?

Mr. BOWLES. Yes, the PATH group, which I reiterate is a group of scientists from, you know, agencies, tribes, Federal and State as well as universities and some consultants, it has very rigorous peer review, independent peer review outside of this northwest group, and their conclusions document is very clear that the decline and continued suppression of upper basin stocks is because of the dams, and has not been mitigated through the transportation system, that it is still at a far lower productivity level or survival level, than down river stocks.

Now ocean productivity and characteristics are extremely important in regulating population abundances—no doubt about it. But to say that the ocean has affected all stocks and they are all going down is not at all correct. You look at the data set and it shows very clearly that the upper river stocks are in significantly more trouble than the down river stocks, throughout the time series.

And basically if I could just expand on this a little bit, what it translates into is, in order for NMFS'—and this is NMFS' scientists that are primarily proposing that the hydro system has been mitigated through the transport system—in order for that to hold scientific ground, the hypothesis can basically be stated this way: that upper basin stocks, both upper Columbia and Snake, go to a spot in the ocean that is far less productive than other stocks and that only the upper basin stocks go there, and that they only go there during years of drought and poor ocean conditions. The hypothesis—and that actually is now the one NMFS scientists are proposing, PATH has taken that on. Regrettably, we actually have to scientifically debate that one. I think we need to get beyond that myself. But PATH is looking at it.

Mr. CRAPO. All right. Mr. DeHart, did you want to make a comment there?

Mr. DEHART. Congressman, just one quick fact to add to that that I think helps with the argument that Ed just made, and that is compare fall run chinook salmon on coastal waters of Oregon and Washington to the fall chinook of the Snake River, you have got a fairly close comparison there in terms of life history type. What is going on with those coastal stocks at the same time? Sure, they go up and down with ocean conditions. Right today, on the Oregon coast, we have got populations that are just as big as they were in 1900 where of course the Snake River fall chinook populations have fallen to a couple of percent of what they were at the turn of the century. And that certainly cannot be explained by ocean conditions.

Mr. CRAPO. All right. Why do you not pass that down to Mr. Stelle, and I want to go through a series of questions with you, Mr. Stelle.

As I have listened to the statement today, it still seems to me that there is a strong disagreement on the short-term part of this with regard to the 1997 decision. It still seems to me there is a strong disagreement between you and Mr. Bowles and probably Mr. DeHart as well, on what the science says. Would you take that from this discussion, or have I misunderstood it?

Mr. STELLE. Mr. Chairman, I would not say it is a strong disagreement, it is not a deep disagreement. Doug or Ed, correct me if I am wrong. I think again, this is a—this is not a major issue one way or the other. I mean if Ed wants to say that the State of Idaho is absolutely convinced that the weight of scientific opinion is that more fish survived in the river in 1997, I have not heard that from the State of Idaho. So no, I do not think it is a strong point of disagreement. Ed, do you want to disagree?

Mr. CRAPO. I saw a little body language there, Ed.

Mr. BOWLES. It is kind of switched again from the long term.

Mr. STELLE. Absolutely. Well, I was just asking a short term question.

Mr. BOWLES. It makes it a little—I mean, I can speak to the short term, if you would like.

Mr. CRAPO. Why do I not have Ed speak to the short term and then I will be thinking on the same wave length and then I can come back to you.

Mr. STELLE. I think my view on the short term issue was very ably described by Rick Williams of the ISAB.

Mr. CRAPO. Okay.

Mr. BOWLES. And I agree with Mr. Stelle that I think it is more productive to look at how this fits into the long term, and so I agree with him that this is a minor issue itself, but it does hint at some perspectives that I think are causing us to lose taking advantage of the opportunities we have to solve this problem. They show the propensity of NMFS to hold onto transportation as the way, the default way of operating, and that does affect the long range decision and it affects the way we deal with that.

But just on the short thing, what I was getting at earlier was that our starting premises are different. Our default, even on the short-term, should be to keep the fish in the river or at least have a viable spread-the-risk migration policy unless there is evidence to take them out of the river. And I think NMFS may disagree and Will can speak to this on his own, but their default is to take the fish out of the river unless there is evidence to keep them in. There is no data set that says transportation is better than in-river under high flow conditions—there is none. NMFS' own consultant that they hired to do an evaluation recommended putting far fewer fish in barges than the State of Idaho did under the conditions we had in 1997. Their own consultant they hired to develop what they called a transportation rule curve said that under high flow conditions, much more fish should be left in the river. The State of Idaho recommended putting more fish in the barges than NMFS' own consultant said. And so to characterize this as a closed book on the in-river versus transport on this interim period, I think is misspoken. But that still does not address the long-term recovery issue because neither the current in-river or transportation can save the fish. Let us not get bogged down too much, Congressman,

in the short term. How does it affect the way NMFS is dealing with the 1999 decision process. That is the key question.

Mr. CRAPO. So he says, Mr. Stelle, that there is a bias there and the 1997 decision was an indication of that bias.

Mr. STELLE. Actually, let us look again, my first preference, Mr. Chairman, was not to get hung up on the 1997 decision because I do not think it is material to the long term remedy. Having said that, the decision in fact was to adopt a spread-the-risk approach, largely in deference to the continuing debate within the region, which means that our instructions to the operators was to manage the system so as to end up transporting around—manage it toward the transportation of 50 percent. Now Ed cites an equal shot, that gets pretty equal to me.

Mr. CRAPO. But that is not what was done, is it?

Mr. STELLE. Yes, the system is being operated I think to transport between 50 and 55 percent of the spring/summer chinook, is that correct?

Mr. CRAPO. Go ahead, Ed.

Mr. BOWLES. We are going to get into this, I guess.

Mr. CRAPO. Yeah, I do want to get into this.

Mr. STELLE. My guidance to the operating agencies was just as I said and I can provide you a written copy of that guidance.

Mr. CRAPO. Okay.

Mr. STELLE. And frankly, I do not know how the spill regimes are working, whether we are not we are getting those—53 percent or 57 percent, I am not that familiar.

Mr. CRAPO. And this is salmon.

Mr. STELLE. Yes.

Mr. BOWLES. And these are the spring migrants, the season is over, we are doing summer migrants right now, the fall chinook.

Mr. STELLE. What were the percentages?

Mr. BOWLES. It depends, and this gets to a pivotal point on this, whether or not you are looking at listed fish or all the fish, and for all the fish, it was just above 50 percent. For the listed fish, it was upwards of 56 to 60 percent.

Now maybe this will be productive if we look at it in the context of how the process works, trying to keep that in mind, because I have already debated this at length, you know, with NMFS and their staff.

Mr. CRAPO. Yeah, but I have not heard the debate.

Mr. BOWLES. But I am sure you do not want to revisit that.

I think what is instructive here is how the process worked and Mr. Stelle is correct, the State of Idaho did come in and within the process with the recommendations worked very hard to develop a consensus and I feel we were quite successful with that consensus among the salmon managers. And this was overruled at the Executive Committee meeting, and even that in and of itself, I think the State of Idaho accepted and was grateful for and recognized Mr. Stelle's authority in doing that, and accepted that decision. Mr. Stelle characterized that right, it was to ensure that no fewer than 50 percent of the fish were in the barges.

But he also made a statement which was consistent with their statutory responsibilities, that this was for listed fish. And this led to another place where the process broke down. So I feel Idaho, in

very good faith, gave it our best shot; NMFS did do a good job of meeting us halfway and working with us on that. They overrode a consensus of basically 11 of the 12 salmon managers. So then we went forward and we figured out how to do it within the 50 percent.

During that period, it became evident that listed fish versus unlisted fish transport at different rates and so we developed a transport operation that met the 50 percent criteria for listed fish. To make a long story short, things were changed by the operating agencies from what we had agreed to.

Mr. CRAPO. Are you talking about the Corps of Engineers?

Mr. BOWLES. The Corps of Engineers and the TMT, while Idaho was absent. They changed the operations to ensure that all fish stayed above 50 percent, and not just the listed fish. And so, we came in and tried to change that back through the process, through the TMT process. We put in a system operation request, and actually got consensus again from all of the salmon management agencies—entities except NMFS to again implement this thing, to correct what had been done wrong. That was again overruled by NMFS on what should have been a pretty minor issue, particularly listening to Mr. Stelle now.

And what this comes down to is in the process of joint decision-making, obviously you have to have somebody who is going to make the final decisions if you cannot reach consensus, that is fine. But I think that entity must choose their battles carefully and to override two efforts that developed total consensus other than that authority group, to override that on these two different situations, for an issue that Mr. Stelle says is relatively minor, is somewhat disturbing in the process aspect of this.

Mr. CRAPO. Well, let me tell you—and I would like you to give the microphone back to Mr. Stelle and he can certainly respond to this. The reason this is—it might sound like I am just endlessly going into something that the witnesses here say is a minor part of the issue. The reason it is a big issue to me is because if there is a bias in the direction of what is suggested, that can have massive implications on the people who live in the State of Idaho, if that bias is carried through into the long-term decision.

As you probably know, Mr. Stelle, from comments that I have made in the past, I have a concern that that bias is there. The question I have is—well, I guess I will just ask it to you directly. Is there a bias in the National Marine Fisheries Service in favor of transportation over other solutions?

Mr. STELLE. No. And let me describe the reason why I say that and also let me describe—I think that raises a good point about why did you feel compelled to override an apparent consensus or lack of objection on a particular matter. It is a good question and it deserves a clear answer.

In my view, the issue on—the transportation issue as it is proposed now in 1997 boils down to an issue of the role of science in decisionmaking here. And in my view, as I stated—

Mr. CRAPO. In the short term.

Mr. STELLE. Absolutely. And in my view, the most important dynamic of the issue as it was presented in 1997 was the issue of the role of the best available scientific information in making sub-

stantive decisions. I was very much aware that lots of people did not agree with this and frankly it was not a comfortable position for myself to be in. And I do not particularly like being in those positions.

But I feel very strongly that if we are going to have success in all of the facets of this effort, we must stick to what we believe to be the best evidence available on what is the right course. In my view, there is not a lot of equivocation on what the right course is in 1997.

Mr. CRAPO. Well, one of the reasons the concern is raised to folks like myself—and I would like you to comment on this—Mr. Bowles indicates that 12 of the other salmon managers agreed or had consensus, and I realize it might not have been 100 percent agreement, as Mr. DeHart has indicated that there were some differences on some aspects of the approach to salmon recovery, but 12 of the managers had consensus and NMFS says no, we are not going to go that direction.

Mr. STELLE. Let me describe in a little more detail exactly what the nature of that agreement was, as I understand it, and Ed and Doug, please correct me if I am wrong.

In fact, this issue was debated first, as it should be, at the technical management team level and a different set of options was evaluated and then in the absence of an agreement at that level on the transportation regimes and the operation of the spill and collector projects, it was elevated to the implementation team which are what I consider the senior program managers and I believe at the implementation team discussion there were several options being evaluated and as reported to me, there was an agreement between the States of Oregon, Washington, Idaho, NMFS and I do not know whether or not the operators were involved in this, in a spread-the-risk option and this was actually the State of Idaho moving some from their proposed position in order to reach an agreement. The lower river salmon tribes objected to that option, which was alternative six, I believe. And on the basis of that objection, the issue was elevated to the Executive Committee.

When it was so elevated to the Executive Committee, the State of Idaho reiterated its preference for and its insistence on the Idaho plan, two-thirds in the river as opposed to spread-the-risk, and the other States to my knowledge did not object, expressed a preference for the spread-the-risk option, but chose not to object. And the tribal participants supported the Idaho proposal. So that was in fact the nature of the agreement, as I understand it.

It is a little simplistic to simply say everybody agreed that the Idaho plan was the right way to go. That is not quite accurate.

Mr. CRAPO. Is it fair to say nobody opposed it?

Mr. STELLE. Yes, that is exactly—at the Executive Committee level, there was an absence of objection to it, but for the objection of the National Marine Fisheries Service.

Mr. CRAPO. Okay.

Mr. STELLE. And again, Mr. Chairman, I am just trying to be very precise here.

Mr. CRAPO. No, I understand that. And you are telling me that NMFS' ultimate decision to ignore, or not to accept—

Mr. STELLE. I did not ignore it.

Mr. CRAPO. I realize you did not ignore it. Not to accept the Idaho proposal or Idaho policy.

Mr. STELLE. In whole.

Mr. CRAPO. In whole.

Mr. STELLE. Yes.

Mr. CRAPO. Does not show any bias whatsoever on the part of the National Marine Fisheries as to the ultimate outcome of its decision for the long-term recovery plan.

Mr. STELLE. Absolutely. And on to the issue of bias, there are—in my view, we are absolutely open to making sure that our science, as well as everybody else's science is properly peer reviewed and subject to an open scientific evaluation process. It was we who decided the need to convene an independent science advisory board specifically to ensure that—and it was we who decided to bring in the National Academy of Sciences to help us construct that board, specifically because of the food fight that occurs here constantly in the region as to whose science is the right science. And it was my judgment that because of a lack of credibility of anyone, that convening an independent science advisory board with the assistance of the National Academy of Sciences was essential and that we were absolutely prepared to open all of our books to it whenever and wherever it so chooses.

Mr. CRAPO. And I agree with you on that. In fact, you and I had a telephone conversation about that when it was first happening, and I think that that was a correct decision.

Does NMFS in fact intend to transport all the smolt it can during the 1998 smolt migration?

Mr. STELLE. I will leave that issue to the process which we have in place, which is in late winter/early spring looking at the flow projections, decreases in flow projections. The technical management team will develop a set of options which will then be either reviewed by the implementation team. I do not want to prejudge that issue right now.

Mr. CRAPO. But that proposal has been put forward, is that correct?

Mr. STELLE. I am sorry?

Mr. CRAPO. Has that proposal to transport all fish in 1998, or as many as possible—

Mr. STELLE. A couple of my staff people have said based on the preliminary returns from the PIC-tag transportation studies this year, and this is the first year of the returns, those preliminary returns indicate basically a two-to-one survival benefit from transported fish. She said that if that holds up in evaluation, why would we put more fish in the river. That was purely a staff observation.

My own view on that, which will be controlling, is that we will work that issue through the technical management team and the implementation team in the development of the 1998 scenario.

Mr. CRAPO. But what you are telling me is at least the proposal to abandon this spread-the-risk policy has been raised.

Mr. STELLE. At the staff level, in hall talk, yes.

Mr. CRAPO. Does NMFS assume the current configuration of dams in its approach to the 1999 decision?

Mr. STELLE. It is a good question, and let me go to that and what I believe is important in that 1999 decision.



We do not assume anything there. We assume that by 1999 we will have been able to develop the necessary biological and economic information associated with each of the five or six principal options in order to make a better informed selection of what the long-term remedy is. We can sit here at this table today and speculate, but because of the significance of the issue for the Pacific Northwest, it is my view that our obligation to ourselves is to pursue a very steady, open evaluation of the performance, the likely performance of each of these options so that we can then answer the question to ourselves, do we think we know what we are doing. Because when we get to the selection of a preferred alternative, it will be essential to be able to demonstrate to you and to all the other participants that yes, we believe that our projections of the outcomes of this particular alternative are reliable. And the issue of reliable projections is essential.

Secondly, the issue of the economic costs and benefits of each of the particular options, going to Ed's point, and what the degree of economic impact may be on different sectors and what the opportunities might be to mitigate those impacts so as to be able to accept them as a region is also an absolutely essential facet of this effort over the next several years.

Mr. CRAPO. Okay. I am sure you have heard the argument, the gold plating argument.

Mr. STELLE. Yes, I would like to speak to that.

Mr. CRAPO. Good. The Corps of Engineers is—well, let me just ask you, do you agree that the Corps' capital budget plan seems to predispose the region toward a particular recovery plan that requires flow augmentation as a continued recovery—

Mr. STELLE. No, I do not agree.

Mr. CRAPO. [continuing] outcome. Okay, tell me why.

Mr. STELLE. The issue, as I understand it, Mr. Chairman, is that in particular there were three or four sets of capital projects, dam improvement projects, in the 1998 Corps' capital program that were the subject and have been the subject of continuing debate. The salmon managers in the system configuration team, which is the team of people that try to set priorities for that Corps capital budget, reviewed these four projects and they involved the continued work on the collector project at the lower Snake, extended length screens at John Day, improvements to the juvenile and adult bypass facilities at Bonneville and I believe one other. Doug, do you remember what the other was?

Mr. DEHART. Ice Harbor.

Mr. STELLE. Ice Harbor, Okay. There was what I perceived to be a fairly strong agreement between the Federal and State participants in the SCT and implementation team that those four projects should proceed and that they did not constitute gold-plating or prejudicing the 1999 decision, because—there are separate reasons for each, but for the lower Granite project it was basically that the question of the ability to develop surface collection to better collect and bypass or spill juveniles is an essential option.

Mr. CRAPO. May I interrupt right there? Is there any effort underway right now to accelerate the research on the surface collector design?

Mr. STELLE. I do not know the answer to that, I think that the Corps was pursuing some additional reconfiguration of the prototype this year and testing it out with some curtains. I do not know whether or not—I think they are going full bore on it frankly.

Mr. CRAPO. All right, go ahead.

Mr. STELLE. In essence, the salmon managers, the Federal and State salmon managers decided that these projects should go forward for various and sundry reasons, be it research or simply because we need the improvements in survival that they hold out, and that particularly in the case of John Day, obviously the question of whether or not John Day should be reconfigured is one of the major questions we have to get to. I think the salmon managers' judgment was that yes, even though we put those extended length screens in at John Day—in fact, for 5 days this coming year, the survival benefits of that, even if we end up deciding to take out John Day, will be worth it because implementing a drawdown decision, an extended drawdown decision at John Day may take us 10 to 12 years, and that therefore, the incremental benefits of those extended length screens are worth it and in their view did not prejudice that decision.

For Bonneville, the issue was juvenile bypass at what Ted Strong and the Columbia River Inter-Tribal Fish Commission has rightly termed is a lousy bypass system and has been lousy for years. And I think again the Federal and State salmon managers decided that those bypass improvements were fairly reliable and would result in some fairly significant survival benefits.

I have to say that the salmon tribes, represented by Mr. Strong here, do not agree with the Bonneville decision and I believe do not agree maybe with John Day. And we are looking at that very hard. My own personal view is that I want to sit down and look at the issue of the John Day extended length screens for 1999 and beyond, because maybe we should not be further pursuing any more investments there.

Mr. CRAPO. So you are prepared to give me your assurance today that the current expenditures are not intended to or designed to push the decision in one direction or another.

Mr. STELLE. Absolutely.

Mr. CRAPO. The 1995 biological opinion provides that the water in the upper Snake River basin will only be acquired from willing buyers and willing sellers and in compliance with State law. You have probably heard me express concern about that remaining the case in any new decision that is made in 1999 or whenever it is made. Do you have any plans to approach obtaining water in any other way?

Mr. STELLE. No.

Mr. CRAPO. If the water is not able to be obtained through a willing buyer-willing seller and is required by whatever recovery plan that you may approve or whatever biological opinion or whatever decision is made in 1999, how will you obtain it?

Mr. STELLE. My view on that, Congressman, is that the subject of operations of the upper Snake reservoirs and the Hells Canyon complex and the relicensing of that complex should properly be open to negotiations between the Bureau—and this is the long term—

Mr. CRAPO. Right.

Mr. STELLE. [continuing] between the Bureau, the Idaho Power Company, the States, the tribes and ourselves and that that in my view is very directly related to the issue of the lower Snake Federal projects. Hence in my view, our objective should be to try to reach a more comprehensive agreement that involves both decisions about those lower Snake dams and some long-term understandings and commitments about flows or flow augmentation from the upper Snake.

Mr. CRAPO. And those commitments again would come, if I understand it correctly, if the water is obtained only from willing buyer-willing seller arrangements, those commitments would have to come from individual water users.

Mr. STELLE. Yes, and I believe the implementation of those commitments would require the continued support of the State of Idaho.

Mr. CRAPO. Do you have any opinion or knowledge of any legal opinions that would indicate that the managing agencies, whether it be the Bureau of Reclamation or otherwise, could obtain that water other than through a willing buyer-willing seller arrangement?

Mr. STELLE. I heard the testimony this morning and the exchange this morning, and Mr. Chairman, that is not my area of expertise, so I really—

Mr. CRAPO. So beyond that, you have nothing to add?

Mr. STELLE. No.

Mr. CRAPO. You heard us refer to the consultation this morning between the Bureau and NMFS.

Mr. STELLE. Yes.

Mr. CRAPO. Do you have any plans on increasing the 427,000 acre-foot amount that is now requested or provided as a part of this new consultation?

Mr. STELLE. Can I give you a precise legal response to that?

Mr. CRAPO. Sure.

Mr. STELLE. And let me describe to you why I am giving you a precise legal response. We have received a 60-day notice on that issue, we may well be in litigation on that issue and I do not want anything I say here to prejudice our ability to defend what we do in that litigation, and therefore, I am being careful.

If your question is do we have any current intention of requiring more water beyond that which we called for in the 1995 biological opinion, the answer is no. If your question is do we intend to look at all of the current available information and examine all of the issues in accordance with a normal and lawful consultation process, we do intend to do that. But at this point in time, we have no intention, based upon what we know and we believe we have considered all the relevant information in the 1995 biological opinion.

Mr. CRAPO. Who has filed the notice of intent to sue?

Mr. STELLE. Oh, I do not know.

Mr. CRAPO. Is there only one?

Mr. STELLE. Anybody here know that? Legal Defense Fund or—

Mr. CRAPO. There are several here that know, but we will find that out.

Mr. STELLE. American Rivers. There are so many, Mr. Chairman.

Mr. CRAPO. Has—let us get it all, it is the American Rivers group, are there any others that are a part of that?

Mr. STELLE. Again, I am not sure who signed that 60-day notice.

Mr. CRAPO. Mr. Ford, do you have an answer to that question?

Mr. FORD. The lawyers have told me the Defense Fund and Northwest Environmental Defense Center, the plaintiffs are American Rivers, Sierra Club, National Resource Defense Counsel, Oregon Natural Resources Counsel, Federation of Fly Fishermen, Northwest Sportfishing Industry Association, Pacific Coast Federation of Fishermen Associations.

Mr. STELLE. To name a few.

Mr. FORD. Trout Unlimited may also be in there.

Mr. CRAPO. Okay, good, thank you.

What is meant by the statements in your May 19, 1997 letter to FERC regarding the water diversion activities in the upper Snake River basin and progress on securing additional water? You are familiar with the paragraph that I am referring to, the second paragraph on page 2?

Mr. STELLE. I do not have it before me.

Mr. CRAPO. I have got a marked up copy here and there is also a copy in the record from our previous hearing, but basically in your letter to FERC—I think I have got it here, yes—it states, “The effectiveness of the FCRPS project operation seeking to achieve BO in-river flow objectives is dependent upon water diversion activities in the middle and upper Snake River basin and upon the operation of the Hells Canyon project situated in between.” I will skip a sentence or two and then it says, “Specifically, the BO adopted the Council’s requirement for immediate provision of 427,000 acre-feet and progress on securing additional water from the middle and upper Snake River and specific drafting levels from Brownlee Reservoir of the Hells Canyon complex in May, July, August and September.”

The question that I have is the question in this consultation that is raised by that language of what “progress on securing additional water” refers to.

Mr. STELLE. That is one of the numerous points that we intentionally incorporated in the 1995 biological opinion to try to draw that opinion as close as possible to the fish and wildlife program of the Northwest Power Planning Council. In our view—the Council program called for an additional one million acre-feet out of the upper Snake.

Mr. CRAPO. That is right.

Mr. STELLE. We did not believe that that was feasible and that it would be inappropriate to request the Bureau to provide that. We therefore, in working with the Bureau, decided that the—that a firm commitment for the 427,000 acre-feet was feasible and implementable, but that we would continue to examine the possibility of additional water over and above that, in reflection of the Power Council’s call for one million acre-feet.

Mr. CRAPO. Then what that tells me is that the Power Planning Council’s call for an additional one million acre-feet is very much in play.

Mr. STELLE. In my view, the agreement that we have now with the Bureau of Reclamation for the providing of 427,000 acre-feet is the agreement that we will continue to look to with the Corps—with the Bureau and will be the subject of further discussions in the consultation. I do not know of any specific further measures for additional water from the upper Snake, if that is what your question is.

Mr. CRAPO. At least in occasional discussion and consultation with FERC and the issue of seeking an additional one million acre-feet, or at least looking at the issue of seeking an additional one million acre-feet in that consultation.

Mr. STELLE. Again, to parallel and be consistent with the—

The REPORTER. Will you use the microphone, please? I cannot hear you.

Mr. STELLE. Oh, I am sorry.

So the issue is—and, Mr. Chairman, I am not even sure that the Federal Energy Regulatory Commission has decided to initiate consultation.

Mr. CRAPO. I understand that.

What is the current progress on meeting the 1999 deadline for making a decision on the long-term mechanism for salmon recovery?

Mr. STELLE. I would say it is good. In fact, at our last meeting with the State and tribal senior members of the process, we, in fact, had presentations by the mediator for the PATH process on their progress and on the—by the Corps of Engineers on their economic and engineering evaluations. We looked at the schedules. We even looked at the question of whether or not schedules should be accelerated or could be accelerated and what we might or might not sacrifice by accelerating decision schedules. We distributed a discussion paper on the relevant schedules and timeframes and issues and I would be happy to provide that to you, Mr. Chairman.

Mr. CRAPO. If you would, I would appreciate it.

Mr. STELLE. But my general impression is, I think the economic and biological work is pretty much on track.

Mr. CRAPO. I think that discussion paper refers to more water, too.

Mr. STELLE. Yes. Yes, in fact, one of the issues that the PATH process is examining is the role of flow augmentation in the long-term remedy.

Mr. CRAPO. In that context, what implication will either of the two long-term decisions have for water in southern Idaho? And when I say that, I am referring to basically the enhanced transportation and surface collector approach or the drawdown dam breaching approach. In other words, if the decision moves in one direction or the other in the 1999 decision that is going to be made, what implications do each of those options have, in your opinion, with regard to the need for additional water from southern Idaho? And I am referring not just to the upper Snake but clear across southern Idaho.

Mr. STELLE. Again, based on what I know now, my view is that there is a correlation between flow augmentation or additional flow augmentation in southern Idaho or the upper Snake and drawdown options on the lower Snake at the Federal projects. If the region

decides to implement a drawdown strategy, then, I think, that will likely result in reduced demands for flow augmentation from the upper Snake. Exactly how much and what the equation is, Mr. Chairman, I do not know and I do not frankly think we have developed that information through the PATH process, but there is a relationship there.

Mr. CRAPO. Is it possible that the need for flow augmentation could be eliminated entirely under some options?

Mr. STELLE. We would have to talk about what you mean by flow augmentation. Fish need a river and fish will be returning in summer and fall. So there will need to be flows in the summer and fall time in the lower Snake. Now does that require flow augmentation, or does the natural hydrograph provide for it? That is some of the details we have to take a look at.

Mr. CRAPO. In the event that there were a requirement of more flow augmentation from southern Idaho, particularly in dry years, some have suggested additional storage such as Galloway for those purposes. Is NMFS evaluating that and is that a feasible option?

Mr. STELLE. I do not have information on that topic, Mr. Chairman. I do not know.

Mr. CRAPO. Okay. Were you here this morning when we had the discussion with Mr. Campbell about the two million acre-feet of water?

Mr. STELLE. Yes.

Mr. CRAPO. Do you have a comment on that?

Mr. STELLE. I believe the discussion pertained to the recently completed study by the Bureau of Reclamation.

Mr. CRAPO. Yes.

Mr. STELLE. The—that study was intended by both NMFS and the Bureau to be an evaluation of the cumulative effects of all different water resource activities on in-stream close in the Snake and Columbia system. It was called for, and part of the 1995 biological opinion. The study was released—finished and released by the Bureau, I believe, in the spring of this year. Exactly when, I am not sure. And in essence, what that seeks to display is the—is the relative role of different types of water resource management activities on in-stream flows, including, but not limited to, power production, flood control and irrigation.

Mr. CRAPO. And so you do not interpret that study to mean anything other than—

Mr. STELLE. Accumulative effects study.

Mr. CRAPO. [continuing] accumulative effects study? All right.

In his testimony, Mr. Ray asked—or said that he is not aware of—and I am not aware of—what the improved transportation alternative really is. Are you in a position to give us details on what that alternative is?

Mr. STELLE. Yes. They are fairly commonsensical. The most significant of which I think is the—is substantial improvements in the ability to collect juveniles in their downstream migration through this question of surface collectors. If we—if transportation is the chosen long-term remedy, then it must be predicated on the assumption that we are going to be able to collect enough juveniles in order to support rebuilding. Right now, the collection efficiencies at the different projects is quite variable. The most important im-

provement in the transportation system is the ability to—is the collection abilities, and that—and the most important focus there is whether or not we can develop surface collectors that work. There are other more modest improvements, improvements in the bypass systems, improvements with the other collection facilities like screens, improvements in barge—in the conditions in the barges themselves, reduced crowding, improvements in release strategies of fish in the downstream areas, et cetera, et cetera.

Mr. CRAPO. All right, thank you. I am going to change gears over to the conservation agreements.

Mr. STELLE. Yes.

Mr. CRAPO. Do you see positive potential for NMFS to use the conservation agreements that were discussed earlier in terms of dealing with private parties and others?

Mr. STELLE. Yes.

Mr. CRAPO. What have you done or what do you plan to do in support of these agreements as a tool for fish recovery?

Mr. STELLE. I plan to work very hard to try to get more staff to help us negotiate that. That is actually a serious issue. What we have done thus far principally in Oregon, Washington and California, Congressman, is initiate a fairly aggressive program to negotiate long-term conservation agreements with applicants who come in the door. They tend to be 40 to 100-year agreements with the large industrial landowners, mostly timberland owners. And the basic deal, if you will, associated with those agreements—which I strongly support—is that if they promise to manage their landscape in a way that provides a high likelihood that the aquatic habitat on that landscape will be healthy over time and will support salmon and steelhead, we, in turn, promise not to come back and take another bite of the apple. They are multi-species, all species. They tend to cover both aquatics and terrestrials and they represent very large scale, very sophisticated agreements. We have been—we have been quite successful with a number of them thus far, and I think that they—the landowners themselves are willing to change their land management practices for the long term with some significant investments associated with it in return for the stability it proves them, that, in essence, they are home free from an Endangered Species Act or Clean Water perspective. They are a very important tool in the toolbox.

Mr. CRAPO. And you fully intend to use them?

Mr. STELLE. Yes.

Mr. CRAPO. I want to go back to your answer with regard to the water from the upper Snake. I recognize that you are facing a notice of intent to sue. I assume you can tell me what is in that notice. Is that not a public document, the notice of intent to sue?

Mr. STELLE. Oh absolutely. I can give you a copy.

Mr. CRAPO. I would like to see that.

Mr. STELLE. Okay.

Mr. CRAPO. I assume that the reason you cannot discuss water issues is because the notice of intent to sue seeks further water, or says that there may be a claim for further water from southern Idaho, is that correct?

Mr. STELLE. I think that sounds like a safe assumption. To be honest with you, I cannot recall the exact claim. I believe the heart

of the claim is a procedural claim that you did not consult and you have to. Whether or not the relief sought is something more than a formal consultation under section 7 is the question. My guess is probably they are looking for more than just process.

Mr. CRAPO. And you will provide a copy of that notice?

Mr. STELLE. Yes.

Mr. CRAPO. And I do not—I think I asked this, but you were in the middle of answering something else. Is that the only notice that you are currently operating under or dealing with right now?

Mr. STELLE. No. I can answer with great confidence that we—we get a sort of sprinkling of 60-day notices on a monthly basis from various and sundry parties. Do you mean in the context of the upper Snake?

Mr. CRAPO. Well no, I meant the first, but let us go to that. In the context of the upper Snake, are there others that you are aware of?

Mr. STELLE. Not to my knowledge.

Mr. CRAPO. Can you tell me—and I realize you may not have this on the tip of your tongue. But can you tell me which groups may have—individuals or groups may have filed notices of intent to sue with regard to the 1995 biological opinion? Is that going to be a long list?

Mr. STELLE. No. Doug, you might be able to help here, or Ted. I believe the principal plaintiffs for challenging the hydro opinion—

Mr. CRAPO. Yes.

Mr. STELLE. [continuing] were the—I believe three of your member tribes, or was it four?

Mr. STRONG. We were just amicus.

Mr. STELLE. I am sorry. Then it was—I assume American Rivers was the plaintiff, the principal plaintiff. I assume some of the Idaho environmental groups may have been part of the coalition of plaintiffs. I believe they were represented by the Sierra Club Legal Defense Fund. As Ted indicated, his member tribes joined that litigation as amicus, and I believe the State of Oregon joined as a party plaintiff, and the State of Washington joined as an amicus, and the States of Idaho and Montana joined as party defendants.

Mr. CRAPO. And that is all in one notice?

Mr. STELLE. That was all in one litigation.

Mr. CRAPO. In one litigation. Are there any notices that have not resulted in litigation?

Mr. STELLE. Oh, yeah.

Mr. CRAPO. That is a long list, or is it?

Mr. STELLE. A 60-day notice can be a tactical move, Congressman, as you probably well know, to stimulate further discussions on a particular matter. So I do not necessarily assume that 60-day notices automatically translate into actively prosecuted litigation.

Mr. CRAPO. But you are treating the—

Mr. STELLE. Yes.

Mr. CRAPO. [continuing] American Rivers one as a potential—the recent one—

Mr. STELLE. Yes.

Mr. CRAPO. [continuing] as a potential for very real litigation?

Mr. STELLE. Yes.



Mr. CRAPO. Hold on just 1 minute.

[Pause.]

Mr. CRAPO. All right, I just want to go into one more area with you, Mr. Stelle, and then I do want to have a brief discussion with the panel about process. As you have heard from some of my other questions, I am sure, and from some of the testimony at the first hearing and in this hearing, a lot of objections come to me from individual participants in various endeavors, whether it be mining or timber or grazing or other uses that have been impacted by salmon management—often habitat management decisions. And one of the constant complaints is they can deal with the overall managing agency, but then when the layer of management that NMFS adds to it is overlayed, that it is a very unworkable and frustrating circumstance. I do not really have a question, although you are welcome to respond if you would like to. I just want to tell you that that is a constant concern that is raised to us, often enough that I feel it necessary to bring it to your attention here that in one way or another, we have got to get past that. We have got to get to the point where the managing agencies and officials are working together and in a timely fashion with NMFS. I am not going to necessarily say it is NMFS' fault, but you are the one at the table today. I have the opportunity to talk to other managing agencies as well. To just encourage you to look at that issue and make sure that your people in the field are providing the kind of timely and prompt public service that they ought to be providing to those who are dealing with our managing agencies. If you would like to comment to that, you are welcome to.

Mr. STELLE. Let me offer just a couple of brief comments. First of all, I—there have been—I think there are probably some of the—some of the frustration is warranted, and at times things have not gone as quickly as everybody would hope. I think that there is—there has been some room for improvement with the interagency process and that, in fact, we are seeing some real improvements occurring. So I am optimistic that things are in fact getting better on the ground.

I would also note that we have—I have made a big effort to try to expand our Boise office so that just the bloody issue of workload and bottlenecks tries to get resolved better. We have made some pretty good progress there.

Finally, I would like to say that after the—on the issue of the grazing permits, I listened to Jim's testimony this morning, Jim Little—

Mr. CRAPO. Yes.

Mr. STELLE. [continuing] and he participated in the review team that we had on the ground a couple of weeks ago to look at the issues of cattle management on Federal lands and what kind of strategies might be implementable and what kind of monitoring requirements might be required. What I would like to do is to give you a commitment that when the report from the National Riparian Team comes back with what their recommendations are on how to implement a strategy, that I will call Jim and I will meet with him to talk to him about developing a larger multi-year framework for grazing management in a way that gives him better predictability. I think that is entirely possible. I think we are closing the

bounds between the different points of view and I will give you my commitment that I will meet with him to look to explore that.

Mr. CRAPO. Thank you. That is the kind of thing that I think really does help, because even though we all recognize that the issues are complex and the agency is very heavily over worked, we still have people on the ground who's livelihoods are seriously impacted by these things.

Mr. STELLE. Yeah.

Mr. CRAPO. Let us go now to a discussion with the whole panel on the question that we have talked with each panel about, and that is what kind of a process do we need to move forward. We have the sovereigns in one capacity or another represented here, and that has been different than the other panels because they have had an opportunity to talk about you. But I would like to get your perspectives on this. I tend to come at it—I will tell you out front—up front that I tend to come at it from a perspective of thinking that we need a decisionmaking model in which there is a final place where the buck stops. Although NMFS may be the closest thing we have got to that, I do not think that we have got that even now with NMFS. There are those who say, okay, then we ought to have a Federal agency doing that. There are those who say, no, we ought to create a regional entity that has equal participation from the tribes and the States and the Federal agencies. There is a suggestion, as you heard this morning, to have maybe those sovereigns create a single managing person or a board of directors with a CEO for management. I am sure that a number of other options could be discussed. I would like to know what your thoughts are.

First of all, do we need to have a different system than we now have? If your answer to that is no, then I would just like to know why, and if your answer to that is yes, I would like to know what you have as suggestions.

Mr. DeHart, do you want to start?

Mr. DEHART. Certainly, Congressman. Maybe the best way for me to answer this, rather than just sort of speculate myself on some of these options, is to offer you an example of an approach that I think is working well in Oregon at this point, and that is the process that we have gone through as a State and have worked with National Marine Fishery Service on in developing recovery strategies for coho salmon. And that was, I think it is fair to characterize, very much a bottom up rather than top down effort. An effort that involved a commitment by State agencies, by the Governor of Oregon, by the Oregon State legislature in partnership with local governments, with local landowners to bring together measures to meet scientific objectives, biological objectives that we developed working with the National Marine Fishery Service and others. The end result was really not, I do not think, fundamentally a different process in the sense of the Federal side of it, but it was different in the sense that when it came together, the pieces came with buyoff. So that plan, as it stands right now, has State and local money behind it, as well as Federal money behind it. Of course, it was only adopted earlier this summer, but many of the measures are already happening and moving forward quickly. Now in fairness, that did not solve the issue of Federal management re-

sponsibilities for Federal lands and Federal water projects versus non-Federal ones. It operated on the assumption—and it is working there—that the Federal agencies define their measures and then they implement those to the same set of agreed to standards and the State implements ones involving State and privately owned lands. I think that model is worth a real close look. It is a bit of a brave new world in how you implement the Endangered Species Act and also in how you get ahead of the Endangered Species Act and deal with weak stocks before you have to talk about kicking in federally driven, ESA driven management. So I certainly offer that one as food for thought here.

Mr. CRAPO. All right, thank you.

Mr. Bowles.

Mr. BOWLES. Congressman, that is a big question you asked and one I have a lot of opinions about. As I mentioned in my testimony, you know, I really do not feel that how ever we package the process that we are going to get there unless we have a fundamental shift in what is motivating the participants at the table. And that motivation has to be meeting the biological requirements of the fish in a way that is acceptable to society. I feel that it is a very simple mission, but we, as a group, get far too bogged down in the process of salmon recovery. The concern, legitimate as it is, on litigation, on the bureaucracies that we all are part of causes us to lose sight of that mission. I do not feel that our tendency as a group to try to first and foremost see if we can somehow make it fit without causing any real changes is going to get us there.

The other, you know, thing that I brought up is that from the standpoint of having one person in charge, I think you are right in that we do need some place for the buck to stop. But that leadership is going to require somebody that has solely focused on that mission and without any scientific, economic or social biases within that. And I do not feel NMFS is there on that, mainly because of what I perceive as their bias toward sticking with the transportation program. I think if we can get beyond that and focus on the social and economic issues of how to make in-river survival work, we could be much more successful in this.

Mr. CRAPO. Okay. Mr. Strong.

Mr. STRONG. I believe we are already on this road to a new process and structure and it came about because the tribes withdrew from the adaptive management forum for the reason which is to overcome the bias that Will says was not there. You know, we felt there was extreme bias on the part of National Marine Fishery Service in leaning on its own science and utilizing only its own scientists' advice. That first came to public attention when we went through the MOA process to which allocated the \$435 million. That was predicated almost exclusively on the biological opinion which the tribes objected to, which many environmentalists objected to, and which in part was the American Rivers versus NMFS lawsuit. When the adaptive management process began and all of these tiered committees were put together, NMFS chaired those, and despite any protestations from the tribal scientists, many of those decisions were made at a very low level. We objected strenuously to having technicians and scientists making policy. After several months of frustration—maybe a year went by, we finally—after

fully consulting with the chair for the Council of Environmental Quality, we withdrew from that process, asking that a new process be developed in which three sovereigns would respect each others authorities and bring a greater kind of communication toward resolving what we thought were these biases. And when the decision about bargaining went forward, to us, that was the ultimate in terms of bias. And when the decision was supposed to be made in the future about breaching the dams, and the goldplating went ahead as a decision anyway, the Army Corps of Engineers and the Bureau of Reclamation said we are obligated to do that because it is in the biological opinion. Their hands were tied by the National Marine Fishery Service. That is a bias because it excludes the decisions and the science from the tribes and other environmentalists. So it is biased.

I think to the credit of the National Marine Fishery Service and others, we are now putting together a new framework that allows us to have these very authoritative decisionmaking processes put into place. I think—I am hopeful anyway that a new kind of optimism will grow from decisionmaking being made from the policy-makers on down. The tribes were quite frustrated having policy decisions made at a very low level. So I think we ultimately hope that improved communication will result in better decisionmaking and maybe take the edge off what we felt was a bias toward only the National Marine Fishery Service science.

Mr. CRAPO. Okay, thank you. Mr. Stelle.

Mr. STELLE. Yes, Mr. Chairman, let me first draw a couple of distinctions in your question, because I think they are useful. They are not perfect, but they are useful. There is, first of all, the suite of activities which occur on a day-to-day basis in implementing the biological opinion in preparation for the larger discussion in 1999 in running the river, in deciding what the Corps should spend their money on, et cetera, et cetera, et cetera. And in our view, I consider that as sort of interim governance issues. And then there is the larger question of how is this region going to decide what that long-term pathway should be in 1999. And they are qualitatively different subjects in some respects.

On the first, I sincerely believe that—call it what you will, and I do not care what we call it—you need in essence the implementation team made up of the senior program managers of the relevant State, tribal and Federal agencies overseeing day-to-day implementation activities. You just need that. Now we could go behind closed doors and say this is just a Federal system, but that makes absolutely no sense. And we have that implementation team structure in place and I think it works fairly well, and hundreds and hundreds of issues get worked out there. And they oversee some technical committees which are essential technical committees.

So I see in some respects the interim decisionmaking apparatus is there. It is an implementation apparatus and we do not need to worry too much about that in some respects. There are incremental improvements we can make and should be making in it and are making with everyone.

The real larger governance issue is the big—is how to make the long-term decision. In my view, first and foremost—and I think I represent the Administration on this. We believe that the long-

term—the selection of a long-term remedy must absolutely involve the active and formal participation of the governments of the Pacific Northwest. The State governments and the tribal governments must come together with the Federal agencies in developing a long-term solution. If it does not happen, it will not get implemented. The question for us on governance, I think, is what kind of mechanism can we agree to to ensure that those options that we are developing are the right options, that the information is the correct information, and that the—and that we then negotiate and come to an agreement on the right pathway. On that, I think Ted is correct that largely because of the effort of the Governors and the tribes with Federal participation, we are actively discussing how we can develop that kind of deliberative process. Maybe using the offices of the counsel representing the States, with active tribal and Federal participation, maybe doing it some other way. At the end of the day, we will end up having three sovereigns around some table somewhere in a deliberative process. We need to come to a more complete understanding of how that will work so that when we get 299, we are prepared to do business.

Mr. CRAPO. Mr. Stelle, in that context, it seems to me that what you have just described, we already have or have the potential to have put into place if that collaborative process between the sovereigns assumes that the Federal sovereign will ultimately make the final call, which is what happens now, am I correct? In other words, we can bring the State and tribal governments into collaboration or consultation or whatever we want to call it, but under the current system, basically you have to make a decision, NMFS has to make a decision, and then the other operating Federal operating agencies have to decide whether they are going to comply with that decision or not, is that correct?

Mr. STELLE. That is the current—that is the current system, yes.

Mr. CRAPO. So the question I would have in the context of what you have just suggested is, do you think that is adequate? In other words, the States and the tribes—and I would ask this to all of you. That the States and the tribes are involved but they are not actual decisionmakers, or should we move to a system in which the States and the tribes are the decisionmakers, if we can create one. I do not even know if we can do that. But do you see what the question is?

Mr. STELLE. Yes, I do, and it is a fair—it is a good question. I again think there are really very qualitatively different things at play here. On the one hand, the current system we have now is the implementation of day-to-day activities pursuant to our various responsibilities and statutory obligations, and we all try not to get sued too much. On the other hand, this larger decision, again in my view, is a macro—is a macro choice by the Pacific Northwest. I fully expect that the implementation of that choice will be by legislation, will require legislation and will require some degree of consensus among the governments and the political leadership here in the Pacific Northwest. And in my view, that ultimately—the coming together of that political consensus, as I think Ed was saying, is going to be the essential ingredient for long-term salmon success. It is not going to be simply NMFS and the Corps of Engi-

neers going off and making a section 7 decision under the Endangered Species Act, no, sir.

Mr. CRAPO. All right. Mr. Strong, do you want to add anything to that?

Mr. STRONG. First of all, I want to make sure that in this area of bias—because Mr. Stelle is good at some of this stuff, he is a good bureaucrat at this point. That just because things are interim, as he terms it, it does not mean that the tribes, States and others should not be included. Barging, budgeting, spills, flows, production, they are interim. They are decisions being made today, but they impact the long-term availability of salmon in the future. We are not going to have that door closed on us by NMFS saying that these are interim measures and we will make the decision and you guys just go along with it. That is not going to happen.

Secondly, I think that with regard to these processes and the decisions that are being made, I do think that while we have gone through this adaptive management process, that it is going to be very important that each of the respective governments be able to make decisions at these forums. That has been one of our problems. We do not necessarily need a CEO. We need people coming to that table who can make the decisions at that time instead of saying well, we have got to give this to our scientists, we have got to give this to our attorneys and the statisticians and everybody else to make a decision for us. There is no need for any of that kind of leadership if that is what we are going to do in a new process. We need people who can come there, make those decisions, make them binding and get on with the show.

Mr. CRAPO. All right. Mr. Bowles.

Mr. BOWLES. I would like to just reiterate what Mr. Stelle brought up. This really is going to be a societal decision, and I think where the process really needs to start focusing on is embracing society into the discussion and the debate. Hopefully not so much in the debate of these conflicting ways of protecting our interests, or anything else, but actually in finding solutions on how to keep their interest whole. That cannot be done with the current process. We put, and it would be a fair question to ask us involved in the process, how much time relatively have we spent dealing with the science, dealing with the day-to-day implementation of things versus how much time have we spent figuring out how best to get society prepared for the decision they have to make? I think you would be a little disappointed in the answer.

I think Mr. DeHart has a good model for us perhaps on the coastal coho restoration plan, in that they basically came in with some ideas of what they need to accomplish it. It was not a big debate on the biology. I mean, it was there but it was not the focus. And they came in and said okay, this is what is biologically needed. Now let us figure out how to do it. That generated a lot of grassroots support. They had the threat of a listing, so that helped motivate people. But basically what you had was people figuring out how to keep themselves whole and still get the job done. Whether or not it works or not, the verdict is still out. But, at least, I think it was a good model and a way to begin that.

Mr. CRAPO. All right. Mr. DeHart.

Mr. DEHART. Well the only thing I could add is—at this point is to agree with the characterization that Will made a process, and that is, there is only so many ways to rearrange the same pieces in any case and they are largely on the table. So from my perspective, why do not those pieces always function now? I said this before, but it is worth reiterating. There is a couple of things that are missing, I think. One of them are clear biologically based goals and objectives that the process is supposed to meet. I would suggest that that has really been the failure of the Northwest Power Planning Council to the degree that process has failed to date. It has not been able to take on and resolve that fundamental issue. Instead, it has built an array of measures, but never the fundamental objectives for what they are trying to accomplish and what the measures need to meet.

And then second—and I mentioned this earlier, too—a dispute resolution process. Because clearly, just as you have mentioned several times, this is not going to work if it is just simply regional sovereigns and Federal Government disagree, regional sovereigns lose. I mean, the process has to be able to deal with what happens if there are good faith disagreements between regional and Federal parties. If you can make those two pieces work, I think largely the process piece will run all right.

Mr. CRAPO. All right. I appreciate your thoughts and input and the time you have taken to come here and testify. I have no further questions, so I am going to adjourn the Subcommittee hearing. For those who want to give a 1-minute speech, we will still do that. As I said earlier, it will not be a part of the record, but the record will remain open for written submission of comments for 30 days. This Committee is hereby adjourned.

[Whereupon, at 2:46 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows.]

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**MEMORANDUM**

**TO:** Members, Subcommittee on Fisheries Conservation, Wildlife and Oceans

**FROM:** Subcommittee Staff

**SUBJECT:** Hearing reviewing the authority and decision making processes of the National Marine Fisheries Service Northwest Region.

At 10:00 a.m. on Thursday, July 24, 1997, in Room 1334 Longworth House Office Building, the Subcommittee on Fisheries Conservation, Wildlife and Oceans will meet to hold a hearing to review the authority and decision making processes of the National Marine Fisheries Service Northwest Region. Witnesses invited to testify: Mr. Jim Yost, Senior Special Assistant, Idaho Governor's Office; Mr. Samuel Penney, Chair, Nez Perce Tribal Executive Committee; Mr. Dave McFarland, Chairman, Lemhi Riparian Conservation Agreement; Mr. Stan Grace, Council Member, Northwest Power Planning Council; Mr. Lionel Baylor, Fisheries Policy Representative, Shoshone-Bannock Tribes; Mr. Joseph Rohleder, Oregon Governmental Affairs Office and NW Sportfishing Industry Association; Mr. Robert Durlow, Meridian Gold Company; Mr. Justin Hayes, Save Our Salmon; and Mr. Norman Semanko, Twin Falls, Idaho.

**BACKGROUND**

The Columbia River basin is the focus of much debate and controversy regarding the appropriate actions needed to restore the declining salmonid populations. At issue are the causes of decline and the changes needed to minimize salmon mortality and maximize salmon returns. There are many potential causes affecting the decline in abundance of these salmon stocks: ocean conditions, dams, water use, overharvest, habitat destruction, hatchery impacts, and other human-induced factors. No single factor is responsible for the full extent of the decline, and no single action will restore the salmon runs.

Five federal agencies (National Marine Fisheries Service, the U.S. Fish and Wildlife Service, Bonneville Power Administration, U.S. Army Corps of Engineers, and the Bureau of Reclamation), five states (Washington, Oregon, Idaho, Montana, and Alaska), five lower river tribes (Yakama, Nez Perce, Umatilla, Warm Springs and Shoshone-Bannock) and eight upper river tribes (Colville, Spokane, Couer d'Alene, Shoshone Paiute, Burns Paiute, Kalispell, Salish-Kootenai, and Kootenai) are involved in salmon management and recovery. Commercial and recreational fishing sectors along with environmental organizations also have an interest and are active in this process.

<http://www.house.gov/resources/>



Seventy percent of the 471 miles from the mouth of the Columbia River to Lewiston (Idaho)/Clarkston (Washington) on the Snake River have been converted from free-flowing rivers into slack-water reservoirs after the completion of eight hydroelectric dams. Over the last decade, salmon have disappeared from about forty percent of their historical breeding ranges in Washington, Oregon, Idaho, and California. Most runs that appear plentiful today are largely composed of fish produced in hatcheries. Recreational and commercial fishing for several salmon species has been restricted or even prohibited from the coastal waters of the region to the headwaters of many streams, and tribal fishing has also been reduced.

The Endangered Species Act of 1973 (P.L. 93-295) as amended (16 U.S.C. 1531-1543), gave the National Marine Fisheries Service (NMFS) the authority to manage and recover the declining Columbia River basin salmonid populations. By 1978, NMFS had started a formal review of the status of Columbia River basin salmon stocks. When Congress passed the Pacific Northwest Power Planning and Conservation Act in 1980, NMFS put its petitions to list salmon on hold.

The Power Planning Act directed the federal agencies responsible for managing, operating, and regulating the hydro system to exercise their responsibilities in a manner that provides "equitable treatment" for fish and wildlife. The federal agencies with jurisdiction are: the Bonneville Power Administration (BPA), the federal agency in charge of marketing power; the U.S. Army Corps of Engineers (COE), which is responsible for operating mainstem dams and some of the storage reservoirs and establishing flood control requirements; and the Bureau of Reclamation (BR) which operates the Grand Coulee reservoir and most upper Snake River reservoirs.

The Act also established the Northwest Power Planning Council (NPPC), which is an interstate compact with a statutorily adopted plan to restore Columbia basin salmon stocks. The Act requires that the Columbia River Basin Fish and Wildlife Program be assembled from recommendations submitted to the Council by the region's fishery managers, including Indian tribes from the basin. The recommendations proposed by these managers and other interested parties, are reviewed by members of the public throughout the Northwest and adopted by the NPPC.

In 1987, the NPPC incorporated the concept of adaptive management in the Fish and Wildlife Program as a means of moving forward with recovery actions while the region debated questions on biology and hydrology. The NPPC updated its recovery plan in 1992 to achieve a "no net loss of biodiversity." In December, 1994, the NPPC proposed recovery plan, the "Strategy for Salmon," crafted a schedule to provide safer in-river passage for migrating juvenile salmon. Nonetheless, the program still does not have the support of a majority of the NPPC Members and the NPPC is considering whether to open the 1994 plan for a formal amendment. In 1995, the Independent Scientific Group (ISG) was formed as a response to measures adopted in the 1994 plan. The ISG

evolved from its predecessor group the Scientific Review Group, which was formed from a Memorandum of Understanding between the BPA and the Columbia Basin Fish and Wildlife Authority, the latter acting on behalf of the state, federal, and tribal fisheries managers.

#### ESA LISTINGS AND RECOVERY EFFORTS

Despite these efforts, however, Snake River sockeye were listed as endangered under the ESA in 1991. Snake River spring/summer chinook and fall chinook were listed as threatened in 1992 and reclassified as endangered in 1994 because of the low number of adults returning to spawn. Once a species is listed, the ESA requires a recovery plan to be established and implemented.

In 1995, NMFS released its Biological Opinion and Salmon Recovery Plan. NMFS' charge was to develop a biologically sound and legally defensible strategy for salmon restoration in the Columbia and Snake basins to recover wild stocks at risk of extinction and rebuild those wild stocks to maintain healthy and sustainable fisheries. Through this Plan, NMFS was trying to satisfy all applicable Federal laws, while using the best possible science to develop a range of options for modifying the river system over the next several years in order to achieve its salmon rebuilding objectives.

The NMFS recovery plan was based on what it called the 4-Hs, requiring changes to the hydroelectric dam operations, hatcheries, harvest and habitat. These are some of the major elements of the NMFS plan: phasing out nontribal commercial gillnet fishing in the lower Columbia River and reducing nontribal coastal troll fishing and buying back fishing boats, permits and gear in those fisheries. In addition, it restricted ocean and river harvests to protect fall chinook, and urged the U.S. and Canada to reach an agreement on rebuilding chinook stocks. The plan also capped Columbia River basin hatchery production of salmon at the 1994 level of about 197 million fish and promoted raising wild fish in captivity from egg to juvenile stages and other artificial propagation programs to create gene banks to boost populations of wild fish.

Since the signing of the Biological Opinion, NMFS has been informally sponsoring a regional forum. The forum was established to achieve a broadened regional agreement on the future operation and configuration of the Federal Columbia River Power System (FCRPS) within the restrictions of the Biological Opinion. All of the affected parties in the region were invited to participate, the thirteen federally recognized tribes, the five states, the Northwest Power Planning Council, and the utilities whose operations are affected by FCRPS operations. Given the overlap of jurisdictions, it has been difficult to achieve consensus on an appropriate overall hydro power and fisheries management regime. It is the goal of this regional forum to facilitate and achieve consensus.

This regional forum is made up of an Executive Committee and Implementation and Technical Teams. The Executive Committee is chaired by NMFS and has representatives from the relevant

federal and state agencies and Indian Tribes. The Executive Committee considers issues on implementation of hydro-related Biological Opinions and establishes priorities for the Implementation and Technical Teams. The Implementation Team comprises senior program managers who direct the work of the technical teams and resolves in-season fisheries and hydro management issues elevated from the technical teams. There are four technical teams: a Technical Management Team, which is chaired by the COE and directed to address hydro operations requirements relative to fish survival; a System Configuration Team, which is co-chaired by NMFS and NPPC and charged to prioritize fish-related mainstem construction activities at Federal facilities; an Integrated Scientific Review Team also co-chaired by NMFS and NPPC and instructed to develop and coordinate research related to reducing salmon mortality during migration; and a Dissolved Gas Team chaired by NMFS directed to develop research and measures to abate gas bubble disease problems associated with spills at mainstem Columbia dams.

In addition to this NMFS regional forum, NMFS and the NPPC have chartered an Independent Science Advisory Board (ISAB) to avoid any duplication in scientific research. The ISAB was established on May 28, 1996 and is composed of eleven senior scientists from the United States and Canada, from a variety of biological and statistical disciplines. The ISAB will address scientific and technical issues relating to the NPPC fish and wildlife program and the NMFS recovery program for Snake River salmon and other anadromous fish stocks, including related marine areas. Its purpose is to foster a scientific approach to fish and wildlife recovery and the use of sound scientific methods in research related to the programs of the NPPC and the NMFS.

The ISAB has released a report "Return to the River" which reviewed the scientific conceptual foundation of the NPPC program. The report identifies three major problems with the NPPC Fish and Wildlife program. First, the program is more a list of measures with competing groups advocating for various measures instead of working together to build a comprehensive program. The second problem is that there is no set schedule or priorities based on overall goals or objectives and that there is no integrated means to monitor and evaluate the measures. Finally, the report stated the NPPC is immersed in endless details due to its emphasis on individual measures rather than focusing its attention to the broader picture. The ISAB also stated that the key to future salmon productivity will be the degree to which normative conditions are re-introduced into the Columbia River basin.

NMFS goal has been to develop the best possible scientific information on a range of options for modifying the system over the next several years to enable the sovereign (federal, state, and tribal) and regional leadership to make a responsible and well-informed choice on the long term solutions for the hydro system in order to achieve their salmon rebuilding objectives. The methods being reviewed by NMFS as recovery options are controversial and include: transporting or barging the migrating smolts past the dams; keeping the migrating fish in the river system and implementing changes to the hydro power operations; or a combination of the two methods.

NMFS has devised a schedule to get additional information on the various methods it has available to use in its salmon recovery program in order to make a final determination by 1999 on which method or methods it will use for future conservation efforts. NMFS will work within the regional forum to develop a range of options for salmon recovery and project the outcome of each option and evaluate and describe the ecological, cultural, social and economic affects of each alternative. In addition, NMFS will continue to expand in-river survival studies, while initiating an improved transportation evaluation to compare adult returns from transported and non-transported groups. During the interim, NMFS will take these actions to improve salmon survival rates through: 1) immediate actions of increasing spring and summer flows; and continuing transportation efforts; and 2) intermediate actions of implementing bypass improvements (turbine intake screens, bypass outfall relocation, adult ladder modifications); and limited gas abatement measures.

Unfortunately, due to frustration with the NMFS and the current process, the State of Montana and four of the Lower River tribes (Yakama, Umatilla, Nez Perce, and Warm Springs) have withdrawn from the regional forum. The State of Idaho has also voiced concerns about the process stating that NMFS has resisted policy initiatives developed by the state and that NMFS has not followed through on decisions and commitments it has made to the state.

Stakeholders have also cited NMFS inability to issue permits and their lack of cooperation with other agencies as causing undue delay and adding additional costs to their efforts to save valuable spawning habitat for salmon and steelhead in areas such as Hannah Slough. Stakeholders have also cited NMFS with delaying consultation with the agencies responsible for the administration of grazing allotments. The process used by NMFS is said to be incapable of considering or accepting monitoring or scientific data presented by other agencies when making determinations of stream designations. This lack of coordination with these other agencies causes confusion and frustration, and is said to be having adverse affects on grazing, timber, and mining activities that are being managed according to approved environmental practices.

**ISSUES**

- How can the NMFS better coordinate with the various participants to keep them involved in the process? Would it help if NMFS participated in regional management efforts such as the Lemhi Riparian Conservation Agreement?
- NMFS set 1999 as a deadline to make a final determination on what actions should be taken to recover the declining salmon populations. What type of information is currently available to NMFS? Does this information merit a determination now? Will two more years of research produce any new information?
- The NPPC 1994 plan "Strategy for Salmon" focused on improving in-river conditions for migrating salmon. Should the NMFS plan focus more on this option than continuing its research on barging juvenile salmon?
- The NMFS recovery plan gives the federal hydropower agencies more than just a consultative role in developing biological research and monitoring programs. Is this appropriate? Will the biological research and monitoring programs conducted by the federal hydropower agencies have any credibility?



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July 23, 1997

SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE & OCEANS

Committee on Resources

U.S. House of Representatives

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Mr. Chairman, and Congressional Committee Members

The State of Idaho is pleased to present testimony on the authority, decision making processes, and interagency cooperation of the National Marine Fisheries Service Northwest Region. Idaho would like to specifically present our views on NMFS coordination with the State of Idaho agencies, industries, individuals, and representatives from Idaho who attend and participate in the NMFS's regional forum committees.

The primary consideration of the State of Idaho in the regional forum is to provide the best possible utilization of Idaho's resources to assist in the restoration of anadromous fish. Idaho is proud of the actions taken to balance the needs of anadromous and resident fish. Idaho developed and presented to the regional forum an operational strategy for this years river operations.

Governor Philip E. Batt wrote in a letter to Will Stelle this spring, "I am disappointed with the recent decision by the National Marine Fisheries Service to reinitiate transportation of Chinook smolts at Little Goose and Lower Monumental dams on the lower Snake River. Its decision raises concerns on several fronts. First, it overrode operations that were consistent with your transportation decision made at the April 4, 1997, Executive Committee Meeting. Second, it overrode a consensus among all other salmon managers for transporting smolts from Lower Granite Dam only. And third, the decision pivoted on non-listed Chinook smolts, which NMFS has no ESA jurisdiction over except within the context of Section 7 and Section 10 permitting issues.

## SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE &amp; OCEANS

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"The State of Idaho has committed to trying to resolve salmon and Steelhead recovery issues within a regional forum. I hope you agree with me that the State of Idaho has remained faithful to that process during the past two years. These three points raise serious concern regarding NMFS' credibility within the regional decision making process, NMFS' willingness to work cooperatively with the states and tribes, and NMFS' authority for unilateral decisions regarding unlisted fish. These points undermine our collective efforts to work toward an effective joint decision making process for salmon recovery and river governance.

"As you are aware, the State of Idaho developed a 1997 migration policy that allowed two thirds of springtime migrating salmon and Steelhead smolts to remain inriver during their journey to the ocean. This policy was based on the desire to take full advantage of this year's snowmelt, and the relatively good adult returns that resulted from similar runoff conditions and low transportation proportions during 1982-84.

"The State of Idaho brought this policy to the Regional Forum for consideration last winter. After extensive discussions, a compromise transport recommendation was elevated to the Executive Committee for resolution. There was consensus among 11 Of the 12 salmon management sovereigns within the Basin for implementation of Idaho's compromise request or for allowing even more fish to migrate inriver. NMFS was the only salmon manager that objected to Idaho's request on the basis that it allowed too many salmon to migrate inriver."

In Section 6 of the Endangered Species Act, Congress directed NMFS to "cooperate to the maximum extent practicable with the States" in carrying out programs under the Act. Despite this directive from Congress to cooperate with the States, NMFS' decisions are often in clear disregard of state positions. Each year Idaho citizens that depend upon water for agriculture, power, recreation and tourism are required to allow hundreds of thousands of acre/feet of water to flow downstream in an "experimental effort" to improve Salmon migration. It is particularly frustrating to Idaho to be forced to provide water as part of this experiment but to be ignored by NMFS in attempting to shape this experiment.

Idaho and others who participate in the Regional Forum can formulate, discuss, compromise and reach consensus, however, if NMFS fails to concur then that effort is in vain, the proposal is not implemented, and the status quo is maintained. If NMFS doesn't get its way, they pick up their marbles and go home. Only NMFS' technical staff, data, and information is considered indisputable. Science from Idaho is suspect; ideas from Idaho are suspect.

The effort to travel 400 miles to participate in regional forums is complicated by the inability to meet daily or weekly with federal agency personnel at the numerous work groups or sub-groups on specific issues. Idaho has committed resources to participate in the regional forum. Idaho has tried to develop, promote and explain solutions to the regional participants, only to find that after these extensive efforts NMFS doesn't agree.

## SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE &amp; OCEANS

July 23, 1997

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If the NMFS wants a regional forum to discuss issues, then they should be able to present their opinions up-front in the discussion. Instead, after countless hours of trying to find solutions with participants, and in the final step of the process, NMFS objects. The criteria of NMFS' decision making process has become suspect. Compromise on science and compromise on operations can be made, but it is hard to reach compromise with NMFS on principles and process because they seem to change.

Consistent with NMFS distrustful attitude toward other federal agencies and the states, NMFS takes a long time to make a decision. When the Upper Salmon River flood runoff threatened the spawning area in Hanna Slough, NMFS could not make a decision to support other federal and state agencies in reinforcing the weakening river bank. Protective action saved the redds in the Hanna Slough with only reluctant support from NMFS. NMFS wanted to do the engineering because they didn't agree with the Corps of Engineers. NMFS wanted to do the biological review because they were not sure the Idaho Department of Fish and Game biologists had counted the redds properly and had rationalized the risk / benefit analysis of allowing the river to wash-out the Slough and create new downstream habitat. Numerous other projects along the Salmon River were finally implemented but were unnecessarily delayed by NMFS despite approval by all other state and federal agencies. Those delayed decisions by NMFS are documented in correspondence and meeting records in Custer County.

The NMFS also required the Sawtooth National Forest to restrict commercial rafting in the Salmon River corridor within the Sawtooth National Recreation Area despite coordinated mitigation measures developed by the Forest Service, Idaho Department of Fish and Game, and the float-boaters who used that section of the river. These mitigation measures ensured the safety of any salmon that return to spawn in late August and September and, over the last three years, have not harmed any returning salmon. NMFS does not participate very well at the local level on site specific projects or activities. It must be very difficult to make a decision in Portland, Seattle, or Washington DC concerning a site specific project in the mountain areas of Idaho.

Idaho is also somewhat confused by the activities of NMFS and other federal agencies concerning Idaho's water quality standards. Implementation of NMFS's protection strategy requires violation of Idaho Water Quality Standards. At the same time, the United States Environmental protection Agency (EPA) and the United States Fish & Wildlife Service (USF&WS) are unilaterally modifying Idaho Water Quality Standards, over the objections of Idaho, in a myopic and misguided attempt to protect threatened and endangered species.

In conclusion, Idaho must suggest that the past actions of NMFS have been less than cooperative. If the desire is to have regional input and consideration in a Northwest Regional Forum, that goal has not been reached. Idaho suggests that a change be made in



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the Regional Forum, a different forum be established, or the federal agencies (especially NMFS) be responsive to the States and other participants. NMFS must listen, cooperate, and communicate or they may as well take their marbles and go home.

by Dave McFarland, Chairman Lemhi County Land Use Planning Commission  
representing Lemhi County and it's Public Lands Users

Committee members :

My name is Dave McFarland. I represent the people of Lemhi County, Idaho as an agent of the County Commissioners. As a rancher with federal grazing permits I also represent those interests.

During these hearings you should hear plenty of negative testimony concerning NMFS. I concur. I have been told several stories where NMFS decisions have cost federal or private agencies and individuals a great deal of money, time and energy without benefiting endangered salmon.

In Lemhi County NMFS is held in the same status as the IRS without being recognized as a necessary evil. Yet, what they represent-i.e. recovery of endangered salmon stocks, is locally a very laudable and popular goal. In reviewing NMFS activities with county residents who deal with them it seems that NMFS decision making is often taking place in a vacuum. Instead of involving themselves with a diversity of disciplines many decisions are made solely by fisheries biologists with limited experience based on textbook solutions. For example, a 6" stubble height on grazed riparian areas must be maintained is a textbook statement. Experienced land managers state the phenological stage of the plants involved is much more important in deciding utilization levels.

Nevertheless many good decisions have been made by NMFS personnel and many of these have occurred in Lemhi County. I have observed that many of the best solutions happen when the best communication happens. This leads into my primary objective which is to share with you what is happening in Lemhi County and let our experience propose a much more effective way to protect salmon in their spawning habitat.

In the late 1980's we became increasingly worried that federal land management decisions emanating from Washington D.C. might destroy both the economy and the esthetic appeal of our county. (Lemhi County is about 4 million acres in size with a population of 8,000. 92 % of our land is federally owned.) We were aware of efforts by some counties to supplant federal planning with local planning. Several major legislative documents such as FLPMA and NEPA have clauses that generally mandate federal agencies will consult and coordinate with local planning units when such units exist. We held many meetings to explore the feasibility of using this authority. To us, it was plain we didn't have the resources to make federal land planning decisions. Local Forest Service and BLM personnel working with us suggested it might be possible and desirable to discuss their planning with the county. Jointly we prepared a document called the Lemhi County Land Use Plan. It is a document setting up lines of communication with federal land management people to allow Lemhi County to have relevant input into their decisions. Although not perfect, it has succeeded spectacularly. By being included in the decision making process we have given federal land managers information to make better decisions. By keeping us informed and involved we have been able to support difficult decisions such as closing roads.

Throughout this entire process all of us have been aware of the need to protect our natural resources and particularly endangered species. Graphically I would refer you to the orange booklet given members of the subcommittee. This is a trend report on riparian conditions on the Salmon District Bureau of Land Management dated 1995. Note the gains made in the past seven years. As you peruse the condition photos note that some were recovered by changing grazing duration or intensity and some were made by removing livestock if deemed necessary.

We were aware before listing that the Northwest Chinook Salmon would, and should be listed. In fact, local Forest Service biologists had been trying to get a national audience for the plight of the salmon for about 20 years. This, and knowledge of the Endangered Species Act led local federal land managers to hire the best fisheries biologists available before NMFS was even aware of the scope of the task they were being handed

With the assistance of these newly hired biologists, the county began exploring ways to contend with species listing. It was pointed out that bull trout and some cutthroat trout were also increasingly scarce. After much thought, we decided: 1) single species management could not be the best recovery strategy. 2) intense management of only federal land without participation of private land would probably fail. 8% of Lemhi County is privately owned but encompasses 90 % of the occupied salmon habitat.

From these two main tenets we arrived at the Riparian Habitat Conservation Agreement. This document which is appended to this testimony is a major but simply agreement. Basically the signatories agree to protect riparian habit to the best of their knowledge and ability. Very importantly though, the County and its residents offer private land to much of the federal land scrutiny so recovery efforts go where they will be most valuable first. Note the signatory page. The absence of NMFS is conspicuous even though US Fish & Wildlife Service are part of the agreement

The foregoing support these suggestions for improving protection of endangered fish in the Northwest:

1. NMFS must actively participate with diverse interests to make optimum decisions. Decisions made openly are much easier to implement.
2. NMFS should ally with, partially hire, or contract with fisheries experts already in federal agencies.
3. With the proposed listing of bull trout we are going to have three sets of experts supervising each other on the same stream reach, NMFS, USFWS, and the federal agency in charge. Congress should let either NMFS or USFWS be the lead agency. We propose USFWS be given jurisdiction for inland waters and their biota.

ORIGINAL

LEMHI COUNTY

RIPARIAN HABITAT CONSERVATION AGREEMENT

## RIPARIAN HABITAT CONSERVATION AGREEMENT

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RIPARIAN HABITAT CONSERVATION AGREEMENT

Article 1. Involved Parties

This Agreement is entered into on May 31, 1996 between the:

Lemhi County Commissioners, hereinafter referred to as the "County"

and

Idaho State Department of Lands  
Idaho Department of Fish and Game  
Idaho Division of Environmental Quality  
Idaho Department of Water Resources  
USDA US Forest Service  
USDI Bureau of Land Management  
USDA Natural Resources Conservation Service  
National Marine Fisheries Service  
US Fish and Wildlife Service  
Shoshone-Bannock Tribes

hereinafter referred to collectively as the "Agencies"

and

other groups and individuals interested in cooperatively promoting the objectives of this agreement, including but not limited to:

Model Watershed Advisory Committee  
Lemhi Soil Conservation District  
Custer Soil Conservation District  
Lemhi Cattle and Horse Growers Association  
Idaho Conservation League  
Trout Unlimited  
Grassroots for Multiple Use  
Back Country Horsemen  
Rocky Mountain Elk Foundation  
Salmon Valley Chamber of Commerce  
Idaho Outfitter and Guides Association  
Formation Capital Corporation

for the purpose of developing coordinated efforts to avoid, minimize and/or mitigate risks to riparian habitat, which is crucial to the majority of listed or potentially listed species in this area, through a conservation strategy to enhance and maintain specific riparian habitat in Lemhi County, Idaho.

Future Section 7 actions requiring consultation, with either the National Marine Fisheries Service or US Fish and Wildlife Service, will be reviewed in the context of how this Conservation Agreement (hereafter referred to as the "Agreement") provides for the conservation of federally listed species, candidate species, or species of concern by removing threats to those species through addressing the factors for listing, delisting, or reclassifying species as described in the Endangered Species Act of 1973, as amended.

Article 2. Authorization

This Agreement is authorized by the State of Idaho Local Planning Act of 1975, the Endangered Species Act of 1973 as amended, the Fish and Wildlife Act of 1956 as amended, and the Cooperative Funds and Deposits Act of 1975. Implementation of this agreement will be through existing Federal and State authorities such as the Clean Water Act, Idaho Forest Practices Act of 1974, National Forest Management Act of 1976, Federal Land Policy and Management Act of 1976, and the National Environmental Policy Act of 1969, in accordance with the provisions of this Agreement, the attached General Terms of Agreement, the County Land Use Plan, and the plans of the cooperating agencies.

Article 3. Scope

- 3.1 Establish a framework for the cooperative management of all riparian areas within the boundaries of Lemhi County, regardless of ownership, in order to enhance, maintain and restore the favorable ecological condition of these habitats.
- 3.2 Foster a harmonious relationship between private and public entities that have an interest in Lemhi County ecosystems. Participation is voluntary and any party can withdraw at any time.
- 3.3 Any actions taken through this Agreement on public or private land will be voluntary. Improvement projects on private lands will be encouraged through the use of financial incentives or by credits (mitigation banking) which may offset negative effects of another project, as determined by a cumulative effects analysis. The end result will be to create good land stewardship through the use of incentives in a free market system that allows these values to accumulate as marketable commodities.
- 3.4 Eliminate, minimize, or mitigate known or potential threats to riparian habitats which are important not only to humans and wildlife, but are crucial to endangered, threatened or sensitive species which include, but are not limited to, Snake River chinook salmon, sockeye salmon, bull trout, steelhead trout, westslope cutthroat trout, bald eagle, and peregrine falcon (*see Definitions for scientific names*). Objectives will be set for riparian management, based on site-specific conditions and issues.
- 3.5 Involve landowners in working group investigations and priority determinations of all drainages. Landowners have intimate knowledge of their specific drainages, but need to have the opportunity to understand how actions in their drainages impact the overall health and function of the watershed within Lemhi County.
- 3.6 Investigate known or potential threats to uplands which could impact the conservation, restoration, or enhancement of riparian habitats.

Article 4. Conservation Strategy

## 4.1 General Strategy, Common Vision

These guidelines apply to all levels of conservation, restoration, or enhancement.

4.1.1 This Agreement establishes a framework to address riparian habitat conservation and recovery by maintaining and/or restoring the ecological processes that affect riparian condition on a watershed basis.

4.1.2 All efforts undertaken in this Agreement will be based on the best available scientific knowledge.

4.1.3 In order to use limited resources wisely, areas of concern will be prioritized and actions that produce long term, not temporary, solutions will be emphasized.

4.1.4 Because individual drainages are unique in their characteristics and the issues that affect them, all efforts undertaken in this Agreement will be made on a drainage by drainage basis and will address:

- 1) the physical integrity of the riparian system including the vegetation, the stream banks and channel structure;
- 2) the species composition and structural diversity of plant communities in riparian zones and wetlands, and the connection between riparian health and overall ecosystem function;
- 3) ground water and surface water quality necessary to support healthy riparian, aquatic and wetland ecosystems;
- 4) habitat to support well distributed populations of native riparian dependent or aquatic plant and animal species;
- 5) the timing, variability and duration of flood plain inundation and water table elevation in riparian areas;
- 6) the benefit to the local community of healthy riparian areas that result in clean water and increased economic options.

#### 4.2 Specific Strategies

A principle working group will be established which will:

4.2.1 Identify known issues and concerns in Lemhi County watersheds and drainages using a Watershed Assessment that will evaluate the current status of local riparian areas and allow consistent, informed and intelligent decisions to be made. Using the Watershed Assessment as a guide, provide an inventory of fauna, flora, or other pertinent habitat information as needed. The Watershed Assessment will also be used to determine reasonable objectives and related strategies to accomplish each objective.

4.2.2 Prioritize watersheds and drainages within Lemhi County according to:

- 1) importance of the drainage to key wildlife and fish species, based on an inventory of what species are present by seasons of the year;
- 2) the likelihood of accomplishing measurable progress in a given drainage;
- 3) the importance of the prioritized projects within a given drainage to the entire Upper Salmon River Basin;
- 4) benefits to the local community from the implementation of the management strategy, including economic costs.



4.2.3 Develop a cumulative effects analysis for all watersheds in Lemhi County. This is an analysis of the relative effects of different actions to riparian areas and an evaluation of the benefits of avoiding or mitigating those effects. In this way, negative impacts to Lemhi County riparian habitat in one location can be mitigated for by improvement to riparian habitat in higher priority areas. The idea is to allow mitigation to be directed toward high priority riparian areas, thus creating a net positive effect to riparian areas in the County as a whole.

4.2.4 Assign smaller working groups as needed to assess priority drainages. In each drainage, especially priority drainages, a localized working group will be established. An emphasis will be placed on using input from people that live in the drainage. This group will develop a management plan that uses Best Management Practices based on the best available science to provide a basis for the most cost effective approach to riparian habitat conservation, restoration or enhancement.

4.2.5 Implement these strategies and make them become reality.

4.2.6 Develop a monitoring strategy to evaluate the effectiveness of the Agreement and guide future efforts. In addition, each agency or group in the agreement will provide the principle working group with an organized report detailing any relevant monitoring done that year (see 5.1.1).

#### Article 5. Responsibilities

##### 5.1 General Responsibilities

- 5.1.1 All involved parties shall provide a qualified representative to serve as the leader of their specific organization, in regard to this Agreement, who has the authority of that organization to assign personnel from their organization to working groups, to gather and distribute information and data pertinent to the intent of this Agreement, to attend all scheduled meetings between the Agencies and the County, and to document the proceedings of those meetings as they may apply to their organization.
- 5.1.2 All involved parties shall advise the Lemhi County Commissioners of any directives and/or new information that may affect the intent of this Agreement.
- 5.1.3 Organizations are expected and encouraged to communicate with the Agencies in the pursuit of their assignments to working groups. To avoid potential conflict and confusion, a copy of all written communication must be sent to the designated commissioner in addition to the named party, so that a track record can be maintained.
- 5.1.4 All involved parties shall participate in activities to improve riparian habitats within Lemhi County as funding and personnel allow.
- 5.1.5 All involved parties shall participate in the annual compliance review; review proposed projects for consistency with applicable regulations; review projects and provide comments to reduce potential impacts to riparian-dependant federally listed, or proposed to be listed, species and their habitats.

- 5.1.6 All involved parties shall participate as needed in working groups formed to develop watershed assessments and address riparian habitat management issues identified through said watershed assessment's or other means.
- 5.1.7 All agencies shall work with the principle working group and individual drainage working groups to prioritize activities and funding related to riparian habitat conservation efforts on those lands they are charged with managing.

## 5.2 Specific Responsibilities

- 5.2.1 Where a party to this Agreement is not assigned to specific responsibilities under this Article, its responsibilities shall be limited to those General Responsibilities set forth above.
- 5.2.2 The Lemhi County Commissioners Shall:
  - Have the leadership role for the execution of this Agreement. The Commissioners will appoint one of their number to schedule and chair meetings and to arrange for the documentation and distribution of all proceedings.
  - Serve as the coordinator for this agreement by providing central communications and facilitating the intent of and any modifications to this agreement.
- 5.2.3 USDC National Marine Fisheries Service Shall:
  - Review actions requiring consultation under the context of this agreement.
- 5.2.4 USDI Fish and Wildlife Service Shall:
  - Review actions requiring consultation under the context of this agreement.
  - Provide cost-shared funds, if available, through Partners for Wildlife or similar programs for projects on private lands.
- 5.2.5 Idaho Department of Fish and Game Shall:
  - Continue to regulate public fishing activities in the upper Salmon River basin to minimize mortality to endangered fish species.
  - Coordinate agency fish collection activities in the Upper Salmon basin.
- 5.2.6 Idaho Department of Water Resources Shall:
  - Consider the authorization of permits based on a watershed analysis under the context of this agreement.

5.2.7 USDA Natural Resources Conservation Service Shall:

-Assist private landowners to develop Resource Management Systems for land uses such as irrigated pasture or range which incorporate riparian area maintenance, enhancement or restoration associated with these land uses.

-Assist land owners to plan or apply Best Management Practices to implement resource management system plans.

Article 6. Termination of Agreement


- 6.1 The Agencies may terminate their involvement in this Agreement upon written notice of thirty (30) days of such action. The County may terminate this Agreement upon written notice of thirty (30) days should the Agencies fail substantially to perform in accordance with the terms of this Agreement through no fault of the County.
- 6.2 Each party shall have thirty (30) days from the receipt of written notice of substantial failure within which to correct any default.

Article 7. Sole Agreement


- 7.1 This constitutes the entire Agreement between the Agencies and the County. It is specifically agreed that no representations or agreements of any character, written or oral, not contained in this Agreement, have been made by the Agencies or the County, and any claimed representations or agreements are hereby waived. Parties to this agreement agree to act in good faith. This Agreement may be amended only by written instrument signed by both the Agencies and the County.
- 7.2 During the 12th and 24th months of this Agreement, the Agencies and the County will review the Agreement and its effectiveness to determine whether it should be revised. By the 36th month, the Agreement must be reviewed and either modified, renewed or terminated.
- 7.3 If at any time it becomes apparent by all parties that a better strategy for the conservation of riparian areas is available, modification may take place immediately upon the approval of all in the group.
- 7.4 In accordance with Article 7, paragraph 7.2, the term of this Agreement may be extended at the option and mutual consent of the Agencies and the County.

Article 8. Signatures (Commissioner and Agencies)

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have executed this Agreement.

  
 Lemhi County Commissioner  
 (Chairman of principle working group)

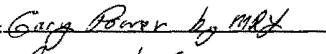
US Fish and Wildlife Service

By:   
 Title: Supervisor, Boise

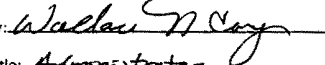
National Marine Fisheries Service

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

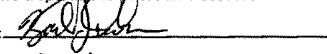
Idaho Department of Fish and Game

By:   
 Title: Regional Supervisor

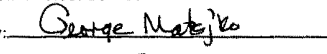
Idaho Division of Environmental Quality

By:   
 Title: Administrator

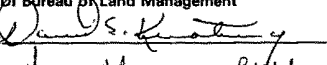
Idaho Department of Water Resources

By:   
 Title: Director

USDA Forest Service

By:   
 Title: FOREST SUPERVISOR

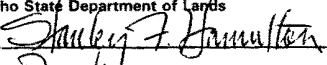
USDI Bureau of Land Management

By:   
 Title: Area Manager BLM

Shoshone-Bannock Tribes

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

Idaho State Department of Lands

By:   
 Title: Director

USDA Natural Resources Conservation Service

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

Article 8. Signatures (Organizations and Individuals)

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have executed this Agreement.

**Model Watershed Advisory Committee**

By: V. Dan Olson  
 Title: Chairman

**Custer Soil Conservation District**

By: Paula A. Robinson  
 Title: Chairman

**Idaho Conservation League**

By: Cheryl Hart  
 Title: Board Rep.

**Grassroots for Multiple Use**

By: Joe Fran  
 Title: Laureate

**Rocky Mountain Elk Foundation**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Idaho Outfitter and Guides Association**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Lemhi Soil Conservation District**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Lemhi Cattle and Horse Growers Association**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Trout Unlimited**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Back Country Horsemen**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Salmon Valley Chamber of Commerce**

By: \_\_\_\_\_  
 Title: \_\_\_\_\_

**Formation Capital Corporation**

By: [Signature]  
 Title: Director

Article 8. Signatures (Organizations and Individuals)

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have executed this Agreement.

Name: Clark L. Collins  
 Organization: Blue Ribbon Coalition  
 Name: Clark Collins  
 Organization: Beartrack Mine

Name: Philip E. Datt  
 Organization: State of Idaho

Name: \_\_\_\_\_  
 Organization: \_\_\_\_\_

Name: \_\_\_\_\_  
 Organization: \_\_\_\_\_

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Name: \_\_\_\_\_  
 Organization: \_\_\_\_\_

Article 8. Signatures (Organizations and Individuals)

IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have executed this Agreement.

|                     |                     |
|---------------------|---------------------|
| Name: _____         | Name: _____         |
| Organization: _____ | Organization: _____ |
| Name: _____         | Name: _____         |
| Organization: _____ | Organization: _____ |
| Name: _____         | Name: _____         |
| Organization: _____ | Organization: _____ |
| Name: _____         | Name: _____         |
| Organization: _____ | Organization: _____ |
| Name: _____         | Name: _____         |
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| Name: _____         | Name: _____         |
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| Organization: _____ | Organization: _____ |
| Name: _____         | Name: _____         |
| Organization: _____ | Organization: _____ |

## GENERAL TERMS OF AGREEMENT

### RIPARIAN HABITAT CONSERVATION

#### Section I. Riparian Issues in Lemhi County

In general, issues on riparian areas are centered around the vegetation and/or water components of these areas. Healthy riparian habitat is crucial to aquatic species such as fish for all lifestages, wildlife on a seasonal or annual basis, plant communities established within this zone, and local citizens who are dependent upon water and land resources. Healthy riparian habitat contributes to water quality and quantity, providing important habitat for wild animals, forage and water for domestic stock, public use consumption, recreational enjoyment and agricultural and commercial needs. Thus, healthy, ecologically functioning riparian areas not only contribute to the health of the natural community, but also contribute to the long term economic stability and human habitation of an area.

- A. Vegetation on riparian areas is important to the county for numerous reasons. Riparian areas are often the most productive areas in a drainage... they provide forage for livestock and wildlife, habitat for birds, fish and other animals and provide aesthetic and recreational opportunities. In addition to these values, healthy riparian vegetation helps reduce soil erosion, enhances water storage and improves water quality.
- B. Water is important to the county for its quality and quantity. Water quality affects recreation, agriculture, human health, fish and other animals. Water quantity directly affects all of these too, and is essential for providing economic stability to the area.
- C. Both components can be affected by such things as roads, agriculture, logging, mining, recreational activities, commercial development, subdivisions, wildlife, and natural events, to name a few. It must also be recognized that riparian condition is dependent on upland health. What happens on uplands may affect riparian areas.

#### Section II. Consultants

Certain consultants, having expertise not available in Lemhi County, may be engaged to provide assistance in gathering and supplying special data and information. Engagement of such consultants must be approved by both the Agencies and the County prior to commencing any work. Consultant contracts, if any, shall be prepared by the office of the Lemhi County Commissioner.

#### Section III. Definitions

The following are definitions of terms as used in this Agreement, which are supplemented by the incorporation herein by reference of other definitions included in the Lemhi County Land Use Plan.

- A. "Anadromous". An aquatic life history strategy where freshwater habitat is used for spawning and juvenile rearing and the ocean (saltwater) is used for maturation to adult.
- B. "Bald Eagle". The bird *Haliaeetus leucocephalus*.
- C. "Bull Trout". The fish *Salvelinus confluentus*.
- D. "Chinook Salmon". The currently listed as endangered, Snake River spring/summer chinook salmon, *Oncorhynchus tshawytscha*.



- E. "Cumulative Effects Analysis". An analysis done by the principle working group, or assigned parties, of the relative effects of different actions to riparian areas and an evaluation of the benefits of avoiding or mitigating those effects. In this way, negative impacts to Lemhi County riparian habitat can be mitigated for by improvement to riparian habitat in higher priority areas. The idea is to have a net positive effect to riparian areas in the county.
- F. "Designated Commissioner". A current member of the Lemhi County Board of Commissioners who is appointed by the Board to serve as the project manager for the execution of this Agreement.
- G. "Drainage". A stream that is tributary to either the Lemhi, Pahsimeroi, North Fork or mainstem Salmon Rivers, and includes all the land that drains into that tributary.
- H. "Ecological Condition". A reflection of the dynamic equilibrium of an overall watershed, the long term health of the complete system and not small parts of it. This concept should redirect efforts to those portions of the system in which maximization and mitigation of efforts will produce the greatest potential benefits. Looking at enhancement and mitigation efforts to best aid the ecological health of the riparian habitat will involve choosing systems areas in greatest need of attention, rather than expenditures on sites regardless of benefit.
- I. "Endangered Species". Under the Endangered Species Act, any species which is in danger of extinction throughout all or a significant portion of its range, other than a species of the Class Insecta determined by the Secretary of the Interior to constitute a pest whose protection under the provisions of the Act would present an overwhelming and overriding risk to man.
- J. "Human Environment". The interface between processes dictated by the activity of people and those developed by other sources of input. Mankind is an integral part of the world's ecosystems which can be managed for the betterment of overall ecological health.
- K. "Peregrine Falcon". The bird *Falco peregrinus*.
- L. "Principle Working Group". A team of resource professionals and community representatives having knowledge of local watersheds responsible for the execution of the terms of the agreement. The designated commissioner will be the team leader of the principle working group.
- M. "Rainbow Trout". The resident form of the fish, *Oncorhynchus mykiss*.
- N. "Riparian Community". A community of organisms both plant and animal associated with the surface waters and watercourses within active drainages. This community is rich in diversity of plants, aquatic micro and macro organisms. The habitat may include not only lake and river ecosystems, but also important wetland communities.
- O. "Riparian Habitat". An area of land directly influenced by permanent water. It has visible vegetation or physical characteristics reflective of permanent water influence. Lakeshores and streambanks are typical riparian areas. Excluded are such sites as ephemeral streams or washes that do not exhibit presence of vegetation dependent upon free water in the soil. From BLM Riparian - Wetland Initiative for the 1990's.

- P. "Sensitive Species" For the purposes of this agreement, sensitive species are those which 1) are low in number, or 2) limited in distribution, or 3) have suffered significant population reductions due to habitat losses.
- Q. "Sockeye Salmon". The currently listed as endangered, Snake River sockeye salmon, *Oncorhynchus nerka*.
- R. "Steelhead trout". The anadromous form of the fish, *Oncorhynchus mykiss*
- S. "Threatened Species" Under the Endangered Species Act, any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.
- T. "Watershed". A collection of drainages that form either the Birch Creek, Lemhi, Pahsimeroi, North Fork or designated portions of the mainstem Salmon Rivers.
- U. "Watershed Assessment". An overview of the conditions and issues in a drainage. All parties affected by actions taken should be involved in developing the assessment. Purpose is to allow all involved to come to a common understanding of resource conditions within a given area and to provide direction for future management. It can be as detailed or as general as needed, but should provide the necessary information from which to develop proper objectives and management actions to resolve a given issue.
- V. "Westslope Cutthroat". The fish *Oncorhynchus clarki lewisi*.
- W. "Wetland". Areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and which, under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. These areas include marshes, shallow swamps, lakeshores, bogs, muskegs, wet meadows, estuaries, and riparian areas. From BLM document: *Riparian Area Management: Process for Assessing Proper Functioning Condition*.

**1995 RIPARIAN REPORT  
AND FUNCTIONAL ASSESSMENT**

**UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
UPPER COLUMBIA - SALMON CLEARWATER DISTRICT  
LEMHI RESOURCE AREA**

MAY 1996

## EXECUTIVE SUMMARY

This report is a summary of the Lemhi Resource Area's riparian condition as related to the BLM "Riparian Initiative of the 1990's" with the Goal of having 75% of the riparian habitat in Proper Functional Condition by 1997. The document describes the assessment of the 325 miles of stream/riparian habitat in the Resource Area. Much time and effort was spent on management changes especially related to grazing, monitoring, use supervision, and education of both the public land users and the Lemhi staff.

In 1988, 73.5% of these areas (239 miles) were either proper functioning condition or functional-at-risk within the Lemhi Resource Area with 17.7% (57 miles) non-functional. Today 88.2% (286 miles) are either proper functioning condition or functional-at-risk. Only 3% (10 miles) are non-functional within the resource area.

Management actions over the past few years have centered around developing close working relationships with the user groups including adherence to allotment operation plans and terms and conditions of permits. Certain streams have mitigation standards for riparian habitats including a six inch stubble height on herbaceous forage at the end of the growing/grazing season and less than 30% use on riparian shrubs and other techniques. Most drainages have standards that relate to ecological health and not specific terms. Emphasis in the future will continue to refine management prescriptions that obtain resource objectives.

Two large drainages, Hayden and Agency Creeks, required some modifications in grazing management on BLM lands to mitigate impacts to riparian quality. An interdisciplinary team approach is employed for all resource management and monitoring in the Resource Area. Participants bring a wide variety of professional and personal experience and knowledge.

Monitoring to evaluate management efficiency on critical areas includes riparian, upland and aquatic techniques at designated Key Areas on each stream. Methods and results are discussed in some detail along with photographic comparisons of key riparian areas.

The permittees and local agencies are making a great effort at working cooperatively and at achieving management prescriptions. This has allowed both the BLM and the users the freedom to work on innovative ways to use the public land and make important steps toward riparian improvements to benefit many values.

## INTRODUCTION

This document reports condition of the Lemhi Resource Area (RA) riparian habitat conditions with reference to the BLM Riparian Initiative for the 1990's. This initial format is a brief presentation of the RA's riparian and aquatic resources regarding their condition, management objectives, monitoring and evaluation toward reaching the riparian initiative goals and the specific RA objectives on a watershed level.

The September 1991 publication of the BLM Riparian-Wetland Initiative for the 1990's states the following:

**Goal 1:** Restore and maintain riparian-wetland areas so that 75 percent or more are in proper functioning condition by 1997. The overall objective is to achieve an advanced ecological status, except where resource management objectives, including proper functioning condition, would require an earlier successional stage.

**Goal 2:** Protect riparian-wetland areas and associated uplands through proper land management and avoid or mitigate negative impacts. Acquire and expand key areas to provide for their maximum public benefit, protection, enhancement and efficient management.

**Goal 3:** Ensure an aggressive riparian-wetland information/outreach program including providing training and research.

**Goal 4:** Improve partnerships and cooperative restoration and management processes in implementing the riparian-wetland initiative.

This program ties directly to other areas of emphasis in the RA including Salmon Recovery Program, implementation of PACFISH, implementation of the Resource Management Plan (RMP), participation in the Lemhi Model Watershed Program and the Lemhi County Riparian Conservation Agreement, various Allotment Management Plans (AMP), and others.

## MANAGEMENT PHILOSOPHY

The Vision of the Lemhi staff is "A team with a presence on the land for the husbandry of resources in partnership with and for the people." This vision helps us to understand where we are going and helps prioritize workloads. One very important aspect to the team is our commonality of purpose and underlying principles to our management of the public lands.

The overall goal of the Lemhi Resource Area is to protect and enhance natural resources and manage uses so they are compatible with sustaining the functionality of the ecosystem. Using a watershed approach, an interdisciplinary team with on-the-ground knowledge is employed for all aspects of management. Staff members are at an equal status and work together at developing priorities, scoping/resolving

problems (regardless of job title) and budgeting money. Efforts are specifically aimed at resolving the issues at hand while keeping the bigger watershed picture in mind. Much time and energy are devoted toward building relationships with various agencies and publics to better manage resources across boundaries and have long-term commitment to keep the successes running.

Riparian management and Salmon Recovery efforts have gone hand-in-hand since 1992. Specifically, we set up individual drainage interdisciplinary teams for a more consistent contact for the public and to ensure appropriate monitoring and data gathering took place. Using these teams, we fine-tune management schemes on a drainage basis, particularly in the Hayden and Agency Creek drainage of the Lemhi River Watershed with many important resource improvements. The following describes some of our methods and accomplishments.

#### **MONITORING METHODS**

**Utilization Pattern Mapping:** This is the process of mapping grazing intensity over a pasture or allotment. Utilization pattern mapping gives valuable information on livestock distribution, indicates areas of livestock concentration and can point out problem areas or opportunities. Utilization patterns are obtained using the height-weight stubble height method. Measurements of plant heights recorded along transects are converted to percent of weight utilized by means of a utilization gauge which promotes uniformity between examiners.

**Key Areas:** These are areas along a stream that have the capability to reflect ecological changes as a result of on the ground management (BLM Manual "Rangeland Monitoring and Evaluation" 4400-01). Key areas were selected by a BLM interdisciplinary team to monitor vegetation change along stream/riparian habitat. Key areas are often in livestock concentration areas that show more effects from grazing than other sections of the same stream. Because of this, they have the greatest potential for improvement along a stream. These areas were chosen instead of a large "representative" area to ensure those areas in lowest ecological condition are improving. Our assumption was that if these key areas were improving, areas on the stream in healthier ecological condition were also improving. Even though Key Areas are concentrations of monitoring, each entire stream is evaluated through observation by the ID team and photographs taken.

**Greenline Transects:** Greenline transects are conducted within key areas when high resource concerns existed or comparison with 1993 baseline vegetative data was desired. The greenline method is described in BLM Technical Reference 1737-8 "Greenline Riparian-Wetland Monitoring". Data collected will assist in determining progress toward objectives.

Carex (sedge) and hydric woody vegetation were determined to be the key components needed for each stream to reach proper functioning condition. We measured percent composition of seven vegetative classes along the greenline

## transects:

- 1) *Carex/Juncus* (*Carex/Juncus* sp. >70% composition of site)
- 2) *Carex/Other Mix* (*Carex* sp. 20-10% composition of site),
- 3) *Grass/Forb Mix* (*Carex* sp. <20% composition of site),
- 4) *Riparian Shrub* (willow, aspen, cottonwood),
- 5) *Mesic Shrub* (rose, currant, etc.),
- 6) *Upland Shrub* (sagebrush, rabbitbrush, etc.),
- 7) *Bare Soil* (vegetative composition <10% of site).

**Riparian Stubble Heights:** Pre-grazing, post-grazing and post-growing stubble heights are measured on key areas as an indication of management effectiveness and to determine correlations between herbaceous vegetation and riparian conditions. Locations of transects varied depending on stream objectives, riparian condition and vegetative composition of plant communities. Stubble heights are measured both on the greenline and the adjacent floodplain and tied to objectives. Insight is also gained on regrowth potential species by species and stream by stream.

**Riparian Shrub Use:** Riparian shrub (woody) use by livestock is determined by walking random transects along streams and counting both nipped and unnipped current years leaders growth. Grazing permit stipulations included terms and conditions stating <30% of the current years leaders being used. Woody species use was determined to be secondary to herbaceous stubble height as an indicator of riparian grazing impacts for the season of use on areas of concern.

**Riparian Condition:** As part of the overall evaluation of ecological health of drainage, streams were scoped for functionality during 1988 through 1995 by the Lemhi interdisciplinary (ID) team. Eleven streams in the resource area were further inventoried by a contracted survey crew in 1995 to give more detailed information on condition. The ID team scoping process included examining aerial photographs, low-level color infra-red photographs, and walking each stream to evaluate streambank stability, vegetative components and condition, fishery resources, and livestock and wildlife use levels. Streams or segments of streams were then put into one of four condition categories: Proper Functioning, Functional At Risk, Non-Functioning, or Dewatered. These categories are defined in BLM Technical Reference 1737-9 "Process for Assessing Proper Functioning Condition". The definitions for each category are listed below:

*Proper Functioning Condition:* Riparian-wetland areas are functioning properly when adequate vegetation, landform, and/or large woody debris is present to dissipate energy associated with high waterflows, reducing erosion and improving water quality. These systems filter sediment, capture bedload, and aid in floodplain development; improves flood-water retention and ground-water recharge; develop root masses that stabilize streambanks against cutting action; develops diverse ponding and channel characteristics to provide the habitat and the water depth, duration, and temperature necessary for fish production, waterfowl breeding, and other uses; and support greater

biodiversity. The functioning condition of riparian-wetland areas is a result of interaction among geology, soil, water, vegetation, and animals.

*Functional At Risk:* Riparian-wetland areas that are in functional condition but an existing soil, water, and/or vegetation attribute makes them susceptible to degradation.

*Non-functional:* Riparian-wetland areas are nonfunctional where they clearly are not providing adequate vegetation, landform, or large woody debris to dissipate stream energy associated with high flows and thus are not reducing erosion, improving water quality, etc., as listed above. The absence of certain physical attributes such as a floodplain where one should be are indicators of non-functioning conditions.

*Dewatered:* Streams or segments of streams were put into this category if private irrigation practices totally dewater the stream annually.

Each segment of stream is given a trend indicator denoting upward, static or downward trend in riparian condition based on field observations.

**General Photographs and Photopoints:** Monitoring for resource condition and trend often seems best represented with pictures. Key areas are generally the locations for photopoints and are supplemented with large scale photos of the drainage. Photopoints are taken at least once and in critical areas are taken pre-season, during use periods and post-use period. A picture speaks a thousand words.

**Temperature Data:** Thermographs were placed on 20 different stream sites for indications of water temperature profiles throughout the year and will assist in evaluating relationships between vegetative condition and stream habitat quality.

**Runoff Event Monitoring:** During spring high water and other storm events, runoff is monitored by direct observation to help determine major sediment sources to the Lemhi and Salmon Rivers. Pictures were taken and sediment volume was noted. Quantitative data has not yet been collected. We are able to better understand point sources and change management where appropriate.



## RESULTS AND DISCUSSION

The following information is a summary of riparian condition and aspects of vegetation management designed to meet the objective to "Restore and maintain riparian-wetland areas so that at least 75% are in proper functioning condition by 1997".

Greenline transect data on plant composition for Cow Creek is shown below as an example on how vegetation composition can change under a management plan that reduces impacts to riparian areas.

**GREENLINE TRANSECT COMPARISON**

| Stream    | Year  | VEGETATION CLASS |            |              |                |             |      |
|-----------|-------|------------------|------------|--------------|----------------|-------------|------|
|           |       | Carex/other      | Grass/Forb | Upland Shrub | Riparian Shrub | Mesic Shrub | Bare |
| Cow Creek | 1993  | 3%               | 87%        | 1%           | 5%             | 0%          | 4%   |
|           | 1995  | 20%              | 73%        | 0%           | 4%             | 0%          | 3%   |
|           | diff. | +17%             | -14%       | -1%          | -1%            | 0%          | -1%  |

Maintaining riparian stubble heights has been a key component to riparian improvements. The following table shows the stubble height measurements pre- and post-grazing and post-growing for key areas monitored within the Roostercomb Allotment.

**STUBBLE HEIGHT MEASUREMENTS**

| STREAM   | KEY AREA | VEGETATION CLASS AND HEIGHT          |                              |         |
|----------|----------|--------------------------------------|------------------------------|---------|
|          |          | POST-GRAZING AND GROWING SEASON      |                              |         |
| Meadow   | MC-01    | <sup>1</sup> Poa 5.7"                | <sup>2</sup> Greenline 15.8" | 9/13/95 |
| Ryegrass | RG-01    | <sup>2</sup> Greenline 8.72" 9/27/95 |                              |         |
|          | RG-02    | <sup>1</sup> Poa 2.5"                | <sup>2</sup> Greenline 13.3" | 9/27/95 |
|          | RG-03    | <sup>2</sup> Greenline 13.9" 9/27/95 |                              |         |
| Bear     | BC-01    | <sup>1</sup> Poa 3.0"                | <sup>2</sup> Greenline 6.0"  | 9/15/95 |
| Dry      | DC-01    | <sup>1</sup> Poa 3.6"                | <sup>2</sup> Greenline 13.6" | 9/15/95 |
| Lake     | LC-01    | <sup>1</sup> Poa 2.0"                | <sup>2</sup> Greenline 8.7"  | 9/15/95 |

<sup>1</sup>Poa equates to the bluegrass bench in the floodplain adjacent to the stream.

<sup>2</sup>Greenline equates to the vegetation directly on the streambank.

### FUNCTIONALITY OF LEMHI RESOURCE AREA STREAM/RIPARIAN HABITATS

The BLM Riparian-Wetland Initiative of the 1990's was established to aid in the maintenance and restoration of the stream/riparian habitats on public land. The Lemhi Resource Area has strived to maintain and improve our riparian area conditions to meet the following objective outlined in the Riparian-Wetland Initiative:

**Objective:** Restore and maintain riparian-wetland areas so that 75% or more are in proper functioning condition by 1997.

Table 1: Lemhi River Watershed Riparian-Wetland Condition (Public Land)

| CONDITION                      | 1988 (miles)    | 1995 (miles)                      |
|--------------------------------|-----------------|-----------------------------------|
| Functioning Condition          | 138.2 (63.9%)   | 184.4 (85.3%)                     |
| Proper Functioning Condition   | 64.8 (29.9%)    | 80.2 (37.1%)                      |
| Functional-At-Risk             | 73.4 → (34%)    | 104.2 (48.2%)<br>{32.2 ↑, 72.0 →} |
| Non-Functional                 | 55.0 (25.4%)    | 8.7 (4%)                          |
|                                | {49.9 ↓, 5.1 →} | {1.5 ↑, 7.3 →}                    |
| Dewatered (private irrigation) | 23.2 (10.7%)    | 23.2 (10.7%)                      |
| TOTAL                          | 216.4           | 216.4                             |

↑ Upward Trend, → Static Trend, ↓ Downward Trend

Table 2: Salmon River Watershed Riparian-Wetland Condition (Public Land)

| CONDITION                    | 1988 (miles)        | 1995 (miles)      |
|------------------------------|---------------------|-------------------|
| Functioning Condition        | 88.2 (97.4%)        | 89.6 (98.9%)      |
| Proper Functioning Condition | 63.3 (70%)          | 66.1 (73%)        |
| Functional-At-Risk           | 24.9 (27.4%)        | 23.5 (25.9%)      |
|                              | {2.8↑, 21.5→, 0.6↓} | {2.9↑, 20→, 0.6↓} |
| Non-Functional               | 2.4 → (2.6%)        | 1 → (1.1%)        |
| TOTAL                        | 90.6                | 90.6              |

↑ Upward Trend, → Static Trend, ↓ Downward Trend

**Table 3:** Birch Creek Watershed Riparian-Wetland Condition (Public Land)

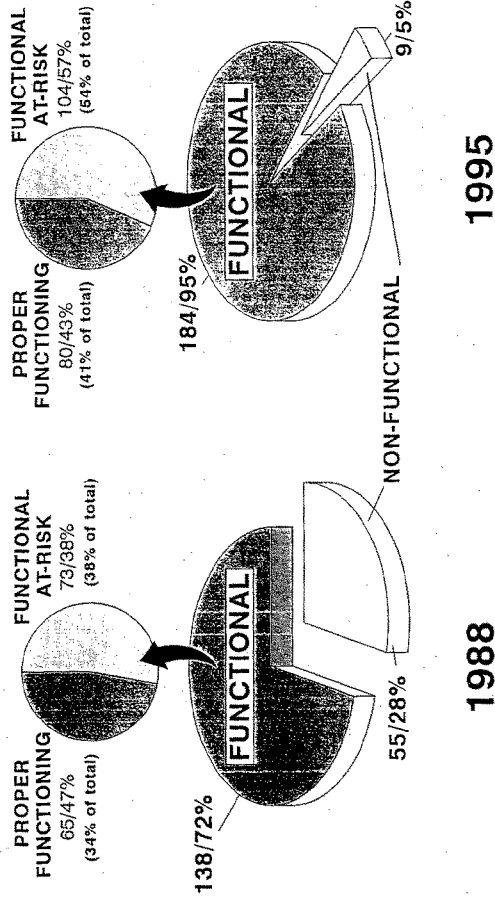
| CONDITION                      | 1988 (miles) | 1995 (miles) |
|--------------------------------|--------------|--------------|
| Functioning Condition          | 12.3         | 12.3         |
| Proper Functioning Condition   | 5.3 (30%)    | 5.3 (30%)    |
| Functional-At-Risk             | 7.0 →(40%)   | 7.0 →(40%)   |
| Non-Functional                 | 0            | 0            |
| Dewatered (private irrigation) | 5.2 (30%)    | 5.2 (30%)    |
| TOTAL                          | 17.5         | 17.5         |

↑ Upward Trend, → Static Trend, ↓ Downward Trend

**Table 4:** Total Lemhi Resource Area Riparian-Wetland Condition (Public Land)

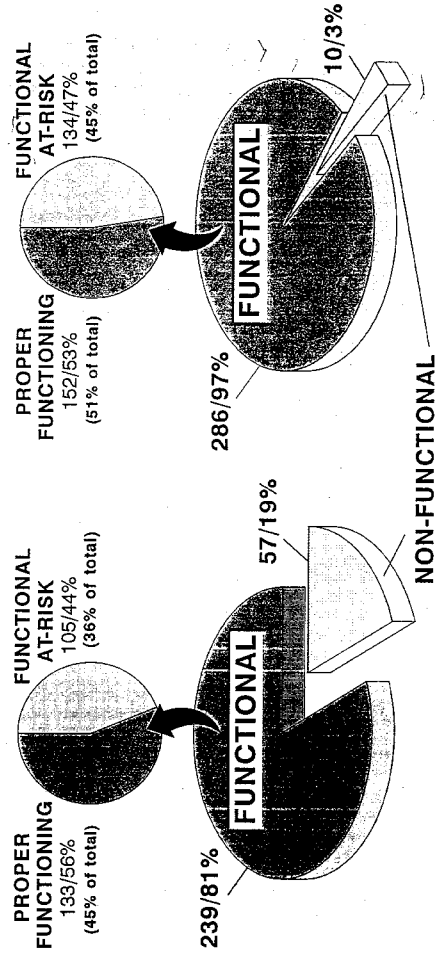
| CONDITION                      | 1988 (miles)  | 1995 (miles)  |
|--------------------------------|---------------|---------------|
| Functioning Condition          | 238.7 (73.5%) | 286.3 (88.2%) |
| Proper Functioning Condition   | 133.4 (41.1%) | 151.6 (46.7%) |
| Functional-At-Risk             | 105.3 (32.4%) | 134.7 (41.5%) |
| Non-Functional                 | 57.4 (17.7%)  | 9.8 (3.0%)    |
| Dewatered (private irrigation) | 28.4 (8.8%)   | 28.4 (8.8%)   |
| TOTAL                          | 324.5         | 324.5         |

# LEMHI RIVER WATERSHED RIPARIAN/WETLAND CONDITION in MILES/PERCENT



Note: 193 total miles. 23 miles dewatered pvt. irrig. (not shown).

# LEMHI RESOURCE AREA RIPARIAN/WETLAND CONDITION in MILES/PERCENT



1988

1995

NOTE: 28 miles dewatered pvt. irrig. (not shown)

**PHOTOGRAPHS**

Monitoring of progress toward meeting our objectives relies heavily on photography. The following pictures include comparison pictures from previous conditions in 1988 through 1992 and after pictures in 1995. We believe the before and after pictures demonstrate changes in vegetation and stream habitat conditions and show riparian areas improving to more functional conditions.



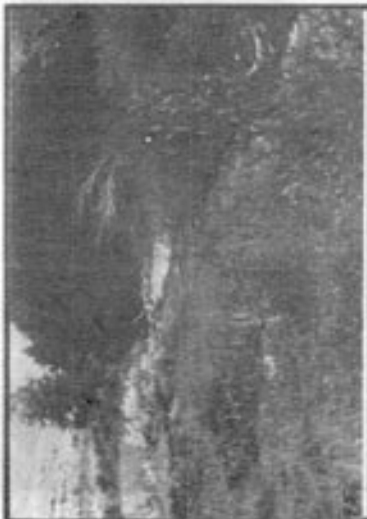
Yearlan Creek August 1988 Post-Grazing



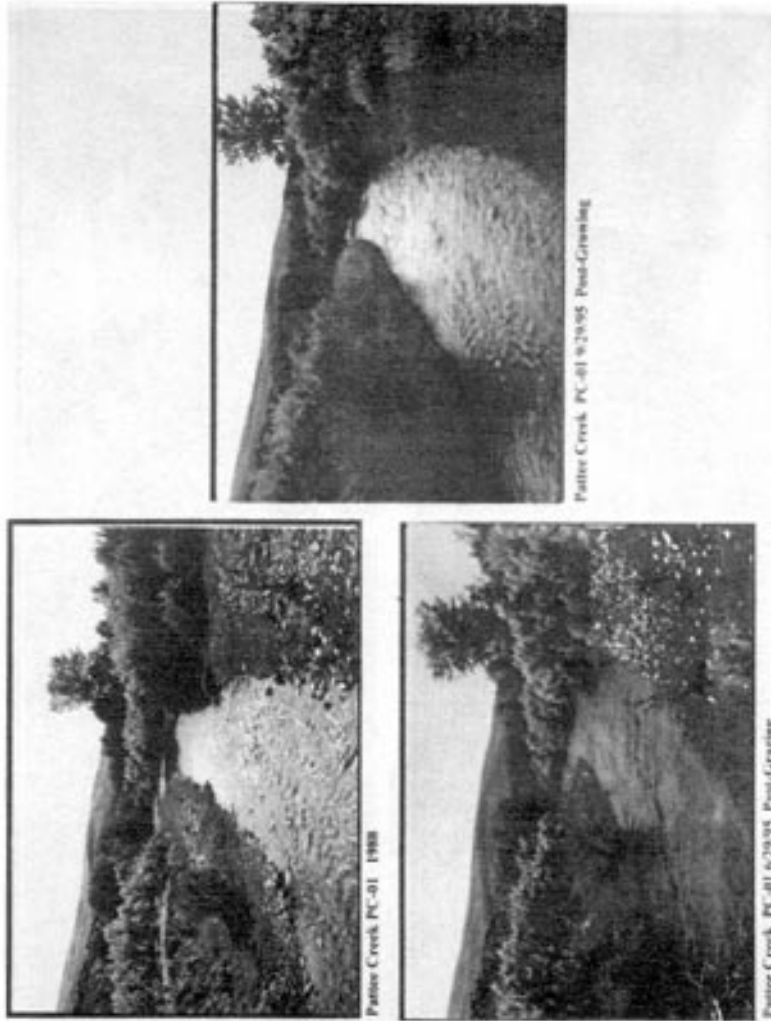
Yearlan Creek 8/22/95 Post-Grazing



Yearlan Creek 5/13/91 Pre-Grazing



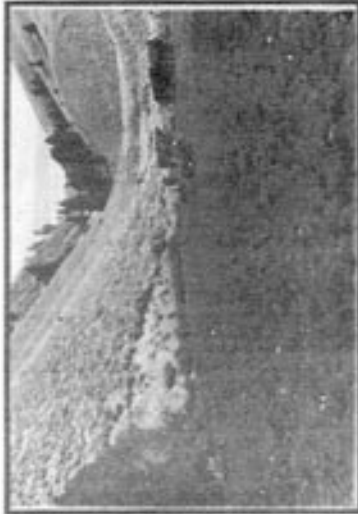
Yearlan Creek 8/17/95 Post-Grazing







Bull Creek 7/26/88 Post-Grazing



Bull Creek 7/15/92 During Grazing Season



Bull Creek 6/24/93 During Grazing Season Fenced Exlosure 1995



Bull Creek 6/24/93 During Grazing Season Fenced Exlosure 1995



Haynes Creek HC-01 8/93



Haynes Creek HC-01 4/14/92



Haynes Creek, HC-91, 7/1/93, Revised



Haynes Creek, HC-91, 4/14/92



Cum Creek CC-42 1988



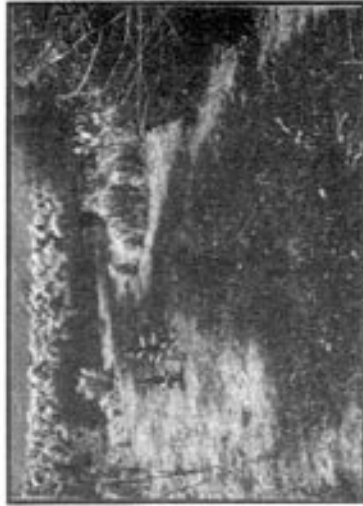
Cum Creek CC-42 to 250 yds. No feedback for rating



Cum Creek CC-43 1988



Cum Creek CC-43 to 250 yds. No feedback for rating



Shurkey Creek SC-01 7/22/94 Post-Grading



Shurkey Creek SC-01 9/21/95 No Livestock Grazing



Shurkey Creek SC-01 9/21/95 No Livestock Grazing



Bear Creek BE-01 5/17/95 Pre-Grading



Bear Creek BE-01 8/30/95 Post-Grading



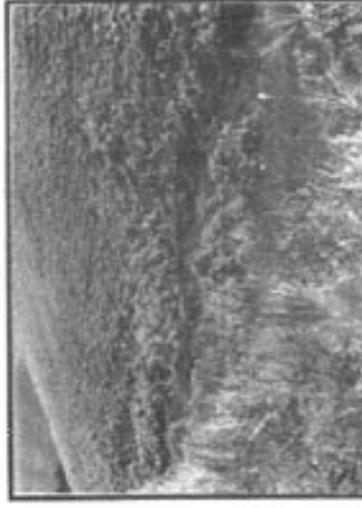
Bear Creek BE-01 7/15/94 Post-Grading



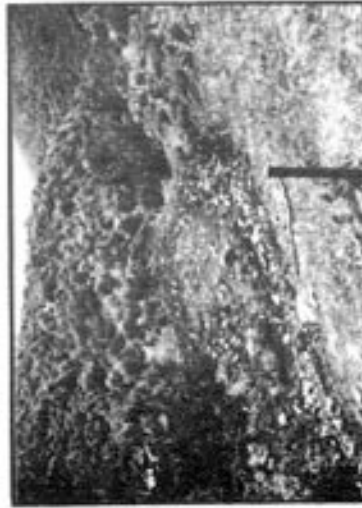
Bear Creek BE-01 5/17/95 Pre-Grading



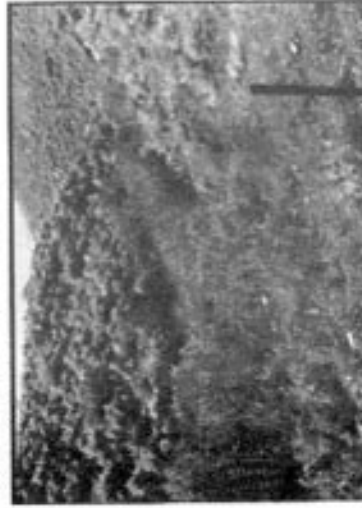
Ryegrass Creek BG-03 4-27-93 Pre-Grazing



Ryegrass Creek BG-03 9-21-95 Post-Grazing



Ryegrass Creek BG-02 7-14-94 Post-Grazing



Ryegrass Creek BG-02 8-10-95 Post-Grazing



Meadow Creek MC-41 7/20/94 Post-Grazing



Meadow Creek MC-41 9/27/95 Post-Grazing



Meadow Creek MC-41 7/20/94 Post-Grazing



Meadow Creek MC-41 9/27/95 Post-Grazing





Canyon Creek CN-01 7/7/95 Post-Grading



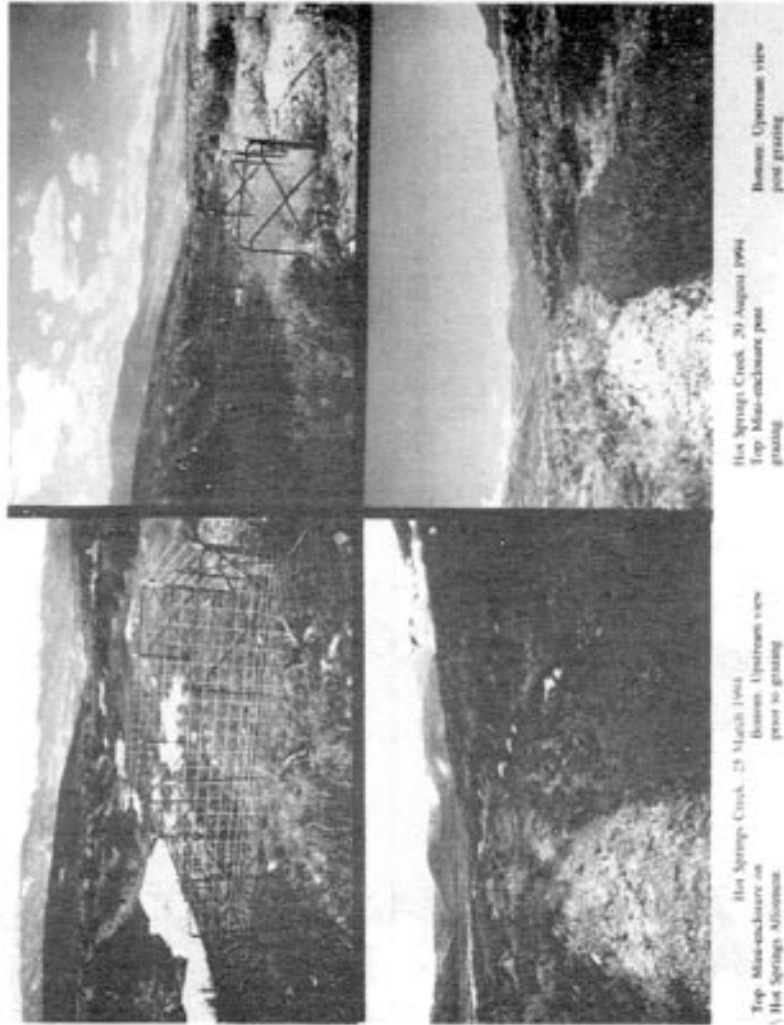
Canyon Creek CN-01 8/27/95 Post-Grading



Canyon Creek CN-01 7/7/95 Post-Grading



Canyon Creek CN-01 8/27/95 Post-Grading





Eighteenmile Creek 7/14/95



Eighteenmile Creek 7/14/95



Eighteenmile Creek 7/14/95



Coronado Creek, Cal. 02/08/1995, Post-fire erosion



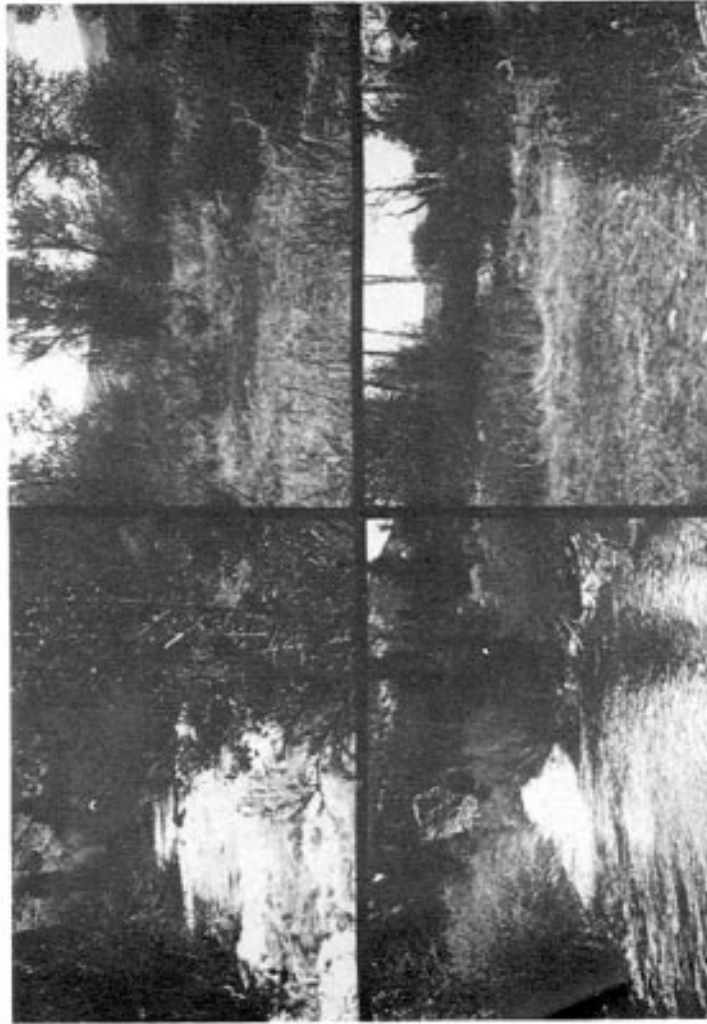
Coronado Creek, Cal. 02/08/1995, Post-fire erosion



Coronado Creek, Cal. 02/08/1995, Post-fire erosion



Coronado Creek, Cal. 02/08/1995, Post-fire erosion



High Key Area TC-01

Farbat Creek, 12 May 1994

Left: Upper Bl. M. above Carey Act Dam



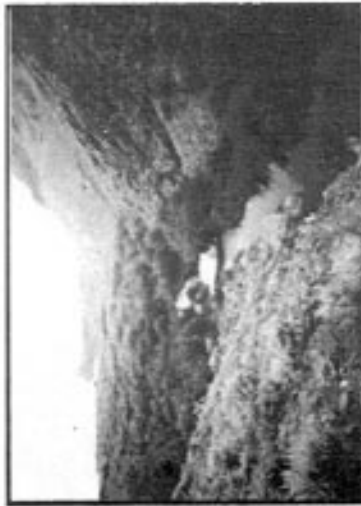
Iron Creek, 12 September 1964



Hart Creek, 8/28/95. Riparian condition showing structural diversities.



Hart Creek, 8/28/95. Close-up of riparian condition.



Hart Creek, 8/28/95. Diversion of riparian area.



Hart Creek, 8/28/95. Private Meadows with riparian protection lines.



*Nez Perce*

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

TESTIMONY OF  
SAMUEL N. PENNEY  
CHAIRMAN, NEZ PERCE TRIBAL EXECUTIVE COMMITTEE  
before the

U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES,  
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS

WASHINGTON, D.C.  
JULY 24, 1997

#### INTRODUCTION

Good morning, Mr. Chairman and members of the Committee. My name is Samuel N. Penney. I am Chairman of the Nez Perce Tribal Executive Committee, the governing body of the Nez Perce Tribe.

Thank you for this opportunity to testify on the National Marine Fisheries Service's (NMFS) role in salmon restoration efforts in the Pacific Northwest.

#### THE NEZ PERCE TRIBE'S CULTURAL CONNECTION WITH SALMON

Since time immemorial, our people have fished for salmon in Nez Perce country, which originally encompassed over 13 million acres in what is today known as northcentral Idaho, southwestern Washington, and northeastern Oregon. Salmon have always been, and continue to be, intricately linked to our people's way of life, our economy, our beliefs, and our culture.

#### THE NEZ PERCE TRIBE'S TREATY-RESERVED FISHING RIGHTS

The leaders of the Nez Perce Tribe who negotiated our 1855 treaty with the United States government recognized the importance of salmon to our people's way of life. The Tribe expressly reserved the exclusive right to take fish within the Reservation as well as the right to take fish at all usual and accustomed places in common with citizens of the United States. The Supreme Court, early in its development of treaty interpretation, recognized the importance of this fishing right in *United States v. Winans*, indicating that:



The right to resort to...fishing places...was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere they breathed.

I am providing a copy of the paper "Columbia River Treaty Fishing Rights" to this Subcommittee so that you will understand the legal and moral obligations of the United States to our Tribe.

#### **THE FEDERAL GOVERNMENT'S TRUST RESPONSIBILITY TO THE NEZ PERCE TRIBE**

The United States stands in a trust or fiduciary relationship to the Nez Perce Tribe. The trust relationship is a legal doctrine which embodies the many political promises made by the federal government to the Nez Perce Tribe. The United States and its agencies are all subject to this fiduciary duty and thus all federal actions and the implementation of federal statutory schemes affecting our people, land or resources must be judged by the most exacting fiduciary standards. The United States' trust responsibility permeates every aspect of the federal government's relations with the Tribe and imposes a duty on the federal government to safeguard natural resources which are of crucial importance to tribal self-government and prosperity.

#### **THE NEZ PERCE TRIBE'S COMMITMENT TO SALMON RESTORATION**

For generations, our ancestors were the caretakers of the Pacific Northwest's salmon runs and treated them as a part of the world that our creator had entrusted to us. The decline of the Pacific Northwest's salmon runs is the most serious environmental concern in the region and is also one the Tribe must squarely face. The concerns we have with the declining salmon runs are shared by many of our neighbors in the Pacific Northwest who also share a connection with the region's signature resource.

From the Nez Perce Tribe's point of view, reversing the decline of Columbia Basin salmon is more just a matter of professional interest, or a legal obligation, or a cost of doing business. The salmon are an integral part of our way of life. We recognize that we have more to lose than anyone if the salmon runs continue to decline. Thus, the Nez Perce Tribe is committed to doing everything we can to ensure that these declines are reversed and that all species and all stocks of salmon are restored. We know, in our hearts, that our vision and plan for salmon restoration will provide a sustainable fishery resource for the benefit of all peoples in the Pacific Northwest and Alaska.

The Nez Perce Tribe welcomes this opportunity to testify before you, as a sovereign nation and a legally-recognized salmon co-manager, on our views and recommendations on NMFS's role in salmon restoration in the Pacific Northwest and its implementation of the Endangered Species Act.

### **THE ENDANGERED SPECIES ACT'S "EMERGENCY ROOM" ROLE IN SALMON RECOVERY AND RESTORATION EFFORTS**

Although the Endangered Species Act has received a great deal of attention for its potential role in the recovery of salmon in the Pacific Northwest, the ESA is but one legal commitment that is relevant to salmon restoration efforts. The ESA operates like an emergency room focused on "recovery" of the listed fish.

The ESA does not guarantee fulfillment of the 1980 Northwest Power Act's promise of "parity" between salmon protection and hydroelectric generation and that Act's call for a program to restore fish and wildlife populations to the extent "affected by the development and operation" of the Columbia Basin hydroelectric system. Nor does the ESA guarantee fulfillment of the United States' treaty promises to our people to protect our aboriginal right to take fish at all usual and accustomed fishing places or the federal government's trust obligation to our Tribe.

In contrast to the ESA, the Nez Perce Tribe's vision for salmon restoration, shared by the other Columbia River Treaty Tribes and contained in *Wy-Kan-Ush-Mi, Wa-Kish-Wit* (Spirit of the Salmon), is substantially broader. Our peer-reviewed plan, which I am providing to this subcommittee, is focused on restoration of all species and all stocks to provide harvestable populations of fish for our people as well as the citizens of the Pacific Northwest and Alaska.

The purpose of the ESA is to provide a program for the conservation of species listed as endangered or threatened, to provide a means to conserve the ecosystems of those species, and to take appropriate steps to achieve the purposes of various international treaties and conventions. One would think the purposes of the ESA could be read consistently with the Northwest Power Act, the Tribe's treaty reserved fishing rights, the federal government's trust responsibility to the Tribe, as well as with the case law principles developed in *U.S. v. Oregon* and *U.S. v. Washington*, the rebuilding program envisioned by the *U.S. v. Oregon* Columbia River Fish Management Plan, the Pacific Salmon Treaty and FERC orders. It is extremely troubling to the Tribe and to many of our neighbors in the region that NMFS' administration and implementation of the ESA, to date, has proven otherwise.

### **THE NEZ PERCE TRIBE'S STANDARD FOR EVALUATING NMFS' ADMINISTRATION AND IMPLEMENTATION OF THE ENDANGERED SPECIES ACT**

The Tribe's standard for evaluating whether NMFS is properly implementing its authorities under the ESA may be simply stated as follows:

NMFS' decisions must be consistent with the biological requirements of salmon, emphasize reductions to the largest sources of salmon mortality,

equitably allocate the conservation burden, and be consistent with the United States' legal obligations.

Unfortunately, our assessment of NMFS' activities since the initial listing of Snake River sockeye in 1991 and the subsequent listing of spring/summer and fall chinook reveals that NMFS is not meeting this standard.

#### **THE NEZ PERCE TRIBE'S EXPERIENCE AND CONCERNS WITH NMFS' DECISIONS AND DECISION-MAKING PROCESSES**

The Nez Perce Tribe has carefully monitored NMFS' implementation of the ESA and is extremely troubled by NMFS' administration and implementation of the ESA over the past six years. Our primary concern is that NMFS has not effectively recognized our treaty-reserved fishing rights and the federal government's trust obligation to protect these fishery resources.

We believe in focusing on the future, not dwelling on the past. Thus, we will simply point out a few examples of some of our concerns with NMFS administration and implementation of the ESA.

***We are concerned that NMFS has accepted an extremely high level of risk in its short and long term recovery strategy***

NMFS's 1992 and 1993 biological opinions on the Federal Columbia River Power System concluded that the system's operations would not jeopardize the continued existence of Snake River salmon. The State of Idaho, joined by the Columbia River Treaty Tribes and others, challenged this conclusion. The federal court held that the Biological Opinion's conclusion was flawed, noting that:

the [NMFS] process is seriously, "significantly" flawed because it is too heavily geared towards a status quo that has allowed all forms of river activity to proceed in a deficit situation--that is, relatively small steps, minor improvements and adjustments--when the situation literally cries out for a major overhaul. Instead of looking for what can be done to protect the species from jeopardy, NMFS and the other action agencies have narrowly focused their attention on what the establishment is capable of handling with minimal disruption.

After going back to the drawing board, NMFS produced a 1995-1998 Biological Opinion that again landed them in court. This time, the court showed great deference to NMFS, but indicated its queasiness with the level of risk that NMFS based its recovery measures on, indicating:

Whether salmon may be saved in time to benefit from such long term system improvements is the risk that NMFS and the action agencies have assumed within this process. Given the dwindling numbers, time is clearly running out. As a long-term observer and examiner of this process,

I cannot help but question the soundness of the [NMFS] selected level of risk acceptance...

The Nez Perce Tribe believes that NMFS' acceptance of a 50% probability of recovery of the listed species is like taking a coin toss. We are extremely concerned that NMFS is staking its recovery program under the ESA on this probability, which offers even less hope of satisfying other legal obligations, such as the Northwest Power Act or the United State's trust responsibility and treaty obligations to the Tribe.

***We are concerned that NMFS failed to consider the best available science in the initial BiOps on the Federal Columbia River Power System***

NMFS' 1993 Biological Opinion on FCRPS operations failed to consider, as the court recognized in the *Idaho Fish and Game v. NMFS* litigation, the "significant biological information and data from well-qualified scientists such as the fisheries biologists from the states and tribes" in carrying out the ESA's mandate of making decisions on the basis of the best available scientific knowledge.

***We are concerned that NMFS designed an ESA implementation process that failed to recognize the Tribe's treaty rights and the federal government's trust obligation to the Tribe***

NMFS established a multi-tiered structure for implementing measures contained in NMFS proposed recovery plan for Snake River salmon. Far from being a "Regional Forum," this process is wholly dominated by the ESA. This became evident this spring when NMFS decided to reject Idaho's proposal, supported by the Columbia River treaty tribes, the United States Fish and Wildlife Service and the states of Oregon, Washington, and Alaska, to permit a greater percentage of springtime migrating salmon to remain in the river during their journey to the ocean to take full advantage of this year's snowmelt and which was based on earlier success with this strategy. We, and the other Columbia River treaty tribes, had never sanctioned this forum and our frustration with NMFS' failure to squarely address the federal government's trust obligation to protect our treaty-reserved resources led to our formal withdrawal from this process this spring.

***We are concerned that NMFS is not taking actions necessary to ensure protection of salmon habitat***

The Interior Columbia Basin Ecosystem Management Project has produced draft environmental impact statements for federal lands in the Interior Columbia Basin and the Eastside of the Cascade Mountains. These EISs will establish the parameters for federal land management activities east of the Cascades in Oregon, Washington, and Idaho. Our analysis reveals that the draft EISs are insufficient to protect salmon habitat, yet NMFS has given this scheme its seal of approval.

***We are concerned that NMFS is not assembling the data necessary to make the long-term recovery decision concerning modifications to the hydrosystem through natural river drawdown or major improvements in the barging programs, and is approaching this as solely an ESA issue.***

***We are concerned that NMFS is stifling responsible supplementation programs designed to restore salmon***

Supplementation, as defined by the Tribe, is oriented towards maintaining the natural biological characteristics of a population and relies on the spawning and rearing capabilities of the natural habitat. Thus, supplementation is far different from traditional hatchery programs. NMFS' focus on racial purity, through its informal adoption and application of an Evolutionarily Significant Unit policy, has stifled responsible supplementation programs designed to restore salmon.

***We are concerned that NMFS may unlawfully attempt to restrict tribal harvest in violation of treaty rights principles and the federal government's trust responsibility to the Tribe***

The Nez Perce Tribe and the Columbia River treaty tribes have made extensive sacrifices for many years in order to conserve salmon. The tribes have not had a commercial fishery for summer chinook since 1965 and have not had a commercial fishery for spring chinook since 1977. The tribes have been consistently responsive to stock-specific conservation concerns and have voluntarily agreed to greater restrictions than would be required under case law principles or the Columbia River Fish Management Plan negotiated by the parties to *U.S. v. Oregon* which promotes the conservation of the fisheries resource and promotes rebuilding of the depressed salmon stocks to harvestable levels. Under the case law principles developed in *U.S. v. Oregon* and related cases, tribal harvest may only be restricted after the following conditions have been met:

The party proposing restrictions must establish that such restrictions are both reasonable and necessary for preservation of the resource.

- . To be deemed necessary, the restrictions must be the least restrictive measures available to achieve the required conservation purpose.
- . The party proposing restrictions must show that the conservation purpose of the restrictions cannot be achieved solely by regulation of non-Indian activities.
- . The restrictions must not discriminate against Indians exercising their treaty rights, either as proposed or as applied.
- . Voluntary tribal actions must be shown inadequate to insure preservation of the resource.

The Secretarial Order on Implementation of the Endangered Species Act also reinforces many of these case law principles and helps foster the common-sense approach that NMFS must consult with the Tribe in order to attempt to address

and prevent potential clashes between the ESA and the Tribe's treaty-reserved fishing right.

**THE NEZ PERCE TRIBE'S RECOMMENDATIONS FOR NMFS' FUTURE ADMINISTRATION AND IMPLEMENTATION OF THE ESA**

We would like to share with you our vision for our future relationship with NMFS and its administration and implementation of the ESA.

We hope that NMFS will honor the federal government's trust obligation to our Tribe and recognize our treaty-reserved fishing rights in all of the actions it takes to administer and implement the ESA. We believe that this commitment, if taken with the seriousness it deserves, would result in better decision making processes and better decisions and would help alleviate many of the concerns we have presented.

We also hope that NMFS will honor our request that they consult with us on a government-to-government basis on issues relevant to salmon recovery prior to proceeding to move them through the multitiered layers of process they have designed to administer and implement the ESA.

We hope that NMFS will commit to using the best available science in reaching all of its decisions, whether they be concerning supplementation, habitat protection or river operations, rather than strike the compromises they have struck in the past.

On a broader scale, we believe that unilateral actions by the federal government through the ESA, the states through the Northwest Power Planning Council, or the Tribe and other Columbia River tribes through the federal courts, are less likely to succeed than actions based on joint commitments of the federal government, the states and the tribes. While a standoff may benefit some interests in the region, it is certainly not in the salmon's interest. Thus, the Nez Perce Tribe believes that the three sovereigns must mutually commit to working together to comprehensively address salmon restoration.

This is particularly important because there are a number of issues, particularly in the hydrosystem and funding arenas, that would have the effect of prejudicing salmon restoration efforts in the future. For example, the proposal to extend the fish and wildlife budget MOA beyond 2001 is troubling because there are many concerns about the adequacy of the current budget which does not address the major structural modifications that will be necessary to the hydrosystem regardless of whether a significantly improved barging program or a natural river option is selected. Similarly, BPA's proposals to enter into long term subscription contracts and to separate its transmission assets from its generation assets and to avoid the stranded costs of its past investments also drastically affects BPA's ability to pay for fish and wildlife restoration. In addition, the Corps

of Engineers' capital construction budget must be closely monitored to ensure that capital construction funds are spent on critical adult and juvenile passage and mainstem habitat measures at the Lower Snake River and Lower Columbia dams, rather than recklessly spent on gold plating the Lower Snake River dams through expenditures for the development and installation of more screen and transportation systems which would be inoperable under a natural river modification.

A high level government-to-government consultation forum would allow the three sovereigns to deal with issues such as hydrosystem reconfiguration in a comprehensive way that is based on the best science, is geared towards restoration of all stocks and species of fish, assesses the implications of these decisions, and provides long-term certainty. This will require the sovereigns to consider aligning a number of conflicting decision tracks identified above.

Such an comprehensive effort will require significant leadership from federal, state, and tribal governments to make progress in comprehensively addressing these issues. We are willing to rise to this challenge and urge you to provide leadership and support to this effort.

Again, we appreciate this opportunity to share our views with you.

## COLUMBIA RIVER TREATY FISHING RIGHTS

Since time immemorial the Columbia River and its tributaries were viewed by the Columbia River Basin tribes as "a great table where all the Indians came to partake."<sup>1</sup> More than a century after the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakima Indian Nation, and the Nez Perce Tribe signed the treaties which created their reservations, the tribes' place at the table has been subordinated to energy production and other non-Indian water development. Today, the Columbia River treaty tribes struggle for a very small fraction of their reserved fishing rights. The treaties -- the supreme law of the land under the United States Constitution -- promised more.<sup>2</sup>

The Columbia River treaty tribes reserved the right to fish at all usual and accustomed fishing stations "in common with" the citizens of the United States. The fishing right means more than the right of Indians to hang a net in an empty river.<sup>3</sup> However, Columbia River runs of sockeye, coho, and spring, summer, and fall chinook have declined drastically since the mid-1800's.<sup>4</sup> Where once the Columbia produced annual runs of at least 10-16 million salmon, its runs are now diminished to tens of thousands. The devastation of fish runs is inimical to Indian treaties and the United States' trust responsibilities to tribes.

The United States stands in a trust or fiduciary relationship to the Columbia River treaty tribes.<sup>5</sup> The trust relationship is a legal doctrine which embodies the many promises made by

<sup>1</sup> Seufert Brothers Co. v. United States, 249 U.S. 194, 197 (1919).

<sup>2</sup> See U.S. Const. Art. VI, cl. 2 construed in United States v. Washington, F. Supp. 312, 330 (W.D. Wash. 1974). Pursuant to the United States Constitution, the treaties with the tribes made under the authority of the United States "shall be the supreme Law of the Land; and Judges in every State shall be bound thereby . . ." *Id.*

<sup>3</sup> Washington v. Washington State Commercial Passenger Fishing Vessel Association, 443 U.S. 658, 679 (1979).

<sup>4</sup> A run is the annual return of adult salmon and steelhead trout. Total runs include those fish that are harvested prior to reaching any dams. See Generally, U.S. COMPTROLLER GENERAL, HYDROELECTRIC DAMS: ISSUES SURROUNDING COLUMBIA RIVER BASIN JUVENILE FISH BYPASSES, H.R. Rep. No. 90-180, at 8 (1990).

<sup>5</sup> United States v. Mitchell, 463 U.S. 206 (1983); Nance v. Environmental Protection Agency, 645 F.2d 701 (9th Cir. 1981); Morton v. Ruiz, 415 U.S. 199, 236 (1974); United States v. Mason, 412 U.S. 391 (1973); United States v. Alcea Band of Tillamooks, 329 U.S. 40, 47 (1946); Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942); Tulee v. State, 315 U.S. 681 (1942); United States v. Santa Fe Pac. Ry., 314 U.S. 339 (1941); Shoshone Tribes v. United States, 299 U.S. 476 (1937); United States v. Creek Nation, 295, 103 (1935); United States v. Candelaria, 271 U.S. 432 (1926); United States v. Panye, 264 U.S. 446, 448



the federal government to Indian tribes. The promises include but are not limited to 1) the protection of tribal sovereignty and self-government; 2) the protection of tribes from state interference; and 3) the protection of tribal people and tribal natural resources. The trust doctrine governs all aspects of federal government actions which in any way affect the tribes.

The trust doctrine sets limits on the exercise of federal power over Indian people.<sup>6</sup> Treaty language, which often speaks in terms of "securing" to tribes land and resources while promising to promote and improve tribal well-being, exemplifies the constraints on the exercise of federal power over Indian affairs.<sup>7</sup> Treaties made with Indian tribes (and the fact that treaties were made at all) are proof of the federal government's recognition of tribal sovereignty.<sup>8</sup>

Federal trust obligations are analogous to common law trust principles.<sup>9</sup> Under common law trust principles, the trustee has a duty to administer the trust property solely in the interest of the beneficiary.<sup>10</sup> The Supreme Court has stated that the federal trustee has the "duty in administering the trust to exercise such care and skill as a man of ordinary prudence would

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(1924); *Cramer v. United States*, 261 U.S. 219 (1923); *United States v. Nice*, 241 U.S. 591 (1916); *United States v. Pelican*, 232 U.S. 442 (1914); *United States v. Sandoval*, 231 U.S. 28, 45-46 (1913); *Choate v. Trapp*, 224 U.S. 665, 675 (1912); *Heckman v. United States*, 224 U.S. 413, 437-38 (1912); *Tiger v. Western Investment Co.*, 221 U.S. 286 (1911); *Lone Wolf v. Hitchcock*, 187 U.S. 553, 564 (1903); *Cherokee Nation v. Hitchcock*, 187 U.S. 294, 305 (1902); *Cherokee Nation v. Southern Kansas Ry.*, 135 U.S. 641 (1890); *United States v. Kagama*, 118 U.S. 375 (1886); *Fellows v. Blacksmith*, 60 U.S. (19 How.) 366 (1856); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

<sup>6</sup> AMERICAN INDIAN POLICY REVIEW COMMISSION, FINAL REPORT at 4-5 May 17, 1977.

<sup>7</sup> See e.g., Treaty with the Tribes of Middle Oregon, June 25, 1855.  
That the exclusive right of taking fish in the streams running through and bordering said reservation is hereby secured to said Indians; and at all other usual and accustomed stations, in common with citizens of the United States, and of erecting suitable houses for curing the same; also the privilege of hunting, gathering roots and berries, and pasturing their stock on unclaimed lands, in common with citizens, is secured to them.

<sup>8</sup> *Worcester v. Georgia*, 31 U.S. (6 Pet) 515, 538 (1832).

<sup>9</sup> AMERICAN INDIAN POLICY REVIEW COMMISSION, FINAL REPORT 127 May 17, 1977.

<sup>10</sup> See *Manchester Band of Pomo Indians v. United States*, 363 F.Supp. 1238, 1245 (N.D. Cal. 1973)(citing Restatement (Second) of Trusts § 170(1) (1959)).

exercise in dealing with his own property."<sup>11</sup> The United States has a duty to account to the tribes for its performance of treaty obligations.<sup>12</sup> If the federal trustee is negligent in its dealings with the tribes' property, it is liable for any losses.<sup>13</sup>

Canons of construction unique to Federal Indian law are manifestations of the federal government's trust relationship with Indian tribes. Courts rely on the canons of construction when interpreting treaties, executive orders, and statutes pertaining to tribes and in reviewing federal actions affecting Indian people. The following is a summary of the primary canons of Federal Indian law:

1. Indian treaties must be interpreted so as to promote their central purposes;<sup>14</sup>
2. Treaties are to be interpreted as the Indians themselves would have understood them;<sup>15</sup>
3. Indian treaties are to be liberally construed in favor of the Indians;<sup>16</sup>

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<sup>11</sup> *United States v. Mason*, 412 U.S. 391, 398 (1973), citing *A. Scott, Trusts* § 1408 (3rd ed. 1967). *See also* *Coast Indian Community v. United States*, 550 F.2d 639, 652-53 (Ct. C. 1977); *Covello Indian Community v. FERC*, 895 F.2d 581, 585 (9th Cir. 1990)(citing *Assiniboine and Sioux Tribes v. Board of Oil and Gas Conservation*, 792 F.2d 782, 794 (9th Cir. 1982)).

<sup>12</sup> *Navajo Tribe of Indians v. United States*, 624 F.2d 981, 990 (Ct. C. 1980).

<sup>13</sup> *Coast Indian Community*, 550 F. 2d at 653.

<sup>14</sup> *United States v. Winans*, 198 U. S. 371, 381 (1905).

<sup>15</sup> *Washington v. Washington State Commercial Passenger Fishing Vessel Association*, 443 U.S. 658, 676 (1979); *Choctaw Nation v. Oklahoma*, 347 U.S. 620, 630 (1970); *Tulee v. Washington*, 315 U.S. 681, 684 (1942); *Jones v. Meehan*, 175 U.S. 1, 11 (1899); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832); *Seufert Bros. v. United States*, 249 U.S. 194, 198 (1919); *United States v. Winans*, 198 U.S. 371 (1905). *See generally* FELIX S. COHEN, *FEDERAL INDIAN LAW* 221-225 (1982).

<sup>16</sup> Or phrased slightly differently, treaties must be read, not in isolation but in light of the common notions of the day and the assumptions of those who drafted them. *Passenger Fishing Vessel Association*, 443 U.S. at 676; *Antoine v. Washington*, 420 U.S. 194, 199 (1975); *Choctaw Nation v. United States*, 318 U.S. 423 (1943); *Tulee v. Washington*, 315 U.S. 681, 684 (1942); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918).

4. Ambiguous expressions are to be resolved in favor of the Indians;<sup>17</sup> and
5. A treaty is not a grant of rights to the Indians but a reservation of those rights not granted away.<sup>18</sup>

The canons of construction reflect judicial recognition of the federal government's obligation to protect and enhance tribal rights. Similarly, the canons provide guidance to federal agencies involved in the co-management of the Columbia River tribes' treaty- fishery and water resources.

#### APPLICATION OF TRUST PRINCIPLES

The federal government and its agencies are subject to the United States' fiduciary responsibilities to tribes.<sup>19</sup> All federal actions and the implementation of federal statutory schemes affecting Indian people, land or resources must be "judged by the most exacting fiduciary standards."<sup>20</sup> The United States' trust obligations extend to all federal agencies that

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<sup>17</sup> *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973); *Carpenter v. Shaw*, 280 U.S. 363 (1930); *Fleming v. McCustain*, 215 U.S. 56, 59-60 (1909); *Winters v. United States*, 207 U.S. 564 (1905). In *Winters* the Court stated:

By a rule of interpretation of agreements and treaties with the Indians, ambiguities occurring will be resolved from the standpoint of the Indians. And the rule should certainly be applied to determining between two inferences, one of which would support the purpose of the agreement and the other impair or defeat it. On account of their relation to the government, it cannot be supposed that the Indians intended to exclude by formal words every inference which might militate against and defeat the declared purpose of themselves and the government, even it could be supposed that they had the foresight to foresee the "double sense" which might some time be urged against them. 207 U.S. at 576-577.

<sup>18</sup> *United States v. Winans*, 198 U.S. 371, 381 (1905).

<sup>19</sup> See e.g., *Pyramid Lake Paiute Tribe of Indians v. United States Department of the Navy*, 898 F.2d 1401, 1411 (9th Cir. 1991); *Covello Indian Community v. FERC*, 895 F.2d 581, 584 (9th Cir. 1990); *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981), *cert. denied*, 454 U.S. 1081 (1981).

<sup>20</sup> *Seminole Nation v. United States*, 316 U.S. 286, 296-97 (1942). See also *United States v. Mason*, 412 U.S. 391, 398 (1973).

manage fisheries, water projects, hydroprojects, and federal lands.<sup>21</sup>

One of the more significant cases applying the trust doctrine to the management of tribal fishery and water resources is *Pyramid Lake Paiute Tribe v. Morton*.<sup>22</sup> In *Pyramid Lake*, the Paiute Tribe sought and obtained a federal court order enjoining diversions from the Truckee River upstream from Pyramid Lake, a desert lake located totally within the Paiute's reservation and fed only by the Truckee River.<sup>23</sup> The upstream diversions threatened the lake's quality and the upstream spawning of two species of fish upon which the tribe historically depended.

The Paiute Tribe's challenge arose in response to the Secretary of Interior's proposed regulation which called for massive diversions from the Truckee River. The court found that the Secretary's self-described "judgment call" regarding the quantity of water to be diverted was an abuse of discretion. The court stated that the Secretary:

misconceived the legal requirements that should have governed his action. A 'judgment call' was simply not legally permissible.... The burden rested on the Secretary to justify any diversion of water from the Tribe with precision. It was not his function to attempt an accommodation.<sup>24</sup>

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<sup>21</sup> See e.g., *Nance v. Environmental Protection Agency*, 645 F.2d 701 (9th Cir. 1981); *Covello Indian Community v. Federal Energy Regulatory Commission*, 895 F.2d 581 (9th Cir. 1990); *Pyramid Lake Paiute Tribe of Indians v. United States Department of Navy*, 898 F.2d 1410 (9th Cir. 1990); *Assiniboine & Sioux Tribes v. Board of Oil and Gas Conservation*, 792 F.2d 782 (9th Cir. 1986); *Cheyenne-Arapaho Tribes of Oklahoma v. United States*, 512 F.2d 1390 (Ct.Cl. 1975).

<sup>22</sup> 354 F.Supp. 252 (D.D.C. 1972).

<sup>23</sup> At issue was the Secretary of Interior's "judgment call" in recommending a regulation allowing 378,000 acre feet of water to be diverted from the Truckee River for irrigation purposes. If not diverted, the water would flow into Pyramid Lake, located on the tribe's reservation and historically the tribe's principle source of livelihood. The extensive irrigation diversions severely impacted the lahontan cutthroat trout and cui-ui, fish which tribal members had historically depended on. These fish were placed on the federal threatened and endangered lists in 1975 and 1967 respectively. See generally *Carson-Truckee Water Conservancy District v. Watt*, 549 F.Supp 704 (1982).

<sup>24</sup> 354 F.Supp. at 256.

The Secretary was obliged to formulate a closely developed regulation that would preserve water for the Tribe. He was further obliged to assert his statutory and contractual authority to the fullest extent possible to accomplish this result.... The

The court held that the Secretary of Interior violated his trust obligation to protect the Paiute Tribe's fishery.<sup>25</sup> Judge Gesell further held that a contract between the Secretary of the Interior and the Secretary of Agriculture that governed reservoir management could not be advanced as an obstacle to maintaining fish flows.<sup>26</sup> *Pyramid Lake* mandates that federal agencies both recognize and act in accordance with their fiduciary obligation to tribes.<sup>27</sup>

The obligations created by the trust doctrine extend to federal actions taken off reservation which impact life and resources on reservation. In *Northern Cheyenne Tribe*,<sup>28</sup> the federal district court of Montana declared that a "federal agency's trust obligation to a tribe extends to actions it takes off a reservation that uniquely impact tribal members or property on a reservation."<sup>29</sup> Not even the nation's need for energy development justified disregard of the federal government's fiduciary duty.<sup>30</sup>

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Secretary's action is therefore doubly defective and irrational because it fails to demonstrate an adequate recognition of his fiduciary duty to the Tribe. This also is an abuse of discretion and not in accordance with law. *Id.* at 256-57.

<sup>25</sup> *Id.*

In order to fulfill his fiduciary duty, the Secretary must insure, to the extent of his power, that all water not obligated by court decree or contract with the District goes to Pyramid Lake. The United States, acting through the Secretary of the Interior, 'has charged itself with moral obligations of the highest responsibility and trust. Its conduct, as disclosed in the acts of those who represent it in dealings with the Indians, should therefore be judged by the most exacting fiduciary standards.' (citing *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942)).

<sup>26</sup> *Id.* at 258. "The Secretary's trust obligations to the Tribe are paramount in this respect...."

<sup>27</sup> *Id.* at 257.

<sup>28</sup> *Northern Cheyenne Tribe v. Hodel*, 12 ILR 3065 (D.Mont., May 28, 1985) *aff'd on other grounds* 842 F.2d 224 (9th Cir. 1988).

<sup>29</sup> *Id.* at 3071.

<sup>30</sup> The court declared that:

The Secretary's conflicting responsibilities and federal actions taken in the 'national interest,' however, do not relieve him of

The trust doctrine permeates every aspect of the federal government's relations with Indian tribes. The federal government and its implementing agencies owe a duty to not only recognize the impacts of their activities on the tribes, but also a duty to safeguard natural resources which are of crucial importance to tribal self-government and prosperity. In addition, the trust responsibility imposes an affirmative duty upon a federal agency to use its particular expertise to protect tribal resources.<sup>31</sup>

#### THE RIGHT TO TAKE FISH

The right to take fish is integral to the Columbia River tribes' subsistence, culture, religion and economy.<sup>32</sup> The Supreme Court recognized the importance of fish to the tribes early in the development of treaty interpretation:

The right to resort to...fishing places...was a part of larger rights possessed by the Indians, upon the exercise of which there was not a shadow of impediment, and which were not much less necessary to the existence of the Indians than the atmosphere

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his trust obligations. To the contrary, identifying and fulfilling the trust responsibility is even more important in situations such as the present case where an agency's conflicting goals and responsibilities combined with political pressure asserted by non-Indians can lead federal agencies to compromise or ignore Indian rights. *Id.*

<sup>31</sup> Mitchell II, 463 U.S. 206 (1983).

<sup>32</sup> NORTHWEST POWER PLANNING COUNCIL, COMPILATION OF INFORMATION ON SALMON AND STEELHEAD LOSSES IN THE COLUMBIA RIVER BASIN (March 1986).

A significant dependence upon salmon is the single feature that most of the aboriginal groups in the Columbia River Basin shared.... inter-group trade made salmon available to virtually all inhabitants of the Columbia Basin....The annual salmon runs were accompanied by religious rituals and ceremonial rites such as the First Salmon Ceremony, believed to ensure the continued return of the salmon. The salmon also played an important role in Indian folklore, art, music, and mythology. The timing and distribution of the runs were major determinants of yearly patterns of group movement, the organization of households, the division of labor, the size of local groups, and the nature of social interactions among groups. Although the cultural value of the salmon to the Columbia Basin Indians cannot be quantified or adequately characterized, undoubtedly much of what is distinctive about the aboriginal cultures can be attributed to their relationship to the salmon. *Id.* at 29.

they breathed.<sup>33</sup>

In 1855, separate treaties with the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakima Indian Nation, and the Nez Perce Tribe were negotiated with representatives of the United States government.<sup>34</sup> Retaining the right to continue traditional fishing practices was a primary objective of the Columbia River tribes during treaty negotiations.<sup>35</sup> Each treaty contained a substantially identical provision reserving to the tribes the right take "fish at all usual and accustomed places in common with citizens of the United States."<sup>36</sup> The fishing clause is the heart of the Columbia River tribes' treaties.<sup>37</sup>

The Columbia River tribes' treaty fishing rights were explicitly reserved. They are property rights and thus, if abrogated, require compensation under the Fifth Amendment of the United States Constitution.<sup>38</sup> Fishing rights are the communal property of the tribes.<sup>39</sup> The Columbia River tribes each reserved the right to take fish (1) within their respective reservations,<sup>40</sup> (2) at all usual and accustomed fishing sites on lands ceded to the United

<sup>33</sup> *United States v. Winans*, 198 U.S. 371, 381 (1905).

<sup>34</sup> Treaty with the Yakima Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribes, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

<sup>35</sup> *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942).

<sup>36</sup> Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963, Article I.

<sup>37</sup> *United States v. Washington*, 443 U.S. 658, 664-69 (1973) (discussing the importance of reserving the right to access usual and accustomed fishing sites on and off reservation to the tribes during treaty negotiations).

<sup>38</sup> *United States v. Sioux Nation of Indians*, 448 U.S. 371 (1980); *Menominee Tribe v. United States*, 391 U.S. 404 (1963); *Three Tribes of Fort Berthold Reservation v. United States*, 390 F.2d 686 (Ct.Cl. 1968); *Confederated Tribes of the Umatilla Indian Reservation v. Alexander*, 440 F.Supp. 553 (D.Or. 1977).

<sup>39</sup> *Whitefoot v. United States*, 293 F.2d 658, 663 (Cl.Ct. 1961)(holding that tribal fisheries are communal property vested in the tribe and that compensation under the Fifth Amendment must be paid to the tribe where fishing stations are destroyed or taken.), *cert. denied*, 369 U.S. 818 (1962); *Kimball v. Callahan*, 590 F.2d 768, 773 (9th Cir. 1979), *cert. denied*, 444 U.S. 826 (1979).

<sup>40</sup> *United States v. Winans*, 198 U.S. 371, 381 (1905)(stating "There was an exclusive right of fishing reserved within certain boundaries"). *See also* *Puyallup v. Department of*

States government,<sup>41</sup> and (3) at all usual and accustomed fishing sites outside the reservation or ceded areas.<sup>42</sup>

#### OFF-RESERVATION TREATY FISHING RIGHTS

In negotiating their treaties, the Columbia River tribes reserved the right to access ceded aboriginal lands for a variety of reasons including the right to fish at their "usual and accustomed places."<sup>43</sup> The treaty right to fish off-reservation preceded the statehoods of Oregon, Washington and Idaho and was not subordinated to state law.<sup>44</sup> A state may not regulate treaty off-reservation fishing activity unless it can first demonstrate that the regulation is necessary for conservation of fish.<sup>45</sup> Furthermore, states may not restrict treaty fishing in a manner which favors non-treaty fishing or discriminates against Indians.<sup>46</sup>

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Game, 391 U.S. 392 (1968)[hereinafter Puyallup I].

<sup>41</sup> *Tulee v. Washington*, 315 U.S. 681, 684 (1942).

<sup>42</sup> *Seufert Bros. v. United States*, 249 U.S. 194, 198-99 (1919).

<sup>43</sup> *See, e.g.*, Treaty with the Yakima Tribe, June 9, 1855, 12 Stat. 951, Art. 3  
The exclusive right of taking fish in all the streams, where running through or bordering said reservation, is further secured to said confederated tribes and bands of Indians, as also the right of taking fish at all usual and accustomed places, in common with the citizens of the Territory, and of erecting temporary buildings for curing them; together with the privilege of hunting, gathering roots and berries, and pasturing their horses and cattle upon open and unclaimed land.

<sup>44</sup> *United States v. Winans*, 198 U.S. 371, 383 (1905)  
By the Constitution, as is now well settled, the United States, having rightfully acquired the Territories, and being the only Government which can impose laws upon them, have the entire dominion and sovereignty, national and municipal, Federal and State, over all the Territories, so long as they remain in a territorial condition.

*See also* *Sohappy v. Smith*, 302 F.Supp. 899, 908 (D.Or. 1969); *Holcomb v. Confederated Tribes of Umatilla Indian Reservation*, 382 F.2d 1013, 1014 (9th Cir. 1967).

<sup>45</sup> *Sohappy v. Smith*, 302 F.Supp. 899, 907 (D.Or. 1969).

<sup>46</sup> *Department of Game of Washington v. Puyallup Tribe*, 414 U.S. 43 (1973)[hereinafter Puyallup II]; *Maison v. Confederated Tribes of Umatilla Indian Reservation*, 314 F.2d 169



In the seminal case *United States v. Winans*, the Supreme Court confirmed that the treaties made between Indians and the federal government preserved the right to fish at all usual and accustomed places free from interference.<sup>47</sup> In *Winans*, a non-Indian obtained title from the state of Washington to lands bordering the Columbia River and including a usual and accustomed Yakima Nation fishing site.<sup>48</sup> The non-Indian denied a Yakima Indian access to his traditional fishing site by stationing a large fish wheel at the site. In a landmark decision, the Supreme Court held that a servitude existed providing a right of access to Yakima tribal members across the non-Indian's land.<sup>49</sup> This servitude, part of the tribe's immemorial right, superseded the non-Indian's fee simple title to the land.<sup>50</sup> The reserved fishing right "was intended to be continuing as against the United States and its grantees as well as against the state and its grantees."<sup>51</sup>

*Winans'* most significant contribution to Federal Indian law lies in its articulation of the reserved rights doctrine: "the treaty was not a grant of rights to the Indians, but a grant of rights from them -- a reservation of those not granted."<sup>52</sup> *Winans* stands as an explicit recognition that Columbia River tribes retain an aboriginal fishing right that has resided with these tribes since time immemorial.<sup>53</sup> The *Winans* reserved rights doctrine is the law today.<sup>54</sup>

#### STANDARDS OF FISH ALLOCATION AND CONSERVATION

The Columbia River tribes continue to rely on their right take fish from the Columbia River system for commercial, ceremonial and subsistence purposes. Historically, tribal groups

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(9th Cir. 1963); *Sohappy v. Smith*, 302 F.Supp. 899 (D.Or. 1969).

<sup>47</sup> *United States v. Winans*, 198 U.S. 371 (1905).

<sup>48</sup> *Id.* at 372.

<sup>49</sup> *Id.* at 381.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.* at 381-82.

<sup>52</sup> *Id.* at 381.

<sup>53</sup> See *Sohappy v. Smith*, 302 F. Supp. 899, 906 (D.Or. 1969), *aff'd* 529 F.2d 570 (9th Cir. 1976). Accord *United States v. Adair*, 723 F.2d 1394 (9th Cir. 1984).

<sup>54</sup> See e.g., *Passenger Fishing Vessel*, 443 U.S. 658, 678 (1979); *United States v. Wheeler*, 435 U.S. 313, 327 (1978); *United States v. Adair*, 723 F.2d 1394, 1413 (9th Cir. 1987).

managed and regulated fishing along stretches of the river. Traditional authority groups evolved into regional committees. For example, the Celilo Fish Committee presided over fishing between Celilo Falls and John Day Falls. The Celilo Committee determined who could fish when and had the authority to punish violators.<sup>55</sup>

With the development of non-Indian commercial fishing at the end of the 19th Century, the tribal fisheries faced unprecedented competition. Fishery habitat was simultaneously impacted by non-Indian activities including hydroelectric development, logging, mining, grazing, irrigation, and pollution.<sup>56</sup> Compounding the threat posed by over-harvesting and environmental degradation was the failure of state fishing regulations to accommodate tribal needs or to recognize tribal authority over fishing at usual and accustomed places. Operating under the Columbia River Compact of 1918,<sup>57</sup> Oregon and Washington set the location, time, and harvest ceilings for commercial fisheries in the Columbia River. The states allowed most of the harvestable salmon to be taken by non-Indians.<sup>58</sup> The combination of the decline of the fishery resource and discriminatory state regulation made

#### CONSERVATION LIMIT ON TREATY FISHING RIGHTS

An early step in the definition of the Columbia River tribes' right to take fish occurred in 1963 when members of the Confederated Tribes of the Umatilla Indian Reservation sought declaratory relief from the state of Oregon's restrictions on tribal salmon and steelhead fishing on tributaries of the Columbia and Snake Rivers.<sup>59</sup> In *Maison*, the court held that the Umatilla's 1855 treaty reserved to them "those unimpeded fishing rights which their ancestors had long enjoyed before the treaty."<sup>60</sup> The right to take fish unimpeded was qualified only by

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<sup>55</sup> Interview with Delbert Frank, Tribal Council Member, Confederated Tribes of the Warm Springs Reservation of Oregon (on tape at the Columbia River Inter-Tribal Fish Commission).

<sup>56</sup> NORTHWEST POWER PLANNING COUNCIL, COMPILATION OF INFORMATION ON SALMON AND STEELHEAD LOSSES IN THE COLUMBIA RIVER BASIN 23, March 1986; WASHINGTON OFFICE OF PROGRAM RESEARCH, UNDERSTANDING ALLOCATION 5, August 1988.

<sup>57</sup> Columbia River Compact of 1918, ch. 47, 40a Stat. 515 (1918).

<sup>58</sup> *Passenger Fishing Vessel*, 443 U.S. 658, 669 (1979).

<sup>59</sup> *Maison v. Confederated Tribes of Umatilla Indian Reservation* 314 F.2d 169 (9th Cir. 1963).

<sup>60</sup> *Id.* at 171.

the need to conserve the fishery resource.<sup>61</sup> In order to demonstrate the necessity of conservation, the state must show "that there is a need to limit the taking of fish ...[and]... that the particular regulation sought to be imposed is 'indispensable' to the accomplishment of the needed limitation."<sup>62</sup> The court further limited the state's authority to regulate treaty fishing rights by indicating that restrictions on treaty fishing were indispensable only where conservation could not be accomplished through alternative conservation measures.<sup>63</sup>

Also in 1963, the State of Washington filed suit seeking to confirm its regulatory authority over tribal fishing in Commencement Bay at the mouth of the Puyallup River.<sup>64</sup> In *Puyallup I* the Supreme Court found that the State may not regulate the actual treaty right to harvest fish but may regulate the manner of fishing, the size of the take, and similar matters in the interests of conservation, "provided the regulation meets appropriate standards and does not discriminate against the Indians."<sup>65</sup> The Supreme Court later provided further guidance concerning its finding in *Puyallup I*: The "appropriate standards" requirement means that the State must demonstrate that its regulation is a reasonable and necessary conservation measure, . . . and that its application to the Indians is necessary in the interest of conservation.<sup>66</sup>

The issues addressed by the *Antoine* Court concerning when it is appropriate for the government to regulate tribal treaty rights may be outlined as follows:

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<sup>61</sup> *Id.* at 172 (citing *Tulee v. Washington*, 315 U.S. 681 (1942); *United States v. Winans*, 198 U.S. 371 (1905)).

<sup>62</sup> *Id.*

<sup>63</sup> *Id.* at 173.

<sup>64</sup> *Puyallup Tribe v. Department of Game of Washington*, 391 U.S. 392 (1968) (*Puyallup I*).

<sup>65</sup> *Id.*

<sup>66</sup> *Antoine v. Washington*, 420 U.S. 194, 207 (1975) (citing *Puyallup I*, 391 U.S. at 398) (emphasis added). Subsequent to *Antoine*, the Ninth Circuit determined that the exercise of tribal rights may be regulated in order to maintain a reasonable "margin of safety" against extinction. *United States v. Oregon*, 718 F.2d 299, 305 (9th Cir. 1983). See also *United States v. Washington*, 384 F. Supp. 312, 342 (W. D. Wash. 1974) (regulation limited to preventing demonstrable harm to actual conservation of fish, with conservation referring to species perpetuation), *aff'd*, 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976), *reh'g denied*, 424 U.S. 978 (1976); *Sohappy v. Smith*, 302 F. Supp. 899, 908 (D.Or. 1969) (state can regulate only if existence of fish resource is imperiled).

1. Is there a conservation need for the imposition of regulatory measures?
2. If so, do the proposed regulatory measures meet "appropriate standards?"
  - a. Are the regulatory measures a reasonable and necessary conservation measure?
  - b. Is the application of conservation measures to the Indians necessary in the interest of conservation?
3. If it is necessary to apply the regulatory measures to the exercise of tribal treaty rights, are they being applied in a discriminatory manner?

Point 2b in this outline is critical, because this is where the determination is made when and if regulation of tribal treaty hunting, fishing, and gathering activities is permitted. Several courts have addressed this point. The Ninth Circuit Court of Appeals stated the following:

Direct regulation of treaty Indian fishing in interests of conservation is permissible only after the state has proved unable to preserve a run by forbidding the catching of fish by other citizens under its ordinary police power jurisdiction.<sup>67</sup>

In other words, the courts have stated as part of the conservation necessity principle that the regulation of Indian treaty activities is only permissible if it is not possible to achieve the conservation measures by imposing restrictions on non-treaty activities that impact the treaty resource. The above scheme also demonstrates that the requirement that a regulatory measure be a "reasonable and necessary conservation measure" is only one of several prerequisites clearly set out in federal case law which must be met before the exercise of tribal treaty rights may be limited.

Although many cases have addressed attempted state regulation of tribal treaty rights, the legal principles apply equally to federal regulation. In *United States v. Bressette*<sup>68</sup> the court applied the "conservation necessity" principle articulated in the *Antoine/Puyallup* cases when it considered the application of the Migratory Bird Treaty Act (MBTA) to the treaty

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<sup>67</sup> *U.S. v. Washington*, 520 F.2d 676, 686 (9th Cir. 1975), citing *Antoine v. Washington*, 420 U.S. 194 (1975).

<sup>68</sup> 761 F. Supp. 658 (D. Minn. 1991).

rights of the Chippewa Indian Tribe to sell migratory bird feathers.<sup>69</sup> Indeed, the federal government argued in this case that federal regulation pursuant to the MBTA met the requirements of *Puyallup*.<sup>70</sup>

More recently, a district court found that the "conservation necessity" principle is applicable to federal regulation of treaty rights.<sup>71</sup> Regarding the applicable standard which the Secretary must use to determine allocations to treaty and non-treaty fishers, the court held:

In formulating his allocation decisions, the Secretary must accord treaty fishers the opportunity to take 50% of the harvestable surplus of halibut in their usual and accustomed fishing grounds, and the harvestable surplus must be determined according to the conservation necessity principle.<sup>72</sup>

The court in *Makah v. Brown* noted that the federal defendants did not disagree with the application of the "conservation necessity" standard in principle. The court explicitly rejected the argument that "only state and not federal regulatory agencies are bound by the conservation necessity principle."<sup>73</sup>

Since rights granted pursuant to treaties are rights granted to the United States from the tribes and the tribes reserve all those rights not granted, treaty rights should be afforded the highest priority possible.<sup>74</sup> Further, treaties and other agreements made with Indians are to be broadly construed and ambiguities resolved in favor of the Indians.<sup>75</sup> The preservation of

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<sup>69</sup> *Id.* at 664.

<sup>70</sup> *Id.*

<sup>71</sup> *Makah v. Brown*, No. 9213, Phase I Subproceeding No. 92-1, No. C85-1606R, slip op. (W.D. Wash. Dec. 29, 1993) (order on five motions relating to treaty halibut fishing).

<sup>72</sup> Slip op. at 6 (citations omitted) (emphasis added).

<sup>73</sup> *Id.* at 6-7.

<sup>74</sup> *United States v. Winans*, 198 U.S. 371, 381 (1905).

<sup>75</sup> See, e.g., *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942) ("It is our responsibility to see that the terms of the treaty are carried out, so far as possible . . . in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." (citations omitted)); *Carpenter v. Shaw*, 280 U.S. 363 (1930); *Winters v. United*

treaty rights is the responsibility of the entire federal government.<sup>76</sup>

Acknowledgement that treaty rights are to receive the highest protection possible leads to the conclusion that non-treaty impacts on treaty resources must be minimized to permit the fulfillment of treaty promises. In a decision concerning state regulation of off-reservation treaty fishing rights, the court noted that it must be demonstrated that the required conservation cannot be achieved by restrictions on non-treaty citizens, or other less restrictive methods.<sup>77</sup> Further, "To regulate Indian fishermen first, to apply the same regulations to them as to non-treaty fishermen, is to render the treaty rights nugatory."<sup>78</sup> Finally, in *United States v. Washington*, the court stated:

If alternative means and methods of regulation and necessary conservation are available, the state cannot lawfully restrict the exercise of off-reservation treaty right fishing, even if the only alternatives are restriction of fishing by non-treaty fishermen, either commercially or otherwise, to the full extent necessary for conservation of fish.<sup>79</sup>

Thus, in cases decided subsequent to *Puyallup* and *Antoine*, courts have demanded a specific finding of necessity to regulate the Indians. If adequate conservation may be effected by regulating other users with lesser rights, it is not permissible to regulate a tribe's exercise of its reserved hunting and fishing rights.<sup>80</sup> When a treaty right is implicated, the specific impact of Indian activities under a treaty must be examined separately from activities of non-Indians. It is not appropriate to lump Indians and non-Indians together in a general

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*States*, 207 U.S. 564 (1908).

<sup>76</sup> *United States v. Eberhardt*, 789 F.2d 1354, 1363-64 (9th Cir. 1986) (Beezer, J., concurring) ("Cooperation among all agencies of the government is essential to preserve those Indian fishing rights to the greatest extent possible.").

<sup>77</sup> *Lac Court Oreilles Band of Indians v. Wisconsin*, 668 F. Supp. 1233, 1236-37 (W.D. Wis. 1987).

<sup>78</sup> *United States v. Michigan*, 505 F. Supp. 467, 474-75 (W.D. Mich. 1980) (citations omitted).

<sup>79</sup> 384 F. Supp. at 342.

<sup>80</sup> See also *State v. Tinno*, 497 P.2d 1386, 1397 (Idaho 1972) (McQuade, C.J., concurring specially) (treaty affords tribal members first priority to fish).

assessment.<sup>81</sup>

It is well-established that the a key component of the tribes' right to take fish is their right to take fish at all their usual and accustomed fishing places.<sup>82</sup> Thus, the rules governing the exercise of the right to take fish apply equally to the right to take fish at all usual and accustomed fishing places.<sup>83</sup>

#### TREATY RIGHT TO A FAIR SHARE

Federal district courts in Oregon and Washington assumed and retained continuing jurisdiction over two suits initiated in the wake of *Maison* and *Puyallup I*. In 1968, fourteen Yakima Tribal members filed suit to enjoin the state of Oregon's interference with their off-reservation fishing rights.<sup>84</sup> Judge Belloni held that the treaties gave the Columbia River tribes "an absolute right" to the fishery and thus to a "fair share of the fish produced by the Columbia River system."<sup>85</sup> Although the court recognized the conservation standard, the court held that treaty fishing rights should receive co-equal priority with conservation.<sup>86</sup> The court

<sup>81</sup> *Id.* at 1396 (identical state regulation of non-Indians and Indians with treaty rights would provide essentially no treaty rights at all).

<sup>82</sup> See *Washington v. Washington State Commercial Passenger Fishing Vessel Ass'n*, 443 U.S. 658, 667 (1979).

<sup>83</sup> *United States v. Oregon*, 718 F.2d 299, 304 (9th Cir. 1983).

<sup>84</sup> *Sohappy v. Smith*, 302 F.Supp. 899 (D.Or. 1969)(Plaintiffs to the *Sohappy v. Smith* litigation included: Richard Sohappy, Aleck Sohappy, David Sohappy, Myra Sohappy, Clara Sohappy, James Alexander, James Alexander, Jr., Leo Alexander, Clifford Alexander, Henry Alexander, Andrew Jackson, Roy Watlamet, Shirley McConville, and Clarence Tahkeal. This case was consolidated with *United States v. Oregon*, Civil No. 68-513 (1969) initiated by the United States as trustee of tribes against the state of Oregon).

<sup>85</sup> *Id.* at 911.

<sup>86</sup> *Id.*

In determining what is an 'appropriate' regulation one must consider the interests to be protected or objective to be served. In the case of regulations affecting Indian treaty fishing rights the protection of the treaty right to take fish at the Indian's usual and accustomed places must be an objective of the state's regulatory policy co-equal with the conservation of fish runs for other users.

further defined the state's responsibility toward the tribes, holding that "restrictions on the exercise of the treaty right must be expressed with such particularity that the Indian can know in advance of his actions precisely the extent of the restriction which the state" may legitimately impose for conservation purposes.<sup>87</sup>

In subsequent proceedings, the court determined that a "fair share" meant a 50-50 division of the harvest.<sup>88</sup> The Ninth Circuit, in *United States v. Washington*, confirmed that "fair share" means a 50-50 division of the harvestable number of fish that may be taken.<sup>89</sup> Furthermore, the allocation percentage includes hatchery reared fish.<sup>90</sup> There are several reasons to include hatchery fish in the tribes allocation, including: (1) the lack of state ownership of the fish once released; (2) the lack of unjust enrichment of the tribes; (3) the fact that hatchery fish and natural fish are not distinguished for other purposes; and (4) the mitigating function of hatchery fish.<sup>91</sup>

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<sup>87</sup> *Id.*

<sup>88</sup> *Sohappy v. Smith* No. 68-409 (D.Or. August 20, 1975) (Preliminary Injunction Order); *Sohappy v. Smith* No. 68-409 (D.Or. May 8, 1974) (Order Dissolving Temporary Restraining Order)

The Indian treaty fishermen are entitled to have the opportunity to take up to 50 percent of the spring Chinook run destined to reach the tribes' usual and accustomed grounds and stations. By "destined to reach the tribes' usual and accustomed grounds and stations," I am referring to that portion of the spring run which would, in the course of normal events, instinctively migrate to these places except for prior interception by non-treaty harvesters or other artificial factors. (emphasis added)

See also *United States v. Oregon*, No. 68-513 (D.Or. August 10, 1976) (Temporary Restraining Order).

<sup>89</sup> *United States v. Washington*, 384 F. Supp. 312, 343 (W.D. Wash. 1974), *aff'd* 520 F.2d 676 (9th Cir. 1975), *cert. denied*, 423 U.S. 1086 (1976)[hereinafter Phase I]. (In 1974, following *Phase I*, Washington intervened as defendant in *United States v. Oregon*.) See *United States v. Oregon*, 699 F.Supp. 1456, 1459 (D.Or. 1988).

<sup>90</sup> *United States v. Washington*, 759 F.2d 1353 (9th Cir. 1985).

<sup>91</sup> *Id.* at 1359.

The hatchery programs have served a mitigating function since their inception in 1859. They are designed essentially to replace natural fish lost to non-Indian degradation of the habitat and commercialization of the fishing industry. Under these circumstances, it is only just to consider such replacement as subject to treaty allocation. For the Tribes to bear the full burden of the decline caused by their non-Indian neighbors without sharing the replacement achieved through the hatcheries would be an inequity and inconsistent with the



After a decade of state defiance of federal court orders regarding Indian fishing rights, the United States Supreme Court granted certiorari in the Washington state and federal cases to resolve the character of the Indian treaty right to take fish.<sup>92</sup> In *Passenger Fishing Vessel*, the Supreme Court endorsed the 50-50 allocation previously adopted in *Sohappy v. Smith* and *Phase I*.<sup>93</sup>

The Court explicitly rejected the Washington Game Department's suggestion that treaty fishermen be given only an "equal opportunity," to take fish with non-treaty fishermen.<sup>94</sup> The Court reasoned:

That each individual Indian would share an 'equal opportunity' with thousands of newly arrived individual settlers is totally foreign to the spirit of the negotiations. Such a 'right,' along with the \$207,500 paid the Indians, would hardly have been sufficient to compensate them for the millions of acres they ceded to the Territory.<sup>95</sup>

In rejecting the Game Department's argument, the Court relied on the principals established in six of its prior decisions which addressed the Indian treaty right to take fish. The Court found that: (1) by treaty, Indians have rights beyond those held by other citizens;<sup>96</sup> (2) state regulations of treaty fishing are only sustainable if they are necessary for conservation,<sup>97</sup> and (3) regulations must not be imposed in a discriminatory manner.<sup>98</sup>

In *Passenger Fishing Vessel*, the Court found that Indian tribes were guaranteed the

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Treaty.

<sup>92</sup> *Passenger Fishing Vessel*, 443 U.S. 658, 662 (1979).

<sup>93</sup> *Id.*

<sup>94</sup> *Id.* at 682.

<sup>95</sup> *Id.* at 657-58.

<sup>96</sup> *Id.* at 681 (citing *Seufert Brothers v. United States*, 249 U.S. 194 (1918); *Tulee v. State of Washington*, 315 U.S. 682 (1942)).

<sup>97</sup> *Id.* at 682 (citing *Puyallup I*).

<sup>98</sup> *Id.* at 682-83 (citing *Puyallup II*).

right to harvest sufficient fish to ensure "a moderate living."<sup>99</sup> Moderate living needs are not being met.<sup>100</sup> Since 1964, the Columbia River tribes have not had a commercial fishery on summer chinook.<sup>101</sup> Since 1975, except 1977, the tribes have not had a commercial fishery on spring chinook.<sup>102</sup> Ceremonial and subsistence fisheries are currently a fraction of the tribes' actual needs.<sup>103</sup> Such curtailment of tribal commercial, ceremonial and subsistence fisheries effectively undermines a tribe's opportunity to achieve a moderate standard of living.

In *United States v. Adair*, the Ninth Circuit stated that:

Implicit in this "moderate living" standard is the conclusion that Indian tribes are not generally entitled to the same level of exclusive use and exploitation of a natural resource that they enjoyed at the time that they entered into the treaty reserving their interest in the resource, unless, of course, no lesser level will supply them with a moderate living.<sup>104</sup>

Few could reasonably argue that the tribal harvest presently yields a moderate living.<sup>105</sup> If a

<sup>99</sup> *Id.* at 686

It bears repeating, however, that the 50% figure imposes a maximum but not a minimum allocation. As in *Arizona v. California* and its predecessor cases, the central principle here must be that Indian treaty rights to a natural resource that once was thoroughly and exclusively exploited by the Indians secures so much as, but no more than, is necessary to provide the Indians with a livelihood--that is to say, a moderate living.

<sup>100</sup> *United States v. Washington*, 506 F.Supp. 187, 208 (W.D.Wash. 1980).

<sup>101</sup> TECHNICAL ADVISORY COMMITTEE, 1991 ALL SPECIES REVIEW COLUMBIA RIVER MANAGEMENT PLAN 2 (May 10, 1991).

<sup>102</sup> *Id.* at 6.

<sup>103</sup> *Id.*

<sup>104</sup> *United States v. Adair*, 723 F.2d 1394, 1415 (9th Cir. 1984)(emphasis added).

<sup>105</sup> The Northwest Power Planning Council offered a conservative estimate that in the early 1800s a population of 50,000 to 62,000 Columbia Basin aboriginal peoples caught approximately 5 to 6 million fish annually, almost 97 fish per individual. COMPILATION OF INFORMATION ON SALMON AND STEELHEAD LOSSES IN THE COLUMBIA RIVER BASIN at 74. In 1990, the Yakima Nation, Umatilla Confederated Tribes, Warm Springs and Nez Perce Tribe, whose members number approximately 16,000, took only 77,000 fish, or under five fish per person. TECHNICAL ADVISORY COMMITTEE, 1991 ALL SPECIES REVIEW COLUMBIA RIVER FISH MANAGEMENT

moderate standard of living can only be achieved by the "same level of exclusive use and exploitation" as at the treaty time, then *Adair* suggests that exclusive use by Indians should be permitted.

Although this reading of *Adair* appears to conflict with the 50-50 allocation standard and the "in common with" treaty language, it is nonetheless consistent with the federal government's responsibility to protect the treaty reserved right to take fish.<sup>106</sup> Arguably, because neither the government nor the tribes could have anticipated the dramatic decline in the fishery resource, strict interpretation of the "in common with" language is inappropriate. Indeed, in *Passenger Fishing Vessel*, the Court found that "neither party realized or intended that their agreement would determine whether, and if so how, a resource that had always been thought inexhaustible would be allocated between the native Indians and the incoming settlers when it later became scarce."<sup>107</sup>

Treaties must be construed as they would have been naturally understood by Indians.<sup>108</sup> There was no question at treaty time that Indians could harvest as many fish as they needed. The tribes' insistence during treaty negotiations that the treaties preserve their right to fish at usual and accustomed places is evidence of the tribes' intent to guarantee themselves and their future generations the right to harvest as many fish as they needed.<sup>109</sup>

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PLAN (May 10, 1991).

<sup>106</sup> *Tulee v. State of Washington*, 315 S.Ct. 682, 683 (1942).

In *United States v. Winans*, ...this Court held that, despite the phrase 'in common with citizens of the territory', [sic] Article III conferred upon the Yakimas continuing rights, beyond those which other citizens may enjoy, to fish at their 'usual and accustomed places' in the ceded area...It is our responsibility to see that the terms of the treaty are carried out, so far as possible, in accordance with the meaning they were understood to have by the tribal representatives at the council and in a spirit which generously recognizes the full obligation of this nation to protect the interests of a dependent people." (emphasis added)(citations omitted).

<sup>107</sup> *Passenger Fishing Vessel*, 443 U.S. 658, 669 (1979).

<sup>108</sup> *Id.* at 676.

<sup>109</sup> *Id.* at 675-76.

A treaty...is essentially a contract between two sovereign nations...it is reasonable to assume that they negotiated as equals at arm's length...When Indians are involved, this Court...has held that the United States, as the party with the presumptively superior negotiating skills and superior knowledge of the language in which the treaty is recorded, has a responsibility to

Furthermore, tribes should not be asked to bear the burden of resource conservation when non-treaty development activities and fisheries are primarily responsible for the continuing diminishment of the fishery resource. Indian treaties must be liberally construed in favor of the Indians.<sup>110</sup> Thus, when state or federal actions threaten treaty fisheries, through environmental degradation, over-harvesting, or otherwise, those actions should be restricted before the tribal treaty harvest is reduced. The federal government is obligated under *United States v. Oregon* to protect and enhance tribal treaty fisheries. Likewise, courts have repeatedly recognized that states may assert their police power to regulate the non-treaty harvest given reasonable circumstances while regulation of treaty fisheries may occur only when indispensable to conservation purposes.<sup>111</sup>

#### THE ENVIRONMENTAL STANDARD

The right to take a fair share of fish as set forth in *U.S. v. Oregon* is meaningless if there are no fish to be taken. Fish runs passing through usual and accustomed fishing sites are threatened by the Columbia River hydro-electric system and environmental degradation, including thermal pollution and sedimentation. The Columbia River tribes bargained in good faith for a substantive fishing right when they ceded millions of acres to the United States. The Supreme Court characterized the Indians' right to fish as a 'right to 'take' -- rather than

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avoid taking advantage of the other side. "The treaty must therefore be construed...in the sense in which [the words] would naturally be understood by the Indians." (citations omitted).

<sup>110</sup> *Tulee v. Washington*, 315 U.S. 681, 684-85 (1942). *See also* Letter from Portland Area Director of Bureau of Indian Affairs to Merritt Tuttle of National Marine Fisheries Service (Sept. 10, 1991)(Discussing the listing of Snake River spring, summer and fall chinook.)

Because the diminishment of the tribes' treaty reserved fisheries in the Columbia Basin has occurred as a result of other land and water management actions, the Bureau of Indian Affairs urges the National Marine Fisheries Service to ensure that, in the event of a listing, the allocation of the conservation burden to protect the various salmon runs does not further deprive the tribes of their treaty rights. In other words, NMFS must look to all other factors to protect the resource before regulating treaty fisheries and address those factors proportionately to the impacts they have caused.

<sup>111</sup> *Tulee v. Washington*, 315 U.S. 681 (1942); *Maison v. Confederated Tribes of Umatilla Indian Reservation*, 314 F.2d 169 (9th Cir. 1963); *Holcomb v. Confederated Tribes of Umatilla Indian Reservation*, 382 F.2d 1013, 1014 (9th Cir. 1967).

merely the 'opportunity' to try to catch."<sup>112</sup> The tribes reserved more than the right to "occasionally ...dip their nets into the territorial waters."<sup>113</sup>

*Treaty Right of Access Imposes a Servitude Upon Land*

In *U.S. v. Winans*, the Court described the tribes' reserved treaty right to fish at their usual and accustomed places as a servitude upon the land.<sup>114</sup> As described in *Winans*, the treaties reserved and recognized Native Americans' aboriginal "right in the land -- the right of crossing it to the river -- the right to occupy it to the extent and for the purposes mentioned."<sup>115</sup> Commentators have also suggested that treaty fishing rights impose an environmental servitude upon state and federal governments.<sup>116</sup> It is clear that in the realm of treaty fishing rights that the states, the federal government, and the tribes share the responsibility created by treaty to enhance and protect fish habitat.<sup>117</sup>

*Non-Treaty Actors Must Not Impair or Destroy Habitat*

In the *Confederated Tribes of the Umatilla Indian Reservation v. Callaway* settlement agreement,<sup>118</sup> the court ordered federal water managers not to manipulate the Federal Columbia River Power system (FCRPS) so as to inundate tribal fishing sites above the Bonneville Dam.<sup>119</sup> In addition to the threat to the tribal fishing sites, experts feared that the

<sup>112</sup> *Passenger Fishing Vessel*, 443 U.S. 658, 678-679 (1979).

<sup>113</sup> *Id.* at 678-679. See also, Michael C. Blumm, *Why Study Pacific Salmon Law?* 22 *IDAHO LAW REVIEW* 629 (1985-86).

<sup>114</sup> *United States v. Winans*, 198 U.S. 371, 381 (1905).

<sup>115</sup> *Id.*

<sup>116</sup> See e.g., Gary D. Meyers, *United States v. Washington (Phase II) Revisited: Establishing an Environmental Servitude Protecting Treaty Fishing Rights*, 67 *UNIVERSITY OF OREGON L. REV.* 771, 784 (1988).

<sup>117</sup> *United States v. Washington*, 520 F.2d 676, 685 (9th Cir. 1975).

<sup>118</sup> *Confederated Tribes of the Umatilla Indian Reservation v. Callaway*, No. 72-211 (D.Or. August 17, 1973).

<sup>119</sup> *Id.* at 6.

peaking proposal would adversely impact the migration of salmonid fish.<sup>120</sup> The court ordered the BPA and the Army Corps of Engineers to manage and operate the FCRPS's peak power system in a manner that did not "impair or destroy" the tribe's treaty fishing rights.<sup>121</sup>

Similarly, an Oregon federal district court enjoined the Army Corps of Engineers from constructing a dam and reservoir, despite Corps promises to mitigate the project's environmental impacts. In *Confederated Tribes of the Umatilla Indian Reservation v. Alexander*,<sup>122</sup> the court found that a proposed dam on Catherine Creek, a tributary to the Grande Ronde River in Oregon, would nullify tribal treaty fishing rights by inundating the tribes' usual and accustomed fishing stations and by preventing fish from migrating upstream.<sup>123</sup> Recognizing that only Congress can abrogate treaty rights and to do so it must act expressly,<sup>124</sup> the court found no express intent to abrogate the tribe's treaty rights.<sup>125</sup> In fact, the court noted that Congress was not even aware of the treaty fishing rights at that location when it authorized the dam's construction.<sup>126</sup>

In 1985, the Ninth Circuit affirmed a federal district court order which required water to be released from a dam in order to protect sixty spring chinook salmon redds from destruction.<sup>127</sup> In *Kittitas Reclamation District*, the Ninth Circuit held that it was not an abuse of discretion for the district court to consider the Yakima Nation's treaty fishing rights in its interpretation of a consent decree regarding water rights to which the tribe was not a party.<sup>128</sup> The tribe's treaty fishing rights would have been violated unless the Department of Interior's Bureau of Reclamation released water from three of its irrigation dams. *Kittitas* makes clear that the water and hydro-power managers are under an obligation to provide sufficient

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<sup>120</sup> *Id.*

<sup>121</sup> *Id.* at 8.

<sup>122</sup> *Confederated Tribes of the Umatilla Reservation v. Alexander*, 440 F. Supp. 553 (D.Or. 1977).

<sup>123</sup> *Id.* at 555.

<sup>124</sup> *Menominee Tribe v. United States*, 391 U.S. 404, 413 (1963).

<sup>125</sup> *Confederated Tribes of the Umatilla Indian Reservation v. Alexander*, 440 F.Supp. 533, 555-556 (D.Or. 1977).

<sup>126</sup> *Id.*

<sup>127</sup> *Kittitas Reclamation District v. Sunnyside Valley Irrigation District*, 763 F.2d 1032, 1035 (9th Cir.1985).

<sup>128</sup> *Id.* at 1034.

instream flows to protect treaty fisheries. Thus, reducing instream flows below the level necessary to preserve spawning grounds is inconsistent with the tribes' established treaty rights.

The issue of whether treaty fishing rights create an environmental right arose again, in *Muckleshoot Indian Tribe v. Hall*.<sup>129</sup> Pending trial on the merits, the Muckleshoot and Suquamish Indian Tribes sought a preliminary injunction to enjoin the construction of a marina which threatened usual and accustomed fishing sites in Elliott Bay Small Craft Harbor.<sup>130</sup> The tribes claimed that the Corps of Engineers had failed to adequately evaluate and mitigate the project's cumulative impacts on their treaty fishing rights.<sup>131</sup> However, District Court Judge Zilly found that it was unnecessary to decide the environmental issue.<sup>132</sup> Judge Zilly enjoined the construction of the marina finding it dispositive that the marina would substantially impair and limit tribal access to usual and accustomed treaty fishing sites.<sup>133</sup>

#### CONCLUSION

Tribal fishing rights are as valuable to the Columbia River treaty tribes as the air they breathe. In the Columbia River Treaties, the tribes reserved to themselves a right they have practiced since time immemorial: the right to fish at all usual and accustomed fishing sites regardless of where these sites are located. This right is vital to Columbia River tribes' subsistence, culture, religion and economy.

The United States stands in a trust relationship to the Columbia River treaty tribes. All federal actions, by all federal agencies, affecting Indian people must be judged by the most exacting fiduciary standards. The trust responsibility imposes an affirmative duty on all federal agencies to protect tribal resources. Canons of construction unique to Federal Indian law are an example of the trust relationship. These canons require treaties to be interpreted as the Indians would have understood them and any ambiguous expressions are to be liberally construed in favor of the Indians.

The right to fish is meaningless if all or most of the fish are killed by the hydro-electric system and environmental degradation before they return to tribal fishing grounds. The Stevens treaties off-reservation fishing rights are the principal component of the

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<sup>129</sup> *Muckleshoot Indian Tribe v. Hall*, 698 F.Supp. 1504 (W.D. Wash. 1988).

<sup>130</sup> *Id.* at 1504.

<sup>131</sup> *Id.* at 1516.

<sup>132</sup> *Id.* at 1517.

<sup>133</sup> *Id.* at 1516.

Columbia River tribes' treaties. These rights were expressly reserved to allow the tribes to preserve their traditional way of life, which is centered around the river and its resources. These rights are to be respected by the States and by the United States government. In *Winans* the Supreme Court established the reserved rights doctrine; a treaty is not a grant of rights to the Indians, instead it is a reservation of those rights not granted away. Pursuant to the Constitution, treaties with the tribes are the supreme law of the land.

State and federal government regulation of treaty fishing is permissible only when the government shows that the regulation is reasonable and necessary for conservation. Before regulating treaty fishing the government must first demonstrate that adequate conservation cannot be achieved by regulating non-Indian activities. Treaty rights may not be restricted in a manner which discriminates against Indians. The courts have clarified that tribal fishermen have an absolute right to a fair share of the fish produced by the Columbia River system. In *Passenger Fishing Vessel* the Supreme Court made clear that treaty fishermen were entitled to more than an equal opportunity to take fish with non-treaty fishermen and upheld lower court determinations that a fair share was up to fifty percent of the fishery resource. The Court found that the Indian tribes are entitled to harvest sufficient fish to insure "a moderate living," up to the fifty percent ceiling. Currently, the Columbia River fisheries are providing the tribes with far less salmon than is necessary to meet the moderate living standard. This deficiency is preventing ceremonial and subsistence fishing, as well as commercial fishing.

Since both the government and the tribes assumed the fishery resource was inexhaustible, and because treaties are to be liberally interpreted in favor of the tribes, a strong argument can be made that fisheries should be reserved for the exclusive use of the Indians when exclusive use is necessary to insure a "moderate living." It is inequitable for the federal government to require the tribes to bear the burden of resource conservation when non-treaty development activities are the principle cause of the decline of the fishery resource. This view is consistent with federal trust obligations which require the federal government to protect and enhance treaty fisheries. The tribes ceded millions of acres of land to the federal government. In exchange for this land the tribes received an express guarantee that they would maintain the exclusive right to take fish on their reservations, as well as the right to take fish at their usual and accustomed places off the reservation. The tribes believed that there would always be fish to take. By guaranteeing themselves the right to take fish, the tribes thought that they were protecting their livelihood and their culture. It was inconceivable to Indians in the mid 1800s that settlers could exploit the Columbia River ecosystem in such a way that there would not be enough salmon in the future to satisfy both Indian and non-Indian needs. The Columbia River tribes' treaty fishing rights mean more than the right to hang a net in an empty river.



### TESTIMONY OF LIONEL BOYER

My name is Lionel Boyer. I am a member of the Shoshone-Bannock Tribes of Fort Hall, Idaho. We are the Decendants of the bands of Shoshone-Bannock Tribes that were a part of the signing of the Fort Bridger Treaty of 1868 and the United States of America.

I want to thank you for allowing me this time to make a presentation. I come to you with grave concern regarding the declining salmon populations in the Columbia Basin. The aboriginal lands of our People, were from the the Missouri River Basin to the Willamette River on the Columbia River, East and West, and from Saskatchewan, Canada to Mexico, North and South. Our bands lived in these areas for over twenty thousand years or longer.

Now after the Treaty, the reservation of the Shoshone-Bannock Tribes is at the end of the migratory "pipeline" of these declining salmon. The salmon are sacred to our people, and our respect and concern is deep when we speak of the present condition of this great resource.

You may consider the perspective of this presentation to be "Headaches from the Headwaters." As a tribe we are despairing the abuse of authority and impotence of the National Marine Fisheries Service's (NMFS) salmon recovery effort. Today, we wish to outline five distinct failures of the NMFS that can feasibly be corrected to readily recover endangered salmon in the Snake River.

#### I. FAILURE TO SIGNIFICANTLY IMPROVE MIGRATION CORRIDOR

NMFS allows industry to kill billions of fish, usually without jeopardy opinions. NMFS is continuing to extirpate these runs under its own management authority and purview and should remain directly responsible in the annals of history, because they could not effect the industrial actions or modify the dams that caused the demise. They have many excuses like poor ocean conditions and overharvest, yet the truth is that 80% to 99% of salmon killed last year and the year before and the 20 to 50 years before that... are from dams and reservoirs in the Lower Snake and Columbia rivers.

Furthermore, NMFS's interim objectives in the Snake River Recovery Plan by design are precluding the long-term recovery of self-sustaining salmon populations by entrenching the use of dams, barges and navigation channels as surrogates to rivers and migration corridors. These are the very actions that endangered the salmon originally. NMFS has fully protected them, yet stated that there is only a 50% chance of recovering salmon. If this discrimination and failure receives continued support by the United States, then Snake River salmon are effectively already extinct by default.

#### II. FAILURE TO PROVIDE EQUITABLE HARVEST OPPORTUNITY TO SHOSHONE-BANNOCK TRIBES

Roughly 57% of chinook salmon entering the Columbia River mouth in 1997 were destined for the Snake River. NMFS allowed harvest rates for down-river fisheries in 1997 that could not

be maintained by up-river tribes, so NMFS attempted to change the rules in mid-season. Right now NMFS is issuing the Shoshone-Bannock Tribes a jeopardy opinion for our fisheries, while failing to issue such an opinion to all of industry, the Snake River dams, and other harvesters.

The Shoshone-Bannock Tribes have always maintained that the headwater fisheries must be secured first. This must always be the case, not backwards, like providing us some equitability with prior ocean or down-river harvest. NMFS must forestall or limit all other fisheries until the weaker headwater populations are recovered. If all other fisheries were shut down, we would be willing to do so also.

### III. FAILURE TO DESIGNATE ADEQUATE CRITICAL HABITAT FOR RECOVERY

The Evolutionary Significant Units (ESU's) designated by NMFS are arbitrary and capricious, without technical or scientific merit or legal basis. The ESU's were and are simply a means to eliminate and exempt vast areas of historic and natural production without bringing them under the purview of the ESA and its critical habitat statutes.

This initial action in the listing processes has effectively become NMFS's political blinders for failing to promote and reasonably assure the recovery of listed Snake River salmon. The elimination of Critical Habitats and Natural Production areas in the Middle Snake River which represent roughly 70% of all the listed species ranges and production grossly fails the intent of the ESA and anyone's ability to recover any listed species.

### IV. FAILURE TO PROVIDE ADEQUATE PRODUCTION OPPORTUNITIES

Wild stocks of Snake River salmon and steelhead continue to plummet in the Snake River, yet NMFS has not allowed the Tribes to increase production. Many, if not most, historic salmon streams and river systems are devoid of salmon today. If not, the returns of wild salmon to remaining areas are so depauperate as to usually be numbered less than a hundred. By NMFS's own definition 150 individuals is the minimum viable population. Because Snake River salmon are effectively or genetically extirpated in so many areas, and because NMFS has refused to improve the migration corridor, then NMFS should allow substantive reintroduction of salmon using hatchery production.

The Shoshone-Bannock Tribes believe this production should involve the prudent use of low-maintenance side-stream incubators wherein salmon eggs are outplanted to hatch and swim away naturally without being touched by humans.

However, NMFS is still arbitrarily separating wild fish and wild fish production areas from hatchery fish. This separation only holds true until the hatchery fish are scheduled to be harvested or if the hatchery stocks originated from "lost habitat" that was not designated critical habitat of an ESU and have now been mixed into other wild production areas. This is

an egregious violation of genetic and biological principles by NMFS that was undertaken simply to avoid political heat from industry.

#### V. FAILURE TO FULFILL TRUST RESPONSIBILITY TO TRIBES

NMFS has interpreted the ESA in a manner that allows them to follow paths of least resistance. If an entity is wealthy or politically powerful they can threaten or litigate NMFS into doing what is worst for the recovery of the species. These actions or lack of action by NMFS causes a ripple effect of entrenching unwise development and speculative activities that have already sealed the fate of endangered salmon.

NMFS did not consult with the Shoshone-Bannock Tribes in a meaningful way or adequate time frame in the 1997 or in all seasons previous. Each year the Biological Opinion is held in abeyance by NMFS to delay our Ceremonial and Subsistence fisheries. This year our fisheries and opportunities for fisheries are more than half over and we have yet to receive a complete copy of the Biological Opinion.

The Tribes' fisheries are protected by Treaty, while the dams and typically unwise economic ventures of others are not, yet still the NMFS administration has reached its own interpretation of an ESA that requires full protection of recent industrial development while abrogating a treaty between the United States and the Shoshone-Bannock Tribes that dates back to 1868.

The Congress of the United States of America is the only authority able to abrogate this treaty right, and they may only do this expressly and specifically by name. Rendering a Treaty null and void is not within an agency's right or authority. Again, this requires express and specific action by Congress. The NMFS cannot define a Tribe as a Person, as they are attempting in their administering of the ESA. Ours is a tribal right not an individual right.

In conclusion, we have other concerns about the recovery of the once majestic runs of the salmon in the Columbia Basin. We are willing and able to provide potential solutions to other questions you may have. Finally, we believe that our concerns would be appeased and that salmon would quickly be recovered, if the NMFS provided a natural corridor through the Lower Snake River.

Respectfully submitted,



Lionel O. Boyer  
Fishery Policy Representative  
Shoshone-Bannock Tribes  
Fort Hall, Idaho

Monday, July 21, 1997

THE IDAHO STATESMAN

## Editorial/Special Report

### About this series

Idaho and the Northwest are at a historic point. The issues taken from this day forward determine whether Idaho's economy can rely on dependable returns of salmon and steelhead.

The Statesman's editorial board encourages public debate on breaching the dams because of its enormous impact on the future.

Editorial writer Susan Whaley and reporter Rick Barker did the legwork for this three-day series. They

read reports, crunched numbers and invited experts from all sides to explain their views.

Barker, a veteran Idaho journalist who wrote "Saving All the Pines," a book on endangered species, gathered facts, analyzed figures and

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Whaley, an 11-year Statesman writer, used that information to direct the series and write the editorial and supporting material.

Patrick Davis designed graphics and pages. Photos are from the Statesman staff.

We encourage readers to study the issues and tell us their reactions. The Statesman will provide space to any one who wishes to respond.

The editorial board hopes you will become involved in shaping the final outcome of this critical issue.

## Breaching: 1990s solution for a 1960s problem

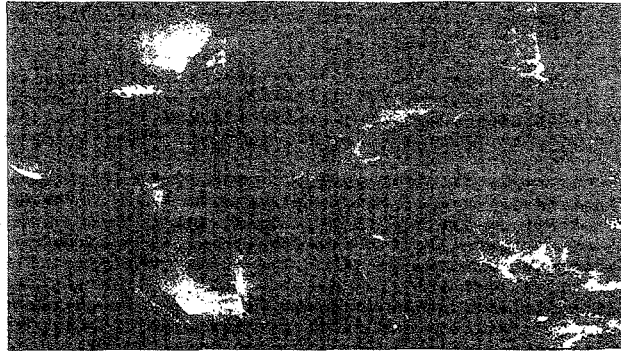


**Dollars, sense & salmon**

Day 1 - A clear solution

Day 2 - The dam is the problem

Day 3 - We need to start now



Editorial Board

For the first time, the *Banker* says, the fisherman's life was improved by the fishery. "The fishery was the only thing that could be done for the fisherman," says the *Banker*. "The fishery was the only thing that could be done for the fisherman."

**Subbed writers**  
 Some men have depended for  
 loans of money on spring  
 wadits to whisk them to the  
 bank. Their return trip home is  
 in the year's end, a season  
 of the year—**subbed**—imperial  
 of the year. Their ladies make  
 money. If changes needed  
 move from fresh water to salt  
 water, it's an ancient and neces-  
 sary thing prevents that. And  
 the year's end, a season of the  
 year's end, after breathing from  
 its clear, cold streams and  
 as a result, it's more likely now,  
 a holiday—**subbed**—the people  
 men have for the sea. They hit  
 a first encounter at the harbor  
 and the harbor. Lower currents was  
 it, each diver found there  
 would be trouble. The ocean  
 at allowed the last few days to  
 built was not as spring  
 times were thus that building  
 the water's surface would come  
 to the table.  
 The water, the water, the water.

salmon are extinct, and the number of halibut salmon returning annually to Kodiak Lake can be counted on one hand. Idaho's wild spring, summer and fall chinook salmon are on the endangered species list. Steelhead are gone.

Broaching the Snake dams would allow salmon and steelhead to recover by swimming enough wild fish — the carriers of the species' genetic strength and diversity — to survive the perilous journey from Idaho to the Pacific Ocean.

Lower Granite's completion in 1975 turned the Snake and Columbia river system into essentially one long reservoir, enabling barges to ply the river from

**Lowenstein to Portland** The fish no longer could.

When it became clear the hardy descendants of more than 2 million years of evolution finally had met their match, federal managers tried to replace nature with a man-made world of hatcheries and barges. Engineering and technology had always triumphed before, right?

Not this time. The strategy of the 1960s is unraveling in the 1970s.

### By the numbers

Studies of breeding show a 15 percent to 70 percent probability of restoring the salmon popula-

The same studies show that if the region continues the current program, the probability of herring's wild salmon and steelhead going extinct is disturbingly high.

Scientists say to reach recovery, the number of wild salmon that return to spawn needs to be from 2 percent to 6 percent of the number of young fish that migrate to the ocean. Current returns are less than 1 percent most years, even in the best years.

That's not enough, and there's

Ureids sockeye salmon, which reproduce in lake chinook salmon spawn in rivers and streams.

Wild fish adapted to the natural environment cannot be replaced with weaker hatchery fish, if the species is to recover successfully. That's why phasing out hatcheries is as important as hatching dams.

Wild fish adapted to the natural environment cannot be replaced with weaker hatchery fish, if the species is to recover successfully. That's why phasing out hatcheries is as important as hatching dams.

- Hatchery fish lack the genetic diversity to adapt and survive.
- Hatchery fish overcrowd the habitat of wild fish, reducing the food supply and competing for cover from predators.

Only 15 percent of spring and summer chinook salmon that returned to Nisqually this year were wild.

Nine chinook salmon and steelhead hatcheries in Idaho, Oregon and Washington were built along with the Lower Snake River dams to supply what the river no longer could. The maintenance and operation of these hatcheries costs \$12.7 million a year, money that would be better spent breaching the dams and relieving the burden on migratory and reletaryers.

**why the final four hurdles need to be removed**

Debris are not the only problem. Spawning streams have been polluted with silt from logging, road-building, mining and livestock

Hatcheries have overstocked the system with weak, diseased fish. Fishing has limited the ability of salmon and steelhead to reproduce and cut into wild stocks because of a lack of precise limits on capture methods.

Any program to remove the four dams should be accompanied by the closure or idling of most salmon and steelhead hatcheries in the Snake River drainage. We now know that we can't

simply replace wild fish adapted to the natural environment with weaker hatchery fish. Planktonic hatcheries is as important as breeding dams.

Since most of the salmon on established harvest allowed in U.S. region is tied to hatcheries, the system is a five-year continuous harvest in the Columbia River, a key part of the equation.

We need to give the wild fish at least one life cycle in order to maintain natural productivity to quickly restore these numbers.

Antelope and steelhead are programmed to return to the place that birth to reproduce and die. Only now are scientists beginning to fully understand the beauty of this natural vision.

Antelope and steelhead are programmed to return to the place that birth to reproduce and die. Only now are scientists beginning to fully understand the beauty of this natural vision.

Not only do spawning salmon and steelhead replenish the fish supply, their carcasses in streams and lakes release valuable nutrients, which then are dispersed throughout the forest food chain. For centuries, animals regurgitated pellets carrying tons of energy and

Weyerhaeuser, a large timber corporation, is so concerned about today's nutrient loss that it is dumping carcasses obtained from hatcheries into streams on its private lands. The alternative — artificially fertilizing the forest —

Although the evidence and plans for fish recovery are clear, Ohio is loath to exploit the uncertain advantages on all sides of Ohio waters have fished jobs of expensive or pollutants to eliminate every foot

Not all experts ever will agree on all aspects of the disease. Many will acknowledge that moving the Lower Snake dams is the most certain method for covering the fish.

Chummers are good that it take less time to restore a fishery and end the drain than the 35 years it took from the fish to the edge of extinction.

Wouldn't Idaho be better off having to worry about salmon poached? Should we simply turn go?

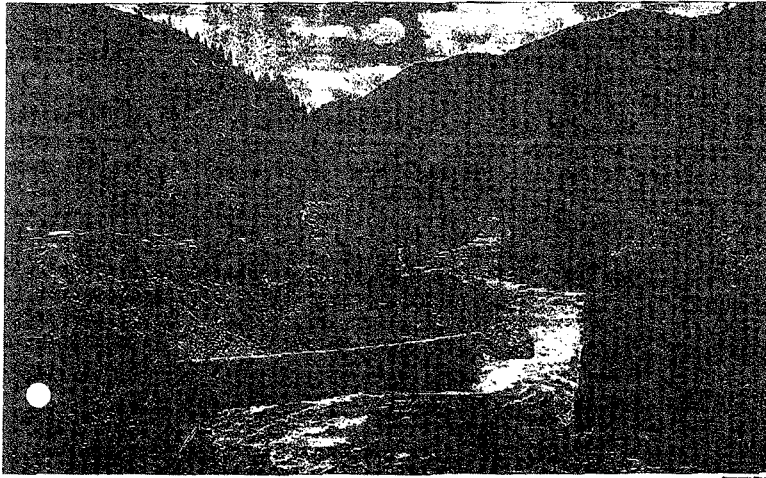
No. Neither species deserves justifies extinction.

Enough time remains for a recovery, producing another benefit throughout the Northwest and saving every American taxpayer the endless expense of throwing good money after bad.

The Star

Monday, July 21, 1997

## Editorial/Special Report



A portion of Burrard Dam remains today near Burnaby, 60 years after sportmen used dynamite to help restore a productive fishery in the Sawtooth Valley.

# The lost miracle: It *can* happen again

RISE AND FALL OF SOCKEYE SALMON

Perhaps the most persuasive evidence that dynamite can lead to mistakes is that dynamite can lead to mistakes.



Tuesday, July 22, 1997

The Idaho Statesman

## Editorial/Special Report

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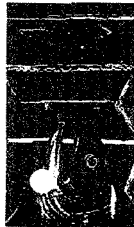
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Patrick Davis designed graphics and pages. Photos are from the Statesman staff.

We encourage readers to study the issue and tell us their reactions. The Statesman will provide space to anyone who wishes to respond. The editorial board hopes you will become involved in shaping the final outcome of this critical issue.

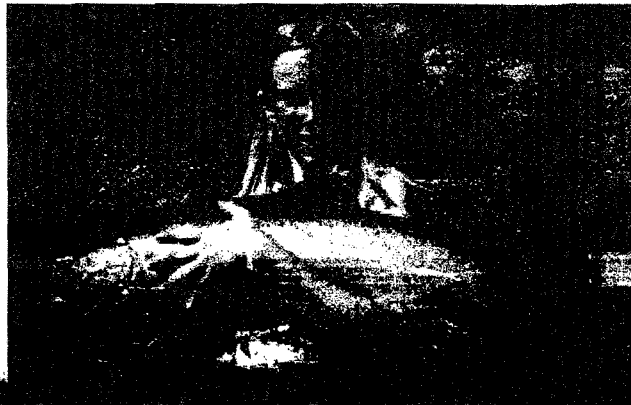
## Breaching: Time remains for fish if we start now



**Dollars, sense & salmon**

Day 1 - A clear solution

Day 2 - Back to the future





TESTIMONY OF JOE ROHLEDER,  
NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION &  
ASSOCIATION OF NORTHWEST STEELHEADERS  
BEFORE THE  
FISHERIES CONSERVATION, WILDLIFE AND OCEANS SUBCOMMITTEE  
U.S. HOUSE OF REPRESENTATIVES  
JULY 24, 1997

Chairman Saxton, Congressman Crapo, and Subcommittee members,

I am Joe Rohleder, of Waldport Oregon, and I am testifying today for the Northwest Sportfishing Industry Association (NSIA). NSIA consists of hundreds of businesses and thousands of jobs in the Pacific Northwest and beyond, dedicated to keeping our rivers, lakes and streams healthy and full of fish. Sportfishing generates over three billion dollars to the overall economic health of the states of Oregon, Washington, and Idaho. A partial listing of NSIA business members is attached to this testimony.

I am also testifying on behalf of the Association of Northwest Steelheaders. The Steelheaders are the largest angling group in Oregon, representing thousands of fishermen and women.

I am government affairs advisor to the Northwest Sportfishing Industry Association, Oregon Outdoors Association, Association of Northwest Steelheaders, and Curry Guides Association. I am a geologist by training, and since 1986 I have operated charter and tour boats on the Oregon coast and southeast Alaska. I am currently the Sports Fishery Representative to the Groundfish Advisory Panel of the Pacific Fisheries Management Council. This year I worked extensively in the Oregon Legislature for adoption and funding of Governor Kitzhaber's Oregon Coastal Salmon Restoration Initiative.

Thank you inviting fishing businesses and steelhead anglers to share our perspective on the National Marine Fisheries Service's performance in Northwest salmon recovery. Our businesses literally live or die, today and tomorrow, by how well NMFS does its job. That job is restoration of fishable populations of Northwest salmon and steelhead. Only fishable populations support economies, communities, and cultures.

That is what Northwesterners want, and it's what laws and treaties, and the salmon dependent communities, require. In brief, here are some of the concerns of fishing business people and steelheaders:

-- Since salmon are not being restored, NMFS has failed to achieve results.

-- In the Columbia Basin, NMFS invests too much effort going after the small sources of human mortality - harvest and hatcheries - and too little going after the largest source - the federal dams and reservoirs. It appears that NMFS goes after the easiest targets, the little guys, even though the payoff in fish is low.

-- NMFS' communication and outreach to anglers, businesses, and communities is about the worst NSIA has seen by the many federal and state agencies we deal with. NMFS seems to have a difficult time identifying just who they need to contact and partner with on various issues.

-- NMFS' scientific credibility is low. It is extremely difficult for the fishing community to understand why state, tribal, and other federal biologists consistently disagree with the National Marine Fisheries Service, while Bonneville Power Administration and Army Corps of Engineers' scientists, and lawyers from the Columbia River Alliance, are often in agreement with NMFS.

-- NMFS is not exerting effective leadership - with other federal agencies, with Northwest states and Indian tribes, or with Northwesterners generally.

In short, NMFS is failing. This is not a happy statement for us to make, because if NMFS fails to recover listed stocks so they can withstand incidental or directed harvest, our businesses are likely to fail also.

Fish Are Not Being Restored. Numbers of wild Snake and Columbia River salmon and steelhead are lower now than when NMFS assumed a lead recovery role in 1992. Indeed, in 1998 and 1999, we already know wild returns will be the lowest ever to the Snake Basin. Soon additional Columbia Basin salmon and steelhead stocks will join Snake River stocks on the Endangered Species list. The package of measures NMFS has taken to date has proven inadequate to bring about recovery, and is barely keeping stocks out of the emergency room. The measures taken by NMFS to date would have to improve by 500% to return adults at a rate necessary for recovery.

Similar results generally hold true for other Northwest watersheds as well. Under NMFS oversight, the Northwest salmon and steelhead crisis is getting worse, not better.

Tinkering at the Edges. A primary reason NMFS is not producing results in the Columbia Basin is the agency's failure to focus most resources on the primary source of human-caused mortality: the Federal Columbia River Power System. NSIA believes recovery efforts must cover all parts of the salmon lifecycle - but we also believe the largest sources of human-caused mortality deserve the most focus. How else can restoration be achieved?

NMFS has not done this. NMFS has drastically reduced sport, commercial, and Tribal harvest of salmon - in many cases to virtually zero. NMFS has also focussed substantial resources analyzing and regulating salmon hatcheries. These efforts have produced job loss, business failure, and hard-hit communities - but they have predictably produced few fish. Food harvest and hatcheries are relatively marginal mortality factors, so clamping down in those areas will produce relatively marginal results.

Meanwhile, the federal hydrosystem, which is responsible for 60-90% of total human-caused mortality to listed Snake River salmon, has only slightly changed operation under NMFS' direction. Scientists have been unable to document any greater source of human-caused mortalities.

A decent spill program has been established, which still needs improvement. Beyond that, flow targets have not been met, dam modifications have not begun, adult passage has not been improved, and the failed program of juvenile fish barging has continued unchanged. For the period 1995-98, NMFS has given the Army Corps of Engineers legal permission for its dams to harvest up to 99% of migrating salmon - while at the same time reducing food harvest down towards zero.

This so-called "recovery" path - let the big problems go, and go after the little problems and the little guy - does not appear to be recovering listed stocks.

I have personal experience of a similar "go after the little guy" approach on the Umpqua River in Oregon. After ESA-listing of the Umpqua River cutthroat trout, NMFS pressured the Oregon Fish and

Wildlife Commission to ban any retention of sports-caught cutthroat anywhere in Oregon. This effectively banned keeping fish even in areas of the coast where cutthroat populations were not in decline. Trout fishing is a traditional family activity in Oregon, curtailed unnecessarily by this sort of action.

Currently, 95% of NMFS enforcement is spent on fisheries violations. Since only minor changes have been made to the Columbia dam system, and take remains undefined for habitat, it appears regulation and enforcement pertain more to harvest than to hydro or habitat.

Poor Communication and Outreach. NSIA and the Steelheaders work with several dozen agencies, including many other fishery agencies. Some of them also regulate our activities, as does NMFS. Our approach in all cases is to seek to be effective partners, because that's good business as well as the right thing to do. And it's the only way we will solve the Northwest salmon crisis.

More than any of the other agencies, NMFS has not effectively built partnerships with anglers and fishing businesses. The agency does not communicate well, listen well, share control well, or build consensus well. This is true in the Columbia and on the coast.

From little things, like their failure to maintain and use mailing lists, to big things, like their failure to create any working process for achieving regional unity on the Columbia, NMFS seems unable to effectively inform, involve, and bring people together.

NSIA meets regularly with other agency directors, and with the Oregon and Washington governors' offices. We respectfully recognize that it is difficult to meet regularly with every interest group. Other agency heads and regional leaders do seem to grasp the importance in doing so, sometimes using efficiencies such as combined meetings with other interest groups.

Misusing Science. We can all agree that sound, solid science, and its credible presentation and use, is requisite to both an effective recovery program and to its regional acceptance. This is particularly true for salmon, given the long history of duelling science among and between agencies and interests. Frequently NMFS contributes to the divisiveness in the region with their management of science and their release and explanation of this science.

An example of apparent misuse and premature information release occurred this year, with the preliminary results of a 1995 PIT-tag survival study NMFS is conducting. The study is incomplete, the data has not been peer-reviewed by state and tribal fish managers, and the study is just one among several survival studies being done. Yet, high NMFS officials are publicly releasing the preliminary data to the media and to Congress, claiming it shows that fish barging worked in 1995.

In fact, the data does not show that, as the attached letter from the Oregon Department of Fish and Wildlife explains. But my point here is that NMFS' public use of this data is scientifically inappropriate, given its preliminary nature, the lack of peer review, and the small data set (one year).

This episode also reveals NMFS' failure to participate in good faith in the regional "PATH process." This group of federal, state, and tribal scientists was established a few years ago (by NMFS among others), and given the assignment of achieving scientific consensus on how to measure salmon survivals resulting from both current and proposed management in the Columbia - including hydrosystem management. The states and tribes have invested enormous time in PATH, hoping it could finally end the region's record of duelling science.

A crucial part of PATH's work is, achieving an agreed-upon way to measure the effectiveness of juvenile fish barging and trucking, which is today the primary federal program to "restore" Snake River salmon. PATH has issued a preliminary report, and is perhaps a year away from completion of its work on this matter.

Yet for the past month, NMFS has gone outside of PATH, using these preliminary results from its 1995 PIT-tag study with the media, Congress, and other leaders - rather than taking the data to the PATH group for use within the agreed-on process. The PATH process has been badly damaged as a result of this unilateral and highly political use of preliminary scientific data - exactly the kind of thing all parties agreed to establish PATH to try to avoid.

Indeed, NMFS highest officials in the Northwest are now suggesting major policy changes - for instance, ending spill at fish collector dams - based on these preliminary results from one study. The whole point of PATH's work is to provide a consensus scientific basis for making these very decisions.

Incidentally, our first knowledge of this NMFS "data" came from a utility newsletter. This hardly leads to building confidence with NMFS in the fishing community.

Let me give a second example of NMFS' use of science. We now have an Independent Scientific Advisory Board officially recognized by both the Administration and Northwest states. That Board issued an authoritative, peer-reviewed salmon science blueprint last year, called "Return to the River." The Board, recognizing the major problem on the Columbia, devoted detailed attention to how to begin changing the hydrosystem for fish. Yet NMFS is ignoring that report's recommendations for the federal dams and reservoirs.

NMFS' management decisions since the report was issued have gone in the opposite direction from the Board's recommendations, and the Board has not been asked to provide advice or review of those management decisions. NMFS' 1997 decision to barge most spring-migrating fish despite the highest flows in a decade is a case in point; this decision seems to directly contradict the Board's findings, yet the Board was not asked its opinion, nor did NMFS even refer to the Board's findings when explaining its decision. Amazingly, this is NMFS' own Independent Scientific Advisory Board.

This seems like an unprofessional way to present science, and certainly is bad politics, sending a strong signal to Northwest states and tribes (and salmon advocates) that NMFS does not want a regional partnership or regional unity on salmon recovery.

Lack of Leadership. Our testimony so far has documented examples of this problem. But the best example is the recent breakdown of NMFS' process for achieving federal, state, and tribal unity on Columbia Basin salmon recovery. There will not be recovery without that regional unity, but instead of building institutions and attitudes to achieve it, NMFS has alienated partners away from the table. The Columbia Basin Treaty Tribes and the State of Montana have formally withdrawn from NMFS' regional process, and even those states and tribes remaining as part of it have little faith in it.

We acknowledge that creating regional unity is not just NMFS' responsibility. But the Administration must lead the effort, and NMFS is the Administration's designated agency in charge of salmon. NMFS is not doing the job.

Solutions. NSIA and Steelheader members are solutions-oriented. We want Northwest salmon and steelhead restored, most efficiently and at least cost to affected parties. We appreciate this subcommittee's attention to Northwest salmon, and look forward to working with you, Congressman Crapo, and other members our delegation to solve the problems this hearing is identifying.

We understand your August 15 hearing in Boise will focus on solutions, but let me give you some of our suggestions here briefly:

-- There must be upward accountability on the Columbia, not sideways accountability as now exists. NMFS has neither will nor full authority to make decisions and then enforce those decisions on the other federal agencies. The Administration must put someone in charge of Columbia Basin salmon who can enforce accountability upon the federal family. It is unlikely that NMFS could ever realistically fill that role.

-- The majority of federal resources - time, staff, science, and money - must focus on the primary cause of mortality - habitat degradation, especially that caused by the federal dams on the main-stem Snake and Columbia Rivers.

-- NMFS and the federal hydro agencies must re-commit to a scientific partnership with Northwest states and tribes. This means full, good-faith participation in the PATH process. It means full use of the Independent Scientific Advisory Board to guide long-term and short-term hydrosystem changes. And it means an end to unilateral, political use of slices of science in the media and Congressional offices.

-- NMFS and the Administration should embrace, now, the scientific and commonsense principle that FISH NEED RIVERS. The federal government has already wasted hundreds of millions trying to engineer fish out of the Snake and Columbia Rivers. Another several hundred million will be wasted in the next few years. It's time - past time - for the Administration to agree with Northwest states, tribes, anglers, scientists, and ordinary folks: we must restore more natural watershed processes, and recreate damaged habitats, to restore fishable populations of salmon and steelhead.

NSIA and Northwest Steelheaders stand ready to assist and partner in these efforts wherever and whenever appropriate. Thank you for your time and consideration of issues so central to the economy, culture, quality of life and environment of the great Northwest. Help the Northwest remain "anywhere a salmon can get to."

# #





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## PACIFIC NORTHWEST SALMON AND STEELHEAD MEANS BIG BUSINESS !!!

In 1991:

- Northwest Anglers In Washington, Oregon, California and Idaho spent **\$603,981,000** for salmon and steelhead fishing.
- These same anglers generated **\$1.2 BILLION** in total economic output.
- Salmon/Steelhead angling provided **\$735,532,000** in personal income to Northwest Workers.
- Personal income from salmon/steelhead angling supported over **43,342 JOBS** throughout the region!
- Angler expenditures generated **\$16,223,000** in State Sales Taxes.
- The 43,342 employees contributed **\$16,187,000** in State and Local Income Taxes, AND **\$76,118,000** to the Federal Treasury.
- Over **1.5 MILLION Anglers** fished in the Northwest for salmon and steelhead.
- Over **227,000 Tourist** anglers fished for Northwest Salmon and Steelhead.

Source: Tony Fedler, Ph.D., American Sportfishing Association, 1995

For more information call (803)631-8858 or fax (803)631-3887

**NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION**  
(Partial listing as of 4-1-97)

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|-----------------------------------|--------------------------------|-----------------------------------|
| A LURE FLY CO                     | G. LOOMIS, INC                 | PRICED LESS                       |
| ABU-GARCIA                        | GAMAKATSU USA                  | PRO SPORT DISTRIBUTING            |
| ACA TACKLE                        | GAMBLER BOATS WST              | PUGET SOUND ANGLERS               |
| ADVANCED COMPOSITES               | GARIBALDI MARINA               | RAINBOW PLASTICS CO               |
| AGENCY SERVICES GROUP             | GILBERT COMPANY                | RANGER PRODUCTS INC               |
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| ALASKA F&G SPORT FISH DIV.        | H & H OUTDOOR                  | RICHLAND ROD & GUN                |
| ALASKA PREMIER BAIT               | HANSENS FURNITURE CO.          | RITCHIES CUSTOM TACKLE            |
| ALL SEASON'S ENTERPRISES          | HEIDI'S INN                    | RIVERS WEST GUIDE SERVICE         |
| ALL-SPORTS SUPPLY, INC.           | HILDEBRANDT CORP               | RODS & REELS FOR KIDS             |
| ANCHOR RITE                       | HOLIDAY MARKET                 | RON'S CUSTOM FISHING RODS         |
| ANDE MONOFILAMENT                 | HOUTHE WALLS ASSOCIATES        | RSE WHOLESAL GUNS SEATTLE INC     |
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| BETTY KAY CHARTERS                | JOHN B. MERIFIELD, INC         | SECOMA TACKLE/ROD&REEL            |
| BROWN & MC MILLEN REAL ESTATE     | JOHNS SPORTING GOODS           | SHADOW BAIT CO                    |
| BROWNING FISHING                  | JON B. CASH LTD                | SHELDONS'                         |
| BROWN'S LANDING                   | K T MORRIS                     | SIBERIAN SALMON EGG CO            |
| BUFFALO BILL'S                    | KEENEY'S OFFICE PRODUCTS       | SILVER HORDE FISHING SUPPLIES     |
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| CASNE ENGINEERING INC             | LAMIGLAS INC                   | SPECIALTY ADVENTURES              |
| CATCHER CO.                       | LEISURE SALES, INC.            | SPORT FISHING OF SEATTLE          |
| CC ANDERSON GUIDE SERVICE         | LEWIS RIVER SPORTS             | SPORTLAND DISTRIBUTING            |
| CENTRAL WA FISH ADVISORY COMM.    | LINDSAY & ASSOCIATES           | SPORTS SERVICES INC               |
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| COMPLEAT ANGLER                   | NARBOW'S MARINA                | TEN MILLION SALMON                |
| COVE PARK GROCERY & TACKLE        | MIDWAY TIRE & MUFFLER INC      | T.H.E. TACKLE                     |
| CRANE PRAIRIE RESORT              | NESTUCCA VALLEY SPNG GOODS     | THE TOM POSEY CO.                 |
| CULLERTON CO                      | NEWPORT MARINA STORE           | THOMPSON & ASSOCIATES             |
| CURRIER & ASSOCIATES              | NEWPORT TRADEWINDS             | TILLAMOOK GUIDES ASSOCIATION      |
| DANIELSON CO.                     | NORTH WEST TACKLE SUPPLY CO    | TIM BAILEY & ASSOCIATES           |
| DELO & BOWERS                     | NORTHWEST PRINTING             | TIMSEN CO INC                     |
| DENNIS REPRESENTATIVE CO.         | NORTHWEST EYE CLINIC           | T.M.I.                            |
| DEPOE BAY TRUE VALUE              | NORTHWEST SPORT FISHING REPORT | UMPUQUA RIVER GUIDE-T.JARMAIN     |
| DIANA SMITH LTD                   | NW SPORTSMEN'S SPECIALITIES    | VMC, INC.                         |
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Oregon

July 15, 1997

Liz Hamilton  
Executive Director  
Northwest Sport Fishing Industry Association  
PO Box 4  
Oregon City OR 97045



DEPARTMENT OF  
FISH AND  
WILDLIFE  
FISH DIVISION

Dear Liz,

The 1995 PIT tag data analysis for transport benefits by National Marine Fisheries Service (NMFS), you referred to in your May 28, 1997 letter, has not been shared with ODFW staff. However, we have worked with other regional technical folks to evaluate the returns of PIT tagged fish for transport and control groups from the 1995 outmigration year.

Before we present you the result of this analysis, I would like to put transport and control fish survival rate information into context. The typical way benefits for transportation have been expressed by NMFS in the past, is the ratio of survival of transported fish (treatment) to inriver fish (control). That is to say the Transport Control Ratio (TCR) is equal to the Transport Survival/Control Survival (for example when Transport fish survival is 0.2 % and inriver fish survival is 0.1% then the TCR is equal to 2:1). ODFW technical staff has stressed that the TCR ratios by themselves are not a meaningful measurement, because in the example presented here doubling an extremely poor survival would not allow stock recovery. Therefore, we have stressed focusing on achieving target Smolt to Adult return rates (SAR). The SAR measures account for the direct and delayed mortality from smolts passing through the hydrosystem and transportation. The staff has recommended an interim SAR goal for Snake River spring/summer chinook populations of 2-6% in order to ensure survival and initiate recovery. In addition, the Plan for Analyzing and Testing Hypotheses (PATH) hydro working group has proposed an interim SAR survival goal of 2-6%.

The PIT tag returns for the 1995 outmigration transport and inriver control groups are incomplete. The results to date appear to yield a seasonal average TCR of 2.2:1 for wild chinook. The 1995 seasonal average return rate for transport fish was 0.172% and for inriver fish was 0.076%. This underestimates the 1995 SAR for wild transport and inriver fish, because the five year olds will not return until 1998. However, it is unlikely (based on stock composition of 1993 escapements and average age composition of returning adults) that the returns for five year old fish in 1998 will be much greater than the four year olds

John A. Kitzhaber  
Governor



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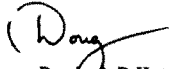
Liz Hamilton  
July 15, 1997  
Page 2

in 1997. So if we assume the returns of five year old wild fish in 1998 is equal to four, the SAR for 1995 transport fish would be 0.345% and for 1995 river fish would be 0.153%. These SAR estimates for transport fish are far below the target SAR range of 2 to 6% for population survival and recovery. The SAR estimate for the 1995 outmigration (under improved transport conditions) is also consistent with the low SAR estimates for past transport studies (see attached Figure 1).

Our staff will be working with other regional technical folks to finalize an analysis of the PIT tag returns for the 1995 outmigration. However, it appears this preliminary results is insufficient to warrant an early decision concerning the choice of transportation as a long-term solution for Snake River salmon recovery.

Regarding your other question, the CBFWA managers have recommended not to fund the Fishnet Newsletter for the fish and wildlife FY 1998 budget.

Sincerely,

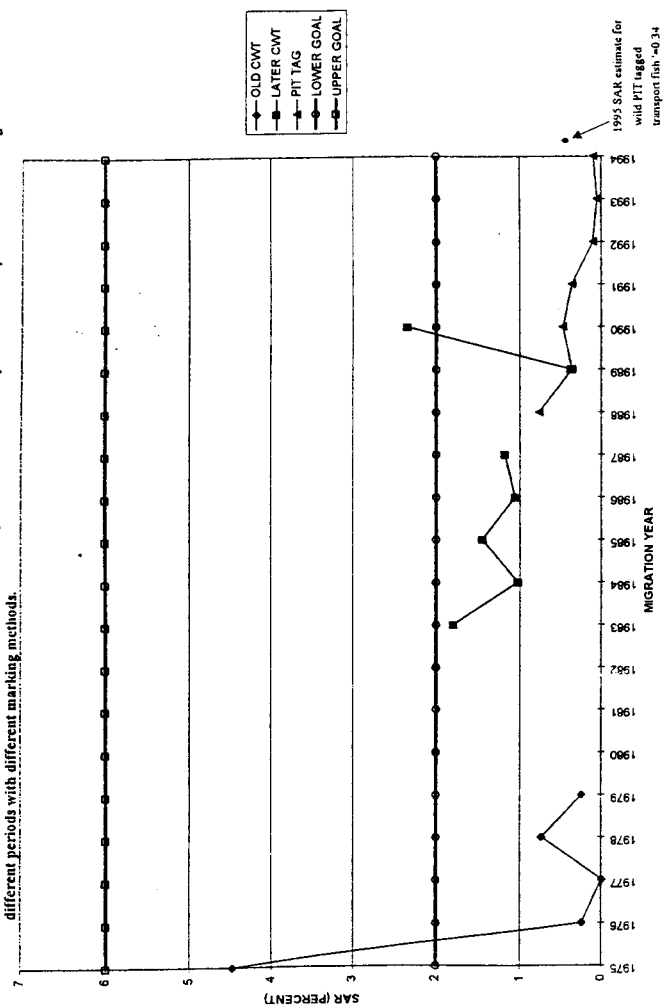


Douglas A. DeHart, Ph.D.  
Chief of Fisheries

Enclosure.

HS:lt

Figure 1. Smolt to Adult return rate (SAR) values for transported fish observed as part of the transport research during different periods with different marking methods.



7/15/97

May 30, 1997

Bern Shanks, Director  
Washington Department of Fish & Wildlife  
600 Capitol Way N #43149  
Olympia, Washington 98501 1091

Dear Director Shanks,

It has come to our attention that the publications "Clearing Up" & "Fishnet Newsletter" have been releasing early pit tag data indicating that barged fish *may* be returning at a higher rate than in-river fish.

We suspect that this interpretation is somewhat less than accurate, and would like to request an immediate response from the WDF&W. We would like the information to include barged fish, by-passed fish and previously undetected fish returning as adults. It is our understanding that the data being used is the 1995 transportation study. We would like WDF&W's analysis, assessment and conclusions regarding this data as soon as possible, given that this information is being circulated around the region. Does WDF&W believe that the analysis being circulated by this publication is valid?

The early analysis needs to examine whether the rate of return for barged fish is sufficient to meet WDF&W's adult survival goals needed for restoration. In addition, I would like to receive the final report at the end of the migration period.

Another critical concern of **NSIA** is the expenditure of fish mitigation dollars on a publication such as "Fishnet Newsletter". This publication, together with "Clearing Up" has consistently attacked the position of state and tribal biologists, salmon advocates and belittled the legal obligations to restore the Columbia/Snake River Salmon. This publication has consistently reported biased information, and is therefore NOT useful to the region. **NSIA** believes that limited public salmon funds should go to helping restore the populations, not supporting the status quo in river operations.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Liz Hamilton".

NSIA



State of Washington  
**DEPARTMENT OF FISH AND WILDLIFE**

Mailing Address: 600 Capitol Way N • Olympia, WA 98501-1091 • (360) 902-2200, TDD (360) 902-2207  
 Main Office Location: Natural Resources Building • 1111 Washington Street SE • Olympia, WA

July 14, 1997

Ms. Liz Hamilton, Executive Director  
 Northwest Sportfishing Industry Association  
 Post Office Box 4  
 Oregon City, Oregon 97045

Dear Ms. Hamilton:

Thank you for your letter to Director Bern Shanks about recent reports on the 1995 Snake River smolt transportation study. Your letter was referred to me for response.

The information reported in "Clearing Up" and "NW Fishletter" was from the National Marine Fisheries Service (NMFS) adult trapping operation at Lower Granite through early May 1997.

This study is addressing two distinct questions:

1. Does transportation or inriver passage give the best adult returns under the present configuration of the hydropower system?
2. Can either approach provide a smolt-to-adult return (SAR) sufficient to achieve recovery?

Through July 7, 1997, a total of 677 study fish have been trapped at Lower Granite, with 451 of those from the transport group and 225 fish from the in-river group (1 fish was classified "unknown"). This gives a transport:inriver ratio of about 2:1. These data are still preliminary since additional returns are expected for this year and there will also be returns from the 1995 smolt outmigration next year. In addition, there will be adult returns in 1998 and 1999 from the 1996 outmigration that are also part of this study.

While this year's preliminary data indicate that transported fish returned at about twice the rate of fish allowed to migrate inriver in 1995, neither mode of transportation appears to be providing an adequate SAR rate for these fish. Based on the size of the actual release groups for transport and inriver fish, the partial return rate for 4-year-olds through July 7th was about 0.42 percent for transported fish and about 0.17 percent for inriver migrants. Again, these are only partial returns. It is likely that the overall SAR for the 1995 transported portion of the study fish may be around 0.55 percent when all adult returns are back. The overall SAR for inriver migrants will be less, likely in the neighborhood of 0.21 percent.

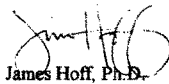
Ms. Liz Hamilton  
July 14, 1997  
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The Plan for Analyzing and Testing Hypotheses (PATH) study group, which was set up in response to the NMFS Biological Opinion for Snake River salmon (the Department of Fish and Wildlife is a participant in this group), has made an interim recommendation that SARs in the range of 2-6 percent might be necessary for recovery for Snake River spring/summer chinook (Final Report on Retrospective Analyses, September 10, 1996). Considering the projected SARs for the transported and inriver fish from the NMFS study, it is apparent that under the conditions the 1995 study smolts were exposed to in the river, the Columbia estuary and in the ocean, that the SAR for both groups is likely to be far below the PATH recommendations for recovery.

We believe it is premature to reach conclusions from the preliminary results of the NMFS study. When more data becomes available, we expect to have a better understanding of whether either transportation or inriver passage can provide an adequate SAR for recovery under the current configuration of the hydropower system.

We understand your concerns about the objectivity of certain publications in their reporting of the NMFS study results. With increased sensitivity on Columbia River expenditures, it is fair to question whether to continue their financial support. We suggest that you voice your concerns to the Bonneville Power Administration and the Northwest Power Planning Council, the public entities that provide funding for these publications.

Sincerely,



James Hoff, Ph.D.  
Staff Director  
Intergovernmental Fisheries

JH:JN:mkd

cc: Bern Shanks  
Dirk Brazil



DISCLOSURE REQUIREMENT  
Required by House Rule XI, clause 2(g)

1. Name: JOSEPH P. ROTHLEDER
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N.W. SPORTFISHING INDUSTRY ASSN. & ASSN OF N.W. STEELHEADERS
4. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
B.A. GEOLOGY U. OF OREGON 1969
5. Any professional licenses or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
MASTER SMALL PASSENGER CARRYING VESSEL
6. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing: CHARTER BOAT OPERATOR, FISHING GUIDE, TOUR BOAT OPERATOR, OREGON & SE ALASKA  
LONG TERM INVOLVEMENT IN FISHERY MANAGEMENT & SALMON & WATERSHED RESTORATION.
7. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:  
GOVERNMENT AFFAIRS ADVISOR NSIA & ANWSteelheaders
8. Any Federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), the source and the amount of each grant or contract:  
NONE
9. Any Federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:  
NONE
10. Any other information you wish to convey to the Committee which might aid the members of the Committee to better understand the context of your testimony:  
NONE

Joseph P. Rothleder



MARC RACICOT  
GOVERNOR

State of Montana

OFFICE OF THE GOVERNOR  
NORTHWEST POWER PLANNING COUNCIL

STAN GRACE  
Council Member

JOHN N. ETCHART  
Council Member

Testimony of Stan Grace  
Council Member  
Montana Office, Northwest Power Planning Council  
Before the Subcommittee on Fisheries Conservation, Wildlife and Oceans

July 24, 1997

Authority, Decision Making Processes, and Interagency Cooperation of the National Marine  
Fisheries Service Northwest Region

My name is Stan Grace, and I am one of two Montana members of the Northwest Power Planning Council, an interstate compact authorized by Congress in the Northwest Power Act of 1980 and subsequently created by the states of Montana, Idaho, Oregon and Washington. The Northwest Power Act directs the Council to prepare a program to protect, mitigate and enhance fish and wildlife that have been affected by the construction and operation of hydroelectric dams in the Columbia River Basin. The Council fulfills this direction through the Columbia River Basin Fish and Wildlife Program. The Council first adopted the program in 1982. Subsequent revisions were adopted in 1984, 1987 and 1994. In addition I am appointed by the Governor to serve as Montana's representative on the National Marine Fisheries Service (NMFS) Executive Committee. This is the upper level of the NMFS's three-tiered regional forum.

Section 4.(h)(1)(A) of the Northwest Power Act says that the Council's fish and wildlife program, "... to the greatest extent possible, shall be designed to deal with that river [the Columbia] and its tributaries as a system." The theme of my testimony today is that while the Council's fish and wildlife program treats the entire Columbia River Basin as a system, the federal government, particularly the National Marine Fisheries Service, does not. The Fisheries Service is the agency that implements the Endangered Species Act for salmon in the Snake River, the major tributary of the Columbia. In lieu of a recovery plan, the Fisheries Service has issued a series of Biological Opinions that direct the activities of federal river and hydroelectric power agencies to avoid further jeopardizing the listed salmon populations. These Biological Opinions have consistently failed to adequately address the impact of river operations on fish in Montana. As a result, on April 15, 1997 Montana pulled out of the river operations forum directed by the Fisheries Service and filed a lawsuit to force the Fisheries Service to abide by the scientifically credible river operations contained in the Council's fish and wildlife program. Montana also is taking action through its water quality agency against two federal dam-operating agencies, the Bureau of Reclamation and the U.S. Army Corps of Engineers, over operations at Hungry Horse and Libby dams that are directed by the Fisheries Service.

In short, the Fisheries Service must treat the Columbia River and its tributaries as a system, as the Council does. The Fisheries Service must stop harming fish in Montana's Columbia River tributaries with river flow operations with questionable benefit to salmon downstream.

**The Council's fish and wildlife program enhances resident fish as well as salmon**

The Columbia River and its tributaries drain a vast area -- 259,000 square miles including parts of six states and the Canadian province of British Columbia. Montana's chief Columbia tributaries are the Clark Fork and Kootenai rivers, which each have numerous tributaries. Through these river systems, Montana is a major contributor to the Columbia River.

Before the construction of mainstem dams that blocked their passage, anadromous fish -- mostly salmon and steelhead -- migrated to the farthest corners of the basin. Salmon and steelhead spawned in the desert plains of south central Idaho and northern Nevada, in the mountains of central Idaho and all the way to the headwaters of the Columbia in southeastern British Columbia, 1,200 miles from the Pacific Ocean. But salmon and steelhead never spawned in Montana's tributaries. Natural barriers such as waterfalls prevented anadromous fish ascending these rivers.

Construction and operation of the Federal Columbia River Power System contributed to the decline of both anadromous (ocean going) and resident fish species across the Columbia River Basin. Anadromous fish include salmon and steelhead while resident fish include cutthroat trout, sturgeon, rainbow trout, bull trout, kokanee and others.

**Montana reservoir protections are part of the Council's program**

As a member of the Council and, as I have said, a representative of a state that contributes a significant amount of water to the Columbia, I participated in the development of the Council's current fish and wildlife program. An important component of the program responds to the Council's legal mandate to treat the Columbia and its tributaries as a system. Through the Council's program, Bonneville expends funds to develop mitigation and protection strategies for the federally owned and operated hydropower facilities at Libby and Hungry Horse dams in Montana. Hungry Horse Dam, operated by the Bureau of Reclamation, is located on the South Fork Flathead River near Kalispell, and Libby Dam, operated by the U.S. Army Corps of Engineers, is on the Kootenai River near the city of Libby.

Research and development of these reservoir protection strategies started in response to the Council's first fish and wildlife program, which the Council adopted on November 15, 1982. In that program, the Council called on the Bureau of Reclamation, the Corps of Engineers and the Montana Department of Fish, Wildlife and Parks to "... develop operating procedures which will limit drawdown of Hungry Horse and Libby reservoirs for power purposes to protect resident fish to the fullest extent practicable."

This work began with the collection of basic ecological data on the affected rivers and reservoirs. Biological and physical data were assembled and analyzed with the aid of innovative and sophisticated computer models. The results of the analysis lead the Montana Department of Fish, Wildlife and Parks and the Confederated Salish and Kootenai Tribes to propose operational rule curves for Libby and Hungry Horse reservoirs. These proposals underwent local and regional public scrutiny and were modified to incorporate public comments. The primary objective was to avoid deep drafts and refill failures and to restore more normative river flow conditions.

When finally adopted into the Columbia Basin Fish and Wildlife Program by the Northwest Power Planning Council in 1994, these recommendations were referred to as Integrated Rule Curves or IRCs. This name reflects the fact that the recommendations are a compromise between the authorized multiple purposes of the projects -- power, flood control, navigation, fish and wildlife, and recreation. Implementation of the rule curves would allow significant power production, adequate flood control, continued navigation, improved conditions in the rivers below the dams (including increased flows for salmon downstream), improved recreation and 55 percent to 72 percent of the optimum biological productivity in the reservoirs. The IRCs provide partial mitigation for damage to fish resources caused by construction and historic operations of Libby and Hungry Horse dams for power production and flood control.

**Despite being in the Council's program, the IRCs have not been implemented**

According to Section 4.(h)(11) of the Northwest Power Act, federal agencies responsible for managing, operating, or regulating federal or non-federal hydroelectric facilities in the Columbia River Basin shall exercise their responsibilities "... taking into account at each relevant stage of decisionmaking to the fullest extent practicable the program adopted by the Council." These federal agencies include the Corps of Engineers and the Bureau of Reclamation.

The IRCs concept has never have implemented. The reason is that the Corps and the Bureau have operated Libby and Hungry Horse dams in compliance with the demands of the NMFS Endangered Species Act process. The National Marine Fisheries Service implements the Endangered Species Act for ocean-going creatures, and is preparing a recovery plan for endangered Snake River salmon. In lieu of the recovery plan, the Fisheries Service issues biological opinions to other federal agencies on how to avoid further jeopardizing the listed species. In short, the 1995-1998 Biological Opinion on Hydropower Operations currently runs the river. In that document, the Fisheries Service relies heavily on the concept of flow augmentation to help juvenile salmon migrate to the ocean. Flow augmentation means that water is released from behind upriver storage dams, like Hungry Horse and Libby, in the spring and summer to boost the volume and velocity of the Columbia downriver of its confluence with the Snake. The Biological Opinion sets flow targets for certain times of the spring and summer, and reservoirs are operated to meet these targets. Drawdown limits were set for Hungry Horse and Libby dams and the limit is 20 feet. These limits were set without consultation with the State of Montana and no evaluation of the local ecosystems or native species.

**Stalemate over IRCs is the basis of controversy between Montana and the Fisheries Service**

The Biological Opinion claims to be an ecosystem management/adaptive management document but clearly is a single-species management approach that does not address species throughout the basin. Through the Council's fish and wildlife program, Montana neared implementation of mitigation for the 40 years of Hungry Horse and 20-plus years of Libby power and flood control operations. But the Fisheries Service stopped the implementation and arbitrarily established power operations, flood operations, and summer draft limits for salmon with no analysis of impacts to resident fish -- in Montana or anywhere else. This not only undermined the 12 years of research and analysis to correct power and flood operations, but it also exacerbated refill failure problems and moved the Kootenai and Flathead rivers away from normative conditions.

Here are two example of how the Fisheries Service ignores the needs of resident fish in Montana:

*1. Management to a damage standard*

First, the Biological Opinion relegates the management of resident fish in Montana to management by a damage standard. In other words, NMFS does not seek to protect the needs of Montana fish, but manages their ecosystem to a level of "acceptable impact". This is in direct contradiction to an ecosystem approach that would strive to improve all aspects of the ecosystem, not sacrifice one area of the region in an attempt to improve another. On Page 98, the Biological Opinion states: "The Fisheries Service did not find convincing the specific data that the operation contained in this measure would clearly damage resident fish and wildlife." Then, on Page 99, the Biological Opinion says that river operations to enhance survival of Snake River salmon "... might have acceptable impacts on resident fish and wildlife." In the Biological Opinion, the Fisheries Service also admits that when crafting the Biological Opinion, "there was not time to analyze fully the impact of these elevations (20-foot summer drafts and refill failures) on resident fish and wildlife ..."

The apparent lack of concern for resident fish seems to contradict one of the recommendations of the Independent Scientific Group, a panel of nine independent scientists who reviewed the scientific underpinnings of the Council's program in 1996. In their report, entitled "Return to the River," the scientists advised the Council: "We suggest that the Council's approach should be to 'protect, mitigate, and enhance' ecosystem properties that are consistent with the biological needs of salmon, steelhead and other native fish and wildlife species while providing for environmentally responsible energy production." As I mentioned earlier, the Northwest Power Act requires that the Council design its fish and wildlife program to "protect, mitigate and enhance" fish and wildlife, and related spawning grounds and habitat, of the Columbia River Basin that have been affected by the construction and operation of hydroelectric dams.

The willingness of the Fisheries Service to accept damage to resident fish in Montana as the result of Biological Opinion operations also appears to contradict a statement by the regional director of the Fisheries Service, Will Stelle, who said, on June 17, 1995 at Columbia Falls, Montana: "If the operations of the Biological Opinion are going to cause damage to resident fish or the ecology of these reservoirs, we have said, and I stand behind it, if that is the case we will change those operations, period."

Since 1993, when the Fisheries Service issued its first Biological Opinion on Hydropower Operations, Montana has contended that Biological Opinion operations will damage both the river and reservoir ecology. Montana repeatedly asked for assurances that our reservoirs and fish resources would receive the protection, mitigation and enhancement afforded by the law. We were promised an independent scientific study of the impacts, to be completed by June of 1996 -- in time to influence reservoir operations in August 1996. The study was not done in 1996. Finally, in February 1997, the Council's Independent Scientific Advisory Board (ISAB) provided a review to the Fisheries Service. The ISAB confirmed Montana's concerns, reporting that: "Drawdown of reservoirs adversely affects resident fishes. Flow augmentation in August leads to increased flows in the streams and lakes below [Libby and Hungry Horse] reservoirs and adversely affects resident fish populations to the points where the streams join the Columbia." Reservoir operations dictated by the Biological Opinion have resulted in loss of fish habitat and food web integrity in the Kootenai River from Libby Dam to Kootenai Lake and is correlated with the decline of Kootenai River white sturgeon.

It has been six months since the ISAB completed its report, and so far the Fisheries Service has made no allowances for change in reservoir operations at Libby or Hungry Horse dams, even in a record water year such as we are experiencing in 1997. In fact, the Fisheries Service recently

indicated they support the full Biological Opinion drawdown of 20 feet at Libby and Hungry Horse in August of 1997. It is clear that the Fisheries Service has chosen a damage standard for the management of resources in Montana. This standard is inconsistent with the recommendations with independent scientists and ignores Montana's requests to exercise flexibility in implementing the Biological Opinion.

**2. *The Fisheries Service ignored the impacts of Biological Opinion flows on resident fish***

Ostensibly to help make river operation decisions, the Fisheries Service created what it called the Implementation Team and the Executive Committee. Issues that could not be resolved by the Implementation Team would be decided by the Executive Team. Both committees were chaired by the Fisheries Service. Montana participated in the so called EC/IT process, but found its participation increasingly frustrating because of the repeated failure of NMFS and their process to exercise flexibility and account for Montana's ecosystem needs and the continued lack of biological justification for the requested flows. On April 15, 1997 Montana withdrew from of the process.

Montana had requested that if there are no measurable changes in fish travel time or survival between river operations alternatives, the choice should be based on other factors. In such cases, the alternative with the lowest impact on other resources should be used, Montana suggested. The March 6, 1997, meeting notes of the Implementation Team reflect the outcome of this request -- it was rejected. A representative of the Fisheries Service said, "We don't intend to estimate survival relative to operating alternatives." Tim Hall, representing Montana, replied, "Montana would simply like to keep the door open to make the argument that, often, it is impossible to measure or detect the impact of an operation for anadromous fish, yet that impact is often very measurable for resident fish." Donna Darm, another Fisheries Service employee, responded, "You can make those kinds of arguments, but they won't get you anywhere. We're agreeing right up front that we can't measure those impacts."

It could not be clearer that Montana was being ignored.

**Unwilling to participate in an unfair process, Montana discontinued participation**

Not only did the Fisheries Service ignore Montana's reservoir operating requests, but it also attempted to delete any reference to the Council's integrated rule curves from the Kootenai River White Sturgeon Recovery Plan. The Kootenai River White Sturgeon Recovery team, composed of scientists and specialists in Kootenai River operations from the United States and Canada unanimously endorsed the use of the IRCs for sturgeon recovery. The Fisheries Service simply ignored this recommendation and tried to have it removed from the sturgeon recovery plan.

In a December 9, 1996 letter to Fisheries Service and the U.S. Fish and Wildlife Service, which is preparing the recovery plan for Kootenai River sturgeon, Montana Governor Marc Racicot raised this issue. The Governor said the Fisheries Service was being inconsistent with the ecosystem management that was promised in the Biological Opinion. The Governor, based on the "Return to the River" report of the Independent Scientific Group, questioned the current water management approach of Snake River salmon recovery that has such a heavy reliance on the use of upper Columbia water for Snake River fish. He reminded the Fisheries Service that in September 1996, then-Secretary of Commerce Michael Kantor, in a letter to Montana Senator Conrad Burns, wrote, "... [the] Fisheries Service agreed to put the scientific question of the value of augmented flows to the Independent Science Advisory Board" and that a report was expected before the 1997 salmon migration season. Such a review has yet to occur. The federal response to the Governor's letter ignored most of the major issues and repeated promises of more process.

Frustrated by this response, and frustrated by the failure of the Executive Committee/Implementation Team process to address Montana's concerns, Governor Racicot informed the Fisheries Service on April 15, 1997, that the state would no longer participate. He noted that this process failed to recognize and embrace the concept of ecosystem management in that it failed to look at what operations result in the most good and the least harm to all elements of the Columbia ecosystem. He explained that Montana has been the largest contributor of storage water to salmon recovery but its proposals for reservoir operations have been given no meaningful consideration. Further, Libby and Hungry Horse reservoirs have suffered chronic refill failures. When the reservoirs have refilled, they have been the last in the basin to do so and for the shortest duration.

The Governor's letter also pointed out that such operations were in contrast to those recommended by the Council in its fish and wildlife program, a program designed to protect, mitigate and enhance species across the basin. He explained that Montana's goal, and the goal of the Council, is not just recovery of the listed species but comprehensive ecosystem management that reverses the decline of all species. The Fisheries Service's Executive Committee/Implementation Team forum clearly lacks such a mandate and has been unwilling to use the flexibility available to it to achieve such goals.

The Fisheries Service responded to Governor Racicot but provided no indication that improvement in the process or consideration of Montana's concerns would be forthcoming. In fact, the Fisheries Service claimed the Biological Opinion reservoir operations actually worked to Montana's benefit and provided tangible results. The Fisheries Service cited the 1995 and 1996 "swap" of Libby water with Canada and "alternative" arrangements for Hungry Horse. In reality, the 1995 swap and alternative Hungry Horse operations came through direct negotiations between the U.S. Department of Justice and Montana, not from the Fisheries Service process. In 1996, no relief was provided Hungry Horse. In fact, because of the high water year, the reservoir was "surcharged" or overfilled for a short period. That additional water, plus the full Biological Opinion 20-foot drawdown, was drafted for salmon over the course of the summer, resulting in flows in the Flathead River more than 250 percent above natural flows. At Libby, the high-water year created conditions that imposed physical limits on how much water could be drafted from the reservoir. It would have not been possible to draft the full 20 feet without spilling water and violating Montana's water quality laws. The "swap" that did occur originated outside of the Fisheries Service process and was nearly stopped by the Fisheries Service process. In 1997, again an extremely high water year, the Fisheries Service has recommended the maximum draft despite the fact that Biological Opinion flow targets will be achieved. The Fisheries Service is simply wrong in declaring that the Biological Opinion process has considered Montana's needs.

These recent correspondences did not raise new issues. Montana's comments on the Reinitiation of the Biological Opinion (Feb. 10, 1995) and Comments on the Proposed Recovery Plan for Snake River Salmon (Nov. 9, 1995) are on the record and raise all of the same issues, including:

- The Fisheries Service is unable to detect changes in salmon survival as the result of Biological Opinion flows.
- Travel time changes as the result of the Biological Opinion are insignificant.
- The Biological Opinion emphasizes Columbia River flows over Snake River flows.
- Salmon migration-season management of the rivers is poorly structured and guided.
- The Biological Opinion flow operations may violate state and federal laws.

- The Biological Opinion's reliance on flow augmentation is not biologically based or rigorously justified.
- There is no monitoring in place to evaluate the effects of changes in flows in the lower Columbia.

Montana reiterated these concerns in testimony before the Subcommittee on Science, Technology and Space on June 19, 1996. These official comments and testimony, along with a lengthy correspondence history, have failed to produce any meaningful change in the Fisheries Service approach to Snake River salmon recovery and the impact on natural resources in Montana. After exhausting such channels, Montana was forced to issue administrative orders to enforce our water quality laws and to file a lawsuit against the Corps of Engineers and the Bureau of Reclamation in the hope of influencing reservoir operations.

#### **Montana's concerns are justified**

The Endangered Species Act protects Kootenai River white sturgeon as well as Snake River salmon. These fish are affected by the operation of Libby Dam. Despite the unanimous scientific support of the White Sturgeon Recovery Team for integrated rule curves at Libby Dam to protect sturgeon, and despite the availability of other water sources to aid salmon, the Fisheries Service has attempted to influence the sturgeon recovery plan. The Fisheries Service has no expertise in the biology of the Kootenai River system yet has sought to overrule the findings of scientists who do. The Independent Scientific Advisory Board (ISAB) validated that hydropower operations have had negative effects on the ecology of the Kootenai River. The scientists cite studies that show that biological diversity and the food web in the river have declined just since the mid-1980s. The ISAB reports that the loss of habitat and food web integrity is correlated with the decline of the Kootenai River white sturgeon. The Fisheries Service has not demonstrated flexibility to accommodate these scientific findings.

The ISAB report cites scientific reviews of bull trout that suggest they are at high risk of extinction throughout their range. Additional studies specific to Montana bull trout populations in the Kootenai and Flathead systems are also cited. In the Kootenai system, the overall risk to extinction is believed to be high. In the Flathead system, the overall risk is perceived as medium. Segments of each system are rated as having the highest risk of extinction allowed by the scoring system.

Cutthroat trout recently were the subject of a petition for Endangered Species Act protection. Both the Flathead and Kootenai river systems contain native populations of these fish.

Montana does not claim that the Biological Opinion operations are the sole reason for the decline of these important native species. In fact, many of the same land use practices and river alteration issues that have contributed to the decline of salmon have also adversely effected native resident fish in Montana. Of great concern to Montana, however, is that the Fisheries Service has failed to recognize this fact. Rather than institute a solution that contributes to solutions in both the headwaters and the mainstem of the Columbia River, the Fisheries Service has chosen to exacerbate problems in the headwaters region.

#### **For Montana, the Biological Opinion means endless bureaucratic process and no results**

As noted previously, Montana raised a number of concerns in comments on the Biological Opinion in early 1995. Also in 1995, the Fisheries Service stated that the region "needs to have a genuine and substantial opportunity for governors' representatives to participate with us as we change the plan and implement it."



To date, Montana has been faced with endless process and no results. The Fisheries Service hired a facilitator who oversaw extensive river modeling exercises. The resident fish alternative modeled in this effort provided protection at Libby, Hungry Horse, Grand Coulee and Dworshak. This alternative had no effect on summer flows in the lowest water years and only marginal reductions in flow in medium to wet years and saved the power system \$27 million relative to the cost of the Biological Opinion. The facilitator had several recommendations which included directing the Fisheries Service to "determine what constitutes a biologically significant change with respect to flow augmentation." He also recommended that the region must resolve the species trade-off controversies relating to flow augmentation for salmon and protection for resident fish. The Fisheries Service did not take the advice of the facilitator and has refused to even consider small changes in flow augmentation or the legitimate needs of other fish species, some which have now advanced toward Endangered Species Act listing.

**Inflexible Biological Opinion implementation is at the heart of Montana's disagreement with the Fisheries Service**

In conclusion, Montana tried repeatedly in numerous processes to resolve the controversy over the impact of Biological Opinion reservoir operations on resident fish in Montana. Satisfactory reservoir operations, such as those provided by the Integrated Rule Curves, would address the needs of Snake River salmon and also ESA-listed upriver species such as Kootenai River white sturgeon. Such operations could also help avoid additional ESA listings of bull trout, cutthroat and other species.

However, because the Biological Opinion has taken control of the river, no progress has been made toward a long-term solution. Montana has been forced to withdraw from the Fisheries Service processes and seek legal solutions.

It appears that the Fisheries Service structured its river operations decision-making processes so that the only implementable alternative will be the Biological Opinion. The Fisheries Service is inflexible in its interpretation of the Biological Opinion. And finally, the Fisheries Service ignores all recommendations that are contrary to its perspective. This entrenched attitude and inflexibility is what forced Montana to seek legal remedies.

**RECOMMENDATIONS:**

This committee, Congress, and the Administration should direct the National Marine Fisheries Service and the Federal Agencies who operate the Federal Columbia River Power System to implement an ecosystem management approach that includes the needs of Montana aquatic ecosystems and fish species. This can be done through implementation of the Northwest Power Planning Council's Fish and Wildlife Program which is designed to protect, mitigate and enhance all species.

**Testimony of Robert Deurloo**  
**Manager, Beartrack Mine**  
**before the**  
**U.S. House Committee on Resources**  
**Subcommittee on Fisheries Conservation, Wildlife and Oceans**

July 24, 1997

My name is Bob Deurloo. I am the Manager of Meridian Gold Company's Beartrack Mine, which is located near Salmon, Idaho within the Salmon-Challis National Forest. The Beartrack Mine is situated near Napias Creek within the Panther Creek Drainage, which is tributary to the Salmon River.

The Beartrack Mine is a modern, state-of-the-art open-pit, heap leach gold mine. The Mine was approved by federal, state and local permitting authorities in 1992; mine development and construction began in 1994. The Mine has 160 employees, most of whom reside in the town of Salmon. Our payroll is in excess of \$6,000,000 annually, and we are a substantial contributor to the local and state economies.

Meridian Gold Company and the Beartrack Mine are committed to natural resource protection, including fish and wildlife conservation. In the course of permitting and operating the Beartrack Mine, Meridian Gold has committed to and achieved substantial environmental improvements aimed at restoring and enhancing resources that have been impaired by historic mining and forest management activities. Our successes have included the restoration of previously-degraded wetlands which required that we remove old placer and dredge tailings at a cost of over \$1,000,000, and the upgrading of existing forest roads to reduce sedimentation impacts and to improve traffic safety, at a cost of over \$2,000,000.

In addition, my Company utilizes state-of-the-art pollution prevention and waste minimization practices at the Beartrack Mine. For instance, Meridian has invested over \$1,000,000 in a water treatment plant to collect and contain sediment from stormwater that falls anywhere on the 700 acres covered by the Mine's facility. As a result, while the Main Salmon River may be brown and opaque during high flows or after a storm, its Napias Creek tributary runs cool and clear.

In the course of permitting and operating the Beartrack Mine, Meridian Gold has become very familiar with the National Marine Fisheries Service

("NMFS") and that agency's administration of the Endangered Species Act ("ESA"). The NMFS' listing of the Snake River chinook salmon as a threatened species on April 22, 1992, followed by the agency's designation of critical habitat for the species on December 28, 1993, led to extensive consultation activities under Section 7 of the ESA among NMFS, the U.S. Forest Service, and other federal agencies.

Meridian Gold supports the intent of the ESA, and the conservation and recovery of Snake River chinook salmon. My Company believes that NMFS must increase its credibility and public support to save the salmon, and that to do so the agency should focus on those factors which are most responsible for their demise. Furthermore, we believe NMFS should focus on doing its job with greater efficiency and timeliness. Too often, the agency's efforts are devoted more to procedural exercises (which themselves drag on at great cost in time and resources) than to efforts which yield on-the-ground benefits to the fish. To some extent, this may be the result of congressional direction; however, NMFS itself is likewise to blame for the problem.

The balance of my testimony focuses on four areas where Meridian Gold believes NMFS' performance can be improved: first, the agency's failure to analyze relative risk and focus on those actions posing the greatest threat to Snake River chinook salmon; second the timeliness of consultation actions; third, the designation of critical habitat for Snake River chinook salmon; and fourth, the draft "essential fish habitat" regulations recently promulgated by NMFS under the Magnuson-Stevens Act.

1. NMFS Should Focus Its Regulatory Activities Upon Those Activities Posing the Greatest Threat to the Snake River Chinook Salmon and Its Ultimate Recovery.

Snake River chinook salmon face a range of threats and problems, ranging from commercial harvesting activities to freshwater habitat degradation. Meridian Gold believes it is widely acknowledged that the single greatest impact to the chinook is the federal hydroelectric dam system on the Columbia and Lower Snake rivers. The Federal Columbia River Power System has a devastating impact both on the ability of returning adult salmon to reach spawning grounds and on the ability of outmigrating salmon smolts to move down river and out to the Pacific. Any rational effort to promote the conservation and recovery of the Snake River chinook must start and focus upon the impacts from those dams.

A rational approach to addressing other impacts to salmon - such as the historic habitat degradation present in some parts of the salmon's historic range - must be based on a determination that such efforts will yield benefits to the fish. This assurance does not exist when NMFS allows dam operations and impacts to

proceed with only incremental modifications. Unfortunately, however, NMFS' activities - at least in Idaho - seem to be based on an effort to uncouple the consideration of habitat impacts and mainstream migration barriers. NMFS is pursuing habitat issues in Idaho without fully acknowledging the role downstream dams play in limiting salmon survival and recovery prospects, and, indeed, without comprehensively addressing whether current spawning and rearing habitat conditions in Idaho are actually limiting factors on salmon conservation and recovery. The agency's apparent determination to soft peddle the impacts of the downstream dams while emphasizing relatively minor upstream habitat concerns seems discriminatory and highly political. Moreover, NMFS' approach seems inconsistent with the administration's present emphasis on "ecosystem management."

NMFS' approach in this regard is well illustrated by the Beartrack Mine consultations. Beartrack is located on Napias Creek approximately 6.5 miles above Napias Falls. In an area rich in written history, there exists no reliable written or oral reports of salmon ever occurring in Napias Creek above the Falls. The Napias Creek watershed in the area of the Mine is cut-off from access by spawning salmon by a physical and natural barrier. Nonetheless, NMFS has insisted upon assuming, for the purpose of determining the potential impact of the Mine on Snake River chinook salmon, that spawning salmon could ascend the impassable Napias Falls.

Agency regulation must be founded on fact and common sense to earn and enjoy public support. For either the regulated community or the general public to support NMFS' regulatory activities, the agency must be able to demonstrate that it is focusing on real, rather than peripheral or perceived issues. In the case of the Beartrack Mine, NMFS (and Meridian Gold and the federal action agencies) are expending a tremendous amount of time and fiscal resources on hypothetical fish and illusory fish impacts while the downstream dams continue to wreak havoc on the Snake River chinook salmon.

If NMFS wants to earn credibility and trust, it should demonstrate to the people of Idaho that its efforts are addressing real impacts to threatened and endangered species, and will measurably benefit the recovery of the fish. The agency should start to do so by evaluating all known impacts to listed fish and ranking them in terms of relative threat to the species, then focusing its regulatory efforts where they will yield tangible, measurable benefits to fish conservation and recovery.

## 2. NMFS Should Focus On Improving the Timeliness of Section 7 Consultations.

Under the regulations applicable to Section 7, a consultation should generally be completed within 135 days. Meridian Gold believes that NMFS

achieves this performance rarely, if ever. Meridian Gold further believes that if NMFS focused more concretely on tangible, documentable threats to Snake River chinook salmon, rather than the types of issues described in this testimony, the agency would benefit from a significantly reduced workload and could then focus on timely evaluations that lead to real benefits in fishery conservation and recovery. We have been in consultation for over three years. Continued delays and uncertainty greatly increase the cost and risk of doing business in this region and we are re-directing our exploration dollars elsewhere. While this is fine with many people, our nation continues to have an insatiable demand for minerals.

### 3. Critical Habitat Designation For Snake River Chinook Salmon.

Meridian Gold believes that NMFS' approach to designating critical habitat under the ESA for Snake River chinook salmon is a good example of a well-intentioned action that has resulted in tremendous resource expenditures. At least in the case of the Beartrack Mine, these expenditures have not yielded measurable species conservation benefits. In 1993, NMFS designated virtually the entire Salmon River and its tributaries, except reaches above natural impassable falls, as critical habitat for Snake River chinook salmon. Much of the area within the area designated is not currently occupied by listed salmon. Under the ESA, the agency is required to make a finding that areas not occupied by the species at the time of designation are "essential to the conservation of the species" before it may designate those areas as critical habitat. 16 U.S.C. § 1532(5)(A)(ii). NMFS has made no such finding; indeed, the agency has never (to Meridian Gold's knowledge) made any determination that the spawning habitat currently utilized by the depleted salmon runs is inadequate to provide for the conservation of the species if the dams downstream are dealt with in a manner that provides for increased escapement and return migration.

In the critical habitat rulemaking, NMFS acknowledged that it did not know whether the areas within the broad watershed designation possessed the biological and physical features essential to the species' conservation. 58 Fed. Reg. 68543, 68548 (Dec. 28, 1993). Instead of limiting the designation to the areas which NMFS knew provided such features, and which might clearly meet the regulatory criteria for critical habitat, NMFS chose to make an overbroad designation and then to "fine tune" it by site-specific determination on a case by case basis. This approach is inconsistent with the critical habitat designation regulations, and also extremely inefficient and resource intensive for the agency and the regulated community alike, as the Beartrack Mine's experiences demonstrate.

As discussed above, the Beartrack Mine is located on a reach of Napias Creek which is above a naturally impassable falls. Upper Napias Creek hosts no salmon, nor is there any known record of it ever having been used by salmon. It is clearly outside the currently occupied range of the species, and is outside the

critical habitat designation (since it is above a naturally impassable falls). Nonetheless, NMFS persists in treating Upper Napias Creek as critical habitat, despite the fact that the best available data demonstrates that it is outside the critical habitat designation and despite the fact the agency has never made any finding that Upper Napias Creek is "essential to the conservation of the species."

In the original Section 7 consultation on the Beartrack Mine, the Salmon National Forest (the action agency) determined that Napias Falls was an impassable barrier to anadromous fish, and that Upper Napias Creek was therefore outside critical habitat. NMFS chose to disagree despite the lack of any concrete evidence to the contrary. Instead, NMFS took the position that based on a site visit by a NMFS staff biologist, there was a "possibility of chinook salmon once spawning upstream from" the Falls, and that NMFS would therefore assume the Falls were passable. That assumption would control until "conclusive data" was available to confirm the Falls were historically impassable. *See* NMFS Beartrack Mine Biological Opinion at 9 (Mar. 1994). NMFS thus set in motion an intensive evaluation of effects on "critical habitat" at the Mine's doorstep, when both the factual information and the critical habitat regulations themselves, limits the critical habitat to at least 6.5 miles downstream from the Mine.

The Beartrack Mine is now the focus of a second consultation.<sup>1</sup> To support this consultation, Meridian Gold committed substantial resources to document the lack of historical information demonstrating any utilization by salmon of Upper Napias Creek, and commissioned a series of studies which confirmed that Napias Falls was both impassable to salmon and a naturally-occurring feature. This information is clearly the best available scientific and commercial information, and corroborates the historical record, which includes a 1941 study reported by the Department of Interior's Bureau of Fisheries (Napias Falls is an "impassable cascades"), a 1965 stream inventory prepared by the Idaho Department of Fish & Game (attempts to establish anadromous runs of fish in Napias Creek would be "impractical" due to extremely steep gradient and numerous cascades and falls), and a 1986 Habitat Rehabilitation Report prepared for the Bonneville Power Administration which concludes that Napias Falls are a definite barrier to upstream salmon migration. Based on this information and record, Meridian Gold expected that NMFS would recognize that Upper Napias Creek was not critical habitat for salmon. However, NMFS still persists in treating Upper Napias Creek as critical habitat, despite the fact that all available information (and NMFS' own regulations) require a contrary determination.

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<sup>1</sup> The original Beartrack Mine biological opinion was challenged in Idaho Rivers United v. National Marine Fisheries Service, No. C94-1576R (W.D. Wash. Nov. 8, 1995). In November of 1995, the court remanded the opinion to the agencies directing them to better explain their conclusions of no jeopardy and no adverse modification of critical habitat in the biological opinion.

Because of Meridian Gold's belief that NMFS' position in the Beartrack Mine consultation is not supported by the available information before the agency, my Company has filed a petition for the redesignation of critical habitat in the area of Upper Napias Creek near the Mine. NMFS has made a determination that the petition may be warranted, and has published this finding in the Federal Register, seeking public comment on the redesignation. 62 Fed. Reg. 22903 (Apr. 28, 1997). Meridian Gold hopes that this examination will prompt the agency to recognize and remedy this situation.

4. NMFS' Recently Proposed "Essential Fish Habitat" Regulations Are Another Example of the Agency's Tendency To Misfocus Its Resources By Establishing Procedures Which Will Not Produce Tangible Benefits To Listed Species.

Earlier this year, NMFS promulgated draft regulations under the "essential fish habitat" provisions of the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act" or "Act"). 62 Fed. Reg. 19723 (Apr. 23, 1997). The proposed regulations set forth guidelines for the description and identification of essential fish habitat in fishery management plans, adverse impacts on essential fish habitat, and actions to conserve and enhance essential fish habitat.

The draft regulations will require consultation between federal agencies and NMFS when federal agency activities may adversely affect essential fish habitat. NMFS has also proposed expansive consultation procedures for federal agencies which will add yet another layer of review and source of delay to activities subject to the consultation requirements of the Endangered Species Act. The agency could - and should have - provided that where a consultation is required under both the ESA and the Magnuson-Stevens Act, the consultation procedures of the ESA will satisfy the consultation requirements of the Magnuson-Stevens Act. NMFS apparently has chosen not to do so, thus increasing its workload without reason or benefit to listed species conservation. To compound this problem, NMFS has exceeded its authority under the Magnuson-Stevens Act consultation provisions in this proposed rule.

The Magnuson-Stevens Act does not give NMFS the authority to require federal agency compliance with NMFS' recommendations in an essential fish habitat consultation, nor does it prohibit agency action which would degrade or harm such habitat, facts which NMFS recognizes in the preamble to the proposed regulations. See 62 Fed. Reg. at 19726. In this respect, the Magnuson-Stevens Act differs significantly from the ESA. However, in the proposed rule, NMFS would require federal agencies which choose not to adopt all recommendations received from NMFS to undergo a dispute resolution process. This is not a requirement of the Magnuson-Stevens Act, and its inclusion by NMFS is inappropriate. Under the Act the federal action agency has the authority and the

responsibility to accept or reject NMFS recommendations received in consultation, and the rule should so reflect. Instead, NMFS has apparently chosen to go beyond its authority and attempt to force its views on other federal agencies in what by definition will be another contentious and resource intensive process. This is another unfortunate example of NMFS' tendency to adopt and pursue procedures which may expand the agency's control and authority but which do so at a tremendous resource cost without commensurate benefits to endangered species conservation.

In summary, the Beartrack Mine has complied with extensive federal, state, and local requirements to protect the environment and water quality. We see the dams continuing to churn up the fish and the nearest stray salmon is at least 7 miles from our operation. Yet, we continue to be subjected to never-ending regulation, restrictions, delays, and expense. We would like to see our collective efforts spent more wisely on addressing the real problems.

BOISE:0079889.01/38672.0308



**DISCLOSURE STATEMENT**

Required by House Rule IX, clause 2(g)

1. Name: **Robert Deurloo**
2. Business Address and Phone Number: **Beartrack Mine, Meridian Gold Company, P. O. Box 749, Salmon, ID 83467**
3. Organization you are representing: **Meridian Gold Company**
4. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing: **I have a professional degree in Mining Engineering as well as an advanced management degree from the Harvard Graduate School of Business.**
5. Any professional licenses or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing: **No.**
6. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing: **I am General Manager of Beartrack Mine.**
7. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying: **I am General Manager of Meridian Gold Company's Beartrack Mine.**
8. Any Federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 194, from the Department of Commerce (National Marine Fisheries Service), the source and the amount of each grant or contract: **None.**
9. Any Federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract: **None.**
10. Any other information you wish to convey to the Committee which might aid the members of the committee to better understand the context of your testimony: **I have nothing further to add.**

## Justin Hayes

Mr. Chairman, members of the committee. My name is Justin Hayes. I am the conservation scientist and DC area representative for the Save Our Wild Salmon Coalition. Save Our Wild Salmon represents 47 fishing, conservation, and fishing business organizations from throughout the Northwest.

I am honored to have been asked to present this testimony before your committee and hope that my testimony will shed some light on the vexing problems associated with the protection and restoration of salmon in the Northwest.

Before I discuss the role of the National Marine Fisheries Service, I would like to take just a moment to provide you with a little background on this issue.

The Columbia Basin's salmon are mostly born in high mountain streams and lakes upwards of 1000 miles from the Pacific Ocean. As juveniles they migrate to the Pacific Ocean. In the ocean they grow to maturity and then return to the area where they were born and spawn.

Over the millennia, this age old cycle has persisted, yet the environment that it occurs in has changed dramatically.

The destruction of habitat critical to the spawning and rearing has been very harmful to specific stocks of fish. Dams on the Snake and Columbia Rivers have been particularly damaging. For many of the Basin's fish, up to eight federally owned and operated dams lie in their migratory pathway.

Since these dams were completed, the Columbia Basin's populations of salmon have declined precipitously. Several stocks have already gone extinct. Many others are teetering on the brink of extinction.

It can not be denied that the primary cause of the decline of Snake and Columbia River salmon was the construction and current operation of these dams. Likewise, it can not be denied that the only way to reverse this decline is to greatly lessen the negative impacts that these dams have on the salmon. That is not to say that the many other factors which threaten the salmon can be ignored.

These dams harm both the young and the adult salmon:

While there are fish ladders to allow the adults to climb over the dams -- still some 40% of the adult fish that swim up the Columbia bound for Idaho never make it past the dams. Finding the tiny entrance to a fish ladder in a river that can be over a mile wide is probably like finding a needle in a haystack.

Many of the juveniles are killed out right by their trip through the dams' turbines. Others languish in the hundreds of miles of currentless reservoirs. These young salmon evolved over millennia to be pushed to the ocean by the rivers current. Now the slack water behind these dams have slowed their trip down considerably. Temperatures frequently soar to lethal levels in these reservoirs. Smolts weakened by the journey make easy pickings for predatory fish that thrive in the now warm and sluggish river.

For nearly twenty years the federal government has attempted to lessen the impact of these dams by collecting as many young fish as they can, putting them in barges, and barging them around the dams. Conditions permitting they are capable of collecting upwards of 80% of young fish migrating from the Snake River. This practice has not worked. Barging fish for twenty years has cost hundreds of millions of dollars and has failed to halt the decline. It has actually made the situation worse.

Recently, other efforts have been made to improve the conditions of the Snake and Columbia Rivers in the hopes of increasing the number of salmon that survive their trip to the ocean. These include increasing the flow of the river during certain critical months and spilling water over the dams in an attempt to move the fish over the dams -- rather than through them.

The National Marine Fisheries Service is charged with developing, implementing and overseeing a plan to protect and restore federally listed Columbia Basin salmon. Since the National Marine Fisheries Service took on this task several years ago, hundreds of millions of dollars have been spent on recovery efforts. One is forced to ask: What is there to show for it?

Well, for starters, the fish are actually worse off. Taken as a whole, wild and hatchery populations of salmon have continued to decline. In fact, several other stock of salmon, several stocks of steelhead and sea going cut-throat trout are about to be listed under the Endangered Species Act.

Why, with this attention by the federal government, years of effort, and the expenditure of hundreds of millions of dollars have these fish continued to decline?

The National Marine Fisheries Service has failed to take the active leadership role required to develop and implement a management plan with the goal of recovering salmon populations to self-sustaining, harvestable levels. Currently there are three separate recovery plans: a federal plan, a state plan and a tribal plan. NMFS has failed to take a strong leadership role, reconcile the differences and merge these three documents into a single, binding recovery plan. In the absence of a single, agreed upon plan, the Northwest's salmon recovery effort has virtually self-destructed.

An additional problem is that NMFS has focused narrowly on fulfilling only the procedural requirements of the Endangered Species Act and avoiding ESA legal challenges. As a result, the recovery plan that NMFS has put forth puts procedure over substance. It fails to fulfill the Endangered Species Act requirement to restore these fish and also fails to fulfill other salmon obligations as promised in treaty and law.

The National Marine Fisheries Service has created a recovery plan that – even if implemented – will not result in the recovery of the Snake River salmon to self-sustaining, harvestable levels. Their own studies prove that not enough juveniles are reaching adulthood.

In two years, when this plan expires, we will be right back where we were three years ago. The only thing that will be different is that there will be a lot fewer fish and we will have wasted hundreds of millions of dollars.

Another stumbling block has been the NMFS failure to incorporate other federal agencies, the states and the Tribes into the substantive decision process. One of the components of their recovery plan is a seemingly endless round of meetings. These meetings are supposed to be a forum where others can actively participate in management decisions. In reality, these meetings are nothing of the sort. Rather, they are a forum where decisions are made by NMFS or the Corps of Engineers. Substantive issues raised by "participants" are routinely passed from one level of meeting to the next because no decision can be reached. Issues languish so long in committees that the need for a decision becomes irrelevant because the crisis has passed. This

process has become such an obvious waste of time that all of the Columbia River Treaty Tribes and the state of Montana have withdrawn.

The National Marine Fisheries Services' failure to bring the region's federal, state and Tribal agencies together has created a leadership vacuum. As a result, many agencies in the Northwest are pointing fingers at each other and staking out their own salmon turf. Every agency has its own salmon biologists. Scientists from different agencies are frequently in disagreement with each other – this tension is used as an excuse by one federal agency to ignore the wishes of another.

There is no better example of this than the US Army Corps of Engineers. The Corps has decided that it has ultimate authority of the operation of these dams – even when their operations directly contradict the management plans of the National Marine Fisheries Service. The National Marine Fisheries Service has repeatedly failed to stand its already weak ground and demand that the Corps comply with the law.

As a result, the Corps is managing the river poorly for fish, spending hundreds of millions on controversial projects and attempting to dictate the outcome of future decisions related to the operation of their dams.

This environment is rife with hostility. In response, the National Marine Fisheries Service has crouched down low and taken a "bunker" mentality. NMFS is like a deer frozen in the headlights, rather than make a decision it chooses to stand in the middle of the road. This fear has resulted in NMFS's pursuance of procedure over substance. They refuse to work cooperatively with others to reach a solution.

Recently the State of Idaho and many of the region's Tribes brought forth a proposal for managing the 1997 salmon migration. This plan called on leaving 2/3rds of the Snake River's young salmon in the river to benefit from the expected high water. This plan was scientifically credible. In addition to the evidence presented by the state of Idaho, leaving more fish in the river is supported by the Tribal recovery plan and by the NMFS's own Independent Scientific Advisory Board.

An extensive report by their independent scientific advisory board urges that the Snake and Columbia Rivers need to be allowed to once again act more like rivers. It also cautions against wide-spread, large-scale barging of juvenile fish -- stating that there has never been any evidence that this practice will lead to recovery.

Yet, at the Executive Committee meeting level (the highest level of meeting to convene on salmon issues) the Idaho/Tribal plan was agreed to or accepted by every member (including the US Fish and Wildlife Service) -- except the National Marine Fisheries Service. In spite of overwhelming support, the National Marine Fisheries Service made the unilateral decision to barge many more juvenile salmon than the other members of the committee thought was acceptable.

Thus, the National Marine Fisheries Service ignored its own best scientific information and overruled the wishes of the other sovereigns in the region.

The National Marine Fisheries Service's process over substance approach is not recovering, or leading towards the recovery of the Basin's salmon. It does not satisfy the substantive requirements of tribal and international treaties committing this nation to restore Columbia Basin salmon. Likewise, it does not satisfy the needs of the thousands of families dependent on commercial and recreational salmon fishing for their livelihood and the hundreds of thousands of recreational anglers.

For this issue to move forward, several things must occur:

- The Administration needs a higher level presence in the region, capable of giving orders to the federal agencies, especially the hydro agencies, whose activities are continue to endanger Columbia Basin salmon.
- The federal, state and tribal plans need to be pulled together by the Administration into a single, binding recovery plan and the states and tribes must be given real, co-management authority.
- Binding dispute resolution needs to be implemented, perhaps through continuing court jurisdiction, and given teeth.

- Until this occurs, recovery efforts, especially spending, need to focus on components found in all three plans -- so as not to prejudice one over the other.
- The authoritative scientific views of the NMFS's own Independent Scientific Advisory Board need to be given more credence by NMFS and the Administration. This is the best science available and the NMFS is ignoring it. Rather, NMFS's relies far too much on the decidedly un-independent scientists in charge of their own fish bargaining program to direct policy.

Thank you very much for the opportunity to speak to you. If there are any questions I will gladly answer them.

DISCLOSURE REQUIREMENT  
Required by House Rule XI, clause 2(g)

1. Name: *Justin Hayes*
2. Business Address and Phone Number: *Save Our Wild Salads  
1249 Walling St.  
Baltimore MD 21230*
3. Organization you are representing: *Save Our Wild Salads*
4. Any training or educational certificates, diplomas or degrees which add to your qualifications to testify on or knowledge of the subject matter of the hearing:  
*M.S. Earth Systems, Stanford University*
5. Any professional licenses or certifications held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:
6. Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:  
*Owner/Partner in the restaurant business for Silver Rivers Hotel.*
7. Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:
8. Any Federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), the source and the amount of each grant or contract:  
*None*
9. Any Federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), by the organization(s) which you represent at this hearing, including the source and amount of each grant or contract:  
*None*
10. Any other information you wish to convey to the Committee which might aid the members of the Committee to better understand the context of your testimony:



**NORMAN M. SEMANKO**

Mr. Chairman and members of the subcommittee, ladies and gentlemen, my name is Norman M. Semanko. I am an attorney with the Twin Falls, Idaho law firm of Rosholt, Robertson & Tucker. Our firm represents various clients in the natural resources field, including a number of canal companies and irrigation districts.

I am here today representing the Twin Falls Canal Company and the North Side Canal Company, two operating companies organized under the 1894 Carey Act, which together deliver irrigation water to approximately 360,000 acres in the Magic Valley of south central Idaho. The canal companies hold natural flow rights from the Snake River, as well as storage rights in federal reservoirs constructed by the U.S. Bureau of Reclamation.

Our firm also represents the Committee of Nine, which is the official advisory committee for Water District 01 in the State of Idaho.

We appreciate the invitation to testify today regarding the National Marine Fisheries Service and salmon management and recovery in the Pacific Northwest.

1. NMFS and the Role of Idaho Water in Salmon Recovery

Our primary concern with NMFS is the role that Idaho water, including water stored in federal reservoirs, is being asked to play in salmon recovery. The current biological opinion on Federal Columbia River Power System operations requires that 427,000 acre-feet be provided annually from the upper Snake River Basin as an interim measure to help mitigate downstream impacts on the salmon. The bulk of this water has been provided from Reclamation reservoirs in Idaho. This is despite the fact that the listed salmon do not exist in this part of Idaho.

While Idaho irrigators do not believe that scientific or legal justification exists to send this water out of Idaho, they have been willing to allow NMFS and the Bureau to use up to 427,000 acre-feet annually through the year 1999 as part of the adaptive management program, even going so far as to support a temporary state law to this effect.

1999 is the year that NMFS is scheduled to make a decision regarding the long-term measure for salmon migration and recovery. The options outlined in the 1995 biological opinion do not include flow augmentation as a long-term solution, but rather as an intermediate stop-gap measure.

It is our continued belief that the long-term solution should not include water for flow augmentation from Idaho's Reclamation reservoirs. We do not believe that any justification exists for continuing to use this water for flow augmentation beyond 1999 and intend to hold NMFS to its word that flow augmentation is only an intermediate measure.

NMFS' 1995 biological opinion was recently challenged by several environmental groups before the U.S. District Court for the District of Oregon in a case titled American Rivers v. NMFS. During the course of the lawsuit, the environmental groups filed a complaint and a motion for summary judgment, arguing, among other things, that additional steps need to be taken to acquire more water from Reclamation reservoirs in Idaho,

including Bureau of Reclamation consultation with NMFS on those projects. The thrust was that flow targets established on the lower Snake River are firm requirements which must be met each and every day of the season. A sixty-day notice of intent to sue for failure to consult was sent to the Bureau during this period.

Judge Marsh's April 3, 1997 ruling denied the environmental groups' motion for summary judgment on all points, including the assertion that flow targets are mandatory. With regard to alleged failures in the upper Snake River Basin, Judge Marsh ruled that the issues were too speculative and unripe. In other words, the environmental groups lost.

Despite this resounding victory for NMFS, NMFS and the Bureau have nonetheless decided to give the environmental groups exactly what they asked for in the lawsuit: consultation on Bureau reservoirs in the upper Snake River Basin. Despite our pleas that consultation is not necessary, and that NMFS and the Bureau have done all that is required, they have decided to move ahead with the consultation.

The 1995 biological opinion states that upper Snake consultation would not be required unless the Bureau failed to make significant progress in obtaining the 427,000 acre-feet. Largely because of cooperation from Idaho and its irrigation community, the Bureau has been able to meet this requirement. Nevertheless, the Bureau and NMFS are commencing consultation.

It is worth noting that FERC has not yet decided to consult with NMFS, despite a similar sixty-day notice of intent to sue and a strongly worded letter from NMFS urging FERC to initiate consultation. All of this leads us to believe that the NMFS-Bureau consultation decision was the product of politics.

**Our very clear message for NMFS and the Bureau is that this consultation process cannot be used as a vehicle to increase the 427,000 acre-foot requirement. Rather, it should confirm that operation of upper Snake River Basin reservoirs does not adversely impact the salmon. The problems exist downstream and in the ocean and should be addressed at the source. In addition, the NMFS-Bureau consultation must not eliminate the requirement contained in the 1995 biological opinion that all water be obtained and utilized in a manner that is consistent with applicable state law and from willing sellers.**

It must be remembered that flow augmentation has been identified only as an interim measure. In our view, any effort to increase the current commitment from Idaho would signal that NMFS does not intend to adhere to the decision path set forth in the 1995 biological opinion regarding the long-term solution for salmon recovery. In other words, it would demonstrate that NMFS intends to make flow augmentation a long-term strategy. This would be met with strong resistance from Idaho irrigators and, I strongly suspect, the State of Idaho.

We urge this subcommittee to provide oversight in the NMFS-Bureau consultation process and help assure that NMFS adheres to its 1999 deadline, including the commitment that flow augmentation will not be part of the long-term solution for salmon recovery.

## 2. NMFS' Failure to Deal Adequately with Critical Aspects of Salmon Recovery

As representatives of upper Snake irrigators who are geographically far-removed from the salmon's mainstem migration corridor, we cannot help but notice NMFS' failure to deal with critical downstream impacts on the salmon. We perceive a basic failure to meaningfully address those management issues over which NMFS has jurisdiction.

A major concern is NMFS' treatment of the ocean. Even though the anadromous salmon spend a majority of their lives in the ocean, NMFS failed to include the ocean in its critical habitat designation under the ESA.

Fortunately, Congressional action on this issue was provided by a September 12, 1996 amendment to the Northwest Power Act, requiring the Northwest Power Planning Council to "consider the impact of ocean conditions on fish and wildlife populations". The issue was addressed in Northwest Power Planning Council Issue Paper 97-6, "Consideration of Ocean Conditions in the Columbia River Basin Fish and Wildlife Program".

Led by this Congressional direction, NMFS is perhaps beginning to address this problem, as well. For example, in its Essential Fish Habitat rulemaking, NMFS generally concludes that marine habitats which have not been included in critical habitat should be included in Essential Fish Habitat. For species like the endangered Snake River salmon, which spend most of their life in the ocean, it seems obvious that marine habitat must be included in NMFS' deliberations.

Despite the recent attention given to the ocean, the signs are that NMFS is still not dealing with harvest in a meaningful way. It is perhaps not well enough known that salmon numbers in the Columbia River Basin had dropped dramatically as the result of over-harvest, even before the first federal dam was put in place in 1938. From the acceleration of commercial fishing operations in the 1860's and 1870's until 1938, Columbia Basin salmon numbers are estimated to have plummeted from between 16 and 20 million to approximately 2.5 million, causing a federal government report prepared prior to the construction of Bonneville Dam in 1938 to observe that the salmon had already been harvested with "destructive capacity".

If a species is threatened or endangered, or is not sustainable, the first thing that should be curtailed is harvest. For the Columbia River Basin salmon species, we are still harvesting the wild endangered salmon. Mitigation and other activities should be secondary, to the extent they are even necessary.

Between 1,000 and 3,000 wild salmon have returned to Idaho each year for the past two years, whereas, Idaho has habitat to support over 10 million salmon smolts. There is no habitat problem in Idaho, but the environment at the eight federal dams and reservoirs, including predators, are a problem, as is harvest. NMFS has that authority to deal with these problems under the ESA and other federal laws.

We suggest that the subcommittee ask NMFS to report on how it plans to deal with these downstream problems and provide some direction to the agency.

### 3. NMFS' Expanding Regulatory Role

We are also concerned about what appears to be a rapidly expanding regulatory agenda by NMFS into areas over which they do not have primary, if any, jurisdiction.

The most recent example, discussed at some length above, is NMFS' insistence that FERC and the Bureau of Reclamation initiate consultation on the Hells Canyon hydroelectric complex and upper Snake storage reservoirs. These decisions should be reserved for the action agencies to make, not driven by NMFS. In addition, the NMFS-Bureau consultation appears contrary to the clear terms of the 1995 biological opinion which states that consultation may be required only if the Bureau fails to make significant progress in securing upper Snake water. The Bureau has been successful in its efforts, making the decision to consult all the more difficult to comprehend.

In addition, NMFS' Essential Fish Habitat rulemaking has turned a relatively simple Congressional amendment to the Magnuson Act into a convoluted consultation process which unnecessarily duplicates the ESA consultation process. While the goal of having government agencies communicate and cooperate is a noble one, there are already too many regulators and policy makers involved and too many processes underway to save the salmon. The current bureaucracy and redtape have made salmon recovery almost impossible. Adding the additional layer of Essential Fish Habitat and the associated evaluations and consultations will only bog the salmon recovery program down further.

To streamline the process and avoid duplication or, worse yet, inconsistent results, NMFS consultation under the Magnuson Act should not be required in cases where NMFS has already consulted and issued a Biological Opinion or Recovery Plan, or approved a State Conservation Plan covering the same area and the same activities.

Biological Opinions and Recovery Plans issued under the ESA both provide direction to federal agencies, therefore satisfying the basic intent of the amendments to the Magnuson Act. Recovery Plans also contain non-binding recommendations for states agencies to assist in the recovery and conservation of species, satisfying another requirement of the Magnuson Act. For species such as the endangered Snake River salmon, which have had a Biological Opinion and Draft Recovery Plan developed, there is no need for NMFS to perform an overlapping consultation.

NMFS' Essential Fish Habitat proposal also provides that designations may be made within both Federal and State waters. The federal intrusion proposed by NMFS encourages efforts to "minimize depletion/diversion of freshwater flows into rivers" and suggests "increasing flows" as a measure to improve habitat. This presumes the answer to a difficult and yet-to-be resolved scientific question. In addition, this interferes substantially with State authority to allocate and manage water resources. Congress has exercised long-standing deference to States in the area of water management. Absent a clear directive from Congress to the contrary, Essential Fish Habitat should not include State-managed waters.

We urge the subcommittee to carefully oversee NMFS' regulatory activities to ensure that the agency does not continue to expand its power over the States and their citizens.

#### 4. NMFS' Decision-Making Process

Much has been said and written about the desire to create a regional forum for salmon recovery decision-making. NMFS is trying to satisfy this concern through what it calls the Regional Implementation Forum. Given recent departures by Montana and Tribal interests from the NMFS Forum, this does not appear to be the answer to regional decision-making. This should not be surprising, however, because the NMFS Forum was not designed to allow ultimate decisions to be made by the Northwest States. That responsibility lies with the federal agencies, as set forth in the 1995 biological opinion. The States are only advisory to the federal agencies.

Another problem with NMFS' Regional Forum is the agency's failure to take into account the far-reaching impact of its authority. By indirectly regulating activities through consultation with other federal agencies, NMFS makes decisions which impact stakeholders throughout the Northwest, not just in Portland and Seattle. Citizens far-removed from NMFS are impacted. Yet, NMFS' failure to deal with these individuals directly is obvious. Decisions are made and then allowed to trickle down to the ground level. NMFS' Regional Forum should be replaced with a decision-making mechanism that is in better touch with the citizenry of the Northwest. We believe the States are the logical choice.

On this point, we would like to bring to the subcommittee's attention a process implemented by the U.S. Fish & Wildlife Service and others in Colorado entitled the "Upper Colorado River Basin Recovery Implementation Program". This process has as its goal recovering four endangered fish species, while at the same time providing for existing and new water development in compliance with state law and interstate compacts. The Governors of the three states involved -- Colorado, Wyoming and Utah - along with the Secretary of the Interior (U.S. Fish & Wildlife Service) and the Western Area Power Administration, entered into a Cooperative Agreement to work toward these goals and have since jointly designed and implemented an Agreement Regarding Section 7 Consultation and a Recovery Action Plan. The parties recognize state authority to protect and manage fish and wildlife and to manage water. This process has allowed major conflicts that are occurring in other areas of the country, including the Northwest, to be avoided in the Upper Colorado River Basin.

This type of process, in which the federal agencies step-aside and allow the States to take the lead in developing recovery plans, is what we believe is needed in the Northwest. We ask that Congress provide specific direction to NMFS, requiring that the agency seek to enter into a Cooperative Agreement with the Northwest States. As its cornerstone, this agreement should allow the States of the Northwest to come to a consensus regarding salmon recovery measures and their implementation -- without undue interference by the federal agencies. In short, we believe that cooperative decision-making by the States should replace NMFS' current salmon recovery program, including the Regional Forum. Congress is perhaps the only entity that can make this happen.

Once again, we appreciate the opportunity to testify.

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**DISCLOSURE REQUIREMENT**  
**Required by House Rule XI, clause 2(g)**

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3. **Organization you are representing:**  
  
Twin Falls Canal Company and North Side Canal Company
4. **Any training or educational certificates, diplomas, or degrees which add to your qualification to testify on or knowledge of the subject matter of the hearing:**  
  
J.D., Georgetown University Law Center
5. **Any professional licenses or certificates held which add to your qualifications to testify on or knowledge of the subject matter of the hearing:**  
  
Idaho State Bar Association (Chairman, Water Law Section), and Washington State Bar Association
6. **Any employment, occupation, ownership in a firm or business, or work-related experiences which relate to your qualifications to testify on or knowledge of the subject matter of the hearing:**  
  
Attorney with emphasis in water, environmental and natural resources law; instructor at College of Southern Idaho on Legal Issues in Water Management.
7. **Any offices, elected positions, or representational capacity held in the organization on whose behalf you are testifying:**  
  
Attorney

8. Any Federal grants or contracts (including subgrants or subcontracts) which you have received since October 1, 1994, from Department of Commerce (National Marine Fisheries Service), the source and the amount of each grant or contract:

None

9. Any Federal grants or contracts (including subgrants or subcontracts) which were received since October 1, 1994, from the Department of Commerce (National Marine Fisheries Service), by the organization(s) which you represent at this hearing, including the source and amount of each grant contract:

None

10. Any other information you wish to convey to the Committee which might aid the members of the Committee to better understand the context of your testimony:

None

07179799.NMS



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
 NATIONAL MARINE FISHERIES SERVICE

Northwest Regional Office  
 7600 Sand Point Way NE  
 Seattle WA 98115-0070

May 19, 1997

Federal Express USA Airbill No. 4145267221

Elizabeth Anne Moler, Chairman  
 Federal Energy Regulatory Commission  
 888 First Street, N.E.  
 Washington D.C. 20426

Dear Ms. Moler:

On March 20, 1997, the Sierra Club Legal Defense Fund, Inc. (SCLDF) sent a Notice of Intent to Sue for Violations of the Endangered Species Act (ESA) on the behalf of American Rivers and others, to the Departments of Energy and Commerce, the Federal Energy Regulatory Commission (FERC), and the National Marine Fisheries Service (NMFS). I am writing to convey our opinion that a consultation pursuant to Section 7 of the ESA concerning the continuing operation of the Hells Canyon Project, FERC License No. 1971, would provide an important opportunity to address that project's impacts on Snake River salmon and steelhead, which are listed or proposed for listing under the ESA. As the NMFS Regional Administrator in the Pacific Northwest, I have the delegated authority to conduct ESA consultations of this kind. I recommend that FERC initiate a formal consultation with NMFS for this project. The Hells Canyon Project is likely to adversely affect the listed salmon and its designated critical habitat. FERC, with the discretion to adjust this project's operation should consult and conference with NMFS on these species now listed and proposed for listing, as required by Section 7 of the ESA.

NMFS is participating in the formal proceedings that have been initiated by the Idaho Power Company, pursuant to FERC regulations, in preparation for that company's application for a new license for this project which would take effect in August of 2005. This letter concerns the eight remaining years of project operations that are subject to the existing license. Under that license, FERC has retained continuing discretion to adjust the project operations to protect fish, including those listed for protection under the ESA, i.e., the Snake River populations of spring/summer chinook, fall chinook and sockeye salmon, and those proposed for listing (steelhead). See Article 35.

The current operation of the Hells Canyon Project affects listed salmon through its retention and release of water into the lower Snake River. This operation influences the quantity, quality and timing of water. The survival of all three species of listed salmon is related to the amount and temperature of water flowing through the river system during their migration. Fall chinook salmon also spawn in the reaches of the Snake River below the Hells Canyon Dam and thereby exhibit an even greater reliance upon the operation of the Hells Canyon Project to provide adequate flow and water quality.





in this regard I direct you to the March 2, 1995 Biological Opinion (BO) issued by the NMFS under Section 7 of the ESA which addresses the operation of the Federal Columbia River Power System (FCRPS)<sup>1</sup>. In that BO, NMFS found that the proposed 1994 - 1998 operation of the FCRPS projects posed jeopardy to the listed Snake River salmon. NMFS developed a reasonable and prudent alternative (RPA) in that consultation to satisfy ESA requirements, which FCRPS operating agencies are implementing. The RPA calls for an interim operation to improve salmon survival while additional information is developed on which to decide upon a long-term configuration of the FCRPS projects after 1999. In the interim until 1999, the RPA requires dam and reservoir operations at FCRPS projects to achieve greater salmon survival by, among other things, providing water to meet certain spring and summer flow objectives in the Lower Snake and Lower Columbia rivers.

The effectiveness of FCRPS project operations seeking to achieve BO in-river flow objectives is dependent upon water diversion activities in the middle and upper Snake River Basin, and upon the operation of the Hells Canyon Project situated in between. At the time of FCRPS consultation, NMFS incorporated into the RPA the operational requirements for these projects that the Northwest Power Planning Council had adopted in its Fish and Wildlife Program pursuant to the Pacific Northwest Electric Power Planning and Conservation Act of 1980 (NWPAA). Specifically, the BO adopted the Council's requirement for immediate provision of 427 kaf, and progress on securing additional water, from the middle and upper Snake River, and specific drafting levels for Brownlee Reservoir of the Hells Canyon Complex in May, July, August and September. The BO also provided for further coordination between the NMFS and the Idaho Power Company on adjustments to the Council-specified operation and on the use of Brownlee to shape up-river water. These discussions have been carried out informally under the auspices of the Technical Management Team formed by the FCRPS operators and NMFS to develop an annual Water Management Plan and to coordinate in-season operational decisions.

NMFS stands ready to conduct this consultation. We are aware of the many interests and related water management activities that are occurring in the middle and upper Snake River Basin. Contemporaneous with this letter, the Bureau of Reclamation (BOR) and NMFS are initiating an ESA Section 7 consultation concerning the operations of federal water storage projects in that basin. We think that an opportunity exists to engage the key water managers in the basin in a comprehensive effort to avoid or minimize adverse effects of their operations on listed salmon in an integrated manner. We propose that this should include the State of Idaho and various Snake

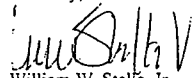
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<sup>1</sup> The FCRPS encompasses those dams and reservoirs owned and operated as a coordinated system by the Corps of Engineers, the Bureau of Reclamation, and the Bonneville Power Administration, including Dworshak, Lower Granite, Little Goose, Lower Monumental and Ice Harbor dams in the Snake River Basin; Hungry Horse, Libby, Albeni Falls and Grand Coulee in the upper Columbia River basin; and McNary, John Day, The Dalles and Bonneville dams in the lower Columbia River.

river irrigators. It should be timed to coincide with the decision to be made concerning the long term configuration of the FCRPS on the lower Snake and Columbia Rivers. We further propose that this consultation and that with BOR serve as the foundation for that broader effort. We think that FERC, and the Idaho Power Company, together with BOR and NMFS, can be critical catalysts for this process.

In closing, this is a matter of great importance for achieving the objectives of the Endangered Species Act for anadromous fish in the Columbia and Snake River Basins. If you have any questions about NMFS' recommendation your staff may contact Mr. Brian Brown, Program Director, NMFS Hydropower Program, (503)230-5417, in Portland, Oregon.

Sincerely,



William W. Stelle, Jr.  
Regional Administrator

cc: Mark Robinson, Director  
FERC Division of Licensing and Compliance  
Distribution List for Project No. 1971

**Eluid Martinez  
Commissioner, Bureau of Reclamation  
Department of the Interior**

**before the**

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

**August 15, 1997**

**Garden City, Idaho**

Mr. Chairman, and members of the Subcommittee, my name is Eluid Martinez. I am Commissioner of the Bureau of Reclamation. I appreciate the opportunity to attend this hearing focusing on the National Marine Fisheries Service's (NMFS) role in the restoration of Columbia River basin salmon populations.

I am pleased to say that Reclamation has a good working relationship with NMFS. As you know, many runs of wild salmon and steelhead from the Columbia River southward are in danger of extinction and have been proposed or listed by the National Marine Fisheries Service. Reclamation believes that recovery of these runs is possible, but recovery will depend upon the involvement, cooperation, and a commitment by all stakeholders. Reclamation appreciates the leadership role NMFS has taken to involve and work collaboratively with the various stakeholders on this very complex issue. Reclamation has experienced a positive and cooperative relationship with the National Marine Fisheries Service and has every reason to believe that this positive relationship will continue.

The Bureau of Reclamation is substantially involved in efforts to recover Columbia River basin salmon resources. The Biological Opinion issued by the NMFS on the operations of the Federal Columbia River Power System in March 1995, calls on Reclamation, along with other operating agencies, to operate their facilities in a way that does not jeopardize survival of the listed species. Specifically, this opinion calls on Reclamation to provide 427,000 acre-feet of water annually from its upper Snake River projects, to draft Lake Roosevelt in Washington 10 feet each August and to draft Hungry Horse Reservoir 20 feet each August to augment flows through the Lower Snake River and Lower Columbia River for juvenile and adult salmon migration. Reclamation accepted these recommendations in a record of decision dated May 1995.

Reclamation has provided 427,000 acre-feet water each year through water rentals from Idaho water banks, by releasing uncontracted water from Reclamation reservoirs, and through a willing-seller water acquisition program. Reclamation has met the NMFS-requested volumes from Lake Roosevelt and Hungry Horse Reservoir.

Water management during the salmon migration season is the responsibility of the Technical Management Team, a technical arm of the Implementation Forum comprised of staff from the states, Tribes, and Federal agencies. This technical team makes the day-to-day decisions regarding operations prescribed in the Reasonable and Prudent Alternative developed by the NMFS and the operating agencies named in the Biological Opinion. Although system operations are prescribed in the Reasonable and Prudent Alternative, the Biological Opinion recognized that new information would be available during the life of the Biological Opinion, and the Reasonable and Prudent Alternative allowed for adaptive management in certain kinds of operations, i.e., transportation vs in-river, spill, system configuration, etc.

The National Marine Fisheries Service forum provides opportunity for the States, the Tribes and the Federal regulatory and operating agencies to participate in the process. The issues involved are clearly not simple, nor is there consensus about specific actions and whether specific actions are worth the effort. In Reclamation's view, NMFS has considerable expertise in the field of "salmon science." And as the administering agency, Reclamation must give serious consideration to the recommendation of NMFS in this manner.

In conclusion, the Bureau of Reclamation believes that the steps that the National Marine Fisheries Service has taken and forums it has created to deal with the restoration of the Columbia River basin salmon populations should be supported. Species restoration will take the commitment and involvement of all stakeholders.

Mr. Chairman, this concludes my testimony. I will be pleased to address any questions.

### Testimony of Scott L. Campbell

My name is Scott L. Campbell. I am a shareholder in the Boise, Idaho, law firm of Elam & Burke. I am the Chairman of the Environmental and Natural Resources Law section of the Firm. I am here representing the Idaho Farm Bureau Federation and its 47,000 family farm members. I am a native of Idaho, and my ancestors have made Idaho their home since the 1860s. I love this state, its people, and its history. Because of this fondness for Idaho, it is with great sadness that I address you today.

Idaho and some of its hardest working citizens are under siege. The attacking army is not a foreign expeditionary force bent on conquest and occupation. Instead, it is an endless horde of insensitive, insulated, federal bureaucrats who have two primary agendas:

- 1) self-preservation—i.e., keep their jobs; and
- 2) central control and regulation of any economic activities involving land, water, or air.

Idaho and its citizens relying upon a natural resource-based economy have fought against this federal army for several years now—at great costs: economic, emotional, and time.

I would like to provide you with two concrete examples of the real price which Idaho citizens are paying for this misguided, malicious war which our own U.S. government is conducting against the livelihoods, lifestyles, and property interests of the citizens which it is supposed to protect and benefit.

My first example involves the Columbia/Snake River salmon and steelhead. I will not focus upon the history of the Endangered Species Act ("ESA") listing process, nor will I attempt to set forth the "silver bullet" solution to the problem. Many people more capable than I have tried and failed in that effort.

Instead, I will briefly describe the havoc which has been wrought by the National Marine Fisheries Service ("NMFS") and its consulting federal agencies. In June 1995, NMFS adopted a biological opinion for the 1995-98 operation of the Columbia River Federal Power System. Part of the biological opinion called for flow augmentation water of 427,000 acre feet ("427 KAF") from Snake River Basin federally-operated storage reservoirs. These reservoirs were building primarily, and in some cases exclusively, for irrigation project use and paid for by water contract holders. Despite the specific restrictions concerning water use set forth by Congress in the individual project authorization statutes, despite the clear requirements of the 1902 Reclamation Act for the Bureau of Reclamation to comply with state water law, and despite clear, unequivocal contract language to the contrary, the Bureau of Reclamation has bullied, begged, borrowed, bought, cajoled, cursed, and threatened Idaho water users in its efforts to locate water for the 427 KAF under the NMFS Biological Opinion—all of this to avoid a jeopardy finding regarding operation of the Columbia River Federal Power System.

Admittedly, in many cases the Bureau of Reclamation is being forced to take these actions by NMFS, but it is taking them nonetheless. No longer is the primary role of the Bureau of Reclamation to provide water to further economic productivity. Now, its primary function appears to be environmental remediation and recovery.

Why does 427 KAF matter to Idaho? Two basic reasons: 1) economic vitality; and, 2) self-determination.

First: economic vitality. 427 KAF in a poor water year will mean the difference between harvest of a marketable crop and no crop at all. Idaho's irrigation storage reservoirs provide critical water in times of shortage and carry-over water in drought cycles. Removing 427 KAF from that supply has direct economic consequences. Also, NMFS is seriously suggesting doubling or tripling the amount of flow augmentation water from Idaho. Such action would destroy Idaho's present agricultural economy.

Second: self-determination. Idaho has never supported federal control of its economic destiny. In Idaho, control of its water resources directly relates to control of its economic future. Idaho citizens have always been self-reliant. This has been demanded of us by the harsh environment we live in: cold winters/hot summers, sagebrush and bunch grass, rock and sand. To carve out a civilization in this great expanse of high desert, you needed a lot of determination, hard work, stubbornness, and water. Clearing millions of acres of sagebrush and digging thousands of miles of irrigation canals does not tend to produce weak-willed, dependent people, who like to be told what to do by the federal government. This is especially true when you are dealing with their most precious resource: water.

Consequently, the actions of NMFS and the federal agencies which are forced to consult with NMFS under the ESA attack two of the core interests of Idaho's citizens: 1) economic vitality, and, 2) right of self-determination -- their independence from tyranny.

My second concrete example of the federal bureaucratic war against Idaho and its citizens involves the Bruneau Hot Springs Snail.

The Bruneau River Valley is an isolated farming and ranching community located 40 miles south of the U.S. Air Force Base outside of Mt. Home, Idaho. Approximately 120 families work farms and ranches, some of which have been in their families for over 120 years. Much of the land is irrigated by groundwater pumping from a geo-thermal aquifer.

In 1985, the U.S. Fish & Wildlife Service ("Fish & Wildlife") embarked upon a pre-determined process to list a tiny snail in the Bruneau area as an endangered species. This snail -- named the Bruneau Hot Springsnail -- was found in a localized area of hot springs and seeps in the vicinity of the Bruneau River. After extensive efforts by the affected citizens and the Idaho Department of Water Resources to convince Fish & Wildlife that the snail was not endangered, the Service determined the snail was endangered and listed it as such under the ESA. Because Fish & Wildlife believed that the hot springs habitat of the snail was drying up due to groundwater pumping for irrigation, it instructed the Farmers Home Administration to cease processing any new or renewal loans for farm operating purposes.

Based upon the economic devastation to the Bruneau farms and ranches which would result from the Fish & Wildlife action, the Idaho Farm Bureau Federation, the Idaho Cattle Association, the Owyhee County Commissioners and others brought suit for declaratory and injunctive relief against Fish & Wildlife in U.S. District Court in Idaho. I served as attorney for

the plaintiffs. Through the course of the litigation, we were able to establish that Fish & Wildlife violated the procedural due process rights of the affected Bruneau citizens in the snail listing process.

The District Judge decided the listing process was fatally defective because Fish & Wildlife:

- 1) failed to provide adequate notice of a re-opened comment period;
- 2) failed to provide an adequate period for additional comment;
- 3) failed to seriously consider or respond to critical comments made against the proposed listing; and
- 4) failed to make significant scientific studies available for public review and comment.

Based upon these significant flaws, the District Court invalidated the listing. That decision was a major relief and a major victory for the Bruneau Valley farmers and ranchers. Unfortunately, the decision was appealed to the U.S. Court of Appeals for the 9th Circuit by two environmental litigation groups who intervened in the District Court case. The 9th Circuit agreed that Fish & Wildlife had violated the procedural due process rights of the Bruneau Valley citizens, but vacated the District Court decision because of the the Court's view of the over-riding need to protect endangered species under the ESA. It remanded the case back to the District Court and Fish & Wildlife to conduct a listing process without the procedural due process violations identified by the original District Court decision.

The Fish & Wildlife Service recently concluded a new public comment period on the remand from the 9th Circuit and a decision on the listing is currently under consideration. If Fish & Wildlife again lists the snail as endangered, that decision is subject to further potential judicial review by the plaintiffs and if not listed -- potential judicial challenge may be pursued by the environmental litigators.

So what have we gained? Very little, at best. The Bruneau Valley farmers and ranchers are still agonizing over their uncertain status because of the federal government's power to shut off their water to supposedly protect a tiny snail. The Fish & Wildlife Service has gotten a terrible black eye for being an unfair, over-bearing, insensitive bureaucracy which cares nothing about productive, hard-working Americans, who are trying to make a living and preserve a lifestyle and property which has been in their families for generations.

Apparently the environmental litigation groups have gained because they succeeded in vacating the District Court decision which invalidated the initial listing of the snail as endangered. But they have also lost because this case illustrates the crying need to reform the ESA to make it more reasonable and balanced -- something the environmental litigation groups oppose.

In my humble opinion, unless the ESA is substantially changed, the citizens of Idaho and

other states in the West will become ever more polarized and combative. This history of Idaho and the West is filled with incidents of violence, even murder, involving disputes over water. In the West, water is more valuable than gold. You cannot drink gold, you cannot eat gold, you cannot grow crops with gold.

I believe that Congress can help prevent the potential violence which could become a very real possibility if it modifies the ESA to make it balance the real economic interests of citizens with the preservation interests of endangered species. If nothing is done, everyone loses: the endangered species, the bankrupted farmers, the federal agencies, the Congress, and the United States as a whole.



### BRUCE M. SMITH, ATTORNEY

Mr. Chairman and members of the subcommittee, thank you for inviting me to speak with you today. My name is Bruce Smith. I am a partner in the Boise, Idaho, lawfirm of Rosholt, Robertson & Tucker where I practice primarily natural resource and water law.

I represent a number of clients in the timber, mining and agricultural industries who have a substantial interest in seeing salmon recovery take place in an efficient and successful manner. I represent, for instance, the Intermountain Forest Industry Association, which is the trade association for the industry in Idaho and Montana. I also represent Noranda Mining, Inc. which is working on salmon restoration in the Salmon, Idaho area. I also work with a number of irrigation and water-related clients, including the Idaho Water Users Association, who are interested in salmon recovery efforts.

Today I am here not so much on behalf of any individual client, but rather to offer my perspective and observations on how NMFS is fulfilling its role to help recover salmon populations in the Northwest. I offer these comments from the perspective of someone who has been involved in the salmon recovery effort since the initial filing of the petitions to list, as a former participant in Senator Hatfield's Salmon Summit process, and as an attorney working with private parties on salmon matters on a continuing basis. I also hope that I can factor in some insight into agency activities since, prior to being an attorney, I was a biologist with the U.S. Forest Service.

There are two points I would like to discuss today:

- 1). Despite the fact that problems with the dams on the Columbia and lower Snake Rivers remain the foremost obstacle to salmon recovery efforts, NMFS appears to be searching for a solution based on using Idaho water and habitat management measures to overcome these problems.
  - 2). Recently proposed policies on Conservation Agreements with Assurances and Safe Harbor Agreements give NMFS a valuable opportunity to recharacterize its relationship with private landowners and states.
1. NMFS cannot solve the problems at the lower Snake River dams by requiring more Idaho water and by trying to mitigate for the problems by shifting its focus to habitat measures.

First, let me say that everyone involved in the salmon recovery effort recognizes that NMFS has been presented with a very difficult problem. The agency has had a troubled start. At the time of listing, NMFS was not adequately staffed, funded, or sufficiently experienced to address the multitude of issues that it had to deal with - in particular, its obligations regarding consultation under Section 7 of the ESA. Coupled with that

situation, NMFS's decisions have been challenged in court almost continually. However, it appears the funding and staffing problems have been largely rectified, and based on my dealings with the agency, it has been successful in bringing in some people with the knowledge and appropriate experience to deal with the issues.

Nevertheless, it sometimes appears that we are making no progress towards meaningful recovery. Although it has been some years since the Salmon Summit, that regionally-based attempt to address salmon recovery was successful in one fashion. It alerted and educated the region of the problems faced by our anadromous fisheries, and it provided a forum for discussion of the possible solutions. One key aspect was recognition of the 4 H's - the four major factors affecting salmon. They are hydro, habitat, harvest and hatcheries. These factors direct many of the present efforts at salmon recovery.

However, there wasn't then, nor has there been in the intervening years, any disagreement with the fact that by far the most significant of the factors was the hydro factor - and that one of the most significant components of that factor was the adverse impacts associated with the lower Snake River projects. Although important, the other factors paled in comparison to the hydro situation. It also was shown, and again, there was little disagreement, that given the problems associated with the lower Snake projects, there was simply not enough water in the State of Idaho to overcome those impacts. Furthermore, trying to mitigate for those problems by focussing on the other factors wasn't going to be successful. Even then, it was constantly noted that large amounts of high quality habitat in Idaho were, and still are, unoccupied. Efforts to "fill up" that habitat with hatchery stocks were unsuccessful. In other words, augmenting the runs couldn't make up for the cumulative detrimental effects of the dams. This wasn't surprising to some. Attached to my testimony are some excerpts from a March 1950 report to the 81st Congress (House Document 473) from the Secretary of the Interior and the Commissioner of Reclamation which raised the specter that augmentation might not be adequate to mitigate for the adverse impacts of the dams to be constructed on the Columbia and lower Snake Rivers. At the time of this report, only the Bonneville dam was in existence.

Yet it appears that recently NMFS has accepted the significant impacts associated with the dams and tried to mitigate for them by focussing on other measures. This committee has already heard about apparent attempts by NMFS to require yet more water from the State of Idaho to alleviate the problems at the lower Snake dams. These efforts ignore the well-recognized fact that there isn't sufficient water to do so and, furthermore, that any augmentation of flows was intended to be only an interim measure. Trying to obtain more water through the Section 7 consultation process only undermines NMFS's efforts at salmon recovery and ignores the

reality that NMFS must focus on finding a solution to the problem at the site of the problem.

More problematic in my view is that NMFS has apparently sought to shift the burden of recovery efforts from the dams to the other factors-in particular the habitat factor. Let me give you a couple of specific examples. NMFS's current biological opinion for flow operations, its 1995-98 opinion, with implementation of its reasonable and prudent alternatives, recognizes mortality of 21% for spring/summer chinook adults, 39% for fall chinook adults, 24-86% for juvenile sockeye and spring/summer chinook and 62-99% for juvenile fall chinook. Now remember, this is the biological opinion on the major factor affecting salmon decline and recovery.

So how does NMFS handle land management activities such as grazing? NMFS has concluded that grazing on one cattle allotment on the Boise National Forest (where NMFS did not establish any mortality levels) would jeopardize the continued existence of spring/summer chinook. In its incidental take statement, NMFS required that all redds had to be fully protected from livestock access and imposed a zero level of incidental take associated with livestock stepping on a redd. Furthermore, when requiring construction of fences to protect a salmon or salmon redd, NMFS required that no more than 20 minutes of temporary displacement be permitted. This example is not meant to suggest that habitat measures aren't necessary in some instances. However, given NMFS's conclusions in these two biological opinions, it seems to me something is out of balance.

A second example. NMFS has recently proposed a regulation known as the Essential Fish Habitat (EFH) rule. The rule seeks to impose an elaborate consultation procedure on federal agencies, and perhaps states, that is probably more burdensome than efforts already existing under the ESA. At the very least, the obligations are duplicative. Rather than devoting efforts towards recovery of listed stocks, this rule seeks to promote harvestable levels of fisheries. The rulemaking sets up a fairly complex, procedurally strict process that, in my opinion, is largely a paper-shuffling exercise. While there is certainly nothing wrong with agencies discussing and working together to protect habitat, it is a waste of resources and funding to establish a procedural mechanism such as the EFH process. Furthermore, it does not appear that NMFS has any funds to implement the rule should it be finalized, thus raising the question of whether existing resources will be diverted from endangered species recovery measures to that effort. Even the agencies affected by the rule are largely ignorant of its existence. In talking with representatives of other federal agencies, I have not found a single person who knew what EFH was or had any clue as to their impending obligations under the rule. The EFH rule reflects a waste of resources at a time when those resources are needed to meet NMFS's obligations under the ESA.

2. **Recently proposed policies on Conservation Agreements and Safe Harbor Agreements offer NMFS a valuable opportunity to incorporate non-federal landowners into recovery efforts and to recharacterize NMFS's relationships with private landowners and states.**

I have suggested in my previous comments that NMFS has an unbalanced perspective when comparing the impacts of land-based activities to those associated with the dams. However, that does not mean that habitat-based efforts are unwarranted. They are important and should not be ignored.

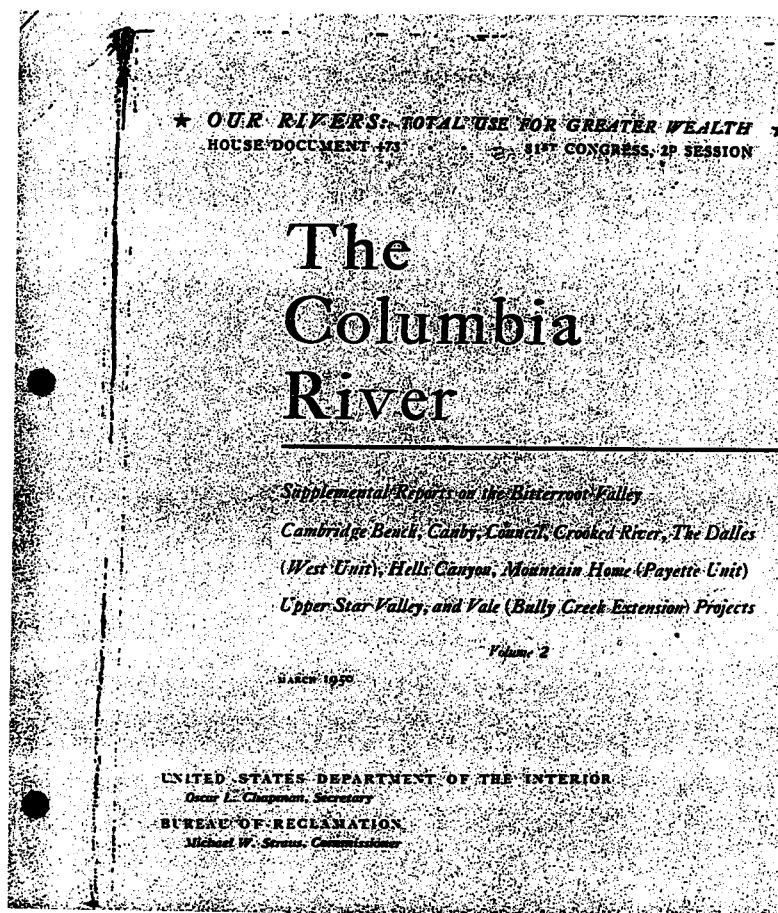
Nevertheless, the fact remains that we have lots of high quality, unoccupied habitat in Idaho. Significant efforts have been implemented to protect and maintain that habitat. In particular, on federally-managed lands, policies such as PACFISH and INFISH have been adopted to make certain this habitat remains available if the fish return.

There is, however, one additional avenue that offers NMFS a valuable opportunity to see that habitat measures are not left out of the recovery picture. This is the opportunity to incorporate private and state-owned lands into the recovery effort. To do so, however, is going to require some innovative and fresh approaches by NMFS. Recently proposed policies such as Conservation Agreements with Assurances and Safe Harbor Agreements give NMFS some new tools to use. They also provide an opportunity for NMFS to recharacterize its role from that of a regulator to that of a partner and to work more closely with private and state entities on both recovery and pre-listing conservation efforts.

It is important that NMFS recognize the potential of these new tools. Under the existing ESA, non-federal landowners are subject to Section 9 liability for "taking" a listed species. Thus, the landowner who wants to improve his land, thereby inviting in a listed species must also recognize that he is potentially increasing his liability. This is a disincentive. These new tools provide a means whereby this disincentive can be removed. In my opinion, the key to successful implementation of these policies is recognition that the role of private lands in the context of Section 9 is different from the role of federally-managed lands which is typically implicated by the Section 7 obligations of federal agencies. These new policies are a potentially significant opportunity for NMFS, and the agency should be encouraged to adopt and implement them in a way that will prove beneficial to recovery efforts.

In summary, NMFS must work to eliminate the problems at the dams by focussing on solving the problems at the dams. It should not seek to mitigate the adverse effects by requiring more water from Idaho and by trying to compensate for dam mortality by unreasonably restricting land management activities. The proper

implementation of Conservation Agreements and Safe Harbor Agreements also offer NMFS a valuable opportunity to shift from regulator to partner and to incorporate non-federal lands into the recovery process. That concludes my remarks. Thank you.



## CHAPTER III

## Hells Canyon Project in Relation to Columbia River Fishery

Prompt construction of the Hells Canyon project could help solve problems which face the salmon industry of the Columbia River.

### SALMON FISHING INDUSTRY

All phases of the industry are involved. The commercial fisheries, which include both the taking of fish in the lower Columbia River and an important catch of Columbia River salmon in ocean trolling operations, are of major significance, but sport fishing and the traditional Indian catch for subsistence purposes are of importance. The salmon fishing conducted for both commercial and subsistence purposes by the Indians within reservations and at usual and accustomed places along the Columbia and tributaries is in accordance with right recognized in treaties between the United States and the various tribes involved. The annual monetary values of these elements of the industry, totaling \$21,000,000, are estimated as follows: commercial, \$17,000,000; Indian subsistence, \$500,000; and sport, \$3,500,000.

The industry, in all its phases, is dependent upon the migration of adult salmon and steelhead trout from the Pacific to spawning areas in the Columbia River Basin; the return of the young fish to the ocean; and the subsequent repetition of the cycle. An annual harvest of fish may be taken without adverse effect upon the resource, but if the catch is excessive, or if other conditions seriously interfere with the cycle, the runs may be depleted and the entire basis of the industry thereby threatened. This possibility, and particularly the likelihood that it might be brought to pass by proposed programs for development of the water resources of the Columbia River, has been a concern of fishery interests, and has led to careful consideration of means for avoiding that outcome.

Some decline has been experienced in the catch of Columbia River salmon and steelhead trout during the

past two decades. The principal causes to which the decline is attributed are: overexploitation of the fishery; increased diversion for irrigation and power; pollution; and the loss of spawning areas cut off by insurmountable dams.

### EFFECTS OF MAIN STEM

The greatest cause for concern with respect to the future, however, has been the proposed construction of additional dams across the main stem of the lower Columbia and lower Snake Rivers. One structure—Bonneville Dam—exists on the lower Columbia. Careful counts of adult salmon passing through the fishways which provide access over the dam have been made since 1938, and numerous experiments undertaken to determine the effect of the dam on the salmon migrations. Diminution of the runs has not been evident since construction of the dam, but this is attributed to other circumstances operating to increase the runs and compensating for losses which the experiments indicate have been occasioned by the dam. Particular concern is felt over the addition of other dams, because it is anticipated that their effect upon salmon will be cumulatively harmful.

The barrier created by the dam to adult fish migrating upstream is the least significant of several factors because the fish can ascend ways or ladders constructed for them. It is feared, however, that the cumulative effect of finding and ascending a succession of fishways may be detrimental to the fish runs because of the serious loss in the time, and the great expenditure of stored-up energy required to reach the spawning areas. The fishways are notably less successful as a means for the young fish to pass dams en route downstream to the ocean. The flow of water through the fishways is so much smaller than that over the spillways or through power turbines that the latter routes are the ones which tend to be chosen with some mortality to

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the young fish. The water temperatures in the relatively shallow pools above dams on the lower Columbia are another cause for concern to fishery interests. The temperature of the water in the pools, it is feared, would be so warm as to be conducive to disease, and in a succession of pools might reach temperatures which exceed the tolerance of either adult or young fish, or both. Moreover, the warmer, quiet waters of the pools make favorable habitats for varieties of fish which prey upon the young salmon descending to the ocean.

#### REMEDIAL PLANS

To forestall loss of the runs, which these conditions might cause unless remedial measures can be found and put in practice, two types of studies have been developed and initiated by the Fish and Wildlife Service and States of the Columbia River Basin. One series of studies applying to the entire basin, includes investigations of (1) the migrations of fingerlings with a view to determining means for preventing or minimizing mortality in passing dams; (2) more efficient screening devices and fishways; (3) the effects of impoundments; and (4) improved methods of artificial propagation. These studies are designed to overcome to the maximum possible extent the hazards to fish runs attendant upon water resource developments of various types.

In addition, other measures have been proposed in the lower river development plan, originally advanced by the Fish and Wildlife Service and currently being activated under the joint sponsorship of that Service and the States of Oregon and Washington. The objective of the plan is to increase, to the maximum extent possible, runs of fish in streams tributary to the lower Columbia. Desirable as a means of augmenting runs in the Columbia, if measures to safeguard the passage of fish over additional main-stream dams are successful, the plan would, moreover, insure the maintenance of at least minimum runs in the event those measures are unsuccessful and main-stream dams prove to have the fully adverse effect feared.

The plan contemplates: (1) removal of obstructions to the passage of fish now existing in some of these tributaries; (2) the abatement of pollution; (3) screening of diversions and the construction of fishways; (4) transplantation of up-river runs to unobstructed areas; (5) extension of artificial propagation; and (6) the establishment of fish refuges in which no conflicting development would be permitted.

The plan is large in scale and a relatively long period is required in which to obtain to check upon results, inasmuch as the complete fish cycle requires 4 to 6 years. Hence, a period of 10 years is considered the minimum in which to test the plan and put it into effect.

#### THE COLUMBIA RIVER

##### CURRENT PLANS FOR LOWER RIVER DAMS

McNary Dam, for navigation and power, is under construction by the Corps of Engineers on the Columbia below the mouth of Snake River. In addition, "a series of dams," now determined to be four in number, have been authorized for construction by the Corps of Engineers for the improvement of navigation and the development of power in the Snake River between its mouth and Lewiston, Idaho. Other dams will be required and are planned between McNary and Doonoville to complete slack-water navigation on the lower Columbia. The Dalles Dam, at the head of the pool behind Doonoville Dam, is the most urgently needed from the standpoint of navigation and its relatively early authorization has been contemplated by the Corps of Engineers. Power would be produced at all of these dams.

##### PROPOSAL OF THE DEPARTMENT OF THE INTERIOR

The conflict of interest in use of the river's resources inherent in these and other considerations led the Department of the Interior, in the spring of 1947, to make a preliminary suggestion for resolution of the matter. It was recognized (1) that electric energy would be needed in amounts and on a schedule substantially as indicated in the preceding chapter, (2) that McNary Dam with its probable adverse effects upon fish migrations would be completed as scheduled, and (3) that interest of the fisheries should not stand in the way of the ultimate, full development of the river's resources for irrigation, power, navigation, and flood control with their attendant, manifold benefits to the region and Nation. With these assumptions, it was suggested that construction of the authorized dams on the Snake and the construction of any other dam than McNary on the Columbia below the Okanogan River be deferred until 1958 in order to afford adequate time for placing the lower river development plan in operation and for working out plans to compensate the Indians for losses of fishing rights.

This suggestion was further made contingent upon the ability to develop, at sources other than the authorized dams on the lower Snake River and at the proposed dam at The Dalles, the energy scheduled for production at those places. Possible means suggested for achieving the latter objective were: carrying forward the power installations at Grand Coulee, Rock Island, and Kerr Dams at the most rapid rate practicable; prompt construction of the authorized Hungry Horse, Foster Creek, Detroit, and McNary Dams; and the early authorization and construction of upstream power developments which would not significantly interfere



with fish migrations. Specifically suggested in this connection were the Hells Canyon, Wolf Creek (a potential development on Snake River between the site of Hells Canyon Dam and the mouth of the Salmon River), and the Boundary project on the Pend Oreille River. The latter has been ruled out of consideration for the immediate future because of serious interference with mineral developments, and the Hells Canyon project would logically precede Wolf Creek in the development of the Snake Canyon.

The proposal was referred by memorandum of March 24, 1947, signed by Warner W. Gardner, Assistant Secretary of the Interior, to the Federal Inter-Agency River Basin Committee, which in turn transmitted the suggestion on April 2 to the Columbia River Inter-Agency Committee for study and recommendation. The latter committee held public hearings in Walla Walla, Wash., on June 25 and 26, 1947, to obtain information on attitudes of affected groups towards the proposal. The results of the hearing and subsequent study of the matter by a fact-finding subcommittee led the committee to conclude that although current plans for further installations at Grand Coulee Dam, and the construction of Hungry Horse, Foster Creek, Detroit, and McNary Dams should proceed with all possible speed, and that close cooperation should be maintained with private and public utilities to the end of encouraging the expansion of existing power facilities, the rescheduling of dams now authorized by the Congress would not be to the best interest of the public. The committee recommended against such rescheduling in its letter of October 15, 1947, to the Federal Inter-Agency River Basin Committee. The latter committee concurred in the recommendation, and so advised Assistant Secretary of the Interior W. E. Warner on November 24, 1947.

#### POTENTIAL ASSISTANCE FROM HELLS CANYON PROJECT IN SOLUTION OF FISHERY PROBLEM

It is not the intent of this report to urge postponement of any of the lower Snake River dams. Because the Hells Canyon project has been linked with the possible solution of the Columbia River fishery, however, it will be desirable to indicate the extent to which the project might assist by making such postponement possible.

Installation schedule Q, discussed in the preceding chapter, calls for the initial production of energy on the lower Snake River in December 1953, and at the Hells Canyon plant in September 1958. The desirability of advancing the latter date 2 years also has been pointed out in the interests of meeting prospective loads in the upper Snake Basin. The earliest date at which it is estimated that energy could be made available from the Hells Canyon power plant is July 1955. Hence,

Hells Canyon energy could not be substituted for that now scheduled for production at the first development on the lower Snake. The assistance which the project could provide to solution of the fishery problem thus is dependent upon the extent to which multiplication of dams across the lower Snake River could be deferred by advancing the date for initial operation of the Hells Canyon plant to July 1955. Utilizing the date for initial operation presented in schedule Q, but recognizing that this schedule would involve undesirable delay in serving upper Snake Basin loads, the advancement in time for operation of the Hells Canyon plant would be from September 1958 to July 1955.

Installations in the lower Snake River plants scheduled to go into operation prior to July 1955 total 240,000 kilowatts and are located in the Ice Harbor plant, the lowermost of the four plants currently planned. An additional 60,000 kilowatt unit would bring the ultimate installation at that plant up to 300,000 kilowatts in September 1957.

The capacity planned for installation in the other three plants, and scheduled to go into operation subsequent to July 1955, amounts to 864,000 kilowatts. By years, these installations are as follows:

| Year | Month     | Installation (thousands of kilowatts) |                  |
|------|-----------|---------------------------------------|------------------|
|      |           | During the year                       | Cumulative total |
| 1955 | December  | 110                                   | 110              |
| 1956 | June      | 58                                    |                  |
|      | September | 58                                    |                  |
|      |           | 116                                   | 226              |
| 1957 | September | 58                                    |                  |
|      | December  | 110                                   |                  |
|      |           | 174                                   | 400              |
| 1958 | March     | 58                                    |                  |
|      | June      | 58                                    |                  |
|      | September | 58                                    |                  |
| 1959 | December  | 174                                   | 574              |
|      | June      | 142                                   | 716              |
|      | September | 71                                    | 787              |
| 1960 |           | 142                                   | 929              |

Installation schedule Q also calls for placing in operation at the Hells Canyon plant generators with capacity of 100,000 kilowatts during September in each of years 1958, 1959, and 1960. Total installations called for in the three plants on the lower Snake River and at Hells Canyon at times significant to the following discussion thus are 770,000 kilowatts in 1958 and until September 1959; 860,000 in that month and until December 1959; and substantially in excess of 1,000,000 thereafter.

The Hells Canyon power plant proposed in this report would have an installed capacity of 800,000 kilowatts, with space for an additional installation of 100,000 kilowatts. If promptly constructed to go into

operation in 1955, the Hells Canyon plant thus could readily supply the power estimated to be required from the three Snake River plants above the Ice Harbor Dam. Power production resulting from operation of the project would be adequate also to meet the loads currently scheduled to be served by both these Snake River plants and Hells Canyon at least until September 1959.

Prompt construction of the Hells Canyon project thus would permit deferment of the time when the second plant on the lower Snake River was put into operation until the latter part of 1960. It seems probable that construction activities on the lower Snake River dams would not significantly interfere with fish migrations until a year, or year and a half before the

dam and powerhouse were placed in operation. This is to say, in the event of the noted deferment in construction, obstruction to fish would not be caused by any of the dams on lower Snake River above Ice Harbor prior to 1958.

To summarize: The Hells Canyon project could not be constructed in time to permit deferment of the construction of all four dams on the lower Snake River without major curtailment in scheduled capacity to meet estimated power loads, but prompt construction of the project, with an acceptance of some delay in serving upper Snake Basin loads, would make it possible to defer the construction of three of the dams for approximately the 10-year period desired for adjustment of the fish problem.

**Testimony**  
by  
**Peter K. Wilson, Vice President**  
of the  
**Port of Lewiston Commission**  
**Lewiston, Idaho**  
to the  
**House Subcommittee**  
on  
**Fisheries Conservation, Wildlife, and Oceans**  
**Boise, Idaho**  
**August 15, 1997**

Congressman Crapo, Members of the Committee, and Distinguished Guests. My name is Pete Wilson and I am the Vice-President of the Port of Lewiston Commission at Lewiston, Idaho. I've been a member of the Port Commission for 9 years and although it's not supposed to be a full time job, I spend about as much time on Port business as I do trying to make a living. I'm also a life long farmer in Nez Perce County.

Let me start by telling you a little about the Nez Perce County area. Lewiston is one of Idaho's oldest cities and got started because two rivers, the Snake and the Clearwater, come together in our valley. Early pioneers used those rivers to transport miners and their supplies to the gold fields of Idaho before there were any roads or railroads in our area. Lewiston, in fact, was the territorial capital of Idaho before Boise stole it around the time of statehood. After the miners came the farmers and the lumbermen and the Lewiston area developed an economy based on the natural resources of the area. Today, we still depend on agriculture and timber to provide most of the jobs in the area.

The majority of our region's agricultural production is exported to foreign countries. The US does not need all of the white wheat, dry peas and lentils that northern Idaho and eastern Washington produce. Likewise, large portions of the timber and paper products we produce are exported. Our economy is now very dependent on our ability to export

our surplus products. We make a very positive contribution to the country's balance of trade. We compete, head to head, with other surplus production areas of the world. We do this, in part, because we have a competitive distribution system that includes barge transportation at Lewiston. The river transportation capability is a vital part of our efficient distribution system. We need this barge system to keep our competitive position in a global economy.

Today, there are proposals that suggest the four lower Snake River dams should be removed or breached and that stretch of the river should be returned to its natural state. The Commissioners of Idaho's Seaport believe that such a radical position is premature. There are currently many scientific studies underway to understand the problems facing the improvement of wild stock salmon runs to Idaho. The Port believes that any decision about the future of the Snake River dams must be made by a solid consensus of the scientific merits of any specific proposal. There currently is no such consensus about dam breaching.

Additionally, there is no current consensus within the region concerning who will bear the costs of salmon recovery and what forms those costs should take. Obviously, costs will be incurred, but how they will be distributed throughout the Northwest still has to be determined. The economic, recreational, social and cultural sacrifices our Northwest communities will make for salmon recovery are a significant consideration for the region. We believe that these decisions should be made using the same regional consensus process that scientific decisions must have.

For the past several years, the Port of Lewiston, Idaho's congressional delegation, Native Americans, environmental groups, water interest groups and the Governor's office have struggled to find common ground that will allow Idaho to speak with a united voice to the other states and federal agencies involved in the salmon issue. While this process has been slow, and not without a certain amount of frustration for all parties, progress is being made. The dam breaching proposal threatens the complicated process of consensus building by offering a solution that is not, at this time, scientifically or politically supported.

Salmon recovery is an issue that involves the entire Northwest. The Port of Lewiston has consistently supported a regional solution, founded on sound scientific principles, and supported by a broad political consensus of the entire region. The Port will not support solutions that divide our state for the advantage of one region at the expense of another region. We have never supported the removal of southern Idaho dams or the taking of Idaho water for flow augmentation as salmon recovery measures for the purpose of protecting our own economic interests.

No one has more incentive to solve the salmon problems in Idaho than the Port of Lewiston. Our very existence, the economic survival of many of our businesses, the water based economy that provides jobs for our citizens and neighbors and much of our quality of life is now tied to the future of salmon. We do not and will not apologize for protecting our economic future, for that is the function of a port district. Nevertheless, the Port of Lewiston pledges to continue to participate in regional forums, which will ultimately determine the path salmon restoration efforts take. We will strive to maintain the defense of the economic interests of our valley and our state without making demands that others bear the entire burden of saving salmon.

We ask the Congress of the United States to continue to support a regional solution, which is scientifically defensible and will have the political consensus of the Northwest. The region is well into the process of determining what future actions will be best for salmon recovery. While this process is admittedly slow and expensive, we fail to see any significant benefit by adding additional layers of federal agencies to the process.

We believe that the state Governors and their representatives on the Northwest Power Planning Council are the best sources for developing a regional political consensus. We have confidence that the National Marine Fisheries Service, in consultation with the Army Corps of Engineers, the state fisheries agencies and the Native American tribes will achieve the best available science. The Northwest states and these agencies, we feel, will ultimately recommend to Congress the best available actions for salmon recovery.

Testimony of James W. Grunke  
 Subcommittee on Fisheries, Conservation, Wildlife and Oceans  
 August 15, 1997

#### INTRODUCTION

On behalf of the community of Orofino and the Orofino Chamber of Commerce, I would like to thank the committee for the opportunity to provide these written comments and oral testimony regarding the future of salmon recovery efforts in the Pacific Northwest. As a community that has been drastically and negatively impacted by the salmon recovery efforts, we view it as one of the most important issues facing our region. It is our belief that we have a fairly compelling story to tell regarding the impacts a federal agency such as the National Marine Fisheries Service have on a community and its citizens, and welcome the opportunity to share our story and offer our recommendations.

#### SALMON RECOVERY, DWORSHAK RESERVOIR, AND THE COMMUNITY OF OROFINO

The Community of Orofino is the sacrificial lamb of salmon recovery efforts. Dworshak reservoir has become the primary source of water for the ill-conceived flow augmentation strategy developed by the National Marine Fisheries Service (NMFS). In 1995, the Corps conducted an economic assessment regarding the impacts to the Orofino economy as a direct result of the drafting of Dworshak reservoir for flow augmentation purposes. For the three years of the study, the economic impacts were \$3.3 million loss in 1992, \$5.0 million loss in 1993, and a \$7.1 million loss in 1994.<sup>1</sup> These economic losses have continued and likely cause an annual loss to the Orofino economy of \$5-7 million. This does not include any secondary economic impacts to the community, or the fall and winter losses due to the declining numbers of steelhead returning to the Clearwater River. The drafting of Dworshak reservoir for flow augmentation has had a crippling effect on the area economy. The summer recreational economy has been virtually eliminated. The timber industry has been adversely impacted as Dworshak reservoir can no longer be utilized for log rafting, a clean, inexpensive, and environmentally benign method of transportation. And the supposed trade off by destroying the summer economy by producing more fish (salmon and steelhead) has simply resulted in direct harm to steelhead populations. The harm has resulted in the closure of the fall steelhead season in the Clearwater River in 1996, and the August 11, 1997 announcement by NMFS to list Snake River Steelhead as endangered. Judging by the past record of NMFS, we are not optimistic that this listing will do anything to benefit steelhead populations.

When Dworshak reservoir was constructed, promises were made to the community that in exchange for destroying one of the most productive steelhead rivers - the North Fork of the Clearwater River - that the reservoir would be operated in a manner to maximize the recreational opportunities. These promises have been broken. Additionally, when Congress authorized the U.S. Army Corps of Engineers (Corps) to construct Dworshak dam, it was under the condition that it would be multi-purpose project. These multiple purposes were

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for flood control, hydropower, transportation (the rafting of logs down the reservoir), recreation, and fish and wildlife. All of these authorized purposes have been abandoned without Congressional approval. The Corps has stated that Dworshak reservoir is operated solely to provide releases for flow augmentation. Any effort to meet the Congressional authorized purposes, and benefits, is only incidental. This deviation from the authorized purposes of the project are outlined in a June 16, 1995 letter, which states "...power rule curves' are no longer used at Dworshak since we (the Corps) currently operate the project to provide release for flow augmentation for salmon in the spring and summer... The only exceptions to this for power generation are during emergency situations when firm power loads can not be met or when voltage or transmission instability occurs."<sup>2</sup> This is clearly not what Congress authorized when Dworshak dam was constructed.

While we in Orofino are more than willing to play a role and carry our fair share to recover the salmon species, we are unwilling to continue carrying the major burden of the salmon recovery efforts. NMFS has failed to ever demonstrate that releases of water from Dworshak reservoir have any measurable benefit to increase salmon returns. NMFS has no measure of "evidence of success" for these releases of water on increasing salmon returns, and after five years of the flow augmentation "experiment," not a single study has ever been conducted to determine if releases of water from Dworshak reservoir have made any measurable improvement in salmon recovery. If demands for Dworshak water continue to be made, we must see that there is a demonstrable benefit. We in Orofino view every effort made by the NMFS has been a complete failure, and that the only result has been the decimation of the area economy.

#### **WHERE DO WE GO FROM HERE?**

Since 1992, when Snake river Sockeye Salmon, Fall Chinook, and Spring/Summer Chinook were listed as endangered, we have been committed to a salmon recovery program that is so complex, inconsistent, and uncertain that attempts to describe it would take volumes. NMFS's most recent statements, and the statements of other salmon advocates, suggest that the goal of salmon recovery may be fifty years away. In the meantime, salmon recovery costs will continue to escalate. The *Oregonian* points out that since 1981, \$3 billion has been spent on salmon recovery with an annual tab exceeding \$400 million. To put this in perspective, last year's spending tallied \$438 million, exceeding the \$250 million spent in four years on the Mars Pathfinder program and the \$193 million spent on all other endangered species in the United States in 1993. The result of this \$3 billion expenditure is the continuing downward spiral in the number of salmon.<sup>3</sup>

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#### Reintroducing Economic Considerations

Salmon recovery resources are not unlimited. Even if we throw equity out the window and single out electric ratepayers as the sole "taxpayers" for salmon recovery, there are limits on how much can be collected. Thus, we must prioritize all the available options for assisting salmon recovery in some rational manner, and comparing the cost effectiveness is the only real way to do this. We are certainly not doing this now. The main problem is that no one with any fiscal accountability is involved in the process at all. Only at the grossest level was there any management at all through the overall Memorandum of Agreement salmon cap, and the "cap" is subject to constant renegotiation. The salmon budgeting process can only be termed a disaster. Congress needs to provide some structure here, and ought to start by requiring a formal cost-benefit analysis of each salmon measure. We are spending a fortune on salmon recovery in the most wasteful group of public programs ever to be adopted in the Pacific Northwest.

#### Harvest Management

There is one obvious way to get more salmon in the rivers of the Pacific Northwest: ban all salmon fishing in the ocean so that the entire population returns to the river. By catching salmon in rivers, harvest levels can be crafted to protect each and every river in the Pacific Northwest. Every scientific panel to examine salmon production in the Pacific Northwest has recognized that reduced fishing effort is necessary for increasing production.

The Northwest Power Planning Council's Independent Science Group (ISG) concluded in 1996 that *"(a)ll Columbia River Stocks, with the possible exception of Hanford fall Chinook, are at such low levels that harvest in the ocean will have to be very low or non-existent to allow the habitat restoration proposed herein to have a reasonable chance to succeed,"* and that *"(t)he further that harvest occurs from the spawning grounds, the less likely accurate stock identification becomes, and the lower the likelihood that harvest management can be achieved."*<sup>5</sup> The most promising means of improving harvest management is mass marking of fish and selective (live) harvest. That is the only way that salmon harvest can take place in the mainstem Columbia River without a disproportionate impact on weaker stocks.

The final problem that remains is setting harvest levels. There would need to be a body like the Columbia River Compact and the gathering of parties in *United States v. Oregon*, but in the form of a single regulatory agency with final authority on the subject. It is time for Congress to provide clear concise guidance to the federal agencies, rather than simply listing a host of factors for the agency to consider. In the long run, the best hope for wild salmon is that commercial fisheries may gradually become an anachronism. Like land based hunting and gathering, commercial fisheries will be outmarketed by agriculture, or, in this case, aquaculture.



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#### Mainstem Passage Improvements

Before turning to structural improvements at the dams, there is one improvement needed of overriding importance. We need to be able to measure what we are doing and the best way to do that is to complete the installation of PIT-tag detectors so that measurements are taken to determine what is going on in the lower half of the river. These measurements represent the first step toward making any improvements in dam passage. Reviewing the data available from upriver PIT-tag studies, the National Research Council concluded that the data *"suggest high priority for mitigation efforts directed at increasing survival at the dam rather than speeding fish through pools."*<sup>6</sup> Unfortunately, the state and tribal agencies have adamantly opposed any effort to increase juvenile passage, rather, they have concentrated solely upon the claim the dams are "lethal" fish killers. This opposition has constrained the debate over making modifications to the dams to increase juvenile migration success.

The most promising concept is surface bypass/collection. Juvenile salmon tend to travel in the upper portion of the water column and to be attracted to the currents at dams. It is just common sense, as the ISG observed, *"to design fish guidance that accommodates the normal behavior of fish rather than attempts to subvert it."*<sup>7</sup> With the exception of their efforts to re-engineer the dams to spill massive quantities of water without creating dissolved gas, state and tribal harvest managers resist any spending for structural improvements to increase survival at the dams. They continue to fight tests of surface collectors, and have succeeded so far in preventing any expansion of the Lower Granite test. The region needs to settle on the surface collector/bypass option. The only place this question can be settled, and it needs to be settled, is in Congress.

#### Reforming the Endangered Species Act

Tracy Warner, of the *Wenatchee World*, recently summarized the accomplishments of the Endangered Species Act as follows:

*"Since the law was enacted, 1,037 plants and animals have been listed for protection, and many more have been considered. Of those, the U.S. Fish and Wildlife Service has removed only 27 from the list. Seven of those species removed are extinct. Nine were removed because corrected 'data errors' showed that they were so numerous they were not threatened and should not have been listed in the first place.*

*Eleven species are healthy enough for the 'recovered category', but at least four came about with the discovery of significant populations unknown at the time of listing.*

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*Three other 'recovered' species are Kangaroos, which are numerous and have no habitat in U.S. jurisdiction. Two others, the brown pelican and the peregrine falcon, were endangered primarily because of the effects of the pesticide DDT, which was banned the year before the Species Act was passed. The last 'recovered' species, the California gray whale, was saved by international bans on hunting and the protection of breeding waters by the Mexican government.<sup>8</sup>*

In short, there is not one species that has been brought back from the brink of extinction by the Endangered Species Act. The Act is merely a tool for stopping actions that may affect the species, with a studied disregard for the magnitude of any benefit obtained. At the least, we need to separate decisions about listing species from decisions about what to do once the species are listed. For this specific species, the salmon, Congress must recognize that we should not list any species as "endangered" that we are going to harvest directly. It has always appeared ironic that even with the \$3 billion spent so far, and the host of programs and projects underway to recover salmon, that salmon are the only species in the history of the Endangered Species Act that is legal to kill for commercial gain. While there are many variables we know little about that have contributed to the decline in salmon, one item we do know for certain is that catching, killing and selling salmon for food harms the salmon. What is needed is not the layering of more laws regarding salmon, but a thorough house cleaning of the existing laws and regulations.

#### RECOMMENDATIONS

Put someone in charge. The major problem in the Pacific Northwest is no one is in charge of salmon recovery. In 1995, the Chair of the Snake River Salmon Recovery Team responded to former Oregon Senator Mark Hatfield's request to review legislation concerning the Bonneville Power Administration and salmon. He told the Senator that the legislation was silent on a key question: "*Who is in charge?*"<sup>9</sup>

With a single sensible authority, one might finally begin to answer the basic questions about salmon survival and dams that remain unanswered after decades of poorly coordinated, repetitive, and disorganized research. As the ISG has emphasized, we need to "*(d)velop estimates of smolt mortality rates assignable specifically to mortality in turbines, tailraces, reservoirs and forebays, to identify areas of highest mortality and to be able to treat them individually with the most appropriate measures.*"<sup>10</sup> This is just common sense, but it is common sense that has eluded fishery managers for years. Right now, fishery managers can only guess at which dams cause problems, and which are not much of a problem.

Despite the elegant simplicity and obvious effectiveness of putting someone in charge, it seems like a goal that is politically impossible to achieve. No institution or leader in the

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Pacific Northwest has been willing to provide the leadership necessary to rationalize salmon management. Without this leadership, without "someone in charge," we will continue to have a myriad of federal, state and tribal agencies competing to recover salmon with no unified vision of how to accomplish the ultimate goal, more salmon. If things remain as they are currently, we could reconvene billions of dollars and years later, and have this exact same discussion. The NMFS is in a delicate position. They are charged by Congress to sustain a commercially viable salmon fishery while at the same time being responsible for salmon recovery. This inherent conflict makes NMFS incapable of managing salmon recovery efforts in the Pacific Northwest. We can no longer pretend that things are working as they are now. Clear leadership and guidance from Congress is the only avenue to streamline and fix the mess of salmon recovery.

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End Notes

1. U.S. Army Corps of Engineers, Walla Walla District,  
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2. Letter, J. Barton to M. Field, June 16, 1995.
3. Jonathan Brinckman, "\$3 Billion Later, Columbia Basin Salmon Dwindle,  
*"The Sunday Oregonian*, July 27, 1997.
4. ISG, *Return to the River*, 366.
5. ISG, *Return to the River*, 369.
6. NRC, *Upstream at 201* (Prepub. ed.).
7. ISG, *Return to the River*, 201.
8. T. Warner, "The Endangered Species Act is Simply a Failure".  
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9. Letter, D. Bevan to M. Hatfield, Sept. 25, 1995.
10. ISG, *Return to the River*, 445.

TESTIMONY OF DR. KEN CASAVANT  
WASHINGTON MEMBER, NORTHWEST POWER PLANNING COUNCIL  
AUGUST 15, 1997

Chairman Crapo, members of the committee, my name is Ken Casavant. I am one of Washington's two members on the Northwest Power Planning Council. I also serve as the Chairman of the Council's Fish and Wildlife Committee. I am here today speaking not for the Council but for the state of Washington.

By trade, I'm an agricultural economist and have taught agricultural economics at Washington State University for the past 25 years.

In my testimony today, I would like to lay out for you some of the strengths -- of which there are few -- and weaknesses -- of which there are many -- of the current amalgamation of governing entities and venues. The first part of my presentation will cover this ground. I will then give you my thoughts on what the best, single Columbia River governing body will look like. I will conclude with a description of what the Council and its partners are doing in the meantime to ensure that the region gets what its paying for.

As you know, Mr. Chairman, there are three separate sovereign governments or groups of governments with jurisdiction over some part of the Columbia River system: the states, primarily through the Northwest Power Act; the Indian tribes, through their treaties with the U.S. government; and the federal government, via the Endangered Species Act. The jurisdictional and philosophical conflicts between the Power Act, the ESA and treaties are the crux of our regional controversies.

Historically, the federal government's presence on the river was limited to the Army Corps of Engineers, Bureau of Reclamation, and BPA -- all of whom either ran dams or sold the power generated at them. In 1991, the National Marine Fisheries Service listed the Snake River sockeye as endangered and perhaps forever changed the political atmosphere in the Columbia Basin. As new species continue to be listed -- as in the recent steelhead listing -- NMFS' authority only expands and solidifies. For all intents and purposes, NMFS, through the Endangered Species Act, runs the Columbia River.

This is not a very positive outcome for many in our part of the country. Some believe the ESA does too much for listed fish at the expense of people, jobs and resident and unlisted fish. Others believe NMFS is not doing enough to restore healthy fish populations to the Basin. The fractious nature of debate over river management eventually caused NMFS to create what is called the Executive Committee, a group of high-level representatives of the federal, state and tribal governments with a stake in the implementation of NMFS biological opinion for salmon. This is supported by the Implementation Team, comprised of high-level staffers - which has been quite successful in resolving most disputes and disagreements. While not a cure-all by any

means, the Executive Committee process has been a relatively effective creation in that it has provided a more open forum for discussion and disagreement among the sovereigns than had previously existed.

Make no mistake – the ESA and NMFS are firmly in control of river operations and decision-making. As my friend and colleague from Montana, Stan Grace, told you a couple of weeks ago, NMFS' decisions this year on hydro operations left Montana asking for relief from summer releases of water from two of its large storage reservoirs. After consultation with the Executive Committee, NMFS did not grant that relief and Montana saw fit to exit the Executive Committee for other options, including federal legislation. The four lower Columbia River Treaty tribes soon followed suit – but for entirely different reasons. Such is the state of federal management of the river.

The states' role over the last decade and a half has been represented primarily by the Northwest Power Planning Council which is directed by the Northwest Power Act to prepare a program to protect, mitigate and enhance fish and wildlife, and related spawning grounds and habitat, that have been affected by the construction and operation of hydroelectric dams in the Columbia River Basin.

Our fish and wildlife program does not address solely the recovery of listed species. Rather it focuses more broadly on the health and diversity of fish and wildlife populations throughout the Basin. There exist clear conflicts between the ESA and our responsibilities under the Northwest Power Act. Our program is often trumped by the implementation of operations consistent with NMFS' biological opinion. The frustration for the Council – and at times the Governors – is that the Council has the responsibility to develop a fish and wildlife program, but only limited authority to implement it.

The Indian tribes' roles are more difficult to describe. On the state level, the tribes are co-managers of fish and wildlife. But because the tribes have reserved treaty rights to fish at usual and accustomed places, the Indians understood that there would continue to be fish to catch. As the runs declined and there were fewer fish to catch in these places, the federal courts have been the most familiar venues for tribal involvement in official Columbia River harvest and management discussions. While I cannot speak for them, I have heard tribal leaders express an increased willingness to exercise, in federal court, the rights they've reserved in the Treaty of 1855. It is important for all of us to remember that the tribes have been consistent winners in treaty rights litigation.

I don't think there is anyone who wants to see a federal judge run the river solely because the United States hasn't lived up to its guarantee of fishing opportunities for the people who first harvested salmon for food and ceremony in the Northwest. I also don't believe the tribes truly want to have to go to court to be heard.

While some in the region believe the states -- through the Council -- are the best arbiters of the region's and the river's needs, when the tribes exited the NMFS Executive Committee process, they did not highlight the Council as the best venue for governance. Rather, they spoke of assertion of rights guaranteed in their treaties with the federal government, not state governments.

Furthermore, as long as we have ESA-listed fish in the Basin, the federal government will play a leading role, continuing to marginalize the Council's broader mandate under the Northwest Power Act.

To hasten resolution of the governance crisis, the region's four Governors recently requested that representatives of the three sovereign governments meet periodically to devise a prototype for regional consideration. I represent the state of Washington in these discussions, the second of which was just last week. Interestingly one of the options discussed is a broadened, non-ESA focused NMFS process which would still include tribes and the states.

Because the states are equally represented on the Council, many in the region believe it should have much greater authority of Columbia River management. But the Council is only successful when it has the support of the state agencies, the federal agencies (particularly NMFS) and the tribes.

My personal opinion is that a more inclusive governance structure is needed, one that puts the region's sovereign governments -- state and tribal -- on equal footing with the federal government. Ultimately, our success -- measured by the number of fish returning to the river system -- will depend upon a mutually agreed upon fish and wildlife program implemented under the legal authorities of the sovereign state, tribal and federal governments. I believe the Council collectively recognizes that our process needs to be strengthened by developing a system of river governance that gives an equal voice to all sovereign entities.

In the meantime, the Council has the support of the region's four governors, and will continue to be a forum where the public can participate in discussions on the future management of fish and wildlife resources in the Columbia River Basin.

Let me now briefly describe to you what the Council is doing in the meantime to make sure the region, the ratepayers and the taxpayers are getting the best buy for their fish and wildlife dollars. Since 1995, the Council and the region's fish and wildlife managers have accepted increasing authority to decide which fish and wildlife recovery measures receive funding. Collectively, we are working hard to ensure that the recovery process is scientifically credible and publicly accountable.

As you know, the Council's fish and wildlife program is funded by the Bonneville Power Administration. And, as you also know, Bonneville is working hard to cut its costs and remain competitive as the nation's electricity industry goes through

restructuring. As the region's energy planners, we have accepted a number of assignments in the last two years intended to address the new realities of electricity industry competition while preserving our region's commitment to protecting and enhancing our fish and wildlife.

For example, beginning in 1995, Bonneville turned over to the Council the responsibility for planning and project selection for our fish and wildlife program. In 1996, this arrangement was memorialized in a memorandum of agreement between the Clinton Administration and Congress and was ratified, with significant changes, by Congress in an amendment to the Northwest Power Act. Since then, we have made the annual project selection process very open and public, and this year -- as the result of the amendment -- we further enhanced the project selection process with the analysis provided by the Independent Scientific Review Panel.

At the request of the four Northwest governors, the Council developed and implemented the Comprehensive Review of the Northwest Energy System in 1996. In this year-long review, a committee of 20 citizens appointed by the governors analyzed the region's power system and made recommendations about how to take advantage of increasing competition while preserving the traditional benefits of the region's federal hydropower system, such as energy conservation, development of renewable resources, low-income energy assistance and rebuilding our fish and wildlife populations, particularly salmon and steelhead.

Following the Comprehensive Review, the Council created and continues to support the Northwest Energy Review Transition Board, which is the four-member committee appointed by the governors to carry forward the recommendations of the Comprehensive Review. Subcommittees appointed by the Transition Board are working on key recommendations of the Review -- subscribing the federal power system, separating Bonneville's transmission and generation functions and determining how to pay Bonneville's costs in the transition to competition. In short, we are working to develop recommendations for the Northwest Congressional delegation's consideration that will assist them in addressing the region's concerns during the future Congressional debate over national electricity restructuring legislation.

Meanwhile, again at the request of the governors and Congress, the Council is working on a cost-cutting initiative with Bonneville. The Council and Bonneville appointed a cost-review panel that includes the Council's four-member Power Committee and five independent financial experts. This committee, which will have its initial meeting on August 25, will help identify potential cost savings at Bonneville. Since 1994, Bonneville has made some progress in cutting its costs, but further reductions will be necessary in order for the federal power marketing agency to remain competitive. Credibility on cost control is an important step toward assuring Bonneville's ability to sign up customers and generate enough revenue to carry out its statutory responsibilities and pay its debts.



We are taking other steps to improve the credibility and accountability of our fish and wildlife recovery effort. First, we created the Independent Scientific Review Panel in response to the Gorton amendment to the Northwest Power Act. The Panel will conduct an annual review of fish and wildlife recovery projects *before* they receive ratepayer dollars. The scientists also will conduct an annual review of the effectiveness of the projects funded the previous year. Second, the Council created a panel of independent economists to analyze the cost-effectiveness of proposed fish and wildlife projects – again *before* they receive ratepayer dollars. Third, we commissioned an independent contract management audit of the region's fish and wildlife recovery efforts to ensure proper accounting controls are in place and lines of project management accountability are clear. And fourth, we soon will initiate a comprehensive review of all artificial production of fish in the Columbia River Basin. And fifth, we are making detailed fish and wildlife project budget information available on the World Wide Web at our homepage, [www.Northwestppc.org](http://www.Northwestppc.org).

We know that energy restructuring legislation is being considered in Congress, and that this legislation will affect the Bonneville Power Administration. The region could be left with a diminished role in fish and wildlife recovery. That would be a mistake. Through a credible cost-cutting exercise at Bonneville, and through a credible, accountable process for selecting fish and wildlife recovery projects, I believe we are taking steps toward a credible regional governance structure for fish and wildlife.

It is important to understand that until the management changes I have discussed today took place, neither the Council nor any other single entity had the authority to actively manage the process used to select fish and wildlife recovery projects. Thanks to this new authority, which Congress and the governors entrusted to us, the recovery process is more credible and accountable today than it ever was before.

We are confident that our new authority, coupled with a stronger reliance on scientific review and new management procedures will add to our current list of accomplishments. For example, through our program, hundreds of irrigation diversions have been screened to protect migrating juvenile salmon. Watershed councils have been formed, and people are working together to improve habitat and enhance water quality in the watersheds where they live. This watershed focus is a direct result of measures in our fish and wildlife program. Through our program, screens and bypass systems have been installed at mainstem dams to protect salmon. Research funded through our program is adding to the region's knowledge about fish and wildlife, particularly salmon. There are salmon in Oregon's Umatilla River today because of an effort initiated in our program to replace agricultural water withdrawals from the Umatilla River with water from the Columbia River. We have funded the research and development of supplementation hatcheries, which aim to rebuild naturally spawning salmon runs. At our insistence, the states of Washington and Oregon restricted new water withdrawals where salmon might be affected, and reduced salmon harvest in the Columbia River to protect the weakest runs.

I could cite many more examples, but I will stop with those. My point is that there have been successes, despite the public perception that this effort has failed. We cannot repair a biological system overnight. Scientists have told us that fish and wildlife recovery is a long-term commitment, and so we must be patient and proceed with carefully selected, scientifically credible measures. I'm optimistic about the future because we are working to improve the accountability of the region's fish and wildlife recovery effort, both in terms of its finances and its governance.

The remarkable shift in fish and wildlife management that has occurred in the last two years has increased accountability while also providing the region with increased authority. The challenge for us in the region is to respond like responsible public managers. If we do not, we're going to lose all of our gains and, probably, public support for fish and wildlife recovery.

We have accepted the responsibility handed to us by Congress and the governors. We are working with the other sovereign governments to devise regional solutions to the challenges of fish and wildlife recovery and energy industry restructuring. I believe we will be able to apply this same positive energy to the challenge of devising an acceptable and more workable process for making decisions pertaining to the governance of the hydroelectric system and other major river-related activities. As I said earlier, our goal is a more inclusive governance structure, one that accounts for the interests and obligations of the region's sovereign governments — the states and tribes — as well as the interests of the federal government.

Thank you for the opportunity to speak today.

August 15, 1997

**Supplemental Sheet**

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*Synopsis:*

- In my testimony I will lay out for you some of the strengths -- of which there are few -- and weaknesses -- of which there are many -- of the current amalgamation of governing entities and venues. The first part of my presentation will cover this ground. I will then give you my thoughts on what the best, single Columbia River governing body will look like. I will conclude with a description of what the Council and its partners are doing in the meantime to ensure that the region gets what its paying for.
- There are three separate sovereign governments or groups of governments with jurisdiction over some part of the Columbia River system: the states, primarily through the Northwest Power Act; the Indian tribes, through their treaties with the U.S. government; and the federal government, via the Endangered Species Act. The jurisdictional and philosophical conflicts between the Power Act, the ESA and treaties are the crux of our regional controversies.
- My personal opinion is that a more inclusive governance structure is needed, one that puts the region's sovereign governments -- state and tribal -- on equal footing with the federal government. Ultimately, our success -- measured by the number of fish returning to the river system-- will depend upon a mutually agreed upon fish and wildlife program implemented under the legal authorities of the sovereign state, tribal and federal governments. I believe the Council collectively recognizes that our process needs to be strengthened by developing a system of river governance that gives an equal voice to all sovereign entities.

**Testimony  
of Charles Ray**

My name is Charles Ray. I am a resident of McCall, Idaho. I represent the members and Board of Directors of Idaho Rivers United, a private, non-profit conservation organization.

Idaho Rivers United is working to restore Idaho's salmon and steelhead populations and the ecosystems on which they depend, along with the economies, cultures, and traditions that depend on healthy, self-sustaining, harvestable runs of these fish.

I appreciate the opportunity to represent our members' and the public's interests before this subcommittee.

**Background**

The decline of Snake River salmon and steelhead is well documented. Less than 100 years after large-scale development began on the Columbia and Snake Rivers, Idaho's salmon and steelhead are almost gone. Snake River coho salmon were declared extinct in 1987. In 1991 and 1992, Idaho's remaining salmon species were put under the protection of the Endangered Species Act (ESA). In 1994 and 1995, wild spring and summer chinook returns were the lowest in history. Last year, a single sockeye salmon returned to Idaho. If early predictions are correct, next year's return of wild spring/summer chinook will be a new record low. Just this week, Idaho's steelhead were listed for Endangered Species Act protection.

The loss of this tremendously valuable resource is an ecological, cultural, and economic tragedy. This tragedy has unfolded while the National Marine Fisheries Service has been in charge.

The decline of salmon and steelhead and the ecosystems, economies, and cultures that depend on them is the direct result of a corresponding human-caused disruption of the fish's habitat. This disruption is most severe and apparent in the migratory habitat - the lower Snake and Columbia Rivers.

There, eight federal dams have turned 350 miles of free-flowing river into 350 miles of slack water reservoirs. Despite federal promises, these dams were not designed or constructed, or operated today, to safely pass juvenile fish.

Nearly all scientists not in the hire of industrial interests agree that the critical limiting factor in the survival and recovery of Idaho's salmon and steelhead is the operation of the federal hydropower/navigation/irrigation system on the lower Snake and Columbia Rivers.

The current federal hydropower/navigation/irrigation system came to us with a series of promises. Beginning in 1855, our government promised the sovereign Indian nations that we would protect harvestable populations of salmon and steelhead. The federal dams between Idaho and the ocean were authorized with the implicit promise that the fish runs would be saved. The Endangered Species Act of 1973 promises that the species and their habitat will be preserved. Another act of Congress, the 1976 Lower Snake River Compensation Plan, explicitly promises that Idaho fishermen would have harvestable runs of salmon. The 1980 Northwest Power Act promises restoration of salmon and steelhead runs to the extent they were affected by the development of the federal hydropower system.

### **The Role of the National Marine Fisheries Service**

For the past 20 years, the federal government's response to a lethal river system has been relatively minor, but very costly, tinkering with the dams and the juvenile fish barging program. By the only true measure of the efficacy of these approaches - return of wild fish to the spawning grounds and to the creels of Idaho fishermen - both are proven failures.

Even before the last of these eight federal dams, Lower Granite dam, was completed in 1976, the National Marine Fisheries Service (NMFS) was grappling with the dilemma of how to keep the federal promises at the same time the federal dams were killing most of the fish. The failed juvenile fish barging experiment was concocted by the NMFS and the Army Corps of Engineers in the early 1970's. In the late 1970's, the NMFS began status reviews of Snake River salmon runs as a prerequisite step to an ESA listing.

Encouraged in part by the passage of the Northwest Power Act in 1980, NMFS dropped the status reviews and continued to focus its efforts on the juvenile fish barging experiment. NMFS chose not to seek ESA protection for Snake River coho salmon. Instead, NMFS declared them extinct in 1987. Similarly, NMFS chose not to use the ESA to try to halt the decline of Snake River sockeye or chinook, even though the sockeye had declined to single-digit annual returns. It took petitions from citizen's groups and the Shoshone-Bannock tribes to gain ESA protection for those fish. Most recently, it took a federal court order to compel the NMFS to consider an ESA petition for Snake River steelhead, despite the fact that wild steelhead returns had fallen lower than wild chinook salmon returns in the year the chinook were listed.

Nearly six years have passed since the ESA listing of Snake River salmon. There has been little substantive improvement in the critical factor for their survival- the federal hydropower dams. Since their critical migratory habitat is still lethal, the fish runs are still dwindling. Another anadromous species with the same critical habitat needs, the Snake River steelhead, has recently been added to the ESA list.

During NMFS's tenure as federal manager of salmon and steelhead recovery, its programs have provided pitifully little relief for the dwindling fish runs, but ample fodder for judicial review. NMFS's 1993 Biological Opinion proclaimed that even though the federal dams caused fish mortality in excess of 90%, they posed "no jeopardy to the continued existence of the species." That opinion was thrown out by a federal judge who observed that the Opinion "was geared more to preserving the status-quo in a river system that literally cried out for a major overhaul."

The revised 1995-1998 Biological Opinion patched up the procedural deficiencies in the old opinion but did nothing in the way of a major overhaul. As an example, the Incidental Take statement accompanying the new Biological Opinion allows the Corps' dams to kill up to 99% of migrating juvenile fall chinook salmon. In a court challenge of the new Biological Opinion, the court found it legal but expressed "grave reservations about the adequacy of the Opinion to save the fish."

Instead of being well on the way to restoring Snake River salmon and steelhead, NMFS has bogged recovery efforts in interminable and unworkable processes and litigation. The state of Montana and the lower Columbia River tribes gave up on NMFS's Technical Management Team-Implementation Team-Executive Committee process and walked out. Lawsuits are pending in both district court and the federal court of appeals.

At the same time NMFS has been frustrating progress with process, it has been playing an inside budget game along with the Army Corps of Engineers. The NMFS's current Biological Opinion (and the Northwest Power Planning Council's *Strategy for Salmon*) call for a pivotal decision in 1999 on two fundamentally different paths for restoring endangered salmon. One path is similar to the status quo -- relatively minor changes at the dams and continued reliance on unspecified improvements in juvenile fish transportation. The other path leads towards restoration of a more "normative" lower Snake River and decommissioning 4 federal dams there.

But ahead of the critical 1999 decision, the Corps of Engineers, with NMFS's blessing, has budgeted hundreds of millions of taxpayer and electricity ratepayer dollars on construction projects that, if the "normative" river path is chosen, will be largely wasted.

Spending this money ahead of the 1999 decision is an irretrievable commitment of limited money, and it prejudices the 1999 decision. Some observers say NMFS and the Corps are attempting to "gold-plate" the lower Snake River dams -- that is, spend so much money on them now that decision makers will be very reluctant to decommission them after 1999. Such "gold-plating" severely threatens an honest decision in 1999. Budgeting money for these projects ahead of the 1999 decision commits NMFS, the federal government, the public, and the fish to a path that NMFS is currently unwilling or unable to reveal in detail.

Idaho Rivers United shares the judge's "grave reservations" - not only about the adequacy of NMFS's Biological Opinion to save salmon and steelhead - but also about NMFS's institutional willingness and ability to do so. By the real test of NMFS's ability to carry out its responsibilities under the law and tribal treaties - the health of listed fish populations and their habitats - NMFS has clearly demonstrated over the past two decades that it is not up to the job.

The continued decline of these fish runs on NMFS's watch has caused immense disruption of entire riverine ecosystems. It has nearly bankrupted a Pacific Northwest sport and commercial fishing industry valued at one billion dollars annually and 60,000 jobs as recently as 1985. The loss of harvestable runs abrogates treaties with Indian tribes dating back to 1855, and it threatens resolution of the current U.S.-Canada salmon treaty. The federal government's inability or unwillingness to keep the promises to protect and restore the fish has further eroded public confidence in the government and elected officials.

### **Recommendations**

Although Idaho Rivers United has some reservations about the ability of Congress to instill institutional commitment and courage in an agency of the executive branch, we appreciate this subcommittee's interest in the performance of the NMFS. That agency definitely needs continuing Congressional oversight.

There are opportunities for Congress to step in and take actions that will put us on the path to keeping the promises and restoring the fish runs and the ecosystems, economies, and cultures that depend on them. There are immediate changes that should take place within the NMFS.

We recommend the following.

1) NMFS must prioritize the focus of recovery actions. Salmon and steelhead must be protected in every phase of their life cycles. NMFS is fond of proclaiming that they focus equally on "the 4 H's"; Harvest, Hatcheries, Habitat, and the Hydropower system. We agree that reductions in mortality caused by each of the 4 H's are important. But by placing equal emphasis on all 4 H's, NMFS is ignoring the critical nature of hydropower system mortality. If NMFS continues to allow the dams to kill 24-86% of juvenile and 11% of adult sockeye salmon, 24-86% of juvenile and 21% of adult spring/summer chinook salmon, and 62-99% of juvenile and 39% of adult fall chinook salmon, all other recovery actions in the other 3 areas will be of little consequence. (Mortality %'s from the Incidental Take Permit accompanying NMFS's 1995 Biological Opinion on the operation of the federal hydropower system. Incorporated here by reference.)

2) NMFS must eliminate its juvenile fish barging program and return the fish to a significantly less lethal river. Barging is an experiment that is a proven failure. Despite all the statistical "evidence" that NMFS trots out in support of barging, it cannot present a single shred of data to suggest that barging has or can achieve the smolt-to-adult survival ratios necessary for restoration of the runs. NMFS has a tremendous institutional investment in its barging program. Despite reams of scientific evidence to the contrary, it is highly unlikely that NMFS will voluntarily recognize that barging has not and cannot produce restored runs. As long as NMFS is allowed to cling to barging in lieu of restored migratory habitat, salmon and steelhead are doomed.

Congress can expedite restoration of that migratory habitat by cutting funding for the juvenile fish transportation program in the Corps' and NMFS's budgets or by legislating an end to the barging experiment.

3) NMFS must preserve the integrity of the 1999 decision.

A) The 1999 decision schedule must not be allowed to slip.

B) NMFS and the Corps should not be allowed to go forward with capital expenditures that prejudice that decision or foreclose some alternatives. Prior to the 1999 decision, capital expenditures should be limited to those projects agreed upon by state and tribal biologists. Congress can influence these capital expenditures via the budget process.

○ Of equal importance, NMFS must be compelled to fully disclose the specific details of the "improved transportation alternative" under consideration for the 1999 decision. NMFS must present credible evidence, if it is able to, of how "improved transportation" can achieve smolt-to-adult survival necessary to restore the runs.

4) Congress must clarify the authorization of the federal dams to allow modification of structure and operation needed to improve salmon and steelhead survival. The Corps of Engineers has resisted operational and structural modifications to the dams under the rationale that such changes are not consistent with the Congressional authorization of the dams. While this excuse has not been tested in court, the NMFS has deferred to the Corps on this issue. Congress should remove this obstacle. The authorization must be amended and clarified to give clear direction to the Corps.

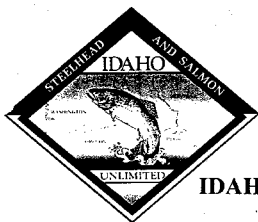
#### **Conclusions**

The NMFS has failed in its primary mission; to keep federal promises by protecting and restoring salmon and steelhead and their habitat. The agency has demonstrated neither the ability nor the willingness to carry out that mission. Instead, it has gone to great lengths to preserve the status quo in the federal hydropower system. Because NMFS is unable to tackle the tough problem of the federal dams, the region's taxpayers and ratepayers, the fish, the ecosystems, economies, and cultures that depend on the fish, and the credibility of the federal government have paid a huge price.

To find out what NMFS really plans to do in the future, Congress should follow the dead fish and the money; the Incidental Take permit issued to the Corps and the Corps/NMFS spending plan for the next 5 years. Based on its past performance, the agency will not voluntarily change its course.

We sincerely hope Congress will step in now before it is too late, and begin keeping the promises.





# **IDAHO STEELHEAD & SALMON UNLIMITED**

*Committed to Recovering Idaho's Anadromous Fish Runs*

## **IDAHO STEELHEAD AND SALMON UNLIMITED**

### **WITNESS TESTIMONY**

**AUGUST 15, 1997**

### **SUBCOMMITTEE ON FISHERIES CONSERVATION**

### **WILDLIFE AND OCEANS**

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Representative Crapo and other members of the Committee, I would first like to thank you for holding this Subcommittee hearing in Boise and allowing me to testify on this important issue.

My name is Steve Bruce, I am a practicing dentist in Boise and I am representing Idaho Salmon and Steelhead Unlimited. I am currently serving as President of this organization.

ISSU is a non-profit educational, scientific and charitable organization formed in 1985 in an effort to unite all concerned citizens in the State of Idaho into one cohesive group for the purpose of restoring, protecting and preserving Idaho raised salmon and steelhead.

This past Tuesday, the National Marine Fisheries Service announced that Snake River steelhead as well as several other West Coast steelhead stocks were being listed as threatened under the Endangered Species Act. This has occurred in spite of the fact that NMFS listed Snake River salmon six years ago and have been ultimately responsible for their recovery since that time. The frustrating part of this whole scenario is that Snake River salmon and steelhead migrate, spawn and rear in the same rivers and streams and anything that is done to benefit Idaho salmon will almost always benefit Idaho steelhead as well. While it is true that Idaho enjoyed a good return of hatchery salmon this year it is still a fact that our wild runs are in very bad shape. The predictions for the runs the next several years are dismal to say the least. The wild runs of steelhead

are also in very critical condition. All of this is occurring while we have a NMFS administered recovery plan in place which is supposedly going to recover our salmon runs.

If a management team working for a major corporation had a "track record" similar to this I have no doubt that they would be replaced. We feel that it is time that NMFS be replaced.

We feel that under the current system, the best recommendations from State and Tribal scientists are often ignored. A good example of this was a regional plan developed this spring by the states of Idaho, Oregon and Washington as well as the Tribes. This plan called for leaving more smolts in the river to migrate to the ocean rather than be collected and trucked or barged down the river. With the abundant water we had this spring, it was felt by the scientists that leaving more fish in the river to migrate naturally would result in better returns as adults. Unfortunately, NMFS paid little attention to this plan and went about business as usual -- that is collecting and barging the majority of the juvenile fish.

We certainly need to get away from the current system where it seems that many different entities are making decisions which sometimes are contrary to each other. With NMFS, BPA, the Army Corps of Engineers, the Northwest Power Planning Council, the States, the U.S. Forest Service and others all coming up with different plans, it is no wonder we have generated literally thousands of studies, reports, etc. while our fish continue to slide closer to extinction.

We feel that it is time that the regional experts be given the responsibility of recovering Columbia River salmon and steelhead. These experts that work for the fisheries departments of the States of Idaho, Oregon and Washington and the Tribes are the best qualified for the job. These "salmon managers" should be responsible for all recovery efforts once the salmon enter fresh water. It would seem logical that NMFS would retain responsibility for recovery efforts and management of salmon stocks while in the ocean. It would also seem logical that a representative from the U.S. Fish and Wildlife Service would also be part of this fresh water team. They would be able to coordinate federal and state efforts and since they are responsible for other listed species such as bull trout, white sturgeon, grizzly bears, etc., it would seem that they would be the obvious choice. It is interesting to note that on the East Coast of this country where Atlantic Salmon are listed as endangered this is the structure that is used with NMFS being responsible for recovery efforts in salt water and the U.S. Fish and Wildlife Service

The issue of the Salmon Cost Cap is another topic that we feel needs to be discussed. We appreciate the fact that only so much money is available for salmon recovery but we feel that the public should get an honest explanation of the "cost cap." Much of the reported \$450 million cost for salmon and steelhead recovery is in "foregone revenue" that is dollars that were not received because water was allowed to pass over spillways rather than through turbines. Obviously, the past two years of higher than normal flows have resulted in the figure for this "foregone revenue" being much lower than in drought years. Why hasn't the public heard about this? Are these dollars that were not used towards the cost cap available in low water years? When is the government going to also let the public know what the value of "foregone revenue" is for irrigation withdrawals, navigation lock operation, etc.? Why is it that "foregone revenue" is charged only to fish and not to other water users?

In recent years many millions of dollars have been spent and are proposed to be spent on the fish barging system. We feel this is a mistake and will contribute to "gold plating" of this system thus giving prejudice to the transportation scenario versus in-river migration when the scheduled decision is ultimately made in 1999.

Barging proponents have recently been stating that barging is more successful than in-river migration based on early PIT tag study results. Unfortunately, the smolt to adult return ration of 1/2 of 1% for barged fish is far below the 2% ration that the Independent Scientific Group says is necessary to halt their decline and it is not even close to the 4 - 6% ratio needed to restore them. Unfortunately, the National Marine Fisheries Service claim that fish barging works is based on asking the wrong question. NMFS asks if barging and trucking work better than leaving fish in a river made lethal by dams and slack water reservoirs. The right question is: will barging and trucking salmon and steelhead ever restore fish populations as required by law and treaty and as demanded by the citizens of the Northwest? Our choice cannot be between a failed barging strategy and a lethal river, neither of which will restore the fish. The decision makers should be asking what fish need, under what conditions do they thrive and how can we expand those conditions.

In conclusion, I would like to thank you once again for this opportunity to speak with you today and I trust that you will make the right decisions to protect this unique resource which has been such a special part of our Idaho heritage for many generations.

**Jim Little, BVGA Permittee  
Emmett, Idaho**

Good morning. My name is Jim Little and I am a third generation rancher from Emmett, Idaho. I am a grazing permittee that has a forest permit to graze cattle during the summer months on Bear Valley Creek on the upper end of the middle fork of the Salmon River in the Boise National Forest (BNF). This area is prime spawning ground for the Spring Chinook Salmon that is currently listed as endangered by the National Marine Fisheries Service. I also serve as Idaho's obligatory member of the Pacific Fisheries Management Council and I am a past chairman of the Private Property Rights and Environmental Management Committee of the National Cattlemen's Beef Assn.

I am here today to comment on the process of dealing with the Endangered Species Act as it pertains to Salmon and the NMFS.

The Middle Fork of the Salmon River has long been noted as prime spawning and rearing habitat for the wild spring Chinook. It takes on additional significance because there have been no hatchery fish put into that gene pool that would dilute their significance. In the 1980's the Forest Service put a lot of significance on the importance of enhancing and restoring stream and streambank health and through that heightening of our awareness we jointly developed a grazing system that would allow us to maintain an economically viable cattle operation. The Spring Chinook was officially listed in the early 90's and from that time forward our grazing in that allotment has become much less certain.

The BNF, through a commitment by then Supervisor Steve Mealey, set up an elaborate and extremely expensive monitoring system that was supposed to let them, as well as us, know if we were on the right track towards improving the habitat necessary for the fish to have a better hatching and rearing survival than current documentation showed. NMFS, as the agency in charge of anadromous species, became a serious impediment to the certainty that we need when making management decisions. They would delay until the very last minute giving the forest service an answer as to whether their planned grazing strategy had the blessing of the regulators in charge. In 1996, the Elk Creek Grazing Association was denied the right to graze because the BNF and NMFS couldn't agree on an acceptable grazing strategy. This was done through a lawsuit filed by several environmental groups on behalf of NMFS. This would be our worst nightmare; at the last minute being denied a place to graze our breeding herd, during a severe down market and virtually no other options available.

In our cattle operation, as in nearly all in the west, we have a year around plan. That plan includes summer grass that rests the winter range so that it regains vigor and has the necessary rest to sustain itself during the months of livestock use. Without that rest, the winter range becomes stressed and the pasture quality declines as well as the wildlife habitat that goes with that land mass.

Currently we, the grazing permittees in the Bear Valley Basin, the NMFS, the BNF and the National Riparian Review Team are involved in a process to determine whether we can continue to graze in Bear Valley. On a three day tour this past week, the above representatives as well as a member of the Pacific River Council and a staff person from U.S. Senator Dirk Kempthorne's office attended and we learned that nearly all of the streambanks in question were on an improving trend, which tells me that the grazing strategy that the BNF and us as grazing permittees agreed to is proper. The term that is used, however, is "functioning at risk" and that is not enough to satisfy the NMFS people, so the National Team will be back next month to see if there is a way to give us the certainty that we either can or cannot return to Bear Valley in the future. One suggestion by a NMFS representative was to put in 16 miles of fence in an allotment that is mainly in the Frank Church Wilderness. This would preclude use of any mechanical equipment in that fence construction which would make the proposed project totally cost prohibitive and it is doubtful that this type of outlay would satisfy the regulators enough that they would give the grazer any long term assurances that he would be left alone. One other wild card is the "re-introduction of wolves by the US Fish and Wildlife Service that could potentially harass the livestock and run them through any fence that might stand in their way.

Congressman, we have purchased these grazing permits to allow us to graze our livestock. While the USFS does not recognize permit value, let me assure you that the Internal Revenue Service does, and we are left in a very uncomfortable position wondering if we will lose these assets. We have always spent money every year doing maintenance and improvements to continue to enhance the value of our allotments, but in this period of uncertainty we are not interested in spending a dime over the bare bones minimum to get by. As an example, our log cabin needs maintenance, but if we are not given any more assurance than we currently have, I don't want to put money down a rat hole. If the agencies involved don't come to terms I can only envision walking away from all the improvements that we have put in and maintained and even though the cabin is on Valley County tax rolls, it is on USFS property and will have no value.

I seriously believe that the involvement of Senator Kempthorne's office has done more to get this process moving than anything else that has happened. In the past years NMFS has given the impression that they were arrogant and would give the USFS an answer whenever they were good and ready and not before. This kind of lack of caring by the managing agency is one of the reasons that Senator Kempthorne is working on a reauthorizing of the ESA to make the process function better.

While serving on the Pacific Fisheries Management Council I have come to better realize that NMFS has a full

plate in attempting to manage anadromous species, and I am impressed with many of their staff and their professionalism, I believe that many of their actions derive from attempts to administer laws that were full of good intentions but end up causing unnecessary complications to their best efforts. Two examples of this are: the prohibition of individual fishing quotas (IFQ's) in the newly authorized Sustainable Fisheries Act (SFA) and the resulting hardship that action has caused, and secondly, the action dealing with Essential Fish Habitat. The wording of that section of the SFA has nearly led to a feeding frenzy on behalf of some ocean fisherman groups in hoping that they can place a larger share of the blame for declining numbers of fish on upland habitat while ignoring some of their own habitat problems. We landowners and land managers are well aware of the importance of clean water and healthy riparian areas and there are a plethora of programs available to us to deal with that problem. We do NOT need another agency consulting on every action that may affect fish habitat. We have too much of that already.

In conclusion, we, as permittees on the Boise Forest feel that progress is finally happening towards clarifying where we stand in regards to our future as grazers in critical habitat. Our problems are in some fashion repeated all over the northwest and we deserve reasonable certainty that we will be able to continue making a living off the land while doing our part to restore the anadromous fish runs in the northwest.



**Testimony of Dr. Richard N. Williams  
Chair, Independent Scientific Advisory Board**

**Before the U. S. House of Representatives  
Subcommittee on Fisheries Conservation, Wildlife and Oceans**

**15 August 1997, Garden City, Idaho**

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to come before you today and discuss issues relative to salmon recovery in the Columbia River Basin and the role of the National Marine Fisheries Service in those efforts.

My name is Dr. Richard N. Williams. I'm a native Idahoan, born and raised in the Boise area. My academic and research background lies in ecology and genetics. My current work focuses on the conservation biology of salmon and trout species native to western North America. I am affiliated with the University of Idaho, where I am part of the Graduate Affiliate Faculty through the Aquaculture Research Institute. I also serve as Chair of the Independent Scientific Advisory Board and of the Independent Scientific Review Panel that advises the Northwest Power Planning Council (NPPC) and the National Marine Fisheries Service (NMFS) on scientific and technical issues concerning salmon recovery. I speak to you today in that capacity.

My remarks will cover several points. First, I will discuss the role of science in the recovery of Columbia River salmon and how groups such as the two independent scientific groups can aid in the salmon recovery effort. Second, I will discuss how a recent consensus among scientists identifies the failure of the traditional view of Columbia River salmon recovery measures and calls for implementation of a new approach based on ecosystem science. Third, I will discuss the dynamic tension that exists between the two major recovery programs in the basin, the Northwest Power Planning Council's Fish and Wildlife Program (FWP) and the National Marine Fisheries Service's ESA (Endangered Species Act) actions. I will conclude with comments on the need for a regional science-driven recovery plan.

***The role of science in salmon recovery.***

The Northwest Power Planning Council (NPPC) and the National Marine Fisheries Service (NMFS), with assistance from the National Academy of Sciences and the National Research Council, jointly created the ISAB in May of 1996 to provide scientific and technical advice on issues related to salmon recovery in the Columbia River Basin and the Pacific Northwest. In December 1996, Congress amended the Northwest Power Act and directed Council to create the ISRP to assist in peer review of projects and the Council's FWP. The fourteen members of the ISAB/ISRP are all senior scientists from the United States and Canada with wide expertise in fisheries, aquatic, terrestrial and marine ecology, statistics, and economics. Although members bring a diversity of backgrounds and expertise to bear on issues, both the ISAB and the ISRP operate by consensus. What differentiates the two independent science groups from other scientists or groups of scientists in the basin, is the combination of our independent non-

representational status and our consensus mode of operation. Finally, in order to safeguard the independent non-representational status of the review groups, all ISAB/ISRP members are subject to the stringent rules governing conflict of interest developed by the National Research Council.

The NPPC and NMFS are both committed to using the best available scientific information to guide program development and implementation of salmon recovery actions. Both groups have worked closely with the ISAB and the Council with the ISRP toward that end. Recent reviews of the Council's Fish and Wildlife Program by the ISAB (*Return to the River*) and the ISRP (ISRP Report 97-1, attached to this testimony) appear to be having strong effects on the program direction and the pending amendment phase of the Council's FWP. Interactions between NMFS and the ISAB have been positive to this point and also indicate that our reviews are influencing NMFS program emphasis and direction.

These positive interactions are in contrast to the reactions from some agency and tribal constituents, who have offered sharp criticism of our reports, even to the point of calling for complete rejection of the reports and dismissal of the ISAB or ISRP. Although the region has uniformly called for and advocated using peer review and the best available science to guide program development and implementation, to do so is clearly a difficult task with hard choices that may affect many traditional fisheries management actions and programs.

#### *Scientific consensus concerning salmon recovery*

Scientific debate continues within the region over how salmon should be restored in the Columbia Basin, while essentially maintaining the multitude of human uses of the river basin at status quo. Present restoration strategies tend to rely on technological approaches that attempt to circumvent ecological processes and they have been ineffective in restoring salmonids. In June of 1996, I presented testimony on behalf of the ISAB during a Senate hearing overseen by Senator Kempthorne. In that testimony, I discussed the failure of the status quo salmon recovery program and predicted that for a variety of reasons, further investment in a program that merely attempts to technologically refine aspects of the current program is almost certainly doomed to failure. The perception of a continuing scientific debate has been an impediment to effective restoration actions, and as long as the debate remains unresolved, truly effective restoration strategies will not be implemented or even considered, and stocks will continue to decline and disappear.

The Independent Scientific Group (precursor to the ISAB) and a National Research Council panel recently reviewed aspects of salmon restoration in the Columbia River Basin. Their reports, *Return to the River* (ISG 1996) and *Upstream* (NRC 1996), present a scientific synthesis that highlights areas where the Columbia River Basin Fish and Wildlife Program (1994 FWP) could be amended to provide a more scientifically sound salmon recovery program into the next century. There are several common threads running through these reports:

- Salmon have declined from many causes and there is no “silver bullet” that will resolve the current crisis.
- Replacement of salmon or salmon habitat by artificial means, such as artificial propagation and supplementation, has in many cases not lived up to expectations. In spite of individual and minor successes, the current approach to salmon recovery has failed to reverse or even halt the decline of salmon.
- It is impossible to return to completely natural or pristine conditions, but there are means of restoring natural processes and features to more normative conditions that will provide a basis for sustained salmonid recovery and productivity. Such actions, taken in an ecosystem context, are likely to provide long-term benefits to resident fish and wildlife, as well as salmon and steelhead.
- Fragmentation of institutional roles and responsibilities remains a significant barrier to coordinated salmon restoration.

To a great degree, salmon recovery actions within the region have been forestalled by a continuing intractable debate that centers on scientific uncertainty or disagreement among scientists. The focus needs to shift to implementation of recovery actions in areas where scientific consensus exists and to the design of specific research projects that resolve issues where disagreement or uncertainty exist.

#### ***Need for a Single Regional Recovery Plan***

At the present time, two major laws form the basis for regional salmon recovery efforts. They are: the Northwest Power Act of 1981, which created the Northwest Power Planning Council and charged it with development of a program to “protect, mitigate, and enhance” fish and wildlife resources of the Columbia Basin as affected by development of the river’s hydroelectric potential; and the federal Endangered Species Act (ESA) which, in the case of salmon, is administered by the National Marine Fisheries Service (NMFS). All salmon, steelhead, and bull trout populations in the Snake River (the largest tributary to the Columbia River) are currently listed as endangered or threatened under the Act.

These two laws present the region with alternative, although not necessarily incompatible, approaches. The Northwest Power Act suggests a broad perspective, calling for the river to be treated as a system and addressing broad-scale problems resulting from hydroelectric development. The ESA, in contrast, focuses more narrowly on restoration of specific populations listed under the act, although it includes all factors affecting these populations, not just hydropower development. Because they are based on separate bodies of law and are administered by different organizations with different jurisdictional perspectives (federal, in the case of NMFS and regional, in the case of the Council), the restoration programs of the Council and NMFS are not well coordinated. The emergency nature of action under the ESA has resulted in abandonment of broader regional

restoration. However, the perspective of the two laws and the goals of the two administering organizations are not incompatible and, indeed, should be complementary.

Real measurable progress toward regional salmon recovery is unlikely with the existence of several recovery plans, which compete for limited funds. The region needs a single salmon recovery plan that encompasses the differing needs and legislative mandates of the Northwest Power Planning Council, the NMFS ESA responsibilities, as well as legal and treaty obligations to the tribal sovereign nations. A single plan must have the support of all constituents in the basin in order to have the political support necessary to persist and provide a likelihood of success. Similarly, the plan must be based on the best available scientific information in order for it to be biologically viable and have the best probability of reaching the region's recovery goals. Too often, political pressure and compromise has led to implementation of a biologically less viable alternative that ultimately resulted in failure to achieve the original objectives. A recovery plan based on the best available science, backed by the support of all regional constituents, and implemented with rigorous monitoring and evaluation would be a powerful force for salmon recovery. It would also have a greater probability of achieving salmon recovery than any program undertaken in the basin to date.

The architecture for such a recovery program is in place. Scientific and technical groups, such as the ISAB, the ISRP, and PATH, can continue to identify the best scientific information and analyses to aid and guide salmon recovery efforts. The recent amendment to the Northwest Power Act increased the role and authority of the Council and its Fish and Wildlife Program in guiding implementation of salmon recovery measures. The amendment also formalized peer-review within the basin through the Independent Scientific Review Panel. Continued attention to peer review of projects and the program will safeguard the technical rigor and veracity of the FWP. The ongoing ESA listings of resident and anadromous stocks, particularly the Snake Basin and Idaho stocks, argues that NMFS role in implementing ESA-driven actions to recover weak stocks will continue to increase. It seems paramount that a forum be identified whereby the recovery goals of the Council's FWP and NMFS's ESA-driven actions can become complementary parts of a single unified salmon recovery program.

*Return to the River*, and other recent reviews of the salmon problem (National Research Council 1996; Stouder et al. 1996), provide a scientific foundation for salmon recovery. Consequently, the biggest challenge facing the region is not the biological uncertainties associated with salmon recovery efforts, but is whether the region is willing to face the fact that we cannot "have our cake and eat it too." Restoration of fish and wildlife in the Columbia River Basin will require difficult decisions, and will test whether the region's policy makers, elected officials, and management institutions can find the political will and strength necessary to endorse and implement a scientifically sound salmon recovery program.

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1989 - 1994 - member of the Scientific Review Group: CBFWA, Portland, OR  
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**Report of the  
Independent Scientific Review Panel  
for the Northwest Power Planning Council**

**Review of the Columbia River Basin Fish and Wildlife Program  
as directed by the 1996 amendment to the Power Act**

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## EXECUTIVE SUMMARY

### A. General Review of the Implementation Process

Columbia Basin fish (anadromous and resident) and wildlife populations have been in decline for a century. The decline has been broadly recognized as serious for at least five decades, and large investments have been made over that period of time in attempts to halt and reverse the decline. With the first ESA listing of a Columbia Basin salmon stock in 1991, the awareness and concern intensified, and the investments in recovery and mitigation increased even further. In FY98, the direct investment in the Council's program is about \$143 million/year (CBFWA 1997) and flow manipulation to enhance survival of migrating salmon smolts creates an indirect cost due to foregone electrical power generation that may amount to an additional \$150–180 million/year (NPPC 1994). In spite of these expenditures, the salmon continue to decline and additional listings under the federal Endangered Species Act have been proposed.

Against this background of apparent failure, it is logical to ask whether there is some basic qualitative flaw in the recovery and mitigation efforts, or whether the failure is due to insufficiency in the amount of the investment. It was in this mix of uncertainties that the Northwest Power Act was amended to require an evaluation of the program and its implementation. The Independent Scientific Review Panel (ISRP) was formed in January 1997 to implement that evaluation. We have, during our first six months of operation as a committee, reached the following general conclusions:

- There is a noticeable discrepancy between the mix of projects actually funded and the ISRP's interpretation of the intent and priorities in the FWP
- There is a somewhat greater discrepancy between the mix of projects actually funded and the Fish and Wildlife Program (FWP), if the recommendations from recent scientific panels (Snake River Recovery Team, *Upstream*, *Return to the River*, and the National Fish Hatchery Review Panel) are considered.
- Although the Council and BPA have project and proposal tracking systems that are adequate for administrative purposes, they did not provide adequate information for a detailed and comprehensive analysis of proposal quality, project quality, or program accomplishments.
- If changes in the tracking and information system are made, and if a new annual funding cycle is announced soon enough, it will be possible to conduct a detailed review of individual projects and program implementation in 1998.

## B. Recommendations

As a result of our review of the FWP and its implementation in 1997, the ISRP reports the following recommendations to the Council. The bases for these recommendations are in the text of the report. The first set of general recommendations concern overall program administration. Their implementation would improve the ability of the ISRP to conduct an overall review of the program or improve its implementation. The remaining group of recommendations are related to Sections 5, 7, 10, and 11 of the FWP. Recommendations are listed first by a Section and sub-section identifier, indicating the location of each recommendation within the body of the report. In the Executive Summary, the ISRP recommendation is in normal type, with supporting text in *italics*.

### General Recommendations

- I.D.1 The ISRP recommends that the Council adopt its "Integrated Framework for Fish and Wildlife Management in the Columbia River Basin" and use it to structure and filter proposed measures for inclusion in the FWP as part of the forthcoming amendment process. *This framework is key to the development of a scientifically based and adaptive process to evaluate and prioritize projects on an annual basis.*
- II.B.1 The ISRP recommends that proposal format require more detail on experimental and sampling design, monitoring, evaluation, and other analyses. *The current guidelines tend to emphasize compliance with measures and priorities and with federal and other regulations. These must be part of the judging of proposals, but more detail is needed to judge relative scientific merit and probable effectiveness.*
- II.B.2 The ISRP recommends that Council and BPA staff work with the ISRP to develop a uniform set of standards and policies for review of new and continuing project proposals.
- II.B.3 The ISRP recommends that annual project evaluations based on renewal proposals (i.e., project summaries) be supplemented with less frequent detailed peer reviews of projects along the lines of recommendations of the SRG to BPA in "Guide to Project Peer Review" (February 10, 1994). *Any project that continues for 3-5 years would be subject to this detailed peer review, which would aid in annual funding decisions*
- III.A.1 The ISRP recommends increased attention by the Council to a more information-rich accounting and reporting system to facilitate the prioritization of ongoing and needed work. *This should be accomplished by fall 1997 to be of use in the next round of ISRP evaluations.*
- III.A.2 The ISRP recommends the Council fund implementation of the comprehensive management review as described in measure 3.1E of the FWP.

- III.A.3 The ISRP recommends that Council specify clearly the intent of Program-wide coordination and reinforce this by specifying coordinated review, rather than appointing separate sub-program review boards. *This will be particularly important for successful implementation of the watershed-based approach to habitat restoration called for in Section 7 and wildlife habitat protection called for in Section 11 of the FWP.*
- III.A.4 The ISRP recommends that the FWP recognize and emphasize sustaining a "normative ecosystem", which includes not only anadromous and resident fish, but wildlife such as bald eagles, river otters, seabirds, marine mammals, and bears, as well as less conspicuous wildlife, such as songbirds, bats, and burrowing rodents.
- IV.B.1 The ISRP recommends that the Council implement a competitive grants program as part of the FWP.
- IV.D.1 The ISRP recommends the Council adopt an annual project review and selection process with a double track for competitive and targeted proposals (including project renewal proposals).

***Recommendations Related to the Review of the Fish and Wildlife Program***

- III.B.1 The ISRP recommends that all migration-related research, monitoring and other management activities be coordinated and integrated across agencies and tribes through explicitly stated and complementary measures in the FWP, NMFS, FWS and tribal recovery plans.
- III.B.2 The ISRP recommends quantitative evaluation of assumptions (e.g., flow-survival) upon which structural (e.g., passage facilities) and operational (e.g., flow augmentation) measures in the FWP and Recovery Plan are based.  
*This should include:*
  - a) *risk-benefit analysis of tradeoffs required to create normative conditions and habitat in the mainstems, and*
  - b) *thorough peer-review and evaluation of the effectiveness of high-cost actions including:*
    - 1) *routine monitoring of juvenile outmigrants*
    - 2) *predator control bounty*
    - 3) *biological studies of gas supersaturation*
- III.B.3 The ISRP recommends quantification of food web dynamics and their associated effects on juvenile salmonid ecology in mainstem reservoirs.

- III.B.4 The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among anadromous fish related measures within Section 7 of the FWP.
- III.B.5 The ISRP recommends that the FWP include an explicit measure to develop approaches and rationale for re-regulation of flows in tributaries to establish normative habitat conditions, as recommended in *Return to the River*.
- III.B.6 The ISRP recommends that habitat policies and objectives be established for each major subbasin and coordinated with overall production goals for the subbasin.
- III.B.7 The ISRP recommends that development of reliable watershed assessment procedures be given high priority.
- III.B.8 The ISRP recommends that the Council not approve funding for the construction and operation of new artificial propagation programs in the FY98 program until a comprehensive review of existing hatchery programs adequately addresses Measures 7.0D, 7.1A, 7.1C, 7.1F, and until at least a preliminary policy addressing Measure 7.1D has been drafted.
- III.B.9 To prevent a complete moratorium on new production, the ISRP recommends that the Council permit funding for an individual project only if the project proponents can demonstrate they have taken measures 7.0D, 7.1A, 7.1C, and 7.1F into account in the program design and the Council concurs. To ensure that standard is met, the individual projects should be funded only after a positive recommendation from an independent peer review panel.
- III.B.10 The ISRP recommends the Council implement a comprehensive review of artificial propagation in the basin. *That review should be initiated as soon as possible and cover all propagation activities including hatcheries funded by sources outside the FWP*
- III.B.11 The ISRP recommends that watershed assessment *precede* implementation of restoration projects so that probable limiting habitat factors be identified and a reasonable expectation of restoration effectiveness exists.
- III.B.12 The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among related measures for resident fish within Section 10 of the FWP.
- III.B.13 The ISRP recommends that the Council require a basin-wide systematic inventory of remaining native resident fish populations and their status, upon which opportunities for restoration and rebuilding native resident fish populations can be identified and prioritized.

- III.B.14 The ISRP recommends that measures in sections 10.1 and 10.2, which focus on planning, development of policy guidelines, and assessments of remaining diversity and population status in resident fish populations, receive greater attention and project funding.
- III.B.15 The ISRP recommends that resident fish artificial propagation facilities and projects be included in the comprehensive review of artificial propagation as described and recommended above in ISRP Recommendation III.B.10.
- III.B.16 The ISRP recommends that *substitution* projects, particularly those using non-native species, be viewed cautiously because their implementation may pose significant threats to native resident fish species. Therefore, individual *substitution* projects should be reviewed by the artificial production review panel (see ISRP Recommendation III.B.9), prior to authorization.
- III.B.17 The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among related measures for wildlife within Section 11 of the FWP.
- III.B.18 The ISRP recommends that the Wildlife Program include an explicit scientific research component. *This would be likely to increase mitigation success and would make evaluation and adjustment of the Program over time much more feasible.*
- III.B.19 The ISRP recommends that additional scientific criteria be added to those currently used to prioritize proposals for mitigation projects. *For instance, the geomorphologic suitability of a site to sustain Habitat Units anticipated to be gained should be considered in prioritizing mitigation projects.*
- III.B.20 The ISRP recommends that specific mechanisms be developed to coordinate the FWP with other programs that have significant impact on fish and wildlife and their habitat in the Columbia River Basin.
- III.B.21 The ISRP recommends that a separate Scientific Review Group for the Wildlife Program not be formed, but rather that a single Review Group (currently the ISAB) be charged with review of both Fish and Wildlife issues within the FWP. *This should improve program coordination, which will likely remain difficult in such a large and complicated program as the FWP.*
- III.B.22 The ISRP recommends that acquisition of land and of land easements continue to be given a high priority in the Wildlife Program, as habitat is necessary for wildlife populations and can be quantified reasonably by HEP in accord with obligations of BPA to various areas and groups.

- III.B.23 The ISRP recommends that the Program give increased attention and priority to research designed to evaluate effectiveness of habitat measures in terms of direct assessment of wildlife populations and their ecology.
- III.B.24 The ISRP recommends that Council include a portion of the Wildlife Program funds each year within the competitive grants program for research that could contribute to the benefit of wildlife. *Innovative monitoring and research proposals could be encouraged through this part of the Program.*
- III.B.25 The ISRP recommends that monitoring, which now is based on the unit of mitigation, habitat (measured as HUs [Habitat Units], determined from HEP [Habitat Evaluation Procedure]), be extended to include a requirement for some degree of direct monitoring of target (and perhaps some non-target) wildlife populations.

## SECTION I - INTRODUCTION

### I-A. Background of 1996 Power Act Amendment

This report responds to a new Congressional mandate changing the way Columbia River Basin fish and wildlife projects are selected for funding by the Bonneville Power Administration (BPA). Until 1995, BPA implemented the Columbia River Basin Fish and Wildlife Program (FWP) by choosing measures to implement and selecting the specific projects and contractors for that implementation. In 1995, BPA and the Northwest Power Planning Council (hereafter Council or NPPC) adopted a new process which called on the fish and wildlife managers to prioritize projects for funding and present them to the Council in the form of an Annual Implementation Work Plan (AIWP). The Council can ratify or revise the managers' annual priorities before submitting them to BPA for funding. Also in 1995, the Clinton Administration agreed to set a six-year fixed budget for BPA's fish and wildlife costs. This agreement meant the new prioritization process had to allocate implementation funding within a fixed budget.

In 1996, Congress amended the Northwest Power Act and added new procedures to the prioritization process. The amendment directed the Council to form an Independent Scientific Review Panel (ISRP) to make recommendations to Council on funding and resource allocations within the FWP and to review the projects proposed for funding for their scientific merit and consistency with the Program. This review is to be reported to the Council before the Council adopts prioritization recommendations. The Council is obligated to explain in writing if its recommendations for project funding disagree with the ISRP's report.

The 1996 Power Act amendment thus further changes what has already been an annually evolving process for selecting fish and wildlife projects for Bonneville funding. The Power Act amendment reforms may be the most significant of all, especially by adding in a formal independent peer review process and also by assigning new responsibilities and accountability to the Council. Integrating the peer review process and the other changes into the project funding process will not be fully accomplished in this first year. The amendment by its own terms is to last for four years, recognizing that this is a multi-year experiment in reinventing the process for making decisions on how to invest hydropower revenues in fish and wildlife recovery. The process will extend over several years, in a cooperative, iterative and educational effort involving the Council, the ISRP, the fish and wildlife managers, Bonneville, and interested non-governmental entities.

## **I-B. ISRP Charge**

The recent amendment to the Northwest Power Act, which mandated the formation of the Independent Scientific Review Panel (ISRP), calls for the ISRP to review funding allocations and projects within the FWP annually for four years starting in 1997. This review is to be reported to the Council (annually on 15 June; extended to 15 July for 1997 because of delays in gathering the project summaries for the CBFWA [Columbia Basin Fish and Wildlife Authority] prioritization process) before the Council adopts prioritization recommendations. The Council is obligated to explain in writing if its recommendations for project funding disagree with the report of the ISRP. To facilitate this, the ISRP has included all of its recommendations in the Executive Summary and has highlighted its specific recommendations throughout the body of the report.

The ISRP identified a potential problem arising from a mismatch between its statutory charge and CBFWA's approach to the prioritization process and the MYIP (Multi-Year Implementation Plan). The ISRP has been directed to review the funding allocations and projects relative to the implementation of the FWP. However, the MYIP addresses the FWP, NMFS's Biological Opinion and The Tribal Restoration Plan. Both the Anadromous Fish Caucus and the Resident Fish Caucus utilized the work done on the MYIP to guide them in the development of their FY98 work plans. Consequently, the ISRP reviewed the FY98 Annual Implementation Work Plan from a more limited perspective than CBFWA used when they developed it. We did not attempt to determine how much this mismatch may have impacted our recommendations in this year's review.

Our review examines and makes recommendations in two broad areas: Implementation of the Fish and Wildlife Program (Section III) and Enhancing Peer Review in the Fish and Wildlife Program (Section IV). Sections I and II provide relevant background information and describe our approach to this review.

## **I-C. History and Present Status of Peer Review in the FWP**

Peer review is an established tradition in public sector research and development enterprises in the United States and much of the world. The General Accounting Office and the Office of Science and Technology Policy have stressed the need for peer review in federal funding agency policies and for reforms to ensure fairness in funding selections (General Accounting Office, "Peer Review: Reforms Needed to Ensure Fairness in Federal Agency Grant Selection," Washington, DC, June 1994). Technical (scientific) peer review of BPA-funded projects is one of the steps critical to attaining and maintaining a high level of technical quality in the FWP.

From their inception, the scientific advisory bodies now represented in the ISRP (Scientific Review Group, Independent Scientific Group, Independent Scientific Advisory



Board) have stressed the need for peer review and have provided advice, as well as recommendations on specific policies and procedures to give BPA and the Council a peer review process responsive to federal initiatives (Coutant and Cada 1985; SRG 1990; ISG 1994). Bonneville Power Administration has made extensive use of the ISG's 1994 report to develop and implement a computerized project summary form. The project summary contains fields or queries that the principal investigators or project leaders must respond to by providing information required for scientific and technical peer review. The queries ask for information such as project objectives, relevance to the FWP, and a detailed description of methodology. The summaries should serve a useful role for review, but as we discuss later in this report, most project summaries requesting 1998 funding fell well short of that goal.

#### I-D. Recent Reviews by Independent Panels

The Independent Scientific Group and a National Research Council panel recently reviewed aspects of salmon restoration in the Columbia River Basin. Their reports, *Return to the River* (ISG 1996) and *Upstream* (NRC 1996), present a scientific synthesis that highlights areas where the Columbia River Basin Fish and Wildlife Program (1994 FWP) could be amended to provide a more scientifically sound salmon recovery program into the next century. There are several common threads running through these reports:

- Salmon have declined from many causes and there is no "silver bullet" that will resolve the current crisis.
- Replacement of salmon or salmon habitat by artificial means has in many cases not lived up to expectations.
- It is impossible to return to completely natural or pristine conditions, but there are means of restoring natural processes and features to more normative conditions that will provide a basis for sustained salmonid recovery and productivity. Such actions, taken in an ecosystem context, are likely to provide long-term benefits to resident fish and wildlife, as well as salmon and steelhead.
- Fragmentation of institutional roles and responsibilities remains a significant barrier to coordinated salmon restoration.

Council staff has recently (April 10, 1997) produced a draft issue paper entitled "An Integrated Framework for Fish and Wildlife Management in the Columbia River Basin" which describes a programmatic framework for the restoration of anadromous and resident fish and wildlife resources in the Columbia River Basin. The framework integrates social, economic and scientific information and objectives and incorporates many of the ideas embedded in the ISG's "Conceptual Foundation" from *Return to the River*. The Basin's fisheries managers have incorporated the conceptual foundation and management framework into their draft Multi-Year

Implementation Plan (MYIP) (pp. 8-18 and Appendix A of the *Draft FY 1998 Annual Implementation Work Plan*, CBFWA, June 4, 1997). There appears to be general consensus among the fisheries managers and Council on most points in the program framework and its conceptual foundation, which is based on *Return to the River*.

**I.D.1** Therefore, the ISRP recommends that the Council adopt its "Integrated Framework for Fish and Wildlife Management in the Columbia River Basin" and use it to structure and filter proposed measures for inclusion in the FWP as part of the forthcoming amendment process. This framework is key to the development of a scientifically based and adaptive process to evaluate and prioritize projects on an annual basis.

### **I-E. Regional Management of Fish and Wildlife and the Role of Adaptive Management**

#### ***Rationale for Prioritization in ISRP Reviews***

The ISRP undertook its review of the Fish and Wildlife Program and project implementation with an understanding that the primary objective in the region is the restoration of a healthy ecosystem that supports increased abundance and productivity from fish (anadromous and resident) and wildlife populations in the Columbia Basin. This goal is explicit in the priorities the Council's FWP places on protection and restoration of native fish and wildlife resources in native habitats, as well as in the anadromous fish doubling goal and its biodiversity constraints. We attempted to judge the merits of proposed expenditures of FWP funds according to their likely contribution to that goal.

At the same time, we recognize in the past there may have been sound reasons for the historical priorities, and that there may be institutional constraints requiring that shifts of actual funding priorities take place gradually.

#### ***Prioritization of Projects in Relation to a Coherent Strategy for Anadromous Fish***

Achieving regional recovery and increased anadromous fish production will require management actions to repair or compensate for some present malfunctions in an entire ecosystem that spans substantial parts of four large states. This will require a highly coordinated set of management actions. In theory, there may be more than one strategy that would be capable of achieving the objective, but mixtures of strategies will not lend themselves to the necessary coordination. Currently there are three strategies for salmon recovery in the basin: Council's Fish and Wildlife Program, NMFS's Biological Opinion and the Tribal Restoration Plan. The MYIP is addressing all three plans and could, when it is finished, successfully integrate them into a

comprehensive recovery program for the basin. If the CBFWA successfully integrates the three plans, the resulting program would be a better vehicle for setting project priorities.

***The Role of Adaptive Management in the FWP***

Existing knowledge may already be adequate to suggest a general framework for a recovery strategy of anadromous fish and development of a healthy ecosystem for fish and wildlife. That knowledge is summarized in recent syntheses such as *Upstream* (NRC 1996) and *Return to the River* (ISG 1996), and both present promising ideas for a scientific basis for proposing recovery actions. The Council's recent draft issue paper entitled "An Integrated Framework for Fish and Wildlife Management in the Columbia River Basin" describes a programmatic framework that incorporates many of the ideas from *Upstream* and *Return to the River*.

Although the framework and other documents may identify a specific strategy, the details of implementation—including decisions about how much is enough, and decisions about which interventions are proving most effective—will have to be learned during the course of the recovery. Details of the management actions that would be sufficient to achieve recovery goals will be tremendously important in their influence on the eventual success and cost of the recovery effort. Because present knowledge is not sufficient to determine the details of an implementation plan, there will need to be some element of experimentation in the recovery efforts themselves.

The adaptive management approach (Lee 1993; Volkmann and McConnaha 1993) offers the region a means to integrate new knowledge and experimentation into the applied effort of salmon recovery and maintenance of the Columbia River ecosystem. There is a fine balance to be struck in drafting a plan that has sufficient flexibility to accommodate a realistic need for ongoing fine tuning, but which still is concrete and specific enough to provide meaningful guidance.

Designing efficient management experiments, and conducting the monitoring to obtain timely and conclusive results from the experiments, will be crucial to the success of this adaptive approach. The design and analysis of the experiments, and design and operations of the required monitoring, may constitute a fair fraction of the recommended investment of the resources of the Fish and Wildlife Program and may occupy a fair fraction of the available talent, for these are demanding problems.

## **SECTION II – ISRP CHARGE AND APPROACH FOR 1997 REVIEW**

### **II-A. ISRP Approach to the Review**

#### ***Approach in 1997***

The Independent Scientific Review Panel was appointed by the Council in December 1996 and began work in January 1997. The panel consisted of eight members from the existing Independent Scientific Advisory Board (ISAB) augmented by three new members with expertise in wildlife, oceans, and natural resource economics. The ISRP spent approximately two months familiarizing itself with the Columbia River Basin and the Fish and Wildlife Program (FWP), reviewing CBFWA's past prioritization efforts, and defining the scope of our 1997 review. By March 1997, we recognized several factors which would limit the scope and extent of our 1997 review. The ISRP was appointed in the middle (January) of an annual review cycle that ends on 15 June of each year. We concluded there was not enough time this year to develop the entire process, establish Peer Review Groups and conduct a rigorous scientific review of each BPA-funded project (which number more than 220). Additionally, in early March 1997, we reviewed a set of 100 project summaries and determined that the quality of information available in most of them was inadequate for rigorous scientific review. Consequently, the ISRP limited its work in 1997 to three primary tasks:

1. a general review of the projects and the project summary form (Section II-B);
2. a general review of the implementation of the FWP (Section III);
3. recommendations for improving review of proposals and refining an annual review cycle (Section IV).

The last task was intended to provide guidelines and assistance so that a complete review of projects can be conducted in 1998.

The ISRP recognizes that integrating the peer review process described in this report, as well as other changes in the project funding process will not be fully accomplished in this first year. The process of revising and reforming peer review in the Basin will extend over several years, in a cooperative, iterative and educational effort involving the Council, the ISRP, the fish and wildlife managers, Bonneville, and interested non-governmental entities. In that vein, future ISRP review efforts are described in the work plan below:

### **II-B. Review of 1998 Ongoing Projects and CBFWA Prioritization**

In spite of starting our review in the middle (January) of an annual cycle ending in June of each year, we examined the project summaries of all ongoing projects during our review of the FWP (Figure 1; Section III). Although our initial review of a subset of 100 project summaries

was conducted on a draft form of the summaries, we later examined all 220+ project summaries in the same form that CBFWA used in development of their FY98 Annual Implementation Work Plan.

#### ***Review of Continuing (Ongoing) Project Descriptions***

We interpreted our mandate from the 1996 Power Act Amendment to include a scientific review of some of the individual projects proposed for continued funding for the BPA-funded FWP. To accomplish this aspect of our review, we did the following.

The ISRP reviewed a preliminary draft of the FY 1998 Project Summary form that was to be used by BPA to collect information on projects in a common format. Comments on the draft form were provided to staff of the Power Planning Council. Our main concern was that the form be consistent with the guidelines for project proposals by Coutant and Cada (1985), the SRG (1990) and the ISG (1994). Those recommendations included the minimum standards for information to evaluate scientific and technical acceptability of projects, and were gleaned from a review of numerous funding agency requirements. The draft form did request many, but not all, of the recommended types of information.

In March, ISRP members read a subset of about 100 of the completed FY 1998 forms for continuing projects. The project summary form had changed since our earlier review of the draft. Each ISRP member reviewed 10-20 projects. The subset included a sample of all types of project, including research, monitoring, habitat improvement, and hatchery construction. In May, we examined all renewal project summaries in the same form that CBFWA used during its prioritization process. We did not evaluate new project proposals, because these were not solicited by BPA. Instead, BPA requested abbreviated statements of need without specific proposals. We did not review the Needs Statements as part of this ISRP report; however, we expect to include a review of them in our "Retrospective" report to Council later this fall.

We drew conclusions about the information-collection and review process from the renewal proposals we reviewed. We drew conclusions about the form, the quality of information supplied by project proposers, and how well we were able to discern project quality from the information provided.

#### ***Conclusions and Recommendations for FY 1998.***

The information supplied in the FY98 proposed project summary forms was generally insufficient for a scientific peer review, although a number of project summaries provided adequate detail for review and several summaries were exemplary. The latter proposals demonstrated that the project summary form could be used for the purpose of scientific review, when adequate information was provided. Nevertheless, several categories of information were not provided, such as the names of personnel, their qualifications to do the work, and breakdown of costs. The information supplied on the form frequently did not provide enough technical detail to adequately represent some projects, based on personal knowledge by ISRP members.

Consequently, the exercise of comparing projects proposed for FY 1998 on the basis of relative scientific and technical merit was not feasible using the project summary forms.

**II.B.1 The ISRP recommends that proposal format require more detail on experimental and sampling design, monitoring, evaluation, and other analyses.** The current guidelines tend to emphasize compliance with measures and priorities and with federal and other regulations. These must be part of the judging of proposals, but more detail is needed to judge relative scientific merit and probable effectiveness.

The current process of obtaining information for project evaluations suggests the need for institutional authority to establish the importance of providing information suitable for a scientific-technical peer review to guide decisions about future funding. Such authority is essential if the FWP is to succeed. Because we were unable to conduct a scientific-technical evaluation of individual projects for FY 1998 due to lack of appropriate information, we decided to emphasize evaluation of subject coverage instead, and attempt to assist the Basin in improving the process and quality of proposals for review in FY 1999.

**II.B.2 The ISRP recommends that Council and BPA staff work with the ISRP to develop a uniform set of standards and policies for review of new and continuing project proposals.**

The written standard and policy document should describe the peer review process, as well as the kind of information and technical detail that are necessary for peer review. The document should also provide guidance for investigators as they prepare or update project summaries for new or ongoing proposals. Finally, the document should also include information on the annual review cycle (Section IV-D) and its deadlines for proposal submission.

In order for the review of projects to occur smoothly within the context of the annual review cycle, particularly during the one or more years that will be required to formalize this process within the Basin, it is imperative that guidelines for the process and expectations be clearly defined for all parties involved. Formalizing peer review, the intent of the 1996 Power Act amendment, will likely need to be an educational and iterative process. Nevertheless, the annual review cycle, including the CBFWA prioritization process and the ISRP review of projects, will be compromised if deadline dates for project submission are not respected. Project summaries must contain adequate information and detail to allow scientific, technical review. A guidelines document will assist investigators in preparing project summaries. In the future,

proposals that do not contain adequate information or are submitted after the deadlines, are likely to be excluded from the review process and not recommended for funding.

**II.B.3** The ISRP recommends that annual project evaluations based on renewal proposals (i.e., project summaries) be supplemented with less frequent detailed peer reviews of projects along the lines of recommendations of the SRG to BPA in "Guide to Project Peer Review" (February 10, 1994). Any project that continues for 3-5 years would be subject to this detailed peer review, which would aid in annual funding decisions.

Peer review of project proposals (both renewal and new) for scientific-technical quality should be part of a well-described project evaluation process. ISRP recommendations in this area are developed in Sections IV-C (A Peer Review Process for Project Proposals) and IV-D (Annual Proposal Review Schedule for the Fish and Wildlife Program).

## II-C. ISRP Work Plan for 1998 - 2000

### *Year 2 (1998)*

Work by the ISRP in 1997 will have set the stage for a 1998 comprehensive review of funded and proposed projects. Project reviews will occur from the perspective of topics (e.g., habitat, artificial production, etc.) and by subbasins, as the latter links different topical projects within specific geographic settings. The review process anticipates extensive use of Peer Review Groups for project review during this process.

Programmatic-level recommendations will arise out of the comprehensive projects review. These recommendations will contain more project-specific detail than do the 1997 programmatic recommendations contained in this report.

- a) 1998 Project-level Review.
  - Comprehensively review funded and proposed projects
  - Review topically and by subbasin
  - Utilize Peer Review Groups

## b) 1998 Programmatic-level Review

- Refine the preliminary recommendations of 1997
- Make project-specific recommendations where appropriate to programmatic concerns

***Years 3 and 4 (1999-2000)***

In addition to conducting further iterations of both project and programmatic reviews as described in Year 2, the ISRP will focus in 1999 on describing a long-term strategy in defining a Rationale and Protocol for future review efforts. This will include specific protocols, revised as needed from 1997 and 1998, for the review of projects, as well as programmatic review. The protocols would be defined within an adaptive management context. The vision, rationale, and protocols should provide guidance for future evaluations, rankings and prioritization of overall program goals, as well as for individual projects if the Congress or region decide to continue the ISRP efforts (either as the ISRP or another review group) beyond the four years mandated by the recent Power Act amendment.



## SECTION III – REVIEW OF FWP IMPLEMENTATION

### III-A. Comments on FWP Organization and Administration

The ISRP reviewed the budgets of individual projects submitted for approval in FY98 and summarized the data by major categories, i.e., hatcheries, habitat, mainstem passage, etc. (Figure 1). The ISRP developed charts (Figures 2-8) that illustrate the organizational relationship between projects and functional groups of measures in each of the sections of the FWP we reviewed. To construct Figures 2-8, we reviewed all the projects that were relevant to a specific section of the FWP. Then we determined which measure or functional groups of measures best described the primary objective of the project. In some cases a single project contributed to more than one measure, but in our analysis we only recognized the project's primary intent. For many projects, this required a judgement by the ISRP as to the project's primary purpose.

The summary presented in Figure 1 shows the distribution of funds among the projects recommended for funding in CBFWA's FY98 Annual Implementation Work Plan. Based on the above analyses, hatcheries were the highest priority, requesting the largest percentage of the budget (41%; 34% supplementation and 7% production). Habitat categories were the next largest funding request (32%). Of the total request for habitat, anadromous fish accounted for 47%, wildlife 42%, and resident fish 12%. Mainstem passage and habitat accounted for 17% of the requested funds. No funds were requested for work in the ocean or estuary.

In our attempt to conduct this initial review, our effort was impeded, in part, because the FWP and the CBFWA AIWP for anadromous fish projects use different organizational structures. The FWP organizes its anadromous fish measures around functional elements: salmon goal and framework, juvenile salmon migration, adult salmon migration, coordinated salmon production and habitat, and salmon harvest. The CBFWA AIWP organizes its anadromous fish projects into geographical units: Clearwater subbasin, Deschutes Subbasin, Fifteen Mile Subbasin, Grande Ronde Subbasin, Hood Subbasin, John Day Subbasin, Klickitat Subbasin, Lower Columbia Watershed, Columbia River Mainstem Subbasin, Snake River Mainstem Subbasin, Hanford and Mid-Columbia Subbasin, Salmon Subbasin, Salmon and Clearwater Subbasin, Tucanón and Asotin Subbasin, Umatilla Subbasin, Walla Walla Subbasin, Yakima Subbasin and a system-wide category. The ISRP did not evaluate the efficacy of the two organizational approaches. Each approach has positive points. However, we agree that restoration efforts, organized by watersheds in an ecosystem context, is logical and consistent with ecological theory (see *Return to the River*). Functional elements focus on major problem areas which makes it easier to assess the distribution of the total investment over the entire range of critical problems.

The different organizing structures make it difficult to relate the list of projects approved by CBFWA to the implementation of specific measures in the FWP. The CBFWA AIWP should

include an explicit description of the relationship between the FWP and its recommended list of projects.

Our experience this year led us to the conclusion that there is a general lack of a disciplined approach to the implementation of the FWP, particularly for the anadromous fish section. There appears to be a general lack of concern regarding the relationship between the FWP and the Annual Implementation Work Plan. This problem was anticipated by the Council and was expressed on page 3-7 of the FWP. Some of the problems encountered this year would be resolved if more attention were given to the relationship between the FWP and the Annual Implementation Work Plan.

The above deficiencies notwithstanding, the ISRP is encouraged by CBFWA's development of a Multi-Year Implementation Plan (MYIP). The ISRP agrees with the need for a regional framework as contained in the MYIP and believes it will be useful in future project prioritization efforts. We believe conscientious adherence to the principles that comprise the conceptual foundation will improve implementation of the FWP and will alleviate some of the problems identified in our 1997 review. The ISRP supports use of the MYIP to exert appropriate influence in the 1999 CBFWA prioritization process.

#### ***General Recommendations on Administrative Issues***

The ISRP had difficulty relating measures in the FWP to specific actions in the basin. Although the Council has an accounting system to match measures with contracts, a more information-rich system is needed to relate measures to actions (past, present, and proposed), especially for complex sections of the FWP, such as Section 5 (Juvenile Migration) and Section 7 (Coordinated Salmon Production and Habitat). Because the accounting and reporting system available at the Council and BPA could not answer many of the ISRP's questions in the time available, the ISRP had to conduct its own survey. Operational measures in the FWP were especially difficult to relate to actual operations. Because there is a cost and often incompletely substantiated biological assumptions associated with fish-related operations, even though no contracts are let, the ISRP included operational measures in its charge for this overview of Section 5 of the FWP. Records are also poor for measures that have already been accomplished (i.e., the intent of the measure has been met) and thus no longer need active projects. For example, some measures have deadline dates, some predating the 1994 FWP, yet it is unclear whether the work was done or whether the work recorded in the accounting system actually satisfied the intent of the measure. Whether a project complies with a measure is often a judgment of the BPA Contracting Officer's Technical Representative (COTR). Neither the Council nor BPA have a bibliography of reports keyed to each measure in order for someone to evaluate accomplishments. Many of the proposals for FY 1998 funding received for ISRP review did not identify which Program measure the project sought to address. These difficulties are more than procedural--if funding is to fill gaps in knowledge identified in the FWP, then it is important to understand where those gaps remain to be filled. If operational measures were abandoned because the biological assumptions were incorrect, then this knowledge should be

recorded. These improvements in the usefulness of the accounting system appear feasible and worth the effort.

**III.A.1** The ISRP recommends increased attention by the Council to a more information-rich accounting and reporting system to facilitate the prioritization of ongoing and needed work. This should be accomplished by fall 1997 to be of use in the next round of ISRP evaluations.

The ISRP believes that the Council needs (and partially has):

- A systematic inventory of what has been accomplished already for each measure, including operational actions that do not have "projects" (with reports, administrative memos, etc. documenting accomplishment).
- A systematic inventory of what is being done now for each measure, both in operations and funded projects (with account numbers and descriptions for specific projects funded by BPA, Corps, NMFS, or other agencies). This inventory should indicate expected near- and long-term results.
- A systematic inventory of the measures in its Program that still need to be addressed, so that groups like the ISRP can prioritize them for future attention. The current accounting system shows measures without current projects, but it is not clear whether the work has already been completed or has been left out.
- A staff assigned to these functions to work closely with BPA COTRs to judge accomplishments, rather than having analysis left to its advisory boards. There is an educational value for the ISRP/ISAB to evaluate the specifics of the FWP, but the institution should keep the records. It is unlikely that computer searches alone will accomplish these inventories, although the StreamNet database might be used for this purpose.

Many of the problems discussed above are organizational and managerial and not scientific, however they impede the scientific evaluation. A managerial review could identify problems overlooked by the ISRP and do a better job of recommending corrective actions.

**III.A.2 The ISRP recommends the Council fund implementation of the comprehensive management review as described in measure 3.1E of the FWP.**

Numerous measures in the FWP call for coordination among measures, entities, and programs. One means of enhancing coordination among major programs, such as anadromous fish, resident fish, and wildlife, would be for a single review board to review proposals or projects from all areas, rather than establishing separate review boards for each program area.

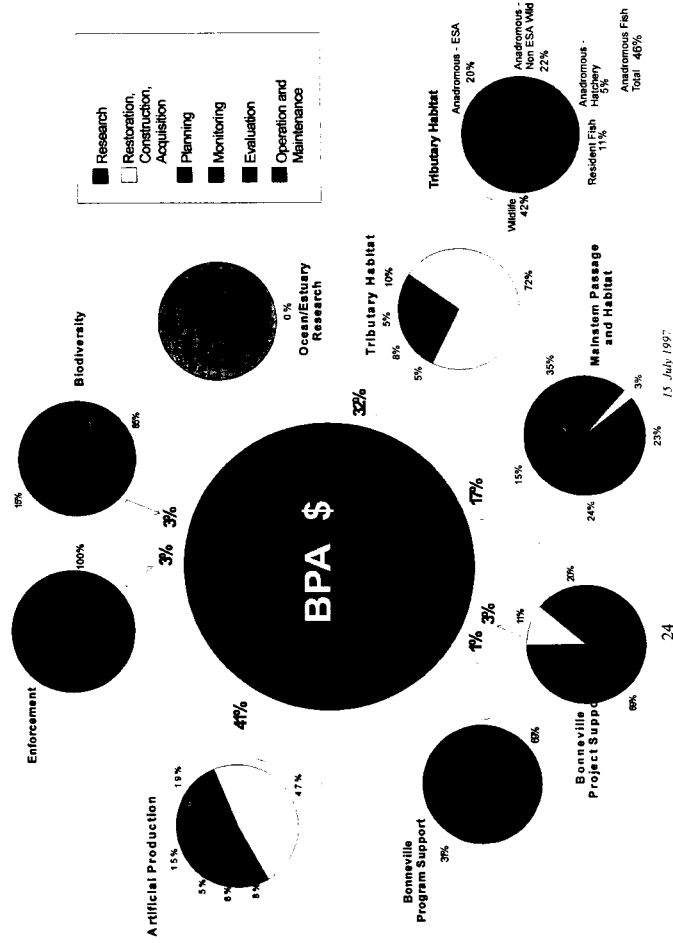
**III.A.3 The ISRP recommends that Council specify clearly the intent of Program-wide coordination and reinforce this by specifying coordinated review, rather than appointing separate sub-program review boards. This will be particularly important for successful implementation of the watershed-based approach to habitat restoration called for in Section 7 and wildlife habitat protection called for in Section 11 of the FWP.**

#### ***General Recommendations on Revisions to Fish and Wildlife Program***

Terrestrial habitat, terrestrial wildlife, and ocean wildlife are part of the ecosystem, contributing to the ecological diversity and complexity that likely are necessary for preservation of both fish and wildlife populations. For example, selection pressure on fish populations by predators can be important to traits of fish, as well as an important contributor to the diversity of their ecosystem, and food provided to marine and terrestrial wildlife by fish helps to maintain the diversity and productivity of both terrestrial and aquatic systems and their component wildlife species.

**III.A.4 The ISRP recommends that the FWP recognize and emphasize sustaining a "normative ecosystem", which includes not only anadromous and resident fish, but wildlife such as bald eagles, river otters, seabirds, marine mammals, and bears, as well as less conspicuous wildlife, such as songbirds, bats, and burrowing rodents.**

Figure 1. Distribution of Funds in the FY98 CBFWA Recommendations



### III-B. Review of specific sections of the FWP

Although the ISRP examined the entire Fish and Wildlife Program, our review emphasized the four major sections of the FWP (Sections 5, 7, 10 and 11) because of start-up problems in this first year of the review process. These sections deal with major elements of the FWP (e.g., juvenile migration, salmon production, resident fish, and wildlife) and therefore include a large percentage of the measures and funded projects in the program. In particular, we did not review adult salmon migration (Section 6) and salmon harvest (Section 8). Nevertheless, adult salmon migration and harvest management are extremely important to salmon recovery and need to be coordinated with other components of the program. We did not focus on individual projects, but reviewed the overall priorities and compared those priorities to the intent of the FWP. Therefore our recommendations are general in nature. In 1998, we will evaluate each project and provide project-prioritization recommendations to Council.

#### *Section 5 - Juvenile Salmon Migration*

##### **Intent**

Section 5 of the FWP addresses juvenile salmonid migration through the lower Snake River and mid- and lower Columbia River. A long preamble (5 pages) and subsections without measures (5.0A and 5.0B) explain the basic physical and biological problems for successful salmonid migration, relationship of fish migration to the basin's water budget (flow management to aid fish migration), the nature of scientific uncertainty about the ecosystem in the mainstem that supports successful migration, the anticipated value of an adaptive management approach to actions intended to aid migration, and the idea of conducting a major mainstem experiment to test several specific hypotheses about how fish migration might be improved. The hypotheses are described in a separate 5-page subsection (5.0E) without measures (specific measures regarding the hypotheses follow in subsequent subsections). There are two major hypotheses, one dealing jointly with river flow, water velocity, fish migration rate, and fish survival, and the other dealing with transportation of juvenile salmonids downstream by barge and truck. This section of the FWP is innovative and laudable for proposing specific hypotheses for improving juvenile salmonid migration and measures to test them. Many of the juvenile migration issues reviewed in the Independent Scientific Group's report, *Return to the River* (ISG 1996) are included in this section.

Many of the measures in Section 5 are "operational" rather than directing BPA expenditures. The operational measures require agencies to take certain actions as a part of their normal business operations. These operational measures outnumber those related to scientific research and monitoring. Section 5 has 189 measures assigned to the Council, major agencies (BPA, Corps of Engineers, NMFS, FERC, Bureau of Reclamation), "fish managers", "regulators", states, the public utility districts, specific utilities (e.g., Idaho Power Co.), specific smaller groups (Fish Operations Executive Committee, ISG, Pacific States Marine Fisheries

Commission), and "relevant parties." Each operational objective (or group of objectives) is accompanied by a biological objective (which entails an assumption that the biological objective will be met by the operation). There is clear intent to operationally expedite successful fish bypass of dams, increase flows, increase water velocities in reservoirs, control salmonid predators and reduce biological competition.

It is also the intent of Section 5 that important research and evaluation be funded and conducted by agencies other than BPA. Numerous actions are specified, for example, for the U.S. Army Corps of Engineers, which has its own extensive mainstem research program (USACE 1997). Coordination of operations and studies among agencies is intended to occur through a "Fish Operations Executive Committee" (5.1A).

The preamble makes four important observations that imply overall intent of the section. The first recognizes inherent conflicts among the purposes of the hydropower system. Apparently, it was not clear to the writers of the FWP how mainstem fish and wildlife objectives could be achieved along with the other objectives of the hydropower system, especially for all years with variable environmental conditions. Careful planning would be required. Second, changes must be made in the hydroelectric system over the long term to both make the fish and wildlife objectives more achievable and minimize continual (and implied sensitive and politically unsettling) impacts and tradeoffs among objectives, consistent with the Northwest Power Act. Third, there must be evaluation of the biological assumptions that underlie operational objectives to see if changed river operations could be expected to achieve the anticipated biological benefits. Evaluation of assumptions behind an action is different from evaluating the results of an action, although the two are related. Fourth, these activities need to be made with cooperation among all parties to ensure the continued adequacy, efficiency, affordability, and reliability of the region's power supply.

The ISRP believes these observations entail immense and important challenges for both overall management of the mainstem for juvenile salmon migration and for prioritizing work to be done with BPA funding under the FWP. The ISRP believes it is especially incumbent on the scientific and technical portions of the FWP to thoroughly scrutinize the biological assumptions behind operational (and structural) objectives. As major restructuring of the hydropower system is contemplated through drawdowns below normal operating pools and dam breaching, the biological foundations for these actions and other less drastic alternatives must be clear and well substantiated.

#### **Implementation**

Many of the measures in Section 5 have been implemented, although the context of the measures has changed greatly since the current FWP was written in 1993-94. In particular, the implementation of operational and experimental measures has been altered by specific actions mandated by the 1995 Biological Opinion by the National Marine Fisheries Service under the Endangered Species Act (NMFS 1995). These actions have often superseded the Council's measures and timetables, despite broadly similar biological objectives. For example, the Corps of Engineers references the Biological Opinion measures rather than the Council's FWP

measures as justification for its research and evaluation projects at mainstem dams (USACE 1997). Specifically, the Council's schedule for experimental drawdown of selected reservoirs to test effectiveness in aiding fish migration has been bypassed. These changes entail not only policy decisions, but often imply new or altered biological assumptions and they affect the ability to test assumptions. The prescriptive nature of the Biological Opinion seems to have been detrimental to the Council's objective of scrutinizing the validity of biological assumptions using BPA funding. There is need for a regional approach reconciling the Council's program and the NMFS requirements.

Of the 189 Section 5 measures in the FWP, 25 currently appear to have identifiable BPA project numbers associated with them, with the remainder being operational or background measures without specific BPA contracts (Figure 2). From the complementary perspective, the ISRP could relate 46 of the more than 220 BPA project numbers to specific Section 5 FWP measures, although this involved the ISRP making judgements about the relationship of a specific project to the FWP, rather than the proposer describing how the project related to a Program measure. Both tallies include multiple entries. Although few operational measures would be expected to be identified with specific BPA FWP projects, their biological basis still needs scrutiny (as noted above).

Projects funded by agencies other than BPA accomplish many FWP measures. The Corps of Engineers, the mid-Columbia P.U.D.s and NMFS, in particular, have funded projects that generally match many FWP measures related to juvenile salmon migration, albeit with little specific cross-referencing (e.g., USACE 1997). The FWP is not designed to relate only to BPA but to federal agencies in general, hence the reference of many measures to the Corps rather than BPA. Both the Corps and NMFS have ESA-related work that corresponds with measures in the FWP. The Corps funds essentially all of the transportation implementation and evaluation (5.8A), with the work being accomplished by the NMFS. The ISRP has surveyed the Corps of Engineers' Portland and Walla Walla districts for projects associated with the FWP Section 5. Most of these relate to improving Columbia and Snake river passage near or at dams (few BPA-funded projects), transportation, and effects of dissolved gas supersaturation (both agencies fund). The concentration of Corps' studies on the behavior of salmonids as they pass through reservoirs and encounter dams, biological evaluations of structural improvements, and studies that evaluate transportation seem appropriate to needs of the FWP. These multiple projects and agencies seem inadequately coordinated and integrated, in spite of the intent of Measure 5.1A, which describes coordination of operations and studies among agencies through a "Fish Operations Executive Committee".

**III.B.1 Therefore, the ISRP recommends that all migration-related research, monitoring and other management activities be coordinated and integrated across agencies and tribes through explicitly stated and complementary measures in the FWP, NMFS, FWS and tribal recovery plans.**



A number of assumptions on which operational measures in both the FWP and the NMFS Biological Opinion (including proposed major structural and operational modifications of the hydropower system) are based have not been evaluated. Quantification of these assumptions could allow more firm prediction of probable biological benefits to be derived from alternative management actions (structural and operational). Key assumptions include the responses of migrating juvenile salmonids to flow volumes, water velocities, temperature, and other ecological characteristics of the mainstem, both in riverine situations and in reservoirs. Some assumptions are being evaluated in detail by the PATH projects (further review of the PATH results by the ISRP or ISAB will be needed to determine what other areas should be covered). The assumptions should be evaluated in the parameter ranges capable of being managed in the basin (e.g., flow augmentation in the actual range of potential drafts from upstream reservoirs over the diversity of water availabilities). This research and monitoring can be accomplished under the framework of the FWP's "mainstem experiment."

There appear to be especially large BPA expenditures in a few areas and none in others, based on the clumping of stars in Figure 2. This seeming imbalance may act to the detriment of other needed studies and actions in the mainstem for juvenile migrants. There seems to be little systematic allocation of funds among areas of need as identified in the FWP. We cite three examples of heavy BPA commitment evident from Figure 2. First, routine monitoring the movement of juvenile salmonids absorbs a large amount of BPA funding (FWP subsection 5.1B) and general monitoring projects (measure 5.9A.1). Although the smolt monitoring work the ISG reviewed is generally of high quality (ISG 1995), the analysis to date seems to have been largely a documentation of the demise of salmonids in the basin with insufficient investigation of causes and potential alternative remedies. This work could be more focused on analyses that try to answer critical uncertainties about various alternative management approaches (that are explicit or implicit in other Program measures). This extended analysis will likely require new projects as well as an evolution of the existing program. Second, the bigmouth minnow (squawfish) predator control program is expensive even though predation is likely the secondary end-result of other multiple stresses and habitat degradation for juvenile salmonids. The primary causes of stress (e.g., damages from turbines and fish bypass systems or high temperatures) might better receive both additional study and attention to remedies. A thorough review of the predator control program has not been conducted. Third, gas supersaturation research receives considerable attention even though the physical causes and engineering solutions at the dams are known and the general biological detriment of high gas supersaturation is well proven. The research tests several key biological assumptions about gas bubble trauma, but the present emphasis could be considered as pursuing biological details as an excuse for not making the obviously needed engineering corrections at the dams. This program, too, has not been evaluated in the context of other needs of the FWP. Fourth, ISRP sees little substantiation that illegal catches are a major problem for salmon survival (this program targets catches of adults, but is a major drain on funds needed for work to protect juvenile salmonids).

A major set of the uncertainties addressed by the FWP in Section 5 are described in several measures, that direct the ISG (now the ISAB) to assist in developing a "mainstem

experiment" to address uncertainties concerning flow, water velocity, fish migration rate, and survival. Companion studies on smolt transportation, also called for in this measure, are being undertaken and funded by the Corps of Engineers. Therefore, the Council and NMFS should consider whether existing work (e.g., PATH, the NMFS reach survival studies and other PIT-tagging studies) constitutes the intent of the mainstem experiment, what other approaches might be taken, and whether any single (different) experiment is feasible and provide direction to the ISAB if additional assistance is desired.

The ISRP finds that ecological and hydrodynamic understanding of juvenile fish migration is inadequate for serious, quantitative evaluation of the major measures of the Council's FWP related to reservoir drawdown, dam breaching, and flow augmentation. All of these actions assume a fairly simple flow-survival relationship. When the complexities of the relationship are more fully understood, other management options for aiding migration will likely become evident (some were suggested in *Return to the River*). The quantitative strengthening of this knowledge base (for support or modification of flow-survival relationships) is seen by the ISRP as having high priority for realistic risk-benefit evaluations of structural and operational management options related to juvenile migration. As immensely important as they are, neither the physical nor biological assumptions related to flow augmentation are being adequately tested by any project funded by the Fish and Wildlife Program or by any other agency in the Columbia River basin.

**III.B.2 The ISRP recommends quantitative evaluation of assumptions (e.g., flow-survival) upon which structural (e.g., passage facilities) and operational (e.g., flow augmentation) measures in the FWP and Recovery Plan are based. This should include:**

- a) risk-benefit analysis of tradeoffs required to create normative conditions and habitat in the mainstems, and**
- b) thorough peer-review and evaluation of the effectiveness of high-cost actions including:**
  - 1) routine monitoring of juvenile outmigrants**
  - 2) predator control bounty**
  - 3) biological studies of gas supersaturation**

Major ecological events in the mainstem that could be affecting juvenile salmonids during their outmigration appear to have received little attention in existing projects, even when part of the FWP. For example, the American shad population has increased dramatically in the lower Columbia River and shad are colonizing progressively further upstream. The anticipated importance of shad is reflected in a set of FWP measures (5.7A2, 5.7B9, 5.7B10, 5.7B11) but

there are no ongoing or planned projects. A second example is the invasion of the Columbia and Snake river reservoirs by estuarine invertebrate organisms, which are now found upstream as far as Lower Granite pool (ISG 1996). Although observed for several years in the monitoring programs, these invaders have not been evaluated for their effects on declining salmonids in spite of likely food-chain interactions. In general, the replacement of riverine food chains for juvenile salmonids with reservoir food chains is hardly recognized in the FWP or in the research being funded (most food chain research has been funded by the Corps of Engineers as part of its dredged materials program).

**III.B.3      The ISRP recommends quantification of food web dynamics and their associated effects on juvenile salmonid ecology in mainstem reservoirs.**

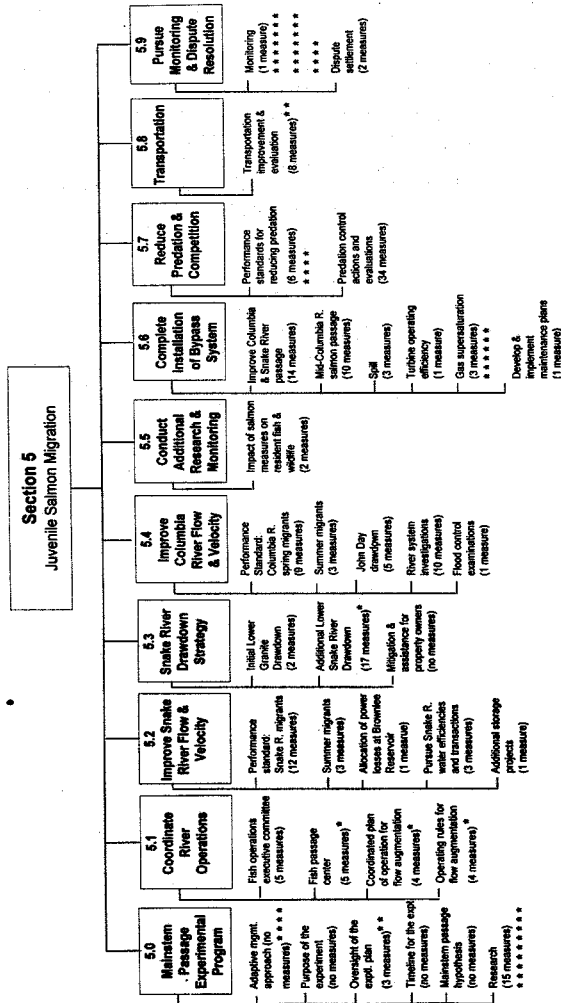


Figure 2. Distribution of projects among measures in Section 5 of the FWP.

### ***Section 7 - Coordinated Salmon Production and Habitat***

#### **Intent**

Section 7 of the FWP contains measures intended to increase natural and artificial production in the basin. The measures in Section 7 fall into three broad categories: 1) increase, improve or evaluate artificial propagation; 2) improve habitat and increase natural production; and 3) a mixture of measures to gather basic information on habitat and existing wild and naturally spawning stocks, and to develop policies and plans. The Council's intent in Chapter 7 is to increase production from both natural and artificial sources. Subsections 7.0, 7.1, 7.2 and parts of the other measures in Section 7 imply that the Council also intended to ensure that the natural and artificial production systems are successfully integrated in the basin—in particular, that artificial propagation does not adversely affect natural production of the Pacific salmon's remaining biodiversity and that harvest of artificially propagated salmon not lead to coincident overharvest of naturally produced stocks.

The measures in Section 7 are tied to measures in other parts of the FWP. The Introduction to Section 7 identifies coordination between habitat (natural production) and artificial production measures as a critical element in an ecosystem approach to species recovery, then it goes on to state that the "starting point for coordination is the subregional process" (Section 3, Measure 3.1D). Clearly, the Council intended to increase artificial production consistent with guidelines that emerge from the subregional process. Measure 4.1D calls for the development of a biological diversity baseline to be composed of selected populations in the basin. The baseline is directly related to measures in Subsection 7.1 (Ensure Biodiversity). Measures such as 3.1D and 4.1D should logically precede or at least be implemented concurrent with the production and habitat measures in Section 7. The ISRP could find no evidence that Measures 3.1D and 4.1D have been completed, that work is ongoing or that there is an intent to complete those measures in the future.

Within Section 7, measures such as: Comprehensive Evaluation of Federal Production Activities (7.0D), Evaluation of Carrying Capacity (7.1A), Conserve Genetic Diversity (7.1B), Wild and Naturally Spawning Population Policy (7.1D), Systemwide and Cumulative Impacts of Existing and Proposed Artificial Production Projects (7.1F), and Adjust the Number of Hatchery Fish Released to Stay Within Basin Carrying Capacity (7.1G) appear to be logical precursors to major investment in new artificial propagation programs in the Basin. The results of those measures should provide important direction to the implementation of production measures and protect natural production and biodiversity in the basin. At a minimum they should be implemented concurrent with new production programs.

### Implementation

The ISRP concludes that the emphasis in implementation of measures in Section 7 in FY97 and the FY98 proposed implementation are not consistent with the priorities of the Council's program. Implementation emphasized new artificial propagation to the nearly complete exclusion of those measures that give direction to and ensure effectiveness of the new production measures (Figures 3 and 5). The ISRP recognizes that not all the apparent precursor measures must necessarily be completed before new artificial production programs are implemented. However, the ISRP concludes that it is inconsistent with the FWP to proceed with a high level of investment in new artificial production while at the same time ignoring those measures that are needed to evaluate existing programs and give direction to new programs. For example, the evaluation of carrying capacity and its relationship to current production should precede and not follow a massive investment in new production facilities and programs. Also, credible evaluation of the existing hatchery program should be completed before new facilities are funded.

The apparent rush to invest in massive increases in artificial propagation is especially disconcerting given recent reviews and recommendations of scientific panels (National Fish Hatchery Review Panel 1994; NRC 1996; ISG 1996). All of these scientific panels have recommended caution and restraint in the use of artificial propagation.

The ISRP notes that implementation of captive brood technology appeared to receive a high priority (Figure 3) in the FY98 program. This does not appear to be consistent with the Council's program. The FWP clearly states that the captive brood programs should be consistent with the "products and conclusions of the genetics and natural production framework provided elsewhere in the section". We interpret that to mean completion of Measures 7.1D, 7.1F 7.1B and 7.1G. These measures are not being addressed or were inadequately addressed in the CEA (the draft Programmatic EIS examining impacts of artificial production). The state of Oregon has a wild fish policy and Washington is soliciting comment on a draft EIS for its wild fish policy. Oregon's policy and Washington's draft policy do not fulfill the intent of Measure 7.1D, which calls for the development of a wild and naturally spawning population policy that is consistent with the "Council's overall program goal and intended to protect genetic diversity, population identity, long-term fitness and evolutionary capacity." The ISRP interprets that to mean a single basinwide policy consistent with the FWP and approved by the basin's salmon management agencies and Tribes. The ISRP recognizes that captive brood programs (measures in 7.4D) need to be implemented to prevent extinction of populations within the listed ESU's. However, the Council should be concerned that the use of captive brood technology may grow to widespread implementation without adequate policy guidance. For example, measures 7.4D.1 and 7.4D.2 call for captive broodstock scoping studies and a demonstration project.

The FWP acknowledges that habitat degradation has been a major cause of salmon declines in the Columbia River Basin, and that present existing habitat is seeded at low levels. Degraded habitat is believed to be limiting to natural production even when population densities are low due to inadequate seeding because "reduced habitat quality results in lower survival during critical spawning, incubation, rearing and migration periods." The Council strongly

endorses the concept of cooperative restoration planning undertaken by federal, state, private and tribal organizations. They further state "if watershed restoration is to be successful, instream restoration should be accompanied by riparian and upslope restoration."

To achieve this objective, the Council proposes aggressive development of cooperative watershed restoration plans. These plans should be crafted after a commonly agreed-upon set of goals (7.6A) and objectives (7.6B) and based upon coordinated watershed planning (7.6C) which includes four elements: watershed assessment, identification of management alternatives, collaboration, and site-specific watershed management projects. All federal, state, private, and tribal interests should be included. Default habitat objectives are provided in the FWP until local, peer-reviewed, habitat objectives are established after a thorough watershed assessment (7.6D) and expedited funding for high priority projects is undertaken (7.6E).

The current FWP, however, includes very few projects that actually involve development of appropriate habitat goals, policies and objectives for different tributary systems (Figure 4). Many of the Model Watershed projects (7.7B) assume similar or identical habitat objectives and factors limiting natural production, but few actually attempt to test and evaluate them for the site in question. As a result, a very large proportion of the habitat restoration efforts are concerned with only a limited number of types of projects, specifically, adding structures to stream channels to achieve an approximately equal percentage of riffles and pools, fencing riparian zones to exclude livestock so as to promote streambank protection and vegetation recovery, and screening irrigation withdrawals to prevent entrainment of rearing or migrating salmonids (Figure 6). While these projects may be worthwhile, they are rarely if ever preceded by watershed assessments that have identified the projects as addressing a critical limiting factor. And, few projects include an evaluation process that monitors long-term project survival or biological effectiveness. A number of the habitat-related elements in the Fish and Wildlife Program are not addressed by any current projects. For example nearly all of the non-hydroelectric dams identified in section 7.10 (Provide Passage and Protective Screens on Tributaries) have no passage improvement projects associated with them.

The geographic distribution of habitat restoration efforts within the Columbia River basin is uneven, and the rationale for the distribution is obscure. Most projects are associated with tributary systems of the mid-Columbia (e.g., John Day, Yakima Rivers) or lower Snake River (e.g., Grande Ronde River). Large areas of the Columbia basin have no habitat restoration projects supported by the FWP, although we recognize there are numerous restoration programs operating on federal, state, private and tribal lands that do not fall under the program. Nevertheless, the rationale for selecting those watersheds that have received the majority of habitat restoration funds under the FWP is not clear; the ISRP is not aware of an objective process for setting priorities among subbasins. Additionally, there do not appear to be any projects recommended for FY98 that coordinate or integrate the FWP with the restoration program proposed by the Interior Columbia Basin Ecosystem Management Plan (ICBEMP) prepared by two major federal landowners in the basin—the Forest Service and Bureau of Land Management. Because of the basin-wide focus of both plans, such an integration seems essential to achieving the Council's directive for coordinated watershed planning.

**Recommendations for FY98***Revisions to the FWP*

**III.B.4** The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among anadromous fish related measures within Section 7 of the FWP.

The direction need not be specific to the level of the individual measure or project. However, it should indicate which classes of measures are related—new hatchery production and comprehensive evaluation, for example—and Council's intent regarding the appropriate implementation sequence for those measures.

**III.B.5** The ISRP recommends that the FWP include an explicit measure to develop approaches and rationale for re-regulation of flows in tributaries to establish normative habitat conditions, as recommended in *Return to the River*.

Such a measure is not a part of the FWP, and there are no present habitat projects that adopt normative flows as a specific objective. The ISRP notes that the Council and NMFS have asked the ISAB to determine priority tributaries and reaches for development of normative habitats.

**III.B.6** The ISRP recommends that habitat policies and objectives be established for each major subbasin and coordinated with overall production goals for the subbasin.

Habitat objectives should be landscape-based and should reflect, to the extent possible, the habitat goals set forth in *Return to the River*. Objectives based on the range of conditions characteristic of different subbasins are more likely to protect the genetic diversity of locally-



adapted stocks than will attempts at one-size-fits-all habitat requirements of individual life cycle stages of individual species. The importance of periodic natural disturbances such as wildfires and floods in maintaining healthy watersheds should also be acknowledged in the development of subbasin habitat objectives.

**III.B.7 The ISRP recommends that development of reliable watershed assessment procedures be given high priority.**

The ISRP recognizes that there is no standardization for watershed assessment in the basin. There are watershed assessments in use that could serve as a model for the Columbia Basin. They include the Washington State watershed analysis manual for forest lands and the USFS watershed analysis guidelines.

#### *Implementation Recommendations*

**III.B.8 The ISRP recommends that the Council not approve funding for the construction and operation of new artificial propagation programs in the FY98 program until a comprehensive review of existing hatchery programs adequately addresses Measures 7.0D, 7.1A, 7.1C, 7.1F, and until at least a preliminary policy addressing Measure 7.1D has been drafted.**

The ISRP recognizes that some facilities have been in the planning stage for several years and this recommendation would delay construction of projects considered high priority by the fish management agencies and tribes. The ISRP further recognizes that some of the best designed and implemented artificial propagation projects in the basin are funded through the Council's program. However, failure of the recent CEA (i.e., CBFWA's draft Programmatic EIS of December 1996) to adequately address Measures 7.0D, 7.1A, 7.1C, and 7.1F places that additional burden on individual projects.

**III.B.9** To prevent a complete moratorium on new production, the ISRP recommends that the Council permit funding for an individual project only if the project proponents can demonstrate they have taken measures 7.0D, 7.1A, 7.1C, and 7.1F into account in the program design and the Council concurs. To ensure that standard is met, the individual projects should be funded only after a positive recommendation from an independent peer review panel.

Recommendations from the panel need to be beyond reproach in order for the region to move forward on the issue and role of artificial production. Therefore the panel should include qualified individuals from within the region, as well as the national or international community. For these same reasons, the panel should be subjected to the same conflict of interest rules that apply to the ISAB and ISRP.

**III.B.10** The ISRP recommends the Council implement a comprehensive review of artificial propagation in the basin. That review should be initiated as soon as possible and cover all propagation activities including hatcheries funded by sources outside the FWP.

The comprehensive review should be conducted by an independent panel; ideally the same panel set up to review individual projects. The panel should consist of highly qualified individuals with regional and national perspectives on artificial production. The emphasis of the panel's review should be to examine the scientific basis for artificial production and to recommend to the region appropriate roles and uses of artificial production in the near term and long term. Detailed suggestions concerning the issues that a comprehensive review should include are presented in the ISAB's recent review of the draft Programmatic EIS (ISAB Report 97-5, April 1, 1997).

**III.B.11** The ISRP recommends that watershed assessment *precede* implementation of restoration projects so that probable limiting habitat factors be identified and a reasonable expectation of restoration effectiveness exists.

It is recognized that implementation of many of the current suite of projects have been driven by restoration opportunity rather than by a prioritization of restoration needs. Many projects are implemented because an opportunity exists (e.g., a rancher willing to fence a riparian zone) rather than because there is reasonable cause to believe that the project will help relieve a significant bottleneck to natural production. While most habitat projects are generally helpful, if for no other reason than they help galvanize local support, few have been supported by prior evidence or an adequate monitoring plan that demonstrates expected project effectiveness.

In keeping with the goals of section 7.6, Model Watershed plans and other habitat improvement projects should be peer reviewed by habitat specialists to ensure that restoration activities are based on sound science and are appropriate to local settings. Funding of individual projects should be contingent on demonstrating that they are needed to increase the potential for natural production or to maintain the genetic diversity of local populations.

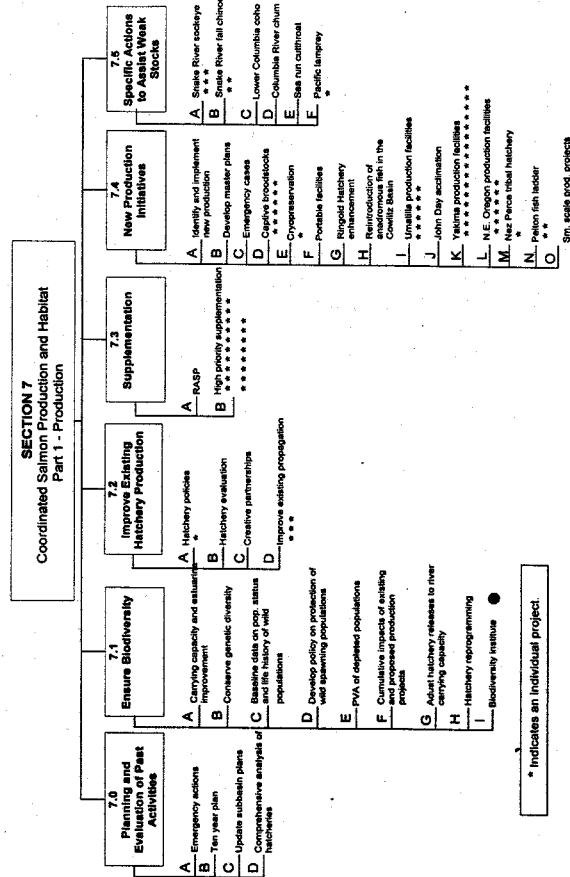


Figure 3. Distribution of production projects among measures in Section 7 of the FWP.

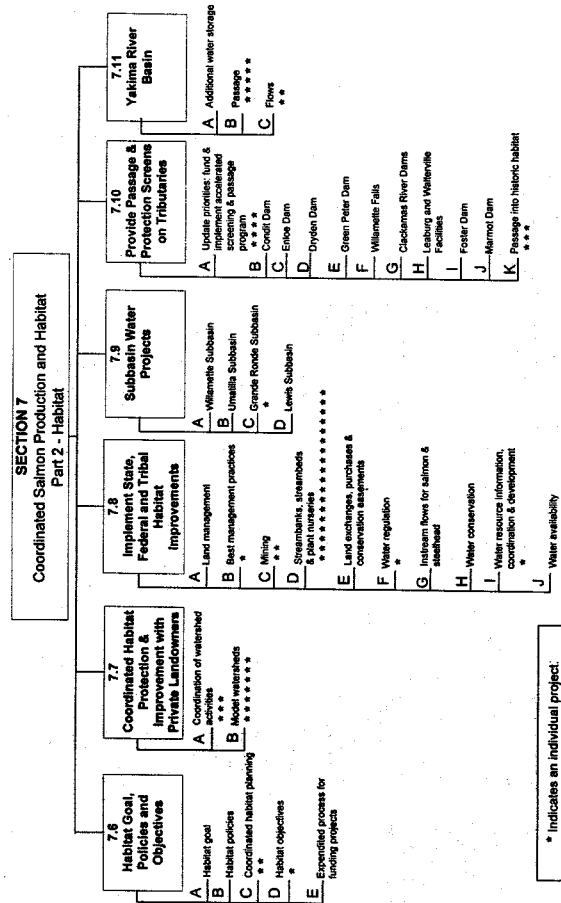
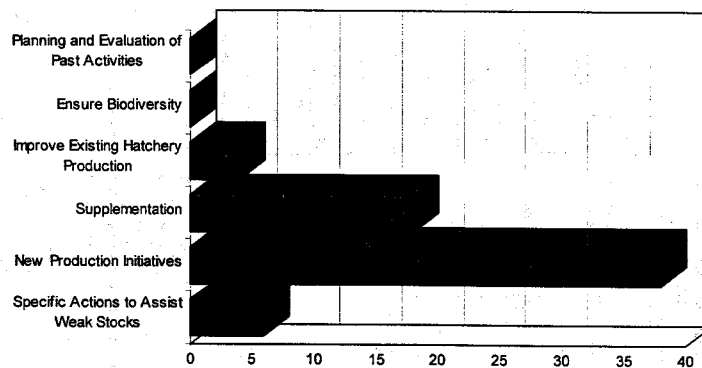
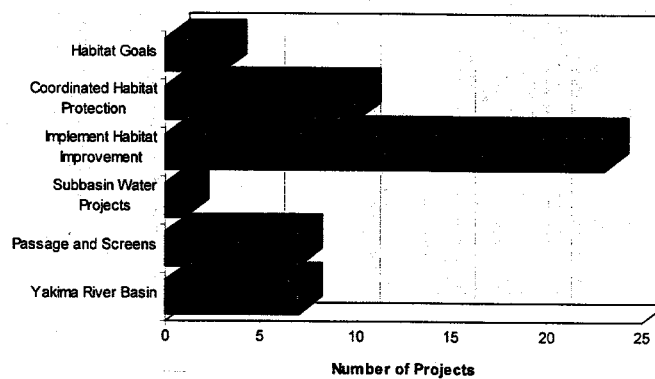


Figure 4. Distribution of habitat projects among measures in Section 7 of the FWP.



**Figure 5. Distribution of production projects among the major measures in Section 7 of the FWP.**



**Figure 6. Distribution of habitat projects among the major measures in Section 7 of the FWP.**

### **Section 10 - Resident Fish**

#### **Intent**

Section 10 of the FWP contains measures intended to protect, mitigate, and enhance resident fish affected by development and operation of the hydropower system. Priority is given to native resident fish over non-native or introduced fish. Measures in the program attempt to balance needs of resident fish with those of anadromous fish through either *mitigation* or *substitution* activities. Measures in Section 10 fall into four broad categories (see Figure 7):

#### *Mitigation categories*

1. Planning, evaluation, and policy development
2. Inventory natural populations and subsequently improve natural production
3. Increase, improve or evaluate artificial production

#### *Substitution categories*

4. Resident fish substitutions and off-site mitigation

The Council's intent in Section 10 is to increase production from both natural and artificial sources. Subsections 10.1, 10.2 and parts of the other measures in Section 10 and appropriately referenced portions of Section 7 imply that the Council also intended to ensure that the natural and artificial production systems are successfully integrated in the basin—in particular, that artificial propagation does not adversely affect natural production of resident fish populations.

Much of Section 10 follows the logic and structure of Section 7 (Coordinated Salmon Production and Habitat, discussed above) and identifies the need for system-wide coordination and subregional planning in order for resident fish objectives to be achieved. Like Section 7, measures in Section 10 imply a logical sequence starting with evaluation of the status of native resident fish populations, leading to watershed or subregional rebuilding or production objectives, and culminating in measures (and derived projects) designed to meet the objectives. Measures in this sequence (10.2 to 10.6) generally fall into mitigation activities designed to recover and preserve the health of native resident fish, while measures in 10.8 deal with resident fish substitutions that attempt to compensate for lost salmon and steelhead production in areas permanently blocked by hydropower projects.

The resident fish portion of the FWP was difficult for the ISRP to evaluate because of differences in the kinds of projects funded through mitigation as opposed to substitution projects, as well as the different management philosophies behind these two activities. This has the effect of making Section 10 appear schizophrenic, as if it is composed of two different programs for resident fish, that have little connection to one another. The first approach represented by the *mitigation* portion of Section 10, focuses on native resident fish populations and describes at least implicitly, a logical sequence of assessment, evaluation, prioritization, and action.

Implementation of this approach, however, falls considerably short of this logical balanced treatment. Much of the discussion concerning habitat and watershed issues from Section 7 on salmon production (above), also apply to resident fish issues, and therefore, merit consideration in that light. Similarly, the FWP places priority emphasis on restoring native resident species in native habitats, although this priority is less apparent in the implementation of Section 10. Many of the points raised by the ISG (1966) in *Return to the River* concerning the interrelationship of habitat, increasing normative conditions, and increases in abundance and diversity of salmonids apply equally well to resident fish as to anadromous fish.

In contrast, the *substitution* portion of Section 10 (measures in 10.8) does not have an underlying logical framework of assessment and prioritization, but focuses on production and introduction of non-native species or forms in site- or situation-specific measures and projects. In many instances, substitution activities are completely isolated from native resident fish populations, so interactions between non-native and native fish will not occur. In instances where uncertainty about interaction exists, concerns about ecological and genetic interactions should be rigorously examined before any introduction occurs. Activities that introduce non-native fish into watersheds should probably be undertaken conservatively, if at all, as the FWP assigns priority to native fish in native habitat. The fisheries literature is replete with examples where introduced fishes have contributed to the loss of native fish species (Billington and Hebert 1991).

#### Implementation

As we observed for Sections 5 and 7 of the FWP, implementation of measures in Section 10 in FY97 and the proposed implementation for FY98 are not balanced, and thus, are not consistent with Council's program. Implementation overemphasizes artificial propagation compared to those measures that give direction to and ensure effectiveness (10.1 and 10.2; Figure 7). For example, several projects currently funded under sections 10.2 and 10.5 should be oriented toward assessment of genetic and life history diversity in native resident fish populations if the measures are followed explicitly; however, these projects actually have the establishment of artificial production goals as their primary objective, based on their project summaries.

The FWP in section 10.2 describes a priority hierarchy for addressing resident fish losses in the Columbia River Basin. Ironically, although the FWP implicitly describes the need for a basin-wide systematic inventory of remaining native resident fish populations and their status, it does not explicitly call for such an assessment. The ISRP wonders how restoration opportunities for native resident fish can be identified and prioritized without having completed a basin-wide inventory of resident fish populations and their status? Such an inventory, coupled with the evaluations and guidelines called for in section 10.2B (evaluation of ecological and genetic impacts of hatchery fish on resident fish), should be critical in establishing watershed or subregional resident fish objectives and determining the appropriate role for artificial production in reaching resident fish production and restoration goals.



**Recommendation for FY98***Revisions to the FWP*

**III.B.12** The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among related measures for resident fish within Section 10 of the FWP.

The direction need not be specific to the level of the individual measure or project. However, it should indicate which classes of measures are related—new hatchery production and comprehensive evaluation, for example—and Council's intent regarding the appropriate implementation sequence for those measures.

**III.B.13** The ISRP recommends that the Council require a basin-wide systematic inventory of remaining native resident fish populations and their status, upon which opportunities for restoration and rebuilding native resident fish populations can be identified and prioritized.

*Implementation Recommendations*

**III.B.14** The ISRP recommends that measures in sections 10.1 and 10.2, which focus on planning, development of policy guidelines, and assessments of remaining diversity and population status in resident fish populations, receive greater attention and project funding.

Many of the ISRP's recommendations concerning habitat and watershed issues from Section 7 on salmon production (above), also apply to resident fish management, and therefore, merit consideration in that light.

**III.B.15** The ISRP recommends that resident fish artificial propagation facilities and projects be included in the comprehensive review of artificial propagation as described and recommended above in ISRP Recommendation III.B.10.

Artificial production of resident fish within the basin involves many of the same objectives, issues and uncertainties associated with artificial propagation of anadromous stocks. Thus it is logical to include a review of resident fish propagation within the larger review of anadromous fish propagation called for in our earlier recommendation (III.B.10). The emphasis of the panel's review with respect to resident fish should be to recommend to the region appropriate roles and uses of artificial production in the near- and long-term maintenance of resident fish populations and biodiversity.

**III.B.16** The ISRP recommends that *substitution* projects, particularly those using non-native species, be viewed cautiously because their implementation may pose significant threats to native resident fish species. Therefore, individual *substitution* projects should be reviewed by the artificial production review panel (see ISRP Recommendation III.B.9), prior to authorization.

Introductions of non-native species have had a devastating effect on native resident salmonids in the Columbia River Basin and elsewhere in western North America (Billington and Hebert 1991; Lee et al. 1996). Therefore, great concern and caution should be exercised when reviewing projects that propose using non-native species for substitution. As a point of clarity, non-native species can also include resident fish species native to the Columbia River Basin when they are introduced to locations outside of their native range. For example, most hatchery strains of rainbow trout were derived from coastal rainbow trout stocks. Thus, planting stocks in the interior Columbia Basin (east of the Cascade Mountains), is a non-native introduction because a different form of rainbow trout, interior rainbow trout (e.g., redband trout) exists there.

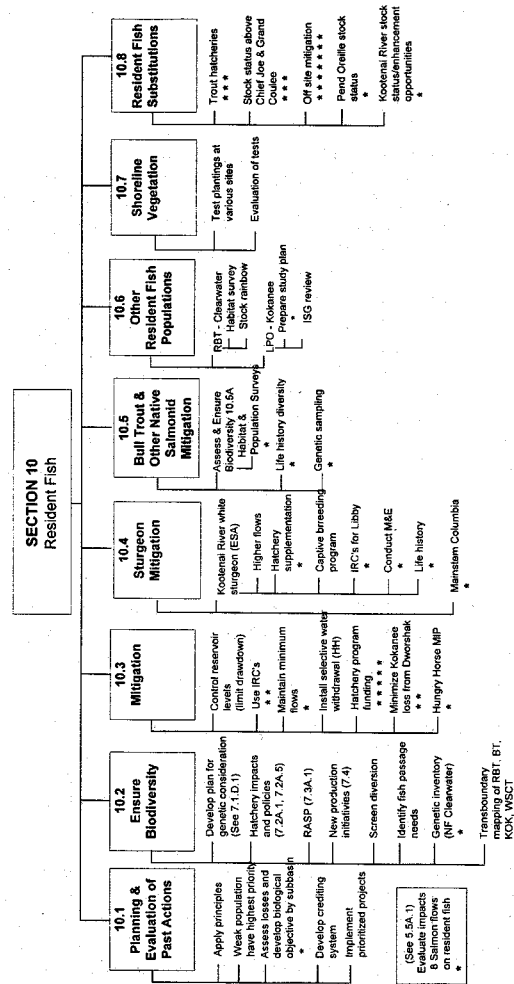


Figure 7. Distribution of projects among resident fish measures contained in Section 10 of the FWP.

### **Section 11 - Wildlife**

#### **• Intent**

Section 11 contains measures intended to fully mitigate for the wildlife losses that have resulted from the construction and operation of the federal and non-federal hydroelectric facilities (NPPC 1995, Draft FY98 Annual IWP). The Northwest Power Act calls on NPPC to develop a program to "protect, mitigate, and enhance fish and wildlife, including related spawning grounds and habitat on the Columbia River and its tributaries" (NPPC 1995). Mitigation is defined as "achieving and sustaining the levels of habitat and species productivity for the habitat units lost as a result of hydropower projects" (NPPC 1995). Mitigation priorities have been established, in the form of lists of habitat types and target species (which are primarily indicator species or Endangered Species Act (ESA) targeted species) with priority levels for the various subbasins in which mitigation is to be accomplished, and are to drive implementation of mitigation. Section 11 specifies policy development to guide implementation and includes 6 installment measures: planning, development of a single Wildlife Plan, credit for new actions, short-term agreements, long-term agreements, and the Snake River Compensation plan. Monitoring and Evaluation of effectiveness are called for in Measures 11.4 - 11.5 and are clearly necessary to establish full mitigation.

#### **Implementation**

Much has been done to implement the Wildlife Program, and reasonable coordination seems to have occurred in implementation within the Wildlife portion of FWP, stemming largely from activities of the Wildlife Working Group (WWG). However, coordination with other parts of FWP (i.e., Resident Fishes, Anadromous Fishes) seems largely lacking.

Implementation is in part reflected in Figure 8. Policies have been completed. Installment measures are well underway, with planning and land acquisition emphasized, particularly via long-term agreements. An EIS for the Wildlife Plan has been completed, but we note that the procedures explored in the EIS are primarily related to compliance with Federal and other regulations, rather than science-related.

The Wildlife Program has concentrated on protection and enhancement of wildlife habitat to compensate for effects on wildlife associated with hydropower development; both negative and positive effects are recognized. Potential projects are evaluated primarily on the basis of the number of "habitat units" (HUs) gained by purchase or protection of wildlife habitat, given compliance with policies and priorities that are listed in the FWP. The scientific basis for determination of HUs has been the theory for the Habitat Evaluation Procedure (HEP) and Habitat Suitability Indices (HSI) that has been developed over the last 30 years at the Biological Research Division, USGS, Fort Collins, Colorado (e.g., USFWS 1981). This methodology is reasonable and appropriate for quantification of the value of potential projects, but is not without weaknesses and limitations.

Current monitoring and evaluation of projects primarily involves following of HUs to assure that the anticipated habitat mitigation has occurred. Further monitoring and evaluation, at the overall programmatic level, are planned for implementation in the near future, but are not yet in place. Direct monitoring of wildlife populations is not a regular part of the Program; only monitoring of habitat, as HUs, is. Thus, the attainment of the ultimate goal of sustaining wildlife is largely unknown. This means that scientific merit (or effectiveness of implementation of the FWP) cannot be validated, either within the program or by an independent review. Scientific technical merit of the procedures used now can be evaluated, but this does not itself constitute adequate review of the scientific soundness or effectiveness of the Wildlife Program. Thus, we conclude that intent of the FWP is not yet met by implementation.

#### **Recommendations for FY98**

##### *Revisions to the FWP:*

**III.B.17** The ISRP recommends that the Council provide clear direction as to the desired implementation sequence among related measures for wildlife within Section 11 of the FWP.

In particular, monitoring and evaluation, including adaptive management as an approach, should be implemented early in the process of land acquisition, development, management, or restoration.

**III.B.18** The ISRP recommends that the Wildlife Program include an explicit scientific research component. This would be likely to increase mitigation success and would make evaluation and adjustment of the Program over time much more feasible.

More emphasis should be given to evaluation of effectiveness of management and restoration procedures at achieving wildlife population objectives. How and why various land management options affect habitat and wildlife are important topics of ecological study and the FWP could make important contributions here, as well as making its own efforts more efficient and effective by application of what is learned. Other areas described in recommendation II.B.24 also would be appropriate topics of research.

**III.B.19** The ISRP recommends that additional scientific criteria be added to those currently used to prioritize proposals for mitigation projects. For instance, the geomorphologic suitability of a site to sustain Habitat Units anticipated to be gained should be considered in prioritizing mitigation projects.

It appears that much habitat acquired through the Wildlife Program undergoes extensive management and restoration. Thus, the geomorphologic suitability of a site to sustain the HUs anticipated to be gained should be considered in prioritizing mitigation projects. For instance, upland areas are not likely to sustain riparian habitat in the absence of irrigation, which introduces conflicts between Fish and Wildlife goals. These areas also are unlikely to provide overwintering habitat, which often is key to sustaining wildlife populations. The importance of areas that serve as winter range for wildlife and of the bottomlands that remain along undeveloped alluvial reaches (ISG 1996), many of which may be available by easement rather than purchase, should be recognized and incorporated into funding priorities. Also, projects that encompass entire drainages could provide particularly valuable landscape level habitat structure for both fish and wildlife.

**III.B.20** The ISRP recommends that specific mechanisms be developed to coordinate the FWP with other programs that have significant impact on fish and wildlife and their habitat in the Columbia River Basin.

The need for FWP actions and the evaluation of their effectiveness may often be strongly influenced by actions of other programs such as the Interior Columbia Basin Ecosystem Management Project of the USFS and BLM, which will affect management of some 75 million acres of the CRB.

*Implementation of the FWP:*

**III.B.21** The ISRP recommends that a separate Scientific Review Group for the Wildlife Program not be formed, but rather that a single Review Group (currently the ISAB) be charged with review of both Fish and Wildlife issues within the FWP. This should improve program coordination, which will likely remain difficult in such a large and complicated program as the FWP.

Outside unbiased review is essential to providing a clear view of program balance. Closer coordination is needed between fish and wildlife programs. For instance, fencing to protect streams for fish should be coordinated with the Wildlife Program, as should any predator control studies that are reviewed and funded through the Fishes Programs. Habitat acquired through the Wildlife Program may affect mitigation of effects on fishes and contributes to implementation of the Anadromous and Resident Fish Programs. Coordination between Fish and Wildlife Programs should extend to joint scientific research and monitoring programs.

**III.B.22 The ISRP recommends that acquisition of land and of land easements continue to be given a high priority in the Wildlife Program, as habitat is necessary for wildlife populations and can be quantified reasonably by HEP in accord with obligations of BPA to various areas and groups.**

**III.B.23 The ISRP recommends that the Program give increased attention and priority to research designed to evaluate effectiveness of habitat measures in terms of direct assessment of wildlife populations and their ecology.**

The underlying philosophy of the Wildlife Program is that provision of habitat will support wildlife. Certainly provision of habitat is a necessary first step to supporting wildlife; however, it may not be sufficient for a variety of reasons. Direct assessment of the effectiveness of the program requires direct study of wildlife populations and their ecological interactions with habitat and with other animals. The following two specific recommendations would contribute to achieving more direct information as to how the FWP has contributed to sustaining Wildlife in the Columbia River Basin.

**III.B.24 The ISRP recommends that Council include a portion of the Wildlife Program funds each year within the competitive grants program for research that could contribute to the benefit of wildlife. Innovative monitoring and research proposals could be encouraged through this part of the Program.**

For example, the value of anadromous and resident fish as food for terrestrial and marine wildlife populations might be investigated. Also, innovative research to establish high-quality and well-validated monitoring programs would be an appropriate and useful target for competitive funding, as would studies of the effectiveness and ecological mechanisms of habitat restoration, especially low cost and sustainable ecological restoration. These and many other

areas could greatly aid in establishing technical merit and effectiveness of the Wildlife Program.

**III.B.25** The ISRP recommends that monitoring, which now is based on the unit of mitigation, habitat (measured as HUs, determined from HEP), be extended to include a requirement for some degree of direct monitoring of target (and perhaps some non-target) wildlife populations.

The decision of Council to mitigate at the level of habitat was prudent, given the biological primacy of habitat to viable populations and given the political and informational constraints on evaluation of losses, gains, and mitigation. However, HEP does not capture wildlife populations or dynamics directly, and the method is not designed to capture landscape-level habitat characteristics that may be important to wildlife. These limitations in the method are not addressed by the attempts to develop uniform standards for HEP that have been incorporated into the Wildlife Program.



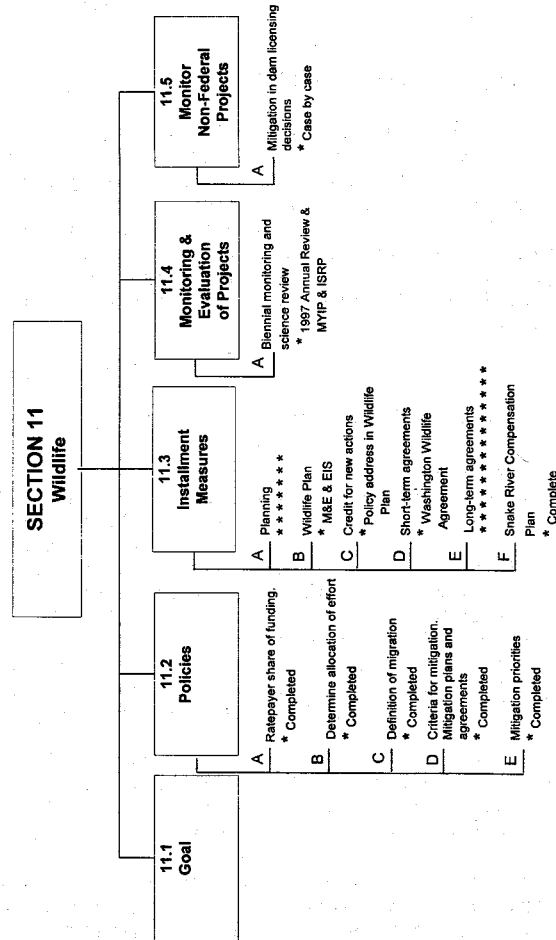


Figure 8. Distribution of projects among wildlife program measures contained in Section 11 of the FWP.

## **SECTION IV - Enhancing Peer Review in the FWP**

Institutionalizing peer review within the Columbia River Basin Fish and Wildlife Program was the primary motivation behind the 1996 amendment to the Northwest Power Act. Implementation of peer review can and should involve more than simply conducting peer review on individual projects proposed for funding. Peer review also needs to occur at the programmatic level (Section IV-A), which is more complex and more difficult than review of individual projects. Additional initiatives, such as a competitive grants program (Section IV-B), as well as new processes, such as the peer review process for project proposals (Section IV-C) and implementation of an annual review schedule (Section IV-D), can maintain and enhance scientific and technical rigor in the FWP.

### **IV-A. Programmatic versus Project Peer Review**

#### ***Evaluating different kinds of individual projects***

The FWP encompasses many different kinds of activities, the funding of which might best be evaluated in different ways. Some portion of the budget is research. Because of the premium on innovation, creativity and technical rigor in research, the appropriate mechanisms for judging the scientific quality of individual project proposals for research would be open competition and scoring of proposals by an ad hoc team of peer reviewers selected for authority in the scientific specialties relevant to each proposal. For the next funding cycle (FY99), we (the ISRP) plan to conduct the evaluation of the research proposals with the assistance of scientific reviews of each proposal by ad hoc review committees (i.e., Peer Review Groups [PRGs]) that we will select from a large panel of experts that we will nominate, subject to approval by the Council and the National Research Council of the National Academy of Sciences.

A larger fraction of the FWP budget is for activities such as construction, acquisition, operations and maintenance, where the crucial issues are competence, efficiency and teamwork. The evaluation basis for individual project proposals in this category is largely a matter of ensuring that the project simply does what it is supposed to do within a reasonable budget and timeframe. Because of the integration of these activities into the ongoing business of the agencies that are implementing various aspects of the salmon recovery effort, there may be sound reasons for relaxing the requirement for open competition at the discretion of the agencies (or in accordance with whatever their respective contracting rules may be). The appropriate mechanism for providing expert advice on the funding decisions for projects in this category would be review by a standing committee of reviewers with a comprehensive understanding of the FWP and the salmon recovery efforts in the Basin. For next year, we (the ISRP) plan to conduct the evaluation of the non-research proposals based on our own understanding of the program.

A modest fraction of the FWP budget that falls somewhere in between the "research" category and the "operations" category, combining elements both of innovation and of routine implementation. Many of the monitoring-related projects and some of the adaptive management projects may fall in this gray area. It may help in the evaluation of these projects to separate the design and interpretation-of-results component from the implementation (i.e., conducting the experiment or carrying out the monitoring operation) so that the respective components can be evaluated according to the appropriate review mechanism. For next year, we (the ISRP) will attempt to separate the research from the operations components of the monitoring and the adaptive management projects in this way, so that the research component can be reviewed according to the peer review mechanism we plan to use, and the operations component can be reviewed by the ISRP on the basis of our understanding of the program.

#### ***Programmatic priorities***

From our survey of projects funded for 1997, we estimate that more than 1/3 of the budget is devoted to artificial production projects, 1/3 is devoted to tributary habitat projects, and roughly 1/5 is devoted to mainstem passage and mainstem habitat projects. This accounts for the bulk of the allocation of the FWP budget; but it is not clear how this de facto prioritization has come about, and it is not clear whether this really is the right prioritization.

The FWP lists all the measures its authors thought were important, without explicitly ranking them, and without stating how much should be spent on various types of activities. The ISRP has arrived at its own interpretation of the priorities implicit in the rationale and discussion presented in the FWP, and believes that the de facto prioritization reflected in the actual budget allocation does not reflect the priorities implicit in the FWP.

Other syntheses and reviews of the salmon problem in the Columbia Basin (*Return to the River, Upstream*, Recommendations of the Snake River Recovery Team) also present conceptual frameworks for salmon recovery, and these frameworks also imply prioritization for research and recovery activities. The ISRP believes that there is considerable agreement among these recent reviews, and that an explicit programmatic prioritization and FWP budget allocation should be developed based on these reviews. As noted earlier, one way to accomplish this would be to use the Integrated Framework as a guide to amend the FWP (see ISRP recommendation I.D.1).

It is the opinion of the ISRP that priorities based on the best available scientific consensus may result in rather different budget allocations from the current allocation. Notwithstanding our confidence in our judgment on the science, we realize that there is considerable controversy within the basin about important large-budget questions involving, in particular, the flow survival relationship, the efficacy of smolt transportation, the role and impacts of artificial production on wild stocks, and the effectiveness of artificial production in restoring the salmon runs. A comprehensive scientific review should be carried out as soon as possible, to establish consensus on these matters, so that proper programmatic prioritization can proceed accordingly.

Where adequate analyses have already been done on such questions, these analyses should be synthesized to arrive at a bottom line. For issues that have not been convincingly analyzed, but where sufficient hard data exist to resolve these questions, those data should be analyzed. Where sufficient hard data do not exist, it is time to gather the required data and conduct the required experiments on a time-table consistent with the importance of the problem.

#### **IV-B. Competitive Research Grants Program for the FWP**

The ISG noted early in its tenure that a competitive grants program would foster innovative approaches to reducing uncertainties in the Columbia River salmonid recovery effort (SRG 1993). The ISRP endorses the recommendation of the ISG and strongly urges the Council to allocate a portion to this program. Other federal agencies, such as DOE and EPA, that have research and managerial responsibilities have successfully used or are implementing competitive grants programs as a means to promote creative approaches to applied and basic problems in research. In the Columbia Basin, an annual solicitation of proposals could be based on priority research areas, such as for example, the recommendations made in *Return to the River* (ISG 1996). Proposals should be subjected to independent review by the ISAB, ISRP, or other independent body and recommendations for funding forwarded to the Council for approval. The grants program should initially run for five years and then be peer reviewed for relevance of products to the goals, objectives and success of the FWP.

##### ***Rationale for a Grants Program***

Section 13.1F of the 1994 FWP provides for solicitation of proposals to advance new ideas and means for reducing uncertainties in the fisheries restoration effort. Although the wording is vague, the measure apparently is intended to encourage innovative approaches to improving salmon survival, especially in the mainstem. Innovative new ideas and approaches are needed, and we believe that a competitive grants program would foster creative approaches to many measures in the FWP. It is likely that a relatively small investment in a competitive grants program could provide substantial improvement in the quality of research done in the Columbia River Basin and also begin to address many critical uncertainties.

Additionally, funds provided through competitive grants could be used to support multidisciplinary work/programs, such as ocean or coast programs, which may also include funds from other sources. A competitive grants program might also allow investigators to address information needs that have been missed or to strengthen/integrate existing programs.

***Suggested Process for a Research Grants Program*****Solicitation**

One approach to the competitive grants program, similar to that used by other agencies, would be for the Council to ask the ISAB or ISRP to develop a solicitation document containing the rationale and requirements of the competitive grants program. The solicitation announcement should include an explanation of priority topics, explicit instructions for proposal preparation, a description of the review process, funding limits, time limits and other conditions. Areas of emphasis within the solicitation document would likely change from year to year as learning occurs and priorities within the Basin shift.

The solicitation should be widely advertised and available upon request, via electronic and posted announcements. An explicit deadline for proposals should be given in the announcements, along with clear statement that the competition is open to any individual, university, agency, NGO (non-governmental organization), or company. The solicitation could encourage interagency or multi-disciplinary collaboration, depending upon the wishes of the Council or BPA, but emphasis should be on addressing scientific uncertainties pertaining to the FWP, rather than as an avenue for funding of annual ongoing needs.

**Proposals**

We have previously provided the Council and BPA with a detailed guide for the preparation of project proposals. The guide was developed broadly for the FWP and was based on guidelines used by a number of federal agencies for research proposals within their competitive grants programs.

**Review**

We suggest that the task of reviewing proposals be assigned to the ISRP or a scientific panel(s) selected by the ISAB and approved by the Council.

**Accountability and Performance Evaluation**

Progress and performance of work done under this grants program should be evaluated annually by the ISAB based on short (2 page) summaries provided by the Principal Investigators. Publication of results in peer reviewed journals is expected. BPA contracts might accept journal publications in lieu of completion reports for these projects.

***Conclusion and Recommendation***

We believe that the credibility and accountability of the FWP will be augmented by implementation of a competitive grants program.

**IV.B.1 The ISRP recommends that the Council implement a competitive grants program as part of the FWP.**

In the event that Council desires to implement or further explore a competitive grants program, the ISAB can develop a solicitation announcement and review process in accordance with the procedures provided above. As other federal agencies have already implemented or are in the process of implementing competitive grants programs (e.g., EPA, NASA, USBR) to enhance their research programs, it would be possible to review those program's efforts and their solicitation announcements in order to adapt them to the Columbia River Basin and the FWP.

**IV-C. A Peer Review Process for Project Proposals**

The ISRP intends to conduct a review of funded and proposed projects in 1998 with the assistance of Peer Review Groups (PRGs). PRGs will be formed to review sets of projects in topical areas (e.g., mainstem passage, habitat, etc.) or regional areas (e.g., subbasin, Snake River, etc.). The PRGs will be composed of technically qualified individuals approved by the National Research Council. Project proposals will be reviewed by PRG members under the supervision of ISRP members. Each project proposal will be reviewed by several PRG members. The PRGs will summarize their reviews of each project, as well as appropriate suites of projects, and provide written commentary to the ISRP. These summary reviews, which will be made available to individual investigators, will be used by the ISRP in developing its 1998 report to Council.

PRG members will receive explicit written directions from the ISRP that assist them in their reviews of individual projects. The instructions will detail specific review criteria, as well as appropriate background information so their review takes place within the context of the FWP.

***Conflict of Interest***

It is imperative that the Fish and Wildlife Program avoid conflict of interest. Therefore, PRG members must disqualify themselves as reviewers if

1. the applicant or subcontractor (if any) is employed at the reviewer's home institution;
2. the reviewer served as either a thesis/dissertation advisor, postdoctoral advisor or a collaborator on a research project or co-author with the applicant on a joint publication related to the proposed work within the past 3 years;

3. the reviewer acted or will act as a paid consultant to the applicant's organization or will gain some benefit from the project; or
4. the reviewer has any management affiliation or financial interest in the organization or the investigators submitting this proposal.

#### **Confidentiality**

The Northwest Power Planning Council is responsible for protecting the confidentiality of each proposal and the details of its review. For this reason, reviewers must refrain from copying, quoting, or otherwise using material from the proposal or their review. Reviewers are not to contact a proposer, but to direct questions to ISRP members, who can forward the questions to the appropriate person or channel. A general summary of the reviews will be prepared by the review panels (not disclosing the specific reviewers) and be provided only to proposal authors. These confidential summary reviews will be used by the ISRP in developing its 1998 report with recommendations to Council.

#### **IV-D. Annual Proposal Review Schedule for the Fish and Wildlife Program**

Every funding agency needs a clear funding cycle. The funding cycle should accommodate initiation of new projects as well as orderly renewal of contracts for continuation of work already underway. Many funding agencies must consider both within-agency funding and funding of outside groups such as universities or commercial firms.

The ISRP has interpreted its implementation of the 1996 Power Act Amendment as including recommendation of a funding cycle. To this end, we reviewed the report by Coutant and Cada (1985) and examined the recent proposal selection schedules of selected agencies. We have provided two case studies as examples--the US Department of Energy's Strategic Environmental R&D Program (SERDP) and the Hudson River Foundation's Hudson River Fund (HRF). SERDP is a large, governmental, applied research and development program for environmental management of contaminated energy-related sites; HRF is a small, non-governmental, endowment-funded, applied research program that develops information needed to maintain a healthy Hudson River ecosystem in the face of contaminants and power plant cooling. We have adapted this information to funding of the FWP, and suggest a potential proposal selection schedule.

*Case Studies*1. Strategic Environmental Research and Development Program (DOE)

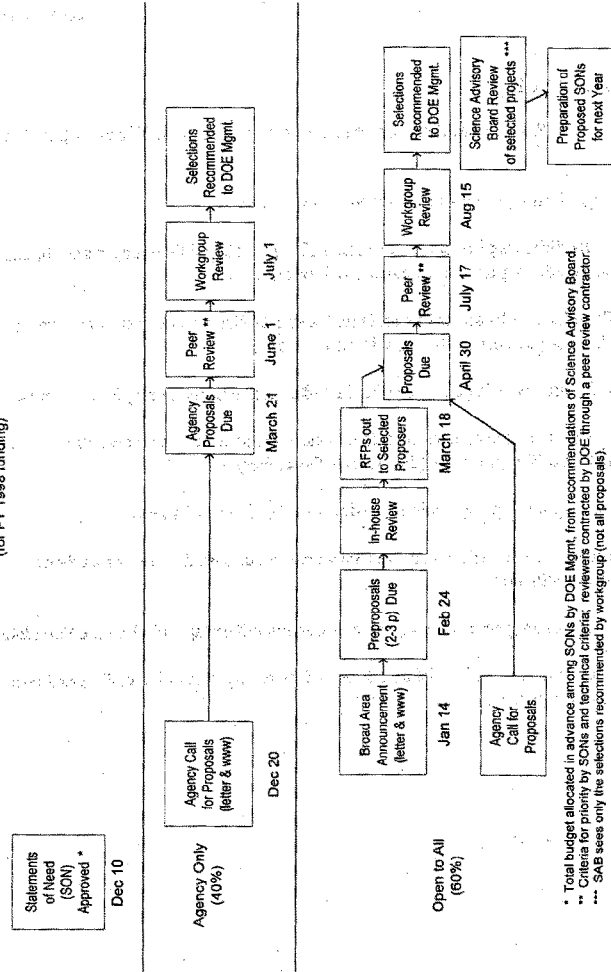
The Department of Energy's Strategic Environmental R&D Program operates on an annual cycle (Figure 9). Key elements are:

- "Statements of Need" developed by the Science Advisory Board in December following its review of the previous year's funding and its year-long evaluation of selected projects.
- Independent solicitations of proposals from DOE's National Laboratories (by internal letter in late December) and outside groups (by published Broad Area Announcement--BAA--in early January), with (for FY 1998) a minimum of 40% of funds allocated to agency laboratories and 60% allocated to all sources (which may also include agency laboratories).
- DOE management review of pre-proposals due in late February from non-DOE groups, followed by specific requests for proposals.
- Specified due dates for proposals (specific dates in late March for in-house track and end of April for BAA track).
- Peer review of all proposals conducted by an outside peer review contractor, with criteria for priority set by the Statement of Need and technical criteria established by DOE management.
- Consolidation of peer reviews by a Work Group into funding recommendations in early July (agency) or mid August (BAA).
- Final project selection by DOE management by October 1 (start of fiscal year).
- Connection to the next year's cycle by the Scientific Advisory Board reviewing recommendations of the Work Group and selections by DOE management.

Renewal proposals for projects already funded for one to three years are shorter. A full proposal is required for continuing projects every 5 years. The SERDP management augments its formal proposal solicitations with on-site descriptions of the program to major research centers inside and outside the DOE.



Figure 9. 1996-97 Proposal Selection Schedule, DOE Strategic Environmental R & D Program  
(for FY 1998 funding)

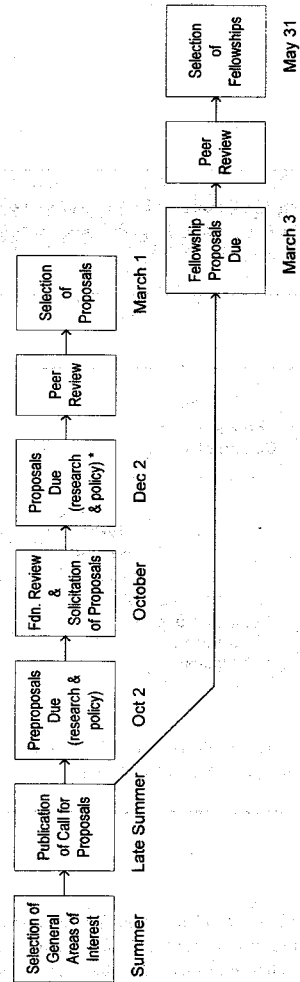


## 2. Hudson River Foundation

The Hudson River Foundation also operates on an annual cycle (Figure 10). Its key elements are:

- Any organization, agency or non-agency, may apply.
- It has established topical categories: scientific research, public policy research, travel grants, expedited grants, and graduate fellowships.
- The Foundation's Board of Directors and staff establish general areas of interest for the next funding year, especially for scientific research.
- A call for proposals is published (that includes all necessary forms) in late summer.
- Preproposals are due on a specific date in early October, which receive staff review for solicitation of full proposals (due in early December).
- Graduate fellowship applications are due on a date in early March.
- Proposals for Expedited Grants are considered throughout the year for study of emergency situations.
- All proposals are peer reviewed, using evaluation criteria specified by the Foundation.
- Notification of awards by 1 March, followed by arrangement of specific grant terms with successful applicants.

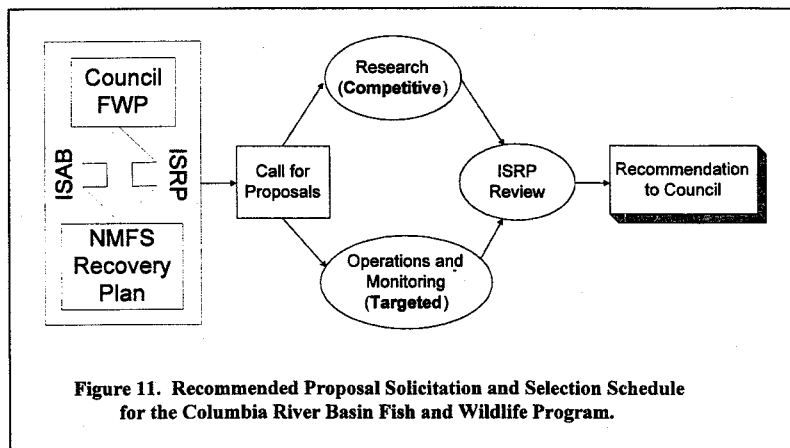
Figure 10. Hudson River Foundation Proposal Solicitation and Selection Schedule for 1996-97



\* Expedited grants are considered throughout the year but still must pass peer review.

**ISRP Recommendation for the FWP**

**IV.D.1** The ISRP recommends the Council adopt a project review and selection process with a double track for competitive and targeted proposals (including project renewal proposals) (Figure 11).



**Figure 11. Recommended Proposal Solicitation and Selection Schedule for the Columbia River Basin Fish and Wildlife Program.**

**Statements of Need**

Needed information or management actions are identified for emphasis in each funding year. The needs will change from year to year as needs are fulfilled over time. Some needs may be broadly stated (e.g., information to better understand the life-history diversity of salmonids), whereas others may be stated more specifically (e.g., design a surface spill system for The Dalles Dam). Others may emphasize long-term needs (e.g., continued monitoring of the numbers and timing of downstream migrants). The Council would appear to be the proper focus for approving the annual list of needs for soliciting proposals in the context of a project selection process under the 1996 Power Act Amendment.

**Call for Proposals**

Proposals (both continuing and new) are solicited in two tracks, one track for targeted O & M (operations and maintenance) and the other track for any participants through a competitive grants program. Targeted projects could be of unlimited duration; whereas, competitive grants would be for a specified time period. Personnel of agencies and tribes would be eligible to apply for funding through the competitive grants program.

Solicitations would be issued by the Bonneville Power Administration (BPA). A specific letter would be sent to agencies and tribes and organizations already funded in the competitive grants program. Solicitations for new project ideas from other potential participants would be by the commonly used Broad Area Announcement (BAA), which would be distributed widely via letter, world-wide web, or Commerce Business Daily (all standard routes for federal government BAAs). Letters and the BAA would outline the year's needs, submission and evaluation processes, and evaluation criteria.

**New versus Continuation Proposals**

Each track (targeted and competitive grant) would produce full proposals for any new proposed project. These new project proposals would follow the format specified in the call for proposals, which should include elements described in Section IV-B (Competitive Research Grants Program for the FWP) and in Coutant and Cada (1985), SRG (1990), and ISG (1994).

Each track (targeted and competitive grant) also would produce continuation proposals annually. These proposals would be short and facilitated by an electronic form provided by BPA. The emphasis would be on a concise summary of the project, including the responsible organization and key staff, needs addressed (in solicitation, FWP, ESA, or other plan), project history, objectives, approach and methods, stocks or geographic area addressed, accomplishments to date, expected accomplishments in the coming year, and an updating of historical and anticipated project costs. These continuation proposals would be reviewed annually by the agencies/tribes through CBFWA and the ISRP to determine if the projects are worth continuing. The continuation proposals are not just administrative records but are the substantive basis for annual funding decisions in competition with new project proposals.

All projects proposed to be continued after being in operation for 5 years are to provide a more substantive summary and proposal. This would be required at each 5-year interval.

**BPA Distributes all Proposals to CBFWA and ISRP**

All proposals from both tracks, continuing and new, are in hand at BPA by February 1.

***ISRP and CBFWA Reviews and Recommendations to Council***

The ISRP (with its peer review groups) and CBFWA independently evaluate all proposals, new and continuing. Each organization establishes its procedures for these reviews. The reviews yield recommendations to the Northwest Power Planning Council by June 15.

***Council Review of Recommendations and Direction to BPA to Fund***

The Council reviews recommendations of CBFWA (the agencies and tribes) and the ISRP (the review body formed by the 1996 Power Act Amendment) and arrives at a decision on which projects, both new and continuing, to fund.

***Project Authorization***

BPA notifies project administrators of planned funding.

***ISAB Review of Selected Projects***

During the year, the ISAB may be asked to conduct a formal peer review of major projects selected by the Council and NMFS. The results of these reviews would be available to the CBFWA and ISRP in evaluations of continuation proposals.

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**Testimony to  
Subcommittee on Fisheries Conservation**

**By  
Douglas A. DeHart, Ph.D.  
Chief of Fisheries**

**Oregon Department of Fish and Wildlife**

Thank you for the opportunity to speak with you today about Oregon's interactions with the National Marine Fisheries Service regarding restoration of Columbia River Basin salmon populations. As you requested, I will highlight what we believe are outstanding issues that, if resolved, would significantly improve coordination among and involvement of key stakeholders in salmon restoration decisions important to the Pacific Northwest.

What I will highlight for you today is already on public record in briefs Oregon has filed in on-going litigation under the *American Rivers, et al. v National Marine Fisheries Service, et al.* case. As a result of discussions aimed at settling this case Oregon has been working with the federal government to resolve our concerns.

Let me preface my comments with a general observation. A lot of attention has focused on the forum and process needed to resolve current problems. This energy may be misplaced. Although there are problems with process, the more significant issues involve the substance of the decisions to be made. The bottom line is that the region, whether through joint decision-making or through the National Marine Fisheries Service, the US Army Corps of Engineers or the US Bureau of Reclamation, must make informed decisions based on the best available technical and scientific analyses. Existing processes have fostered discussion, information exchange, and consensus building. With some changes, they are also capable of establishing the type of accountability for decisions needed to move salmon restoration efforts forward to a successful end.

Regarding the specifics; our concerns relate to three general topics. First, how federal decision-makers can be held more accountable for the decisions they make that affect salmon. Next, how the information used to make decisions can be improved. Finally, how the region can better articulate and reach agreement on what we are trying to accomplish regarding salmon restoration and how we go about achieving our objectives.

Federal decisions affecting salmon restoration must be made in an open, transparent process that fosters deliberate discussions among managers of the resources affected by those decisions. The salmon restoration efforts need to meet the requirements of recovery for the Endangered Species Act and the mitigation responsibility of the federal government for loss of fish due to hydropower development. These decisions must be supported by detailed explanations of why they are the "right thing to do." These explanations must include several elements:

1. They must describe what informed the decision; i.e., what technical, scientific, and policy analyses influenced the final choice.
2. They should discuss how these analyses were used in making the final decision; i.e., the weight that was given to each specific analysis and why.

3. They should describe the full slate of alternatives considered as part of the decision analysis; especially alternatives proposed by salmon managers.
4. They should explain why the information used in the final decision argued against each of the alternatives that was rejected.
5. They should explain how these measures will ultimately meet the mitigation responsibility for lost fishing opportunities (tribal and non-tribal), which are consistent with recovery of individual populations.

In our opinion, the federal government, through NMFS' leadership, has improved its accountability for the decisions it makes. However, the federal government must better explain what information influenced its decision and how that information was weighted and used to make the decision. Likewise, the federal government must explain what alternatives it considered and, more importantly, why it at times has rejected alternatives put forward by the state and tribal salmon managers. More than not, the federal government must present a convincing case for its decisions based on thoughtful analysis of available information.

The federal government can improve the credibility of its decisions by supporting them with regionally accepted technical and scientific analyses of available information. We commend the National Marine Fisheries Service for the role it has played in establishing a regional analytical forum called PATH. This forum involves scientists from the Pacific Northwest and from throughout the region and is charged with describing and testing the various hypotheses put forth concerning salmon restoration. It is a scientifically rigorous process that includes independent peer review of analyses by outside experts. It is playing a significant role in evaluating the scientific merit of competing hypotheses and setting the stage for well-informed decisions about the long-term course of action for salmon restoration.

But here again, the federal government is falling short of fulfilling the expectations it created by establishing PATH. The National Marine Fisheries Service, until recently, has not fully engaged its scientists in the process, nor has NMFS clearly articulated how it will use findings from PATH in the decision process. On the other extreme, the Bonneville Power Administration has engaged fully in the PATH process by hiring a battery of consultants. However, at times, BPA's participation has been less than constructive. There have been high profile incidents when its participants have not met agreed to deadlines and/or have submitted volumes of material for review at the last moment. This has hampered efforts to complete assignments in a timely manner that will best inform the important regional decisions that lie ahead.

In concluding my statement to you today, I turn to the most important issue dogging our efforts to restore salmon, namely, lack of agreement on what we are trying to accomplish regarding salmon restoration and how we go about achieving our objectives. This effort would be greatly facilitated by a deliberate effort by the federal government to clearly interpret ambiguous measures in the Biological Opinion on Operations of the Federal Columbia River Power System. The existing ambiguity significantly hampers decision making by encouraging debate and delay on every issue. Underlying these debates are three central issues.

1. There is no common regional understanding of what the ultimate goal is regarding survival and recovery standards for listed Snake River salmon. The decisions made are often debated based on different interpretations of what "no jeopardy" means under the Biological Opinion.
2. There is no common regional understanding of the specifics of the set of prescriptive measures contemplated in the Biological Opinion to avoid jeopardy. Interpretations vary among federal agencies and these differences have been the source of considerable disagreement on what actions the Biological Opinion requires to recover listed stocks.
3. There is no common regional understanding of how actions to recover listed salmon relate to and complement actions to protect and restore non-listed salmon and other listed fish and wildlife in the basin. The region has focused much effort on arguments about how actions to protect and restore one species affect another. This has pitted sovereign resource managers against each other. The recent listing of eastern Washington steelhead as endangered only focuses more attention on this problem.

In conclusion, the National Marine Fisheries Service is not the problem. The complex and high stakes decisions facing a region on the verge of losing a precious heritage present a significant challenge to us all. The focus should not be on assigning blame or spending valuable time and resources on constructing "new" processes in which we may better argue and debate the issues at hand. The need is for us to collectively analyze the risks to salmon of the various recovery strategies available to us and to act on that information. That action must be an informed decision that describes what we seek as the ultimate outcome for salmon and what risks we are willing to take to make that outcome a reality. Those risks must be characterized in terms of biological, economic, and societal consequences.

CONGRESSIONAL HEARING

**U.S. HOUSE OF REPRESENTATIVES  
COMMITTEE ON RESOURCES  
SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS**

Oral Testimony

Edward C. Bowles, Anadromous Fish Manager  
State of Idaho Department of Fish and Game

Garden City Council Chambers, Idaho  
August 15, 1997

Mr. Chairman, Congressman Crapo and Members of the Subcommittee. My name is Ed Bowles. I am the Anadromous Fish Manager for the State of Idaho Department of Fish and Game. Thank you for the opportunity to discuss Snake River salmon and steelhead recovery efforts. Your interest and initiative reflect highly on your commitment to solving this decades-old tragedy.

We have heard much today on NMFS' process for handling salmon recovery, ways the process might be improved, and who should be in charge. These are important questions but do not get at the root cause of our continued collective inability to solve the salmon dilemma. This inability stems from a focus on process and justifying the status quo, rather than on leadership and commitment to finding solutions and securing societal acceptance of these solutions. We do not need a solution to the process debacle, -- we need a solution to the salmon and steelhead decline. As long as we are more concerned about process than we are about solutions, it doesn't matter who is in charge or who is involved, -- we will likely fail.

The Snake River salmon and steelhead dilemma is akin to a ball and chain on the ankle of Northwest prosperity. Multimillion dollar fisheries have been lost from local and regional economies. A centerpiece of our Northwest cultural, recreational and ecological heritage is crumbling. A third of a billion dollars is spent annually in our attempt to save these fish, with little, if any, success to show for the effort. Agency, industry and public resources are severely strained participating in the process. Irrigation and recreation from upper basin storage reservoirs are threatened. The status quo is not cheap or benign.

So far the salmon recovery process has focused on how to make the ball and chain more comfortable and less obvious, instead of finding solutions to remove the ball and chain. The primary motivation has been to preserve the status quo, rather than finding a lasting solution that meets the biological needs of the fish and finds ways to keep vital economies whole. Without this leadership and collective vision, repackaging the recovery process will do little to save the salmon.

Snake River salmon and steelhead recovery pivots on the 1999 decision point. This is the process that should be our primary focus and concern. As a result of litigation, NMFS committed to a decision path to finalize a long term recovery strategy by 1999. The first step to ensure the 1999 decision points toward recovery, is to stop debating whether the fish should be in the river or in

Congressional Testimony  
 U.S. House of Representatives  
 Ed Bowles, IDFG  
 August 15, 1997

barges. This controversy is one of the primary reasons the NMFS recovery process has little to show for its effort. Available science indicates that sustainable recovery requires an in-river solution, and that the solution must recreate normative conditions. I refer you to my written testimony, which covers this scientific debate in more detail. The sooner the region can come to terms with this biological reality, the sooner we can focus our collective efforts on helping society find ways to truly meet the needs of the fish while maintaining Northwest economies, cultures and prosperity. This is where we need to focus our efforts if we are to help society and decision makers prepare for the 1999 decision, -- not continuing to try to rationalize recovery through transportation and flow augmentation.

Perhaps the biggest threat to successful recovery, and NMFS' ability to lead us there, is NMFS' extreme prejudice toward transportation and flow augmentation as the preferred recovery path. This prejudice is both regrettable and unacceptable. It is regrettable because this unprecedented opportunity to work collectively toward meaningful recovery may soon be lost. It is unacceptable because there is no scientific peer support, or an empirical or theoretical basis, for concluding that wild Snake River salmon and steelhead are likely to recover if we follow the "non-normative" path of full transportation and flow augmentation.

NMFS' bias toward transportation and flow augmentation seriously detracts from their ability to provide leadership toward in-river solutions and focus the recovery process on finding ways to keep vital affected economies whole. The 1999 decision point is just around the corner. We cannot afford to let recovery slip away by continuing to debate the science. This is not a biological issue...it is a social and economic issue. The recovery process should focus on providing the best possible economic information so that society and decision makers can determine how best to keep vital economies whole as biological solutions are implemented. How to meet the biological needs of the fish is not the important question, -- we know what the fish need. The important questions are: In meeting the biological requirements of the fish, ... can we provide an economical and effective way to get commodities to market? ... can we maintain an economical energy source? Can we reduce the threat to irrigation water? ... can we reduce loss of recreation opportunities in upriver storage reservoirs? ... can we reduce or eliminate the ongoing financial burden of the salmon recovery process industry? ... can we help ease burdens and uncertainties associated with energy deregulation? These are the sort of questions that the 1999 decision point really pivots on. If they go unanswered, society will not be in a position to make informed decisions for or against salmon recovery...and we will likely default to the continuation of expensive and ineffective status quo operations. I am not convinced that the current process or leadership is headed in this direction or committed to an honest and open debate of these issues.

Thank you once again for including me in this important discussion. I hope my comments have been constructive.

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**TESTIMONY  
OF  
TED STRONG, EXECUTIVE DIRECTOR**

before the

**SUBCOMMITTEE ON FISHERIES CONSERVATION, WILDLIFE AND OCEANS  
COMMITTEE ON RESOURCES  
U.S. HOUSE OF REPRESENTATIVES**

Garden City, Idaho

August 15, 1997

**Introduction**

Good morning Mr. Chairman and subcommittee members. My name is Ted Strong, I am the Executive Director of the Columbia River Inter-Tribal Fish Commission (Commission). As you know, the Commission was formed by the Confederated Tribes of the Warm Springs Reservation of Oregon, the Confederated Tribes and Bands of the Yakama Indian Nation, the Confederated Tribes of the Umatilla Indian Reservation, and the Nez Perce Tribe. These four tribes possess rights reserved by treaty with the United States of America<sup>1</sup> to take fish destined to pass the tribes' usual and accustomed fishing places. These rights cover salmon, including steelhead, originating in the Columbia River Basin. Protection and enhancement of these runs, and those streams that provide spawning and rearing habitat and migration corridors for these fish, are of critical importance to the tribes. Salmon are a critical part of each tribal member's being, the continued presence of salmon in our lives and our culture is as important to us as the air we breathe.

I want to thank the Chairman of the Subcommittee and Mr. Crapo for the additional opportunity to provide testimony on the tribes' interactions with the National Marine Fisheries Service (NMFS) related to salmon restoration activities. In the tribes' view, our interactions with NMFS as they struggle to carry out their responsibilities under the Endangered Species Act of 1973, as amended (ESA), have been largely negative. From the tribes' view, the NMFS has ignored its trust obligations to the tribes. These obligations require, among other things, that NMFS ensure that the

<sup>1</sup>Treaty with the Yakama Tribe, June 9, 1855, 12 Stat. 951; Treaty with the Tribes of Middle Oregon, June 25, 1855, 12 Stat. 963; Treaty with the Umatilla Tribe, June 9, 1855, 12 Stat. 945; Treaty with the Nez Perce Tribe, June 11, 1855, 12 Stat. 957.

tribes can exercise their treaty reserved rights to fish at all usual and accustomed fishing places. NMFS has relegated this obligation to second class status as it stumbles over the even lower standards it set for itself under the ESA.

I would note at the outset that the subcommittee and its staff will find the document titled "Columbia River Treaty Fishing Rights," previously provided to the subcommittee by Nez Perce Tribal Executive Committee (NPTEC) Chairman Samuel Penney, extremely useful in understanding the extent and nature of the rights reserved by the tribes under the treaties with the United States. Additional copies are available from the Commission's office, if the need should arise. In addition, I have attached a one page summary to my testimony, provided by the Confederated Tribes of the Umatilla Indian Reservation, that describes how they define government-to-government consultation between the tribe and the U.S. government. I believe the subcommittee will find it useful.

In my testimony today I will expand on the testimony provided to this subcommittee by NPTEC Chairman Penney during the hearing on July 24, 1997, in Washington, D.C. He gave you a good indication of the problems that the tribes have experienced, and continue to face, with NMFS's decision-making style. Our greatest frustrations with the NMFS has been their unrelenting attacks on our treaty protected fisheries even as they continue to allow a relatively unrestricted hydropower system to kill off the salmon runs. NMFS recently announced additional listings of steelhead salmon for protection under the ESA. With that news, the tribes anticipate a renewed attack on our treaty reserved fisheries even as NMFS allows the unrestrained abuse of a privileged use of the river by the hydropower system operators. How great the abuse? Steelhead are being listed seven years after NMFS first announced the need to change the hydropower operations to protect salmon. A system that, to cite one federal judge, "literally cries out for a major overhaul." I will try to focus my testimony on why the region has still not achieved, or really even begun, that overhaul, largely because of the NMFS approach to the problems.

### **Three Salmon Restoration Plans, Three Different Directions**

This Commission has strongly supported the use of the best science available as a means of furthering salmon restoration - despite our concerns that science is sometimes used as a facade for hidden policy agendas and decisions. We have strongly supported the Northwest Power Planning Council's scientific initiatives provided in the Fish and Wildlife Program, such as the Independent Scientific Advisory Board and the Scientific Monitoring and Evaluation Plan. The tribes supported the development of and provided scientific and policy comment as the Council developed its *Strategy for Salmon*. In developing their own restoration plan, the tribes set a goal consistent with their treaties: the restoration of healthy sustainable fisheries throughout the Basin. To meet this goal, the tribes utilized scientific principles in developing their



comprehensive fishery restoration plan for the Columbia River Basin, the *Wy-Kan-Ush-Mi Wa-Kish-Wit: The Spirit of the Salmon*.

The NMFS, under the ESA, took a narrower view than either the Council or the tribes in developing its recovery plan. Nonetheless, even the NMFS plan can provide a federal platform to build upon as the additional federal obligations and responsibilities are recognized and incorporated into the restoration efforts, such as those under the treaties with the tribes. These obligations must be squarely addressed and supported by the final compilation of the federal plan and its integration with the states' and tribes' plans.

Unfortunately, the NMFS's current attempts to implement their reasonable and prudent alternatives for the hydropower system disenfranchise the tribes' and the states' from their process. The Adaptive Management Process (AMP), foisted on the region by the NMFS, has failed. At every turn, where one would look for consensus or a respectful accommodation to achieve regional consensus, one would instead find the hydra-headed NMFS declaring that it was obligated to decide the issue. NMFS's attempts to dress this procedural nightmare in a new skin should end. NMFS should resign the AMP to the procedural scrap heap and embark with full vigor with the other sovereigns in developing a truly consensual forum for folding together the three different restoration plans of the three sovereigns.

**The Executive Committee fiascos: the barging versus spilling debate and the more drawdown studies are needed even in the face of overwhelming science decision**

There is a benefit to the region for having experienced the NMFS's AMP: we now know what will not work and we have a better understanding of what can work in a regional process. I think that by reviewing two linked issues "addressed" through the Executive Committee I can best illustrate the shortcomings of the AMP and NMFS coordination capabilities. These issues are the decision to barge versus allowing in river migration, or "spilling," of juveniles (the better alternative) and the decision to do more studies of the drawdown of reservoirs and dam modifications even as NMFS allows the Corps to take actions that compromise that option. And remember, the AMP was a multi-tiered committee structure where issues came from the bottom up, a structure that awkwardly and misguidedly often "allowed" policy decisions to be made by technical committees. And of course, NMFS chaired all the committees and retained the "right" to decide agendas and issues.

Unlike recent years, it became clear late last year that 1997 was beginning to shape up as a good water year. As it turns out, 1997 has in fact been an exceedingly great water year. In years such as this one, generally all of the states, the tribes and the U.S. Fish and Wildlife Service (collectively the "Salmon Managers") support keeping the juvenile salmon migrating to the ocean in the river, versus collecting and

barging them to the ocean. Why? The scientific review of the long term data sets shows that the survival of juveniles spilled over the dams is much better than that achieved by barging the salmon. Barging may present a better option in low water years, when the dam operators will not provide sufficient water flows to spill juvenile salmon.

Working through the AMP, committee level by committee level, the states and tribes ultimately arrived at the Executive Committee with a proposal for keeping the bulk of the migrating juveniles in the river to take advantage of the good water year. That is, all of the Salmon Managers were in agreement that the best option for providing good survivals past the dams was by keeping the fish in the river in 1997. All of the Salmon Managers but one that is - NMFS objected to the proposal. Ultimately, over the objections of the other sovereigns in the basin, NMFS exercised its "obligation" to vote against the proposal. And in the AMP game, NMFS's vote was the only one that counted.

But why did NMFS vote against this proposal? A proposal that is a keystone of the tribes' *The Spirit of the Salmon*, a policy proposal developed and carried to the AMP by the State of Idaho. Was it because of science? Sadly, no. It was on the basis that the proposal would allow many more salmon to migrate in river *than is allowed under the Biological Opinion for the FCRPS*. So even though this in river migration proposal is called for in other salmon recovery plans, is advocated and supported by all the other sovereigns based on good science, and makes it through that circuitous "adaptive management process" (adaptive?) of NMFS to the Executive Committee, it is rejected because it doesn't mesh with NMFS's singular vision. The process was neither adaptive nor respectful of the science of the other sovereigns.

**As a closing comment on the barging issue**, I was glad to see that the subcommittee's record from the July 24th hearing contains letters from the Oregon Department of Fish and Wildlife and the Washington Department of Fish and Wildlife regarding NMFS claims issued this spring that the data was in and barging will be the salvation of salmon. Both state agencies, after looking at the basis for NMFS's claims, noted that the results were too preliminary to make that claim. In fact, the state agencies think it is starting to look like the returns from barging would actually end up being insufficient to achieve recovery. The region is awaiting the completion of a more complete analysis on smolt to adult survivals by the Idaho Department of Fish and Game, hopefully it will be available later this month. The lesson to take from this particular episode is that all of the sovereigns should all receive the final results of research at the same time and jointly analyze it before it is announced by NMFS. In theory, that's how the NMFS process is actually supposed to be working now.

**In *Return to the River***, the ISG report to the Northwest Power Planning Council, a group of fishery scientists noted that the "key to salmon productivity in the future will

be the degree to which normative ecosystem conditions are re-introduced into the Columbia River Basin." They recognized that in order to achieve a normative river ecosystem we would need to evaluate the option of permanent drawdowns and dam removals for its social and economic costs relative to the salmon recovery benefits. In fact, recognizing that the biggest fish killer in the life history of salmon is the Federal Columbia River Power System, the tribes looked closely at this option in *The Spirit of the Salmon*. From the tribes' perspective, the drawdown of the John Day Pool to spillway crest, coupled with the "disembankment" of the four dams on the Lower Snake River, provides one of the best options for restoring healthy salmon populations to the Snake River.

From the perspective of NMFS, claiming it is bound by the narrow vision contained in its Biological Opinion on the FCRPS, the decision on barging versus drawdown and disembankment cannot be made until 1999. NMFS feels it must continue to study both options. Unfortunately, even as NMFS drags its feet on moving forward on implementing the obvious solution to salmon recovery, it has allowed the Corps to move ahead with dam modifications that are, in effect, a "gold plating" of the hydropower system. For example, in FY98, the Army Corps of Engineers proposes to sink some \$50 million into dam "improvements" for salmon passage that will be useless if NMFS decides in 1999 that drawdown and disembankment is the most beneficial salmon recovery tool. That is, even as it says it cannot move ahead on drawdown and disembankment, NMFS is allowing the Corps to move ahead with projects as if the decision has already been made to barge all fish after 1999. Hardly consistent in its standards and definitely not consistent with achieving regional consensus of the three sovereigns.

The Independent Scientific Review Panel, in its Review of the Columbia River Basin Fish and Wildlife Program (as directed by the 1996 amendment to the Power Act) for the Northwest Power Planning Council, noted that:

The prescriptive nature of the Biological Opinion [BO for the federal hydropower system] seems to have been detrimental to the Council's objective of scrutinizing the validity of biological assumptions using BPA funding. There is a need for a regional approach reconciling the Council's program and the NMFS requirements. ISRP Report 97-1 at 24.

The tribes would only add the caveat to also include *The Spirit of the Salmon* in any such reconciliation. And in fact, after noting that the ISRP had "surveyed [not critiqued] the Corps of Engineers Portland and Walla Walla for projects associated" with "passage near or at dams, transportation, and effects of dissolved gas [...] these multiple projects and agencies seem inadequately coordinated and integrated[.]" the ISRP recommends:

that all migration-related research, monitoring, and other management activities be coordinated and integrated across agencies and tribes through explicitly stated and complementary measures in the [Fish and Wildlife Program], NMFS, [Fish and Wildlife Service] and tribal recovery plans. ISRP Report 97-1 at 24, recommendation III.B.1.

Is this what happens at the AMP, through the direction of the Executive Committee? No. What has happened - and apparently what will continue to happen without an alternative forum - is that NMFS accedes to the Corps or BPA because "that's what the BO calls for."

In the interim, NMFS appears to be content to ignore the tribes' requests to protect juvenile salmon by maximizing spill during this high flow year in order to allow for in river migration (no response to letters from Ted Strong to Will Stelle, dated June 5, 1997, nor letter to Will Stelle et al, dated July 23, 1997, supporting Salmon Managers request to provide target flows at The Dalles Dam). Apparently taking its cue from the NMFS, the Corps has decided not to provide the tribes and states data runs from which to forecast potential flows and reservoir operations. This information had previously been available to the tribes and states, but its distribution now is apparently limited to the federal agencies. This information is essential to the other sovereigns so that they can understand the FCRPS system and develop more fish friendly alternatives for consideration by the sovereigns. The tribes have protested this limited access as contrary to the Corps agreement under the MOA to consult with the tribes on a government-to-government basis. (see letter of Ted Strong to Brigadier General Robert Griffin, dated June 9, 1997).

**The Region - not just the NMFS - can better coordinate and involve the various stakeholders through a regional forum of sovereigns**

The subcommittee has asked what NMFS can do to better coordinate and involve the various stakeholders in order to alleviate concerns that the NMFS is making unilateral decisions with respect to salmon recovery efforts. The simple answer is still that NMFS cannot do this alone. The NMFS needs to join with the other sovereigns in the region to establish a forum for the three sovereigns (state, tribal and federal). NMFS cannot carry out the functions of coordination and facilitation of the involvement of the various stakeholders without first having a charter. A charter does not exist yet; the three sovereigns must come together to jointly develop this charter. Only then can NMFS properly act as a coordinator and facilitator, if that is the role defined for them under the charter.

The subcommittee has also asked whether any of the current regional forums, such as the NMFS-led Executive Committee or the Northwest Power Planning Council, are suited to resolving the current problems. Based upon and consistent with

my previous answer, I would have to answer no. I would not equate the inability of the NPPC to provide a regional forum to the inability of NMFS's AMP (Executive Committee) to provide such a forum; the NPPC is competent to carry out the charter provided by the Power Act - that charter is just not sufficient to address the issues before the three sovereigns now. That is distinctly different from the problem with the Executive Committee, whose charter was so flawed in its development that NMFS could not carry out coordination functions nor facilitate regional solutions.

**A new regional forum should be created by the three sovereigns.**

Since the tribes' "formal withdrawal"<sup>2</sup> from the AMP on May 16th of this year, we have continued to advocate for the formation of a forum for the three sovereigns: the states, the tribes, and the federal government. The goal of this forum should be to seek agreement on fundamental matters of policy in order to avoid a basic flaw in the AMP: the inappropriate situation wherein technical committees of engineers and biologists were determining what policies were sufficient to meet the U.S.'s trust obligations to the tribes. In the forum envisioned by the tribes, the consultations between the sovereigns must be structured so that there is first agreement on policy issues before the technical issues related to implementation are referred to the technical committees. On June 3rd in Portland, the Governors of Idaho, Oregon, Montana and Washington, Katie McGinty, representing the federal government, and nine tribal representatives committed to develop a process to structure just such a forum.

Since the June 3rd meeting of the principals, there have been two general meetings of three sovereigns staff to begin to frame the structure for the sovereigns forum, plus additional meetings of smaller task groups addressing specific elements. In these smaller task groups, the staff of the three sovereigns are discussing key issues that need to be resolved in developing a comprehensive electricity restructuring package that addresses fish and wildlife and governance issues. A task group has developed five options for governance, which the group is reviewing; key issues identified and being discussed include future fish and wildlife costs, transition (or stranded) costs, and whether the separate subscription and separation process will foreclose decisions on the identified key issues. The larger group continues to familiarize itself with the Draft Columbia River Basin Fish and Wildlife and Governance Principles for Energy Restructuring (dated May 28, 1997) and planning continues for a meeting of the three sovereigns in September.

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<sup>2</sup>I must note that the tribes were actually never formal participants in the AMP and withdrew from their qualified participation because of "the inability of the NMFS' process to address the federal government's trust responsibilities to the tribes, to protect treaty reserved resources, or to implement the tribal salmon restoration plan." Letter of Ted Strong to Will Stelle, May 16, 1997.

The tribes continue to believe that the governance principles, once they are agreed to, will provide the guidance for developing the detailed implementation actions. There are eight broad principles being discussed by the sovereigns staff. These principles are directed at adapting the BPA and the FCRPS to the deregulated energy market while restoring the Basin's fish and wildlife resources. We want to keep the benefits (and costs) of the system in the region but, at the same time, the tribes firmly believe that what the BPA can afford and remain competitive is not a fish issue. It is clearly an issue of transitioning from a system of regulated monopolies to an open market system; refusing to address these transition costs head on will only hurt the region in the long term.

The tribes believe it is in the best interests of the basin's fish and wildlife that we manage these shared resources on a government-to-government basis among the three sovereigns. Enabling the joint management of these shared resources by the states, tribes, and federal governments requires a forum that respects the unique authorities of each of these three sovereigns. Each of these sovereigns has its own constituent levels of governments and interest groups to respond to on policy and technical management issues related to these shared resources. A representative forum constituted by the three sovereigns will provide a framework to develop regional solutions, consistent national and international obligations, to problems identified by one or more of the sovereigns.

Once the forum for the three sovereigns has been established, it should work on reconciling the three different restoration and recovery plans. This step in and of itself will help to remove hurdles by helping to identify key, agreed measures and allowing the successful implementation of those measures. Assuming the staff of the sovereigns has adequately established the governance principles for the forum, the other coordinating bodies in the Basin can be tiered to the Three Sovereigns Process, allowing for coordination of actions and ensuring that the individual actions of any the sovereigns complements the efforts of the others. The tribes envision, for example, that existing and proposed science advisory panels would now tier to the sovereigns and that a regional fiscal management entity would deal with the fish and wildlife funds transferred from the BPA.

**The Independent Scientific Advisory Board should report to the three sovereigns.** As an aside, it appears as though - unless Congress acknowledges the need to redirect its attention - the ISAB will provide another, repetitive overview of the hatchery system and its relation to salmon recovery. This review, currently being asked for in House and Senate appropriation reports, repeats the work contained in the *Return to the River*. And I would note that the *Return to the River* supports the approach to using hatcheries advocated by the tribes in the *Spirit of the Salmon*.

The ISAB's time would be better spent providing an independent scientific

review of the Army Corps of Engineers' capital construction budget. Amazingly, there has been no such independent review. Even as Congress asks for another independent review of the hatchery system, we have yet to see the first independent review of the Corps' capital construction program. And from the viewpoint of the tribes, as well as many other regional interests, this budget begs for such independent scrutiny. Significant controversy surrounds the Corps' FY98 budget: the capital construction projects in that budget serve to goldplate a system requiring significant changes and represent lost opportunities and wasted resources.

**Actually, if Congress wants to assure itself of the appropriate role of hatcheries in salmon restoration activities, then the review it is asking for is too narrow.** Salmon stocks up and down the Pacific coast are in trouble, all of these stocks are influenced in one way or another by hatchery management. Congress should recognize that the broader issue should be covered in such a report: review the hatchery management programs of the entire Pacific Northwest, not just the Columbia River basin, as well as those of California and Alaska. If possible, Congress should direct federal agencies to seek the participation of Canada as well, which operates several salmon hatcheries in British Columbia. Any other, narrower report requested by Congress will be recognized by the tribes for what it is: a thinly veiled attempt directed at only the Columbia River tribes' efforts to proactively use a reformed hatchery program to restore sustainable fisheries above Bonneville Dam.

Do not confuse my message here though: we don't need another, repetitive report on the hatchery system in the Columbia River, or even a broader one of the entire Pacific Coast, to know that it needs to be reformed. We all know it needs to be reformed. As early as 1982, the Commission foretold the current ESA crisis, that the region would lose several stocks of salmon unless the hatcheries were reformed. So let's have the managers, under the Columbia River Fish Management Plan (a management plan developed and implemented consistent with the three sovereigns concept) develop this reform program for the Columbia River system. Right now NMFS, again acting unilaterally, is blocking one of the most effective tools for salmon restoration - using hatcheries as supplementation facilities to restore naturally spawning runs.

**Amazingly, considering the restrictions on fisheries and habitat protection measures restricting activities in Idaho, you might be surprised to learn that NMFS is killing summer chinook that have made it back to the spawning grounds of the South Fork of the Salmon River!** They determined that they "had" kill some 2000 summer chinook! Plus, with help from the Idaho Department of Fish and Wildlife, they have moved another 500 out of the spawning area. Finally, there's at least another couple hundred more adult salmon that may also end up being "excessed." Why are they doing this? It is nature of the bizarre NMFS's "Evolutionarily Significant Unit" (ESU) salmon stock policy for salmon restoration. Ostensibly, this is to protect the natural

gene pool. If an adult salmon has a history of being in a hatchery, then it is a "bad fish" and not worthy of living. So, where did the salmon originate that NMFS has decided must die? Why, just a few generations ago they were spawning naturally in the South Fork of the Salmon River Basin. Then they were collected for broodstock for the McCall Hatchery. These adult salmon have the same heritage as the fish that still spawn naturally in the South Fork, their sin is having spent time in a hatchery. Swimming 900 miles home in the hopes of spawning - but then they run into the agency responsible for salmon recovery (with, unfortunately, help from the Idaho Department of Fish and Game), so now they must die. Does this make any sense to you? It sure doesn't make any sense to me.

#### **Conclusion**

In reviewing the testimony from the subcommittee's earlier hearing, I noted with pleasure Mr. Young's view that "[i]t is clearly in our nation's interest to rebuild and revitalize the salmon stocks of the Columbia River Basin." I don't think I'm wrong in reading that statement as an affirmation of the principles announced by the Governors of Alaska, Oregon, and Washington at the Sitka Salmon Summit convened last year by Governor Knowles of Alaska. Alaska's acknowledged the importance of Columbia River chinook stocks to its fishery at the Summit. Alaska's commitment to work with the Pacific Northwest states and the Columbia River tribes to restore healthy runs to the Columbia River was in fact instrumental in allowing the U.S. to adopt an abundance based approach for the Alaskan fishery under the Pacific Salmon Treaty. The long term success of that forward looking harvest agreement is inextricably linked to our ability, in a forum of the three sovereigns, to reconcile the region's salmon plans and move forward with the needed restoration measures.



**THE CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION**  
**Definition of Consultation:**  
**between the Federal Government and Tribes:**

**ABSTRACT:**

Consultation is the formal process of negotiation, cooperation and policy-level decision-making between sovereigns. Specifically, consultation is the bilateral decision-making process of the Confederated Tribes of the Umatilla Indian Reservation and the United States Government.

It is critical to understand that consultation is not just a process or a means to an end. Rather, consultation is the process that ultimately leads up to and includes a decision. *The most important component of consultation is the ultimate decision.* Consultation then is the formal effort between two sovereigns of making policy level decisions.

**OBJECTIVES:**

- a. Assure that Tribal leaders understand the technical and legal issues necessary to make an informed policy decision.
- b. Improved policy-level decision making of the Tribes and the federal government.
- c. Bi-lateral decision making among sovereigns (co-management).
- d. Protection of Tribal lifestyle, culture, religion, economy.
- e. Conformance with Tribal and federal law and policy.
- f. Develop and achieve mutual decisions.
- g. Improve the integrity and longevity of decisions.

**OPERATION:**

Consultation operates through the same procedures and steps that are common-place for most federal agencies: technical meetings and policy meetings. From a practical standpoint, consultation requires an ability to differentiate between technical and policy issues; and the capability to resolve issues at each level. Consultation is the process of coming to common understanding of the technical and legal issues that affect or are affected by a decision. Consultation is using this common understanding to make a common decision. The specific procedures for consultation are jointly-defined and reduced to writing, usually in the form of an Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU).

TESTIMONY OF WILLIAM STELLE, JR., REGIONAL ADMINISTRATOR  
NATIONAL MARINE FISHERIES SERVICE -- NORTHWEST REGION

BEFORE THE HOUSE RESOURCES COMMITTEE  
SUBCOMMITTEE ON WATER AND POWER RESOURCES

Field Hearing in Boise, Idaho  
August 15, 1997

Mr. Chairman and Members of the Subcommittee, thank you for the opportunity to appear before you today on the subject of our decision making in the efforts to recover threatened Snake River salmon under the Endangered Species Act. Your letter of invitation suggests a focus on the regional efforts to improve survivals of juvenile and adult salmon through their migrations down and back up the Federal Columbia River Power System. I will therefore focus my remarks accordingly, while noting that the recovery effort is indeed far broader than merely mainstem passage survivals.

Allow me first to articulate three basic principles that underscore our approach to this major effort:

Good Science - First and most importantly, NOAA Fisheries is dedicated to the principle that its decision making under the Endangered Species Act (ESA) must be based upon the best scientific information available. It is the law, it is common sense, and it is the basis of all our efforts. Good science is the compass that will help us chart our course in this complicated and controversial arena. If we depart from the science, we will lose our way. It is very important to understand the significance of this principle in practice because it means that science must prevail over popularity on any given matter.

Intergovernmental Coordination - NOAA Fisheries is committed to working with all interested governments in the Basin to develop the best set of informed options for the Region for "fixing" the hydropower system over the long term. NOAA Fisheries believes that intergovernmental coordination is important and essential if the region is to develop a broad based agreement on how to fix the system. NOAA Fisheries has devoted literally hundreds of hours to this collaborative effort -- as have the fish and wildlife managers of the states and tribes -- and we have made good progress. NOAA Fisheries is actively engaged in discussions with the four governors and the tribal governments to explore options for selecting the preferred approach to the long-term fix, now scheduled for 1999, and we are committed to a formal process to seek agreement among the state, tribal and Federal authorities on the best solution.

Dispute Resolution - NOAA Fisheries remains absolutely open to techniques and mechanisms to improve the process. The Department of Justice distributed a proposal this spring to all the parties to the pending litigation challenging the NMFS 1995 Biological Opinion on the Operations of the Hydropower System, a copy of which I have

provided to the Subcommittee for the record. That proposal to improve the decision making process reflects months of discussions among the parties, and we hope it will provide a basis for a broad agreement on proceeding, on a settlement of the litigation, and on improving the day to day mechanics of the process. Part and parcel of that effort is our conviction that a more effective method to resolve disputes that will inevitably arise from day to day during the implementation is necessary and appropriate, and the Federal government has devoted a great deal of time developing a set of dispute settlement options for the other governments to consider. We hope that the subject of dispute settlement will be one of the matters that might be encompassed by a potential settlement of the American Rivers litigation.

#### **Fixing the Hydropower System and Salmon Survival**

Let me now turn to the substance of the efforts to fix the hydropower system. Mr. Chairman, as we delve into the details of this effort it is important to appreciate the depth of disagreement that exists here in the region on the proper remedy for the system for the long term, and on the role of transportation of juvenile salmon downstream as an interim practice pending the selection and implementation of that long-term remedy. As Federal District Court Judge Malcolm Marsh recently observed in his decision (Opinion, page 25-26) to uphold our approach, "The briefs and oral arguments amply demonstrate how impossible it would be for NMFS to satisfy the concerns of all the interested parties given the widely divergent viewpoints over what is needed to save salmon."

If there were agreement, I dare say we would not be here today. This is a very difficult and contentious matter, and the stakes are high. This profound turmoil makes it all the more imperative that we pursue a steady course based on good science.

In the 1995 Biological Opinion for the hydropower system, NMFS promulgated a multi-year roadmap for fixing the hydropower system. The States of Washington, Oregon, Idaho, Montana and Alaska all argued before the Federal District Court in the District of Oregon that we should implement that approach fully. The court dismissed the challenges of the plaintiffs and found that the 1995 opinion was lawful. Given the considerable controversy associated with this subject, we believe this is a significant process. We intend to adhere to the 1995 Biological Opinion and implement it in an orderly, open and collaborative fashion. If we flip from position to position, month to month, based upon the vagaries of the moment, we will rapidly find ourselves rudderless, adrift and without direction. NOAA Fisheries has no such intention.

The 1995 NMFS Biological Opinion on operation of the Federal Columbia River Power System concluded that the proposed operation posed jeopardy to Snake River salmon populations listed under the Endangered Species Act. Together with the action agencies -- the Army Corps of

Engineers, the Bureau of Reclamation, and the Bonneville Power Administration -- the NMFS developed a reasonable and prudent alternative (RPA) that calls for interim measures to immediately improve salmon survival while additional information is developed on a long-term configuration of the mainstem dams. A decision on the long term configuration of the Lower Snake River dams is planned for 1999. The 1995 NOAA Fisheries decision concluded that for a number of reasons, as discussed below, this delay was necessary. It also concluded that despite this delay the affected salmon populations were likely to remain above survival threshold levels and to maintain an acceptable probability of recovery.

Today, as at the time NMFS issued its biological opinion, there is a rift between supporters and opponents of juvenile fish transportation. One side argues that runs declined to the point of listing during two decades of relying on transportation, and it is time to conclude that transport cannot fully address this problem and to try something else. That something else is natural river drawdown, which would remove known mortality factors like slow moving reservoirs that are habitat for predators, and turbines that are known to kill 10 percent or more of the fish passing through them. It also provides for more natural river ecosystem conditions. The other side that supports the current configuration of the hydropower system argues that other factors besides the hydropower system have led to the fish's decline, that juvenile fish transportation provides about as much improvement in salmon survival as would removal of the Snake River dams, and that certainly given the present configuration of the dams, the best thing to do in the immediate term is to transport as many fish as you can collect.

In light of these alternative views, NMFS identified several areas of uncertainty and set about to address them. Questions include inquiries such as: what is the mortality rate of fish migrating in-river; what is the ability of transportation to mitigate for that in-river mortality; what is the survival rate needed to ensure the survival and recovery of the Snake River salmon; and will either of the two major options -- continued transportation or natural river drawdown -- provide that level of survivals? Entwined in each of these options is the issue of flow augmentation and whether, and to what extent, flow augmentation from the upper Columbia or Snake Basins will continue to play a role in improving river health and fish survivals.

Through the 1995 biological opinion, the NMFS attempted to establish an orderly process for generating additional empirical evidence and reviewing all available information on these critical uncertainties. The first part of this strategy involves providing sufficient flow and spill to significantly improve migration conditions for in-river migrants. These measures ensure that the studies done under the second part of the strategy provide a measure of the best the system can

do in its current configuration. These measures also contribute to the immediate survival improvements during the interim period. We have been very fortunate to have relatively good runoff conditions since 1995. This will help us to estimate the very best that the system can do.

The second part of the strategy involves three principal research initiatives. These are an improved evaluation of juvenile fish transportation, juvenile survival studies, and feasibility studies on surface collection technology for juvenile fish.

The transport evaluation will tell us whether transported or in-river spring/summer chinook survive to adulthood at a higher rate. Juvenile fish for this study were marked in 1995 and 1996. We are getting preliminary returns from the 1995 groups right now, and will get the remainder of the 1995 groups and the 1996 groups back in 1998 and 1999. Preliminary returns from the 1995 groups, which should be viewed with great caution at this time, show transported fish returning at nearly twice the rate of in-river fish. This means that transported fish survive better than those migrating downstream in the river, which is directly relevant to the idea of reducing transportation and leaving more fish in the river. It does not mean that overall survival is adequate to ensure long-term survival and recover, which is precisely the issue that the Plan for Analyzing and Testing Hypothesis (PATH) process is evaluating.

The juvenile survival study data tell us the rate of juvenile fish survival through the hydro system. If these data are consistent with the transport evaluation data, it may provide important information about the expected benefits of a natural river drawdown compared with continued transportation. Some regional scientists argue there is delayed mortality unique to transported fish. If that is true, by drawing down the Snake River reservoirs, one would expect a survival benefit that is greater than the mortalities we actually measure for fish migrating through that stretch of the river. However, results to date show that estimates of in-river mortality is lower than previously measured, about 50 percent for spring/summer chinook compared with rates as high as 70 to 80 percent in the 1970s. The rate of in-river mortality of juveniles is also consistent with the preliminary results of the transport study. Both results suggest that there is no differential delayed mortality of transported fish.

Finally, the initial evaluation of surface collection technology will tell us if there is a potential to develop improved facilities for handling juvenile salmon. If it works, this technology could be used to improve collection systems for transportation, or to improve bypass systems for in-river migrants. The Corps tested an initial prototype at Lower Granite Dam in 1996. Research on that prototype will continue in 1997. Results on this initial prototype were not good. However, on the basis of what has been learned, both with that prototype and through additional model studies, the Corps is preparing for installation and testing of an improved prototype design in 1998.

The third part of the strategy is to refine the analytical tools available for estimating the results we can expect with each of the major alternatives -- drawdown versus refinements to facilities and operations within the limits of the dams as they currently exist. With funding from the Bonneville Power Administration, and with the cooperation of scientists from within the region and beyond, we have been working on a process called "Plan for Analyzing and Testing Hypotheses," nicknamed PATH. It is ably and independently facilitated to ensure objectivity and improve effectiveness. It includes an internal independent peer review process, and provision for certain questions to be subject to a second level of peer review through the Independent Scientific Advisory Board established by NMFS and the Northwest Power Planning Council.

Thus far the PATH group has completed a retrospective analysis of spring/summer chinook salmon, reviewing what we know already on the basis of existing data. Additional information from part two of the strategy will be incorporated as it becomes available. The PATH group is currently working on a retrospective analysis of fall chinook data and moving on to a prospective analysis of spring summer chinook. Analysis of steelhead is planned for 1998. The prospective analyses will be used to project what will happen with salmon runs under the various alternatives over 25, 50 and 100 year time horizons.

The prospective analyses will also provide the hypotheses about management alternatives that will be the yardstick against which the success of recovery measures will be evaluated in a true adaptive management process. We will never be able to know for certain in advance whether a particular set of modifications to the system will be "enough" to provide for recovery. Through the PATH process, however, we hope to get as close as possible to an answer and to the extent there are remaining uncertainties, to understanding the inherent risks. Through implementation of the preferred alternative in an adaptive management framework, we will also assure that we learn as we go and can make necessary assessments and corrections.

This three part strategy under the NMFS 1995 Biological Opinion is scheduled to come to a major decision point in 1999. The additional information available at that time will be the specific results of transport, juvenile survival and surface collection studies noted above. We will also have five additional years of operating experience, improved analytical tools, and, hopefully, a functioning regional intergovernmental process to help us make sense of it all. The intended decision in 1999 is whether any or all of the strategies will, in the opinion of the NMFS, avoid jeopardy and ensure the recovery of listed Snake River salmon. As I mentioned at the beginning, one overlay that the NMFS assumed for this whole approach was that a decision could wait until 1999. There are some in the region, however, who feel that delaying the decision is a mistake. They are concerned that if we do not decide soon, we will have invested substantial resources in the status quo, and that the more significant changes, such as drawdown, will no longer be affordable.

### Regional Participation

The major decision on which long-term remedy is appropriate is of such significance for the Pacific Northwest that we believe it must reflect as broad agreement as possible within the region in order to improve the likelihood of ever being implemented effectively. NOAA Fisheries is therefore committed to seeking that agreement through a formal process of selecting the right course involving the active participation of the four states and the tribal governments.

We are also firmly committed to an orderly, intergovernmental process for implementation of the day to day activities. Since completing the Biological Opinion in 1995, the NMFS and the other federal agencies have been attempting to develop and employ an intergovernmental forum for regional discussion and decision on operation and system configuration of the Federal Columbia River Power System (FCRPS). Such a forum was informally implemented soon after the opinion was signed, and is still in place. The state of Idaho has been and continues to be a productive and cooperative participant on many of the working technical teams. Through the evolution of this informal process and through discussion in a variety of venues the Federal government developed, and recently distributed, a proposal for a regional agreement that would more formally establish principles and procedures for decision-making.

The goals of the proposed regional forum are:

1. To promote fulfillment of related treaty trust responsibilities to Columbia Basin Indian tribes.
2. To ensure the broadest possible technical and policy participation in federal planning, funding, and implementation decisions regarding operation and configuration of the FCRPS.
3. To develop agreement and resolve disputes on operations to be implemented by the federal hydropower operating agencies and other actions related to FCRPS operations and system configuration.
4. To ensure that the decision-making process for operations and system configuration is open and that decisions of the Forum are fully explained.
5. To promote coordination between implementation of the NOAA Fisheries and USFWS biological opinions and actions taken under related regional plans and fora to restore Columbia Basin fish.

The proposed forum would include a tiered committee structure comprised of multiple technical committees, overseen by an implementation team of senior managers, who are in turn supervised by an executive committee of the members. Membership would include the states of Oregon, Washington, Idaho, Montana and Alaska; the Indian Tribes of the Columbia River Basin; the Corps of Engineers, Bureau of Reclamation, Bonneville Power Administration, NMFS, Fish and

Wildlife Service, and Bureau of Indian Affairs; and the Northwest Power Planning Council. Each participating member would retain the full range of its authorities and obligations, but would commit to strive for consensus among the other members on its decisions. NOAA Fisheries role in this process would be to develop a range of options for salmon restoration, ensure the development and analysis of the best available scientific and economic information to project the outcomes for each option, and to solicit the advice of each of the state and tribal sovereigns on the best path to pursue.

We have recently been informed that the State of Montana and the four Lower Columbia River treaty tribes have decided not to continue participation in the current informal process. We are hopeful that the efforts to develop a more formalized structure for implementation decisions will address their concerns and allow them to resume participation to represent their interests and contribute to more informed federal decision-making. We have distributed a proposal to formalize this forum to the parties of the American Rivers litigation in the hopes that an agreement on it might provide a basis for a settlement of the litigation.

#### **The Idaho Plan and the 1997 Transportation Scenario**

It is important to address the matter of the NMFS decision on the transportation scenario for 1997. Before doing so, I would like to commend Governor Batt and his representatives for their ongoing commitment to work with the other states and tribes and the Federal agencies in the implementation of improvements to the hydropower system. While we have not always agreed on details, I have been favorably impressed by the genuine efforts of the Governor, Mr. Mike Field of the Power Planning Council, and others on the Idaho staff. They are professional, serious about the subject, and committed to a collaborative approach.

Mr. Chairman, as has been described in testimony submitted to the Subcommittee, the State of Idaho and other parties proposed an adjustment in the operations for transporting juvenile salmon downstream through the hydropower system for this year in its "Idaho Plan." In a nutshell, the essence of the Idaho Plan was to leave more fish in the river and transport fewer on the grounds that the benefits of transportation appear less in good water years than in poor water years. Specifically, the Idaho Plan called for leaving two-thirds of the juveniles in the river for 1997.

The Idaho Plan was the subject of extensive discussions among the salmon managers and in the Technical Management Team in the development of its 1997 Water Management Plan and the Implementation Team (IT), which oversees and approves the work of the TMT. In both the TMT and the IT, the states of Oregon and Washington and the Federal agencies expressed their reservations about the Idaho Plan because of the higher mortalities experienced by in-river migrants as compared with those juveniles transported around the dams in the barges in past and ongoing evaluations. At the Implementation Team meeting of April, the three states and the



Federal agencies reached an agreement on an alternative scenario that would operate the collection system to target a "spread-the-risk" strategy and have not more than fifty percent of the listed juveniles migrating in river. The Columbia River salmon tribes represented by the Columbia River Intertribal Fish Commission (Intertribe) objected to the agreement, reflecting their long-standing opposition to any barging of juvenile salmon, and the matter was thus elevated to the Executive Committee.

The Executive Committee met on April 4, 1997 and reviewed the proposal presented by Idaho. The States of Washington and Oregon expressed their preference for the alternative "spread the risk" strategy, as did the NOAA Fisheries representative. The Nez Perce representative on behalf of Intertribe requested a vote on the Idaho Plan, and NOAA Fisheries voted against it with the support of the U.S. Army Corps of Engineers, the Bureau of Reclamation and the Bonneville Power Administration. Noting the absence of agreement among the parties on the 1997 operations, I advised the parties that I would recommend to the operating agencies an operation based on the "spread the risk" strategy that is consistent with our prior years' decisions on the same matter. I explained the basis of my recommendation, and later distributed a written explanation of my decision per the interim guidelines.

The Subcommittee has asked why did NMFS not accept the Idaho Plan given that a broad coalition within Idaho supported it and the other states did not object to it at the Executive Committee. It is a good question.

NMFS was unable to agree to the Idaho Plan because the clear weight of scientific information indicates that this river system as currently configured kills fish and that collecting and transporting fish around the eight dams is a safer route of passage than leaving them in the river. In my best professional judgement, to intentionally leave more fish in this river as it is currently configured -- and I want to emphasize this important qualifier -- is to kill more fish, and entirely contrary to our obligations under the Endangered Species Act. I therefore concluded that we would be unable to recommend the adoption of the Idaho Plan, and that the more prudent course would be to remain consistent with our operational guidelines of the last several years -- itself a compromise -- by retaining our spread the risk strategy.

#### **The Bigger Picture - Long Term Solutions for Hydropower**

The larger and more important matter facing the region is the selection of the best long term solution for fixing the hydropower system.

As described above, Federal, state and participating tribal governments are hard at work in investigating a number of options crafted through the PATH process and are hard at work developing the best information on the performance of each option. We are asking questions

such as: What will each option do for the listed fish and other fish and wildlife resources? What are the economic and social impacts of each? What is the confidence in each of these projections? These options include the range from the status quo to improved surface collections and transport to natural river drawdown of the four Snake River dams and John Day.

We are furthermore seeking to generate a regional discussion on the schedule for these decisions and the decisional criteria that should be brought to bear. Towards that end, we have prepared and have distributed a "Discussion Paper" on the long term remedies, with proposed decision criteria and schedules, to state and tribal authorities for their review and comment. We have further indicated our desire to seek an agreement on schedules and criteria as soon as possible this fall to ensure that the necessary preparatory work is undertaken before 1999.

NOAA Fisheries has been clear that it views the current configuration of this river system as dangerous for juveniles and the barging of young salmon as preferable to running the gauntlet of eight dams and reservoirs. We have also decidedly not concluded that barging should be the preferable long term solution, and we do not intend to reach any such recommendations on the long term remedy until the current evaluations of each remedy and their effects can be more completely evaluated, which is precisely the work of the PATH process.

We do not intend to rush to judgement on these crucial matters. Making that judgement based upon the best information we can gather in a collaborative manner with the state and tribal authorities is the preferred course, and it is the course we chart.

#### **More Water from the Upper Snake**

Mr. Chairman, I appreciate your interest in matters relating to flow augmentation from the Upper Snake, and therefore appreciate the chance to review them with you.

First, please understand that these matters are in current and active litigation, and therefore I must be somewhat circumspect in my comments.

The NMFS and the Bureau of Reclamation (BOR) have reached an agreement on the flow augmentation that is necessary in this interim period to satisfy the requirements of the Endangered Species Act. That agreement is the contribution of 427,000 acre feet of water from the upper Snake, to augment flows in the lower river, acquired on a willing seller/willing buyer basis and consistent with state water law. The BOR with the able support of the State of Idaho, has been successful in securing that additional water every year since the issuance of the biological opinion. We are seriously interested in continuing that success.

The BOR and the Federal Energy Regulatory Commission have received notices of the intent to sue from several environmental groups, and my only comment on that potential litigation is that we are fully prepared to consult with the Bureau on their operations in this interim period and are confident that we have properly taken into account all of the important issues associated with the BOR activities during this period. We have worked hard with the BOR on this matter, and those efforts will prove themselves worthwhile. I can only encourage the State of Idaho to stay the course with the Bureau on this matter.

Finally, there is the issue of the long term remedies and the role of flow augmentation from the Upper Snake. There may appear to be a basic tradeoff between improving river conditions by additional flow augmentation from the Upper Snake, and dam removal in the Lower Snake. My own view is that the current information would suggest that there is a tradeoff here from a biological perspective, and that dam removal might reduce significantly the need for flow augmentation from the Upper Snake, but not entirely eliminate it. The biological and economic analyses associated with these different options are precisely the work that must be completed in preparation for a decision on a long term remedy.

Mr. Chairman, this concludes my testimony. I look forward to answering any questions you may have.

Congressman Mike Crapo

I would like to share with you and your committee my experiences in trying to work through the permitting process both as an employee of the Federal Government and that of a private individual.

Prior to issuing any permit each and every project that may effect the resources is required to have some environmental assessment prior to authorizing the activity. This be in the form of an environmental assessment or an environmental impact statement and/or a biological assessment. The environmental assessment or impact statement is prepared by a group of professionals (Interdisciplinary Team) that are knowledgeable about all of the resources and the project being evaluated. It is then necessary to develop the section addressing fisheries into a separate environmental document, the Biological Assessment.

These environmental documents receive peer review from within the preparing agency as well as many other State and Federal agencies. Oversight is also provided by the Tribes and numerous environmental groups as well as the general public. It is NOT necessary to require a second Government agency, who has a single environmental agenda, to perform an independent review by people that are not knowledgeable about the project or the resources in that particular area. Since NMFS received authority to review inland projects the cost to Land Management agencies has doubled.

Under the current process National Marine Fisheries Service can, and does, hold projects hostage until all their demands are met. Their demands are seldom based on professional knowledge or science but someones whim.

During the spring of 1996 I was asked to help landowners get a very important project permitted. This project to stabilize a bank of the Salmon River to prevent it from developing a new channel and destroying 3.5 miles of extremely high quality fisheries, including spawning and rearing habitat for chinook salmon and steelhead trout, would also destroy at least one home, isolate 450 acres of high value farm land and contribute 1 million cubic yards of sediment into the Salmon River.

The landowners followed the established process exactly. As soon as the project could be identified engineering assistance was requested from NRCS. The Survey and design was completed during the summer and fall of '96. Permits to Army Corps and Water Resources were submitted on Nov. 8, '97. The Department of Water Resources permit was issued in early January.

Mark Olson and I met with two NMFS people on Jan. 24, '97. The NMFS people were Dale Brege and Kathy Moynan. At this meeting we were aware that they had not yet received the BA and plans from ACOE. Mark offered plans at that meeting. During the course of this meeting we were told by NMFS that they did not support the project and made the comment that "the river has to do what the river wants to do". I brought up the resources that would be lost including the spawning habitat for some 200 steelhead and the fact that the Hannah Slough had active spawning of Chinook Salmon. I was told that these fish would find other places to spawn. When I mentioned the farm land and home that would be lost their comment was that "someone built in the wrong place didn't they". (This particular home was built 60 years ago.)

At a later meeting, on Feb. 11, '97, that was requested by ACOE to try to resolve their concerns we were rebuffed on every issue. A Fisheries Biologist from Idaho Fish and Game, who has several years experience on this segment of the river, tried to explain to them the workings of the river he was interrupted each time he spoke. I have never witnessed a more unprofessional, arrogant and uncaring attitude as exhibited by these two NMFS employees.

NMFS personnel consistently would not answer or return phone calls, denied receiving fax messages, completely changed engineering drawings and tried to replace the plans with a sketch that was prepared by someone that had never visited the site without ever discussing the change with the landowners or NRCS. NMFS continued to withhold their concurrence in an attempt to stop the project. Finally, with the assistance of Congressman Crapo, Sen. Craig, Sen. Kempthorn, NRCS, Idaho F&G and Northwest Power Planning Council we received word that ACOE would issue their permit without NMFS concurrence.

During the actual construction, Apr. 14th., Kathy Moynan, NMFS employee, was in the area and wanted to visit the project. She contacted Mark Olson, NRCS, who was not available to take her to the site. Mark gave Kathy my phone number and asked her to contact me. She did not attempt to contact me but instead trespassed on private property to inspect the site. The next day she hired an airplane to fly her over the project so she would not be seen. She also called in a Special Investigator to see if they could find something wrong. Again, on Apr. 17, instead of driving to the site NMFS walked in the back way hoping to avoid detection. During this time Kathy nor the Special Investigator had a copy of the plans or permit so they could know what we were permitted to do. When made to review the plans and permits the Investigator stated that we were well within the work permitted. This visit was witnessed by representatives from Congressman Crapo and Sen. Craigs offices.

The additional cost in dollars and delayed action to the public and agencies is staggering. I can find no one who can identify one acre of land or any fish habitat that is better off because of NMFS involvement.

NMFS consistently abuse the authority vested in them. They are not about the protection of fish and fish habitat, they are only interested in having total control over all activities.

The entire permitting system is broken! We are forced to deal with an agency (NMFS) that can do nothing and stop everything. Please, give the review responsibility to the States or if you deem it necessary to involve a Federal Agency, give that authority to US Fish and Wildlife Service.

Sincerely,

BILL N. SAVAGE  
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## THE PACIFIC RIVERS COUNCIL

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14 August 1997

Representative Jim Saxton, Chairman  
Subcommittee on Fisheries Conservation, Wildlife and Oceans of  
the Committee on Resources  
U.S. House of Representatives  
Washington D.C. 20515

Re: Salmon Habitat Problems in Idaho

Dear Mr. Saxton:

Please include this letter and the attached information as part of the record for the hearing held today in Boise, Idaho regarding the National Marine Fisheries Service's (NMFS) management of Columbia River Basin salmon. Our remarks focus on the key role of freshwater habitat restoration in the effort to recover wild salmon populations and are intended to support the continuing need for NMFS to focus resources on matters related to federal lands management.

***Habitat Degradation Continues to Threaten the Persistence of Wild Salmonids in the State of Idaho.*** Our purpose in writing is to emphasize to you that contrary to popular opinion, freshwater habitat in Idaho generally is not high quality and pristine. In fact, degradation of freshwater aquatic habitat in the state of Idaho continues to seriously threaten the health of both anadromous and resident salmonids. Although the dams on the Columbia River mainstem receive considerable, warranted attention as the greatest single cause of salmon mortality, it is incontrovertible that the persistent biological effects of freshwater habitat degradation have reduced and continue to limit the number of salmon which successfully hatch and survive to make an attempt at running the hydroelectric gauntlet. Although not concentrated into losses at a single location, losses of salmon to poor habitat quality are as large as losses suffered at the dams.

We have enclosed a brief report prepared in 1995 regarding the extent of salmon habitat problems in the state of Idaho and their substantial relationship to the maintenance and recovery of these beleaguered fishes. This report supports the following points:

- \* Habitat problems in Idaho are extensive and are roughly equal to dam problems.
- \* Habitat degradation is directly responsible for reduced salmon survival.
- \* Sedimentation and temperature are leading problem for salmon.
- \* Wilderness designation does not protect most Idaho salmon streams.
- \* The historically most productive Idaho streams have been severely degraded.
- \* Habitat problems continue to be created by new federal planning actions.

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Since 1995, the visibility of habitat problems in Idaho has increased dramatically due to the widespread occurrence of severe storm events and landslides. The frequency and severity of slope failures and massive sedimentation of salmon streams has been closely correlated with past timber harvest and roadbuilding. Today, even the casual visitor to the Payette River will notice that the water doesn't run clear. Further north, in waters still accessible to salmon, visitors will see that the waters of the Little Salmon also run brown. What he or she may not notice is that some adult salmon are losing their lives before spawning trying to migrate through this mess, and others that make it through find their spawning gravels have been smothered with mud washing from the hillsides. In these conditions, egg-to-fry survival is severely depressed.

Also since 1995, the Aquatics Team of the Interior Columbia Basin Ecosystem Management Project (ICBEMP) has produced a broadscale assessment of aquatic resources in the interior Columbia River Basin (Lee et. al. 1997). This assessment documents the widespread decline of salmonid species and highlights the critical role of federal lands habitats. It documents that stream-type chinook salmon remain strong in less than 1% of their historical range, ocean-type chinook in 15%, steelhead in 1%, redband trout in 22%, westslope cutthroat in 25%, and bull trout in only 13%. Clearly, it is not just the dams that are causing problems. The chinook that spend the most time rearing in freshwater (i.e., the stream-type) are considerably more at risk of extinction than those that migrate more rapidly to the ocean. Salmonids such as redband, westslope cutthroat and bull trout that do not face the main-stem Columbia River dams show significant declines. Idaho waters no longer provide the kind, quantity or quality of habitat necessary for long-term survival of healthy populations of many of our native fishes.

Despite this overall "bad" news, core areas remain to rebuild and maintain functional aquatic systems. However, small, scattered watersheds probably will not be adequate. The assessment reveals that there are remaining anchor points for recovery in Central Idaho and the Snake River headwaters, but also identifies a surprising number of important "strongholds" for salmonids outside currently protected areas (e.g., via Wilderness or Wild and Scenic designation), outside of areas of low road densities and even outside of federal ownership entirely. The key determinant appears to be road density and management intensity. The assessment concluded that increasing road density and management intensity is correlated with declining aquatic habitat conditions.

The ICBEMP assessment makes it clear that we now face a situation where the overall changes in salmonid population distribution are so extreme, that "even with no further habitat loss, the apparent fragmentation and isolation may place remaining populations of key salmonid species at risk." Therefore, we need not only to conserve those relatively few (as compared to historic) areas where habitat currently supports salmonids, but we need to restore enough degraded areas to reduce population fragmentation and increase the resilience of these fish to both natural and human-caused disturbances (Lee et. al. 1997). This means that we can't stop with the assumption that habitat currently in wilderness is enough — we have to work on improving the



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areas which don't currently support salmon. As a result, NMFS has a key role to play in ensuring that federal land management activities not only do not jeopardize salmon and steelhead or adversely modify critical habitat, but also in coordinating effort to conserve and recover the species and its habitat.

Recent policy developments on these issues has continued to confirm the view that all is not well with salmonid habitat on federal lands in the state of Idaho and that the NMFS has a vital part to play in addressing this problem:

1. Bull trout proposed for listing. The proposed listing of the bull trout is a strong indicator of the status of freshwater habitat in Idaho and elsewhere in the Columbia Basin. Bull Trout already have been lost from 55% of their historical habitat in the basin. Of remaining populations in Idaho, approximately 83% face a moderate to high risk of extinction. The primacy of habitat degradation as a causal factor in bull trout decline is incontrovertible — bull trout life histories do not include ocean migration, but they are highly sensitive to temperature and sediment degradation. (Declines in westslope cutthroat trout and other resident salmonids support a similar conclusion that habitat conditions in Idaho have been impacted severely).
2. Steelhead proposed listing. Like the bull trout listing, the proposed listing of steelhead stocks in Idaho's Snake River Basin are indicative of widespread degradation of freshwater habitat, particularly on federal lands which covers 69% of the watersheds in the basin. Steelhead life histories make habitat quality a key factor in their survival.
3. PACFISH/INFISH implementation reviews by the agencies have revealed that some BLM and Forest Service grazing, timber harvest and roadbuilding projects continue to be conducted in a manner that habitat conditions are impaired and recovery is obstructed, in contravention of the goals of the interim direction, NMFS' expectations and society's desire for healthy salmon and steelhead populations. The reviews also found, however, that more effective implementation of aquatic conservation policies occurred on projects which were subjected to Section 7 consultation and which therefore benefited from the participation of NMFS staff in project design. Clearly the Forest Service and BLM do a better job of designing and implementing management activities in areas where NMFS is involved.
4. Interagency Fisheries Review Team on the Salmon Challis in 1996 revealed that some Forest Service employees consciously were not implementing salmon protection policies, highlighting many of the difficulties faced by NMFS staff in conducting consultations. Obviously some of the problems and controversies that have received congressional and administration attention have not been a result of NMFS "arrogance" but a result of a marked unwillingness by some in the management agencies to accept the Endangered Species Act as a legitimate mandate.

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***What is NMFS' Role in Addressing Habitat Problems?*** It is the duty of NMFS to ensure that federal actions do not jeopardize listed salmon or cause the adverse modification of their habitat. Consultation provides the primary mechanism through which this duty is fulfilled. The proposed regional plan for the Interior Columbia Basin also anticipates that NMFS will participate in the plan implementation through an interagency decisionmaking procedure which applies in areas outside Section 7 watersheds.

NMFS involvement in federal decisions can lead to better decisions. We believe that NMFS' participation in federal lands planning actions has, by and large, resulted in better project level decisions from an aquatic resource protection standpoint. This view is confirmed by the interagency review of the implementation of interim aquatic conservation policies which found that projects subjected to consultation were more likely to comport with the letter and intent of the direction.

We also expect that the recent addition of staff in the Boise Field Office will allow NMFS to more effectively ensure that the needs of listed salmon are met by federal actions. It is likely that staff needs will continue to increase with the listing of steelhead and the implementation of the interagency decisionmaking model proposed by the ICBEMP.

NMFS involvement tends to promote full public participation. From our perspective, the involvement of NMFS in federal project planning at the early stages outside the consultation process has promoted the more full public participation in federal lands decisionmaking by nongovernmental parties. We can cite examples where citizen involvement has been enhanced by NMFS' participation.

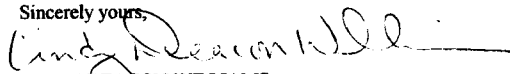
Consultations no longer are cumbersome. In fact, streamlined consultations have vastly increased efficiencies, but we are concerned that such efficiencies may have been gained at a possible cost to the resource. There can be no doubt that the time taken to complete consultations on federal actions has been reduced by implementation of the streamlined consultation model. Since 1992, NMFS has conducted 1,666 consultation on federal land management actions, and most of them were successfully completed with informal consultations. Of the 47 consultations completed in FY 1997, only two required formal consultation. In light of these numbers, we are concerned about the risk that the agency may be responding unduly to the pressure placed on it to issue speedy consultation decisions without concomitant concern for whether the decision is adequate to meet ESA mandates. It seems possible that speedy decisionmaking may at times take precedence over the need to ensure that federal actions comply fully with the intent of the ESA that species and critical habitat are protected. Therefore, we suggest that it might be worthwhile for NMFS to complete a review of recent consultations to ensure that their efforts to provide a timely response to federal project applications have not compromised their ability to act as advocates for salmon recovery.

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NMFS clearly needs to have the support of the Administration and Congress to continue to play an extremely difficult but vital role as the lead agency for salmon recovery. We believe that given the significance of the habitat degradation problems in Idaho and elsewhere, NMFS' continued involvement in the oversight of Forest Service and BLM land use planning and management decisions is a critical part of this role.

We look forward to working with you toward ensuring that federal policies and appropriations for the National Marine Fisheries Service fully acknowledge and seek to address the serious public natural resource problems we have identified.

Sincerely yours,



CINDY DEACON WILLIAMS  
Senior Aquatic Ecologist

cc: Representative Mike Crapo, Boise Field Office

encl: Report on "Salmon Habitat Problems in Idaho"  
List of relevant literature

## SALMON HABITAT PROBLEMS IN IDAHO

### A Report

Prepared by The Pacific Rivers Council  
from the scientific analysis by:

Jonathan J. Rhodes, Dale A. McCullough, F. Al Espinosa, Jr. for  
the Columbia River Inter-Tribal Fish Commission,  
and other sources.

### Introduction

Scientific data show that salmon habitat in Idaho has been very significantly degraded by more than a century of logging, mining, grazing, erosion, streamside development and loss of streamside vegetation. The degradation of spawning and rearing habitat causes loss of salmon populations roughly equal to those from the dams. In effect, the progressive degradation of habitat has resulted in fewer and fewer young salmon surviving to face the dams. While destruction of some rivers -- like the tragic loss of productivity in the South Fork of the Salmon River -- are well known, many other salmon streams across Idaho are in even worse condition. Even though wilderness designation protects many Idaho streams, it does not protect many Idaho salmon streams.

### Habitat Problems In Idaho are Roughly Equal to Dam Problems

Available data consistently indicates that salmon survival in Idaho is 10 to 55 times higher in streams that have not been subjected to logging, grazing, and mining than in degraded streams in managed watersheds (Rhodes et al., 1994). Salmon survival is lowest in streams subjected to multiple impacts. For instance, egg-to-parr survival is about 0.5% in Johnson Creek in Boise National Forest (BNF) a highly degraded stream subjected to grazing, mining, roads and historic timber harvest (NMFS, 1993). Similarly, it is about 3.3% in the highly degraded Bear Valley Creek (BNF) which has been subjected to grazing, mining, road construction, and logging (Scully and Petrosky, 1991). In adjacent streams in roadless and wilderness areas, salmon survival averages about 29% (Scully and Petrosky, 1991; BNF, 1993). All of these streams are above the same number of dams. Habitat conditions plainly exert a profound effect on salmon survival, by sharply reducing the number of downstream migrants that ever make it to the dams.

In fact, these data indicate that poor habitat conditions increase salmon mortality to a level roughly equivalent to that caused by the entire downstream hydroelectric gauntlet. Unfortunately the effects are additive. Hence the precipitous declines of salmon that are especially steep in degraded streams.

Artificially elevated sediment delivery from land disturbing activities such as roads, grazing, mining, and logging are the primary cause of high levels of fine sediment and attendant extremely low salmon survival. Elevated sediment delivery is the primary water pollution problem in Idaho (IDHW, 1989) and has been noted as a major habitat problem in the managed portions of all subbasins with salmon habitat in Idaho (NPPC, 1990a,b). Most investigations indicate that fine sediment is significant higher in managed drainages in Idaho than in roadless areas (Overton et al., 1993; Rhodes et al., 1994; Huntington et al., 1994). Abundant data consistently indicates that the survival of all salmonids is reduced as fine sediment increases. Therefore, it is expected that salmon survival has been reduced in most managed streams throughout Idaho.

#### **Habitat Problems Directly Depress Salmon Populations In Idaho**

Evaluations consistently indicate that there are much greater numbers of salmon in non-degraded streams than in degraded streams. Over about an 8 year period that there were consistently about 10 times as many spring chinook rearing and about 20 times the steelhead in intact streams as compared to degraded streams (Rich et al., 1994) (Rhodes et al., 1994). Huntington (1994) found a similar difference in salmon numbers in managed and unmanaged streams on the Clearwater National Forest. All streams were above the same number of dams, indicating that although dams have profoundly damaged salmon populations, poor habitat conditions just as profoundly add to that impact.

Resident salmonids have also declined in damaged streams in Idaho (Seyedbagheri et al., 1987; BNF, 1993.) These salmonids are similarly affected by habitat conditions but not affected by ocean harvest, hydroelectric operations, or ocean conditions, again providing additional evidence that habitat conditions in Idaho have decreased salmon survival.

### Idaho Salmon Streams Have Serious Sediment Problems

Some habitat problems are very direct: sediment kills salmon eggs, and increases the mortality of just-hatched salmon by eliminating rearing habitat. Direct mortality of salmon eggs and fry "...caused by high levels of fine sediment is probably the greatest single symptom of natal habitat degradation contributing to the decline in salmon populations in the Snake River Basin." (Rhodes, et al, 1994) This problem occurs even when there are very few spawning adults because of dam mortality -- in other words, the degradation of spawning habitat by siltation **MAGNIFIES** the effects of dam mortality.

"Much of the natal habitat for spring and summer chinook salmon in the Snake River Basin has been so degraded by sediment contributed by the separate and combined effects of grazing, agriculture, logging, road construction and mining that they no longer fully support the beneficial uses of salmon spawning and rearing. (Theurer, et al., 1985; Idaho Dept of Health and Welfare, 1989; Scully and Petrosky, 1991; Rich, et al., 1992; Boise National Forest, 1993; Henjum et al., 1994.) Emphasis added.

### Wilderness designation does not protect most Idaho salmon streams.

Certainly Idaho has a lot of wilderness where streams are at least partly protected. Unfortunately most of the streams in wilderness areas are steep, rocky, high-gradient streams that never were the best salmon habitat. Salmon use the larger, flatter, low-gradient streams that are predominantly downstream from the wilderness areas, in the "managed" part of the landscape, where logging, grazing, mining are dominant land uses. For example, in the Clearwater National Forest:

"...Stocks of spring chinook salmon threatened with extinction tend to prefer slow flowing habitat prevalent in C-type channels which are sensitive to disturbance. Of the stream reaches surveyed on the Clearwater National Forest...84 percent of C channels [i.e. salmon habitat] have been classified as managed. Generally roadless streams were dominated by moderately steep to very steep channels while most of the sensitive low gradient channels were within managed landscapes. (Hunnington, 1994) Emphasis added.

Most of the best historical habitat is not protected in wilderness areas. For instance, the South Fork Salmon River is estimated to have once been the most productive habitat in Idaho. It was protected after being horribly damaged, but that

protection is not firm. Plans are underway to log it. The most important salmon habitats are low-gradient, unconstrained streams in broad valleys. These generally do not exist in wilderness areas; or if they do are subject to grazing. These streams are unfortunately the most susceptible to degradation due to reach characteristics and location within watersheds.

#### Habitat Problems In Idaho are Extensive

Historic pool data and resurveys of streams also show extreme declines in this important habitat feature over the past 50 years in all significantly managed streams resurveyed in Idaho. Idaho streams with major losses of historic pools losses include Salmon River tributaries (Bear Valley, Elk, Lemhi River and others Rhodes et al., 1994). Notably, pool frequency either increased or remained stable in wilderness streams, including those that had been intensively burned (Rapid River) (USFS PNW Research Station, unpublished data; Rhodes et al., 1994). The primary cause of pool loss has been increased sedimentation caused by logging, grazing, road construction, and mining together with the loss of LWD, and reduced bank stability. This data indicates that degradation has been intense and extensive.

Other investigations in tributaries of the Little Salmon River on the Payette National Forest found that pools are shallower and less frequent in streams subjected to multiple use than in less hammered streams (Overton et al., 1993)

#### Water Quality In Idaho Has Been Compromised

Water quality evaluations indicate that most of the waters of Idaho are polluted. 962 streams will be listed as "Water Quality Limited" under the Clean Water Act. Sedimentation problems are ubiquitous in Idaho (South Fork Salmon River, Bear Valley etc). The Clearwater National Forest (CNF) found that 71% of the drainages on the forest failed to meet forest plan standards (which were weak to begin with and represent impaired conditions) due primarily to sedimentation from logging (CNF, 1991). Huntington (1994) found that managed streams on the CNF had almost twice the amount of fine sediment as unmanaged streams. Water temperature problems exist in many parts of the state including Johnson Ck., Bear Valley Creek, Lolo Creek, and the lower Salmon River Mainstem, downstream from the mouth of the Pahsimeroi. Sedimentation effects are of special concern because they reduce the survival of whatever few fish are spawned by the few that survive the hydroelectric gauntlet.

### The MOST Productive Idaho Streams Have Been Degraded

The South Fork Salmon River (SFSR) was once the greatest producer of salmon in Idaho (Platts et al., 1989) but was catastrophically degraded by landslides from logging roads and clearcuts. This sedimentation decimated salmon survival (Platts et al., 1989; Megahan et al., 1992). The SFSR is a prime example of how forest management on the Boise and Payette National Forests has caused severe degradation of salmon habitat. Rain-on-snow events in the winter of 1964-65 triggered a number of landslides in the SFSR, primarily from logging roads. It is estimated that these landslides delivered about 1.5 million cubic yards to the SFSR (Megahan et al., 1992). As a consequence, spawning habitat and pools were inundated by sediment and fine sediment increased dramatically, reducing anadromous fish production to only about 20% of potential. It is well-documented that these changes in habitat conditions greatly reduced salmon survival in the SFSR, causing precipitous declines in the salmon populations over the following decades (Seyedbagheri et al., 1987; Platts et al., 1989; Petrosky and Shaller, *in press*). It is estimated that, historically, the SFSR spring chinook runs numbered about 10,000 adults (Platts et al., 1989.)

In 1985, due to the combined effects of habitat degradation, and passage mortality, the number of returning adult spring chinook was estimated to be at about 1,200. Habitat conditions and salmon survival have still not completely recovered some 30 years after catastrophic degradation, even though a moratorium on land disturbance (logging, road construction) has been successful in allowing conditions to undergo some improvement over the past 30 years. However, the SFSR has shown no recovery over the past 15 years and has not fully recovered. It is unlikely that the SFSR can resume recovery unless sediment delivery from logging roads and other sources is abated (Platts et al., 1989; IDHW, 1991).

While the SFSR is a particularly well-documented case history of the effect of land management on landsliding and its ultimate effect on fish populations, existing information clearly indicates that roads and logging have significantly increased the frequency of landsliding throughout the highly erodible Idaho batholith, degrading habitat and reducing salmon survival and production (Megahan et al., 1978).

Subsequent studies indicate the degraded conditions in the SFSR contributed to precipitous declines in salmonid populations in the SFSR and that salmon survival and production remains depressed (Petrosky and Shaller, *in press*; R. Thurow, Fish. Bio., USFS Intermountain Res. Station, pers. comm., 1994).



In recognition of the on-going impairment of salmon rearing and survival, the United States Environmental Protection Agency and Idaho Health and Welfare, were prompted to establish a Total Maximum Daily Load (TMDL) for sediment delivery and sedimentation in the SFSR under the Clean Water Act (CWA) (IDHW, 1991.) This was the first-ever Total Maximum Daily Load for a non-point source (sedimentation) in the United States under the CWA.

#### Other Idaho Streams Have Problems Even Worse Than The Notorious South Fork

Despite the widespread recognition of the SFSR's degradation and its role in the decline of the most fertile salmon producing stream in Idaho, many other streams in the Idaho batholith are in much worse condition than the SFSR at the time of the TMDL and even during the worst sedimentation. A few of these streams are: Johnson, Bear Valley and Elk Creeks on the Boise National Forest, and Eldorado and Lolo Creeks on the Clearwater National Forest (Rhodes et al., 1994). For this reason, a federal judge mandated that Eldorado and Lolo Creeks had to be listed as "Water Quality Limited" under the CWA.

Available data indicates that sediment conditions in damaged, managed streams in Idaho continue to either decline or are maintained in poor condition. Deteriorating conditions have been documented in important salmon and steelhead streams such as: Deadman Creek on the Clearwater, and Bear Valley and Johnson Creeks on the Boise National Forest (BNF, 1990; CNF, 1993; Rhodes et al., 1994). This data indicates that highly degraded streams are generally continuing to degrade in areas affected by logging, mining, and grazing. Using the USFS's own models (USFS, 1983), it is estimated that sediment conditions will continue to deteriorate in streams such as Johnson and Bear Valley Creek on the BNF if current management continues (CRITFC, 1993); this is likely to reduce further the already extremely depressed salmon survival in such streams (CRITFC, 1993).

Extremely poor conditions in Lolo, Eldorado, and Pete King Creeks on the Clearwater National Forest have been maintained by continuing high sediment loads from the combined effects of existing roads, old clearcuts, and continuing logging.

#### Idaho Streams Have Lethal Temperature Problems

Idaho riparian (streamside vegetation) areas have been severely degraded, causing lethal increases in stream temperatures, loss of habitat, increased sedimentation, disruption of the food supply for juvenile salmon. For example:

"Streams throughout much of the Snake River Basin have had streamside vegetation stripped by logging, grazing, agriculture, road construction and mining. (Theurer et al., 1985; ODEQ, et al., 1990; Nez Perce Tribe and IDFG, 1990; Anderson, et al., 1992). Water temperatures in historic and much current natal habitat in....the lower Salmon River commonly exceed levels that are directly lethal to salmon." (Theurer, et al., 1985; Rhodes, et al., 1994)

#### **Idaho Habitat Problems Are Continuing**

Given the historical damage, any incremental degradation is significant. Mining severely disrupted the Crooked River (Clearwater Trib) and acid mine drainage and heavy metals have rendered parts of Panther Creek totally toxic and inhospitable to all salmonids (Nelson et al., 1991); the Stibnite Mine on the PNF has intensively degraded local streams. Irrigation has dewatered historic salmon spawning streams, such as Fourth of July Creek in the upper Salmon River, extirpating salmon runs. Annual dewatering of the upper Salmon mainstem during the sockeye migration period was a major cause of declines in Idaho sockeye.

In addition, all forest plans in Idaho called for programmed degradation: riparian logging, continued road construction, and elevation of sediment delivery to levels known to degrade habitats. The Nez Perce, Clearwater, and Payette National Forest Plans specifically set degradation as an objective for many salmon streams, such as French and Warren Creeks on the PNF, Fish and Hungry Cks on the Clearwater, and in tributaries to the Salmon River on the NPNF (Payette National Forest and Nez Perce National Forest Land and Resource Management Plans)

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