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NATIONAL MARINE FISHERIES SERVICE'S IMPLEMENTATION OF THE ENDANGERED SPECIES ACT

FIELD HEARINGS

BEFORE THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

SECOND SESSION

SEPTEMBER 2, 1998, PASCO, WASHINGTON, AND SEPTEMBER 3, 1998, BOISE, IDAHO

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FIELD HEARING ON NATIONAL MARINE FISHERIES SERVICE'S IMPLEMENTATION OF THE ENDANGERED SPECIES ACT

WEDNESDAY, SEPTEMBER 2, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Pasco, Washington.

The Committee met, pursuant to notice, at 10 a.m. in the Columbia Basin College, Workforce Training Center, Pasco, Washington, Hon. Richard W. Pombo presiding.

Mr. POMBO [presiding.] Before we get started, I would like to announce that there is an overflow room. It is room 130 and 131. There is, I am told, a live video and audio in the other room.

So everybody could either try to come into the room, or there is an overflow room that I am told is comfortable and has live audio and video in it so you can see the hearing. But we'd like to get everybody in if possible.

Good morning. Thank you for the opportunity to bring the House of Representatives Committee on Resources to the state of Washington and the Tri-Cities area. We look forward to this hearing today to learn more from you about how the Endangered Species Act is being implemented and enforced in this Northwestern region of the country by the National Marine Fisheries Service.

The Chairman of the Committee, Congressman Don Young, the Congressman from the state of Alaska, sends his best regards and his regrets that he cannot be here with you today. He has asked me to chair this field hearing for him.

In 1995 when the Republicans became the majority party in Congress we all had great hopes that we would be able to amend the Endangered Species Act and implement common sense approaches to species protection, similar to those that the 1973 Congress envisioned when they originally adopted this law.

Congress believed that this law would be used to prevent the extinction of species, but never dreamed that it would turn into a tool to be used by a small minority of people to impose Federal land and water use controls on the majority of people.

They also never envisioned the widespread injunctions and economic and social dislocations that many of you are now familiar with.

For the last 4 years many of the members here present and others in Congress have worked to bring about a common sense approach that protects both species and the rights of our citizens.

Unfortunately, instead of sitting down with Congress to discuss the future of protecting the nation's species, the Clinton Administration has chosen to stand in the way of genuine efforts that would have brought about change. Changes that would have protected the right of our farmers and landowners while still ensuring the protection of wildlife.

The ESA has been law since 1973. Currently there are over 1100 domestic species protected under that law. Time is long over-due for the administration to work cooperatively with Congress to fix the ESA. It is outdated and it is broken. It is broken for people and it is broken for wildlife.

As many of you in this room today can attest to, it punishes those who do the most to provide habitat for wildlife.

Today this hearing will focus on the role that the National Marine Fisheries Service, or NMFS, plays in enforcing the ESA. The ESA gives NMFS the authority to perform all the duties required by the ESA when they involve ocean dwelling species and marine mammals.

The Fish and Wildlife Service enforces the law and performs all of the duties required by the ESA for all other species. However, when land based activities are affected by the ESA, both Federal agencies are involved in regulating those activities.

If you have endangered species on your property in this region of the country, you may be required to obtain two Federal permits under the ESA for the same activity.

It seems to me that there is no need for two Federal agencies to perform exactly the same duties and regulate the exact same activities.

The House Resources Committee is here today to hear from you. We are here to listen to your ideas on what we, as your elected representatives, can do to improve the implementation of the Endangered Species Act.

I strongly believe that as our country begins to enter the 21st century we must and can find a more friendly and fair way to accomplish the goals of this outdated species protection act.

Surely we can reduce the regulatory burdens on average citizens, small businesses and state and local governments, while still protecting our natural resources. I hope today's hearing will help you find a way to make improvements in this law in ways that work for both species and for people.

I would like at this time to recognize the Ranking Democrat, Mr. Romero-Barceló.

STATEMENT OF HON. CARLOS A. ROMERO-BARCELÓ, A DELEGATE IN CONGRESS FROM THE COMMONWEALTH OF PUERTO RICO

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. And I congratulate you for holding this hearing today.

Since this legislation that is the subject of the hearing will require a complete reorganization of at least two government agencies at a considerable expense to the American taxpayers, I sympathize with the need to hear from witnesses more knowledgeable on this subject and the issues than most of us in Congress.

I appreciate the chairman's concerns for the Endangered Species Act and the idea that we must be looking for ways to improve our endangered species recovery efforts.

But I have reservations that the Bill that would strip the National Marine Fisheries Service from its authority to implement the Endangered Species Act is the best solution.

The National Marine Fisheries Service has spent decades gaining the expertise to address endangered species problems related to marine fisheries and species, while the Fish and Wildlife Service has focused its expertise on terrestrial species.

I feel that a transfer of authority at this time could slow the recovery process for salmon and other marine species at a time when many of these species are in trouble and can ill-afford a delay.

For an island like Puerto Rico it has proven that officials to have just one agency making management decisions for both marine species and commercially valuable marine fisheries, to divide responsibility between two different agencies with two different cabinet heads has a potential of a real quagmire, creating twice the bureaucracies and taking twice the time to make management decisions.

In fact, the Committee has already heard from representatives of the West Coast fishing industry who are opposed to the legislation for this very reason.

If there are problems with the implementation of the Endangered Species Act, we need to address those fundamental issues.

One of the more serious issues is funding. In the past decade the National Marine Fisheries Service's responsibility with respect to endangered species has grown dramatically, but their budget has not followed suit.

This year the administration requested a $10,000,000 million increase in the Endangered Species Act, but the appropriators only provided level funding.

As a result of delays in the development of recovery plans, consultations and other activities that cause people to complain that the National Marine Fisheries Service is not doing its job will continue.

This bill does nothing to address that problem.

In addition, fundamental changes are needed in the law itself to streamline many of the processes that people find so frustrating, regardless of whether it is the National Marine Fisheries Service or Fish and Wildlife Service implementing the law.

If we want to do something to really resolve the Endangered Species Act conflict, we must provide the agencies with the financial and legislative resources to do their job in a timely fashion.

It is clear that the majority of Americans support the protection of endangered species and the law is not going away, and whether moving our problems from one agency to another is the solution, I don't know. But let us work together to reauthorize the law in a way that makes it better for both the species and the people.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you. I would like to recognize Congressman Hastings at this point for his opening statement.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Mr. Chairman, I really appreciate you and my colleagues for coming here to the Tri-Cities and Central Washington for this field hearing.

Clearly, the Endangered Species Act and its implementation has impacted those of us in Central Washington.

And let me just give you my observation on how the ESA has worked here.

Using the Endangered Species Act, I believe that Federal regulators have squeezed their way into every aspect of our lives. From water usage, commercial and sportfishing, irrigation diversions, hydroelectric production, and even flood control, an assortment of Federal agencies end up making decisions for our region, oftentimes circumventing the state and local decisionmaking process.

While we have a variety of different species protected under the ESA here in the Columbia Basin, by far the most sensitive, and important I might add, is the issue of saving and restoring our historic salmon runs. The history and culture of our entire region is at risk in this debate.

The ability of the Federal Government to deal with the decline of salmon runs will test the ESA's efficacy in addressing difficult and complex regional issues.

Locally the Federal Government has already declared the Snake River steelhead, Snake River Sockeye, the Snake River Chinook and the Upper Columbia River steelhead as endangered. That's just essentially in Washington State. Adding Oregon and Idaho, the list becomes even larger.

Clearly the role of the Federal protection agencies is going to grow if more and more populations are listed.

As you well know, the Endangered Species Act does not protect species. Let me repeat that, because I believe it is one of the largest misunderstandings of the ESA. It protects distinct population segments.

This is a regional classification that ignores the strength and health of the species in other regions. A specie may not be in danger of extinction at all, and in fact there are many that are not even close to being extinct.

But the ESA specifically provides for the protection of distinct population segments of species, and therefore the protection of Sockeye salmon of the Snake River or Chinook salmon of the upper Columbia can be federally protected under the ESA.

Even the controversial Northern Spotted Owl has never been in danger of becoming extinct, just locally extinct.

I would conclude that there is a big difference.

I share the belief that regional populations of distinct species should be preserved as best as possible.

To accomplish this, however, we must look at the entire life cycle of a protected population. This is where preserving and restoring salmon populations become very, very difficult.

We are committing regional resources, and in some cases national and international resources, to the preservation of a local resource. And we know so little about the conditions that each salm-

on stock prefer. Therefore, making necessary adjustments become very costly, with a very limited likelihood of complete success.

Let me give you an example. Why can the Sockeye return to the Okanogan River through nine dams and through hundreds of miles, and still be a viable specie, while the Upper Columbia River steelhead, who goes through exactly the same dams, the same hundreds of miles, is listed as endangered?

The question is, is it ocean conditions, the timing of the harvests, their path through the Northern Pacific, the temperature of the water, the depth of the migration that protects them from predators, or something else entirely?

I think we need to find out, and that's the coordination that I think needs to be looked at.

Unfortunately, our Federal fishery managers and their supervisors, right up to the Department—to the Secretary of Interior, have so consistently blamed the dams for the decline of all the salmon runs that they have become the targets of the most dramatic adjustments for the sake of the region's salmon.

Deep drawdowns below the minimum operating pools, reducing irrigation diversion below Federal contract levels, eliminating timber harvests near streams, delaying grazing permits for cattle, and outright removal of dams, all of these options have been studied, considered, or mandated in our region, with no certainty of recovery, or even making the sustainability of salmon, and I think this issue must change.

What has yet to be comprehensively addressed in my view is the commercial harvest of salmon in the open ocean.

I don't understand how our fisheries managers can continue to allow the harvest, and I am not referring to incidental catches in this case, I am speaking of harvesting endangered salmon stocks by commercial fishermen. I think we can all remember that when the spotted owl was listed in the 1980's, that the threat of removing one tree within their owl circle was considered a take under the ESA.

Now, because the Sockeye salmon from the Snake River is not visually distinct from Sockeye salmon from Alaska or Canada, commercial fishermen continue to harvest millions of pounds of Sockeye each year.

I will be very interested to hear why the National Marine Fisheries Service has not required each commercial fisherman to be issued an incidental take permit for every endangered salmon caught or killed.

I would like to know why our region has committed billions of dollars to recovery efforts when commercial harvests continue unabated.

I will just make this, quickly four recommendations that I think need to be a part of any ESA reform.

First, we need a comprehensive approach that doesn't leave predator control to nature. If we are to protect the region's salmon runs, we must protect them from their natural predators, as well. For example, the Caspian Tern population at the mouth of the Columbia is now one of the largest in the world. There has been a recent report that the Caspian Tern has consumed over 11 million smolts.

I might add that that is more smolts than we barge down the Columbia River.

So we need to look at it, have a comprehensive approach to the predator problem.

Second, we need an approach that doesn't put commercial fishing and tribal fishing under different Federal jurisdictions.

And third, we need to have the BPA and the Northwest Power Planning Council working with the Federal agencies, not at the mercy of them.

I would like to see a program implemented, in conjunction with the Power Planning Council and BPA, that would voluntarily offer to compensate fishermen for setting aside a portion of their salmon harvest.

This is very similar to what we do with land as far as habitat under the Conservation Reserve Program.

And, finally, I would argue that most importantly, local citizens need to be at the table, making decisions for themselves.

We had a case of that in the upper Mid-Columbia with the Mid-Columbia PUDs agreeing to a habitat conservation plan that will last for some 50 years if it is implemented.

But the bottom line of that whole plan is that local people will be at the table. That's the approach we need to pursue.

So, in closing, I would just like to say that once again, Mr. Chairman, thank you for bringing this hearing, and I am looking forward to all the testimony from those that are affected, either pro or con, perceived or not, as to how the ESA is being implemented by NMFS.

And with that I will give back my time.

Mr. POMBO. Thank you. Congressman Smith—Congresswoman Smith.

STATEMENT OF HON. LINDA SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mrs. SMITH. Thank you, Mr. Chairman, and thank you for coming. You could have stayed home with that new baby. All of a sudden that baby isn't that new anymore.

The Committee as it sits today is a committee of very diverse people from around the West. And what we find for you here from home is that there's quite a different opinion of who should control our destiny in our state.

And they have come up with some false choices that I want to hear addressed today by those testifying that if we are to work to recover salmon and to preserve our environment and the endangered species, then we automatically have to give up our other rights, like property rights.

And I think what I want to just lay as a base of the philosophy that I would like to hear spoken to, do we believe that that assumption is accurate?

And I am going to say that I don't. And I guess I set that up a little bit. I don't think we have to have the choice of recovery and protection of species or protection of our property rights.

I do believe that water is a property right. And if you deny water as a property right, held to the States, controlled by the Federal

Government, then you give property rights to the Federal Government to control the moment that they control the water.

And what we're seeing around the Nation here, and that's why it's important we have this hearing here, is the Federal Government moving to control water levels which then control water rights, whether they take them or not.

Because if they change our water levels, they've got our water rights.

So, this is an important thing today that is happening.

I am very, very grateful for the Chairman of this Committee. We have several Subcommittees. We happen to be on this, Representative Pombo and myself, but we have several Subcommittees, and most folks take August off. They go home. They get some rest, to go back in September.

So, for this Committee to take their time and Representative Chenoweth and Representative Romero-Barceló, to come here, means a whole lot for our region, and I do want to thank them for coming to our state.

I want to make a statement about your representative. Doc Hastings probably knows this issue better than anyone in Congress. And he really fought to get this hearing here. Our Committee didn't have much ability to hold hearings. We're just about to the end of the 2 year period. And so for him to advocate the way he did, you have to know, you've really got a champion for you from this district.

And I look forward to hearing the testimony.

Mr. POMBO. Congressman Nethercutt.

STATEMENT OF HON. GEORGE NETHERCUTT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. NETHERCUTT. Thank you, Mr. Chairman.

Ladies and gentlemen, thank you for allowing me to participate in this panel. I am not a member of the Resources Committee in Congress. I am a member of the Appropriations Committee, which has jurisdiction over the Interior agencies and the Agriculture Department, those land management agencies that affect farmers and ranchers.

So I have a particular interest in this issue because of the subcommittees on which I serve have to pay the bill for these activities that the Federal Government engages itself in relative to our natural resources.

I want to thank Congressman Doc Hastings and Congressman Pombo and the rest of the panel for being here today to chair this very important hearing and listen to the citizens of our region.

Doc and I represent more than half of the entire geographical area of the state of Washington. And the two primary interests that are affected in our respective districts are agriculture and the timber industry, or natural resource based industries.

From an economic standpoint, agriculture and timber play a tremendous interest, as part of our state's economy and our region's economy.

So, what the Federal Government does to us in those industries has a tremendous impact and a reverberating effect on corresponding industries that rely on agriculture and timber.

My bias has been, since I was elected to this job, was to be sure that the people who work and live in the Fifth Congressional District, north in the timber areas and south in the agriculture areas, are able to continue their way of life, that they are able to continue to farm and ranch and live the lifestyle they have lived over generations.

And to the extent that the Endangered Species Act has an impact on that way of life, it has a very great impact on the way I look at the actions of the Federal Government.

The bottom line for me is to try to listen here today, and frankly I am very pleased to see so many citizens here who have a stake in the decisions that are made by the Federal Government, the NMFS, and all the other land management agencies, as it relates to the Endangered Species Act.

So I welcome you here as a nonmember of this Subcommittee or Committee, but as a very interested part of the equation of paying for those things and trying to make good judgments about how, you as taxpayers, pay for the activities that these government agencies decide are in our best interests.

Beyond the very severe impacts of the ESA on private property rights and the two industries that I mention, decisions relative to breaching dams and locking up our forests under the name of protecting species will have a terrible effect on our agriculture and timber industries and have a terrible effect on our economy.

So my hope is that we can resist that at every instance, because I think it's wrong headed, and to the extent that government agencies have a desire to do that, you'll find everyone on this panel I predict fighting against those kinds of actions.

So, thank you for coming. Thank you, Chairman, for recognizing me, and I look forward to a good hearing.

Mr. POMBO. Congresswoman Chenoweth.

STATEMENT OF HON. HELEN CHENOWETH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mrs. CHENOWETH. Thank you, Mr. Chairman. I just want to say I am very pleased to be here. I am a member of the Resources Committee and I am a member of the task force on the Endangered Species Act. And so this subject holds a great deal of interest for me.

It's great to be here in Doc Hastings's district. I see, Mr. Chairman, that we have great witnesses in the three panels, and I am looking forward, as I know we all are, to hearing from those witnesses.

And I just want to say I very much identify with the comments of my colleagues. Thank you very much.

Mr. POMBO. Just to start off, there's one member that's out here that I would specifically like to thank for being here.

Congresswoman Chenoweth in the 25 odd hearings that I have chaired on the Endangered Species Act, has been at every single one of them, whether it was in New Orleans or South Carolina or California or where it was, she showed up at every single one of them. And I appreciate her diligence in representing the people that she's elected to represent.

To start off, I would like to call up the Mayor of Pasco, Mayor Kilbury, and he has a brief statement he would like to make. Please join us.

Thank you very much for being here. I realize that you have a written statement on the specifics of the hearing. That will be included in the record. I wanted to give you an opportunity to welcome everybody to your fine city. Mayor?

STATEMENT OF CHARLES D. KILBURY, MAYOR, CITY OF PASCO, WASHINGTON

Mr. KILBURY. Well, first I'd like to welcome everyone to my fine city. It is a fine city. We are glad to have you. It gives us an opportunity to speak on this matter.

I am Charles D. Kilbury, Mayor of the city of Pasco, and I am reporting action by the City Council of the city of Pasco.

Some few weeks ago the City Council passed a resolution in direct opposition to an action requiring breaching or lowering the pools behind the dams on the Snake or Columbia Rivers.

For any Federal agency to advocate breaching of any or several of the Federal dams, with the idea of increasing the number of anadromous fish returning to the upriver spawning grounds, when no evidence has been taken to prove that only rivers with dams have reduced runs of salmon, when the fact is, that rivers with no dams have already had their spawning runs decimated, makes little sense, and cries out for the NMFS to be investigated for their lack of scientific study of the Columbia River basin.

Why has there been no attempt made to restrict the destruction of the salmon in the ocean?

Why has there been no attempt to restrict over-catching of the salmon in their passage up the river?

Why has there been an increase in the Yakima River Chinook run even with only the supplementation of the wild run having taken place, when that run has come through four dams in the Lower Columbia?

What has been done to eliminate the massive increase in predators at the mouth of the Columbia River?

Nor has the NMFS considered the enormous cost of removing irrigation, barge traffic and recreation from the river.

We do feel action by the NMFS will affect the city of Pasco's water rights.

At this time I call on Congress to call a halt to this bureaucratic bungling immediately.

I am presenting also a resolution passed by the City Council of the city of Pasco.

Thank you, Mr. Chairman, for allowing me to testify.

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

Mr. POMBO. Thank you, Mr. Mayor.

I would like to call up our first panel of witnesses. Speaker Clyde Ballard, Speaker of the House of Washington State; Speaker Lynn Lundquist, Speaker of the House, Oregon State; Representative Dave Mastin; Senator Ted Ferrioli; and Dr. James Anderson, if you would join us at the witness table.

Just so you understand how it works, you've got little lights in front of you. We try to limit the testimony, the oral testimony, to 5 minutes.

I am sure most of you are familiar with this. The lights work similar to traffic lights. Green means go, yellow means hurry up, and red means stop. That's what it means in California.

Your entire written statement will be included in the record, but if you could summarize those written statements to within the 5 minutes, I would appreciate that.

Speaker Ballard, you are recognized first. If you are prepared, you may begin, Mr. Ballard.

STATEMENT OF CLYDE BALLARD, SPEAKER OF THE HOUSE, WASHINGTON STATE LEGISLATURE

Mr. BALLARD. Mr. Chairman, members of the Committee, my name is Clyde Ballard. I am Speaker of the Washington State Legislature.

And first, I would like to express my thanks to the Committee for bringing forward a public hearing to provide for oversight regarding the actions being conducted by the National Marine Fisheries Service in the Pacific Northwest.

My views are those of an elected official who is directly responsible to the citizens of Washington State, the people who provide for the economics and social well-being of our communities, the people who are directly affected by NMFS' actions to implement salmon recovery measures, and influence river system governance.

I want to be direct with you in my comments. I believe that you are here today because the National Marine Fisheries Service has sought to engage in actions that exceed its rightful authority, because it has nurtured the development of a self-serving salmon recovery industry, and because it has failed to offer the region a workable pragmatic salmon recovery plan for the Columbia-Snake River Basin.

My first remarks focus on NMFS' attempts to control water management.

The NMFS has put forth a water policy for the Columbia River drainage area, a policy it refers to as zero net water loss policy.

The end effect of this policy is to eliminate future water withdrawals from the Columbia-Snake River mainstem, tributaries to the mainstem, and related groundwater sources, including the protection of existing water rights as well as review existing water withdrawals to assess impacts to salmon. Basically, all Basin water resources are affected.

This policy challenges the authority of the States to review and grant water rights from municipal, industrial and irrigation purposes and directs all future water use for one purpose and one purpose only, fish protection.

This water policy not only attempts to abrogate state authority over existing and future water rights, but it presents an absurd resource management policy for the State with the only real objective of transferring control of water management over to NMFS, not creating more fish.

The NMFS is primarily interested in resource control and breaking the back of western and state water law. To suggest that this

policy is being a driven resource by prudent managers with the sole objective to enhance salmon is disingenuous.

The state of Washington is willing to work to address the salmon recovery of the region, but the state will aggressively resist attempts by NMFS to control our water.

Unfortunately, the most effective action of NMFS to date is to enhance what is being called a salmon recovery industry, not improving salmon runs. The salmon recovery industry, an army of state, Federal and tribal bureaucrats and their consultants, have simply sought greater political and operational control over the resources and funding. Their objectives are totally self- serving. More control and funding has not created more fish in the river.

In 8 years, NMFS and the salmon recovery industry have neither produced more abundant salmon runs nor even developed a recovery plan that a majority of the region is willing to accept.

The NMFS and the salmon recovery industry cannot even quantify the number of salmon it has supposedly saved while spending literally billions of dollars. NMFS and the salmon recovery industry have advanced an almost total disenfranchisement of the river system's key economic stakeholders and the people who are directly affected by management actions.

There is never room at the decisionmaking table for the stakeholders, nor does there appear to be room for the region's elected officials.

Let me give you a personal experience. The state of Washington put a moratorium on removing any additional water from the Columbia River. That meant cities could not build houses, they could not build medical facilities, they could not have any agriculture, nothing could happen.

And this past week Speaker Hastings and myself had the privilege of taking Speaker Gingrich, Congressman Dan Miller and Congressman Clay Shaw, along with a number of other speakers from the Western States, on a tour of the Columbia River.

And as we went up the river, I asked them to look at the vastness of this Columbia River. Remember, that agriculture takes less than 3 percent of this water supply, and that is above the Columbia—above the dam, the first dam on the river, which I just forgot the name of, to be able to service all of the ag industry.

When the state put on the moratorium, there was no scientific data, none.

In 1997 the legislature passed legislation that declared void the moratorium, and further directed the Department of Ecology committees to consult with the standing committees of the state of Washington in the future.

I met with the Director of the Department of Ecology following the session to talk about the legislation. He indicated that there was a major problem with giving any more permits because NMFS had declared the Columbia River to be overallocated.

Mr. Chairman, members of the Committee, without water, along with the threat to remove existing water rights, will guaranty that a large part of the state of Washington will be an economic disaster along with the stealing of property values due to threats from NMFS.

Please send a message to the agency, that we not only have the ability to make the right decisions on water, but it is our right, not that of a Federal agency.

Thank you for your commitment.

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

Mr. POMBO. Speaker Lundquist.

STATEMENT OF LYNN LUNDQUIST, SPEAKER OF THE HOUSE, OREGON STATE LEGISLATURE

Mr. LUNDQUIST. Mr. Chairman, members of the Committee, thank you very much for the opportunity to let us speak to you today. I am from the central part of Oregon.

Certainly, we're a state like Washington, where natural resources literally drive our economic engine.

I want to make three points today.

First, I want to make a statement, that a flawed law cannot be administered as good public policy.

The Endangered Species Act does not provide effective mechanisms for species recovery as we have already heard. And I think there is one main reason for that. And that is it is not based on science but rather it is too much based on politics.

I just came last week from a central coast town called Coos Bay that is timber dependent and fish dependent. And there is a story that goes around town like this. What do you get when you cross a spotted owl with a coho salmon? 100 percent unemployment in Coos Bay.

And that's not a very funny story. It's reality that hits home.

Let me tell you a little about what's happened to Oregon's effort to recover the coho salmon.

As you probably know, we put forth an Oregon Plan, a very inclusive, very comprehensive kind of plan, with hundreds of measures that are already being implemented by state agencies, a lot of them prior to the plan.

We put in $32 million, a public/private partnership, the first time it had ever been done.

Where was the money from NMFS that helped in that process? I would like to ask that question.

When we put together that public/private partnership, however, it was almost for naught in many regards, because after the species was not listed, there was a court challenge, and as most of you will probably realize, our coho salmon has been listed, effective October 9th.

What that says to me is that the state does not have the right to have its own destiny in its own hands, because of a law. If in fact that's true, something's wrong with the law.

The second point I would like to make is simply this: That agencies can make a flawed law even worse. Not all the disappointment in the Endangered Species Act is because of the Act itself.

I believe that the NMFS has created considerable frustration among legislators, state agencies and citizens.

What it has done is force Federal mandates upon our local communities and say we can't do it ourselves.

Let me give you some specific examples that I think are leading to the frustration that we find in Oregon.

No. 1. There have been a number of Memorandums of Agreement developed with the state at different times. These Memorandums of Agreement, and particularly the one that deals with the Oregon Plan, were like having a gun at your head. That's frustrating.

Point No. 2. After we already had the Oregon Plan in and it had passed the legislation, NMFS came forward with a draft proposal, I want to emphasize that, a draft proposal to the Oregon Board of Forestry that I believe was blatantly regulatory and hammer oriented.

Let me give you some examples.

Where we have fish bearing streams, they were saying in the riparian management zone, that up to 200 feet wide on each side would have to be set aside for an 80 to 200 year old stand, and that during that time no more than two entries per 50 year timeframe could be entered into those areas for timber management.

But that's not even in my opinion as absurd as this next one, and that is that on non-fish bearing streams, that are seasonal streams, OK, non-fish bearing streams that are seasonal streams, that there has to be up to 100 foot width on each side.

Now, you visualize in Western Oregon how many streams flow in the wintertime that don't flow in the summertime, with that kind. Let me give you the economic impact.

It has been estimated that if this would have gone forward, and we simply said, have at it, we're not going along with this one, but if this were to be in place, it would reduce the value by 41 percent on our timberlands.

There was a Southern Oregon county there that had a proposed sale that was to bring in $1.5 million into their county coffers under the normal Forest Practices Act that we have in Oregon. With this plan they would have brought in $75,000.

Now, that's probably more extreme than normal. But that's the kind of economic impact it makes.

I would simply like to emphasize what the prior speaker has also said in regard to my third point, and that is it is imperative that the National Marine Fisheries Service and other Federal agencies do not infringe upon western water law and the state's sovereignty over the allocation of that resource.

I could tell you in Oregon we will fight that to the bitter end.

Mr. Chairman, and fellow Congressmen, Congresswomen, my request is simply this: We need a change in the Endangered Species Act to allow for local solutions and direct the agency or agencies to be a partner, not a stumbling block, to the process, and stay away from infringing on our state waterways.

Thank you for the opportunity.

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

Mr. POMBO. Representative Mastin.

STATEMENT OF DAVE MASTIN, CHAIRMAN, HOUSE-SENATE EXECUTIVE BRANCH TASK FORCE ON SALMON RECOVERY, WASHINGTON STATE LEGISLATURE

Mr. MASTIN. Thank you, Mr. Chairman, members of the Committee.

I appreciate the opportunity to talk to you today. My name is Dave Mastin. I am a State Representative from the 16th District in the state of Washington.

If you take the state of Connecticut and plop it into the southeast corner of the state, that's my home.

I have served in the legislature for 6 years, and in the past year I was the Chairman of the Legislative Salmon Restoration Task Force.

I am deeply committed and deeply involved with restoring salmon habitat in the state of Washington. You already heard some testimony and we have a room full of people. These people come from this area, and some of them will be testifying today.

They live here. They work here. They raise their families here. They pay taxes here. These people are not anti-salmon, and they are not anti-environment.

What I think you will hear today with all the different testimony is one value that the people in this room hold to be true. Fish are important. But people should count, too.

Many of the people in this room have already begun to do salmon habitat restoration. We have several tributaries off the Columbia Basin system that have spent millions of Federal dollars, millions of state dollars, and hundreds of thousands of private dollars, individual landowners giving up their time, giving up their land, and giving up their incomes to help restore habitat. That's the silent work that is going on right now in the state of Washington.

I took the opportunity to ask these people, how is NMFS doing? National Marine Fisheries Service is in charge of restoring salmon habitat. These people are on the front line. These are farmers across the Snake River, agricultural folks on the front line, and they have taken that mission of restoring salmon habitat. And I asked them that simple question, how is NMFS doing.

And to a person, they have told me that NMFS has been a major impediment at restoring salmon habitat. They have been a bureaucratic roadblock at restoring salmon habitat in the tributaries off the Snake River.

I will give you two examples.

Two tributaries that in the past 5 years we had the finest watershed assessment team in the Northwest, bar none, come to this area and do river segment by river segment assessment to find out what fish needed in that area.

And then with local government, with landowners, with state and Federal agencies working together, they developed fish habitat projects. Willing landowners, willing to give up some of their land, to give up some of their time and effort, and we have the projects ready to implement.

And then the permitting begins. Of these two tributaries in the last year, there were about 60 projects. For those 60 projects you need a hydraulic permit. BPA requires a NEPA checklist. NRCS re-

quires an environmental evaluation. And some of them need county shoreline permits, as well.

All of those permits and all of those agencies combined require about 60 pages of work for those projects.

Then we have to go to NMFS. The NMFS requirement is about 230 pages, different pages, not the same information, 230 pages. And so they take these projects that everyone else has agreed is going to help salmon, these are salmon restoration, habitat restoration projects, and NMFS takes 3 to 6 months, 3 to 6 months to tell us that in fact these salmon habitat restoration projects will not jeopardize salmon. Will not jeopardize salmon.

Some people wonder why it takes so long. And I am sure you will hear that there's questions about agency priority and agency funding.

But I think that's the wrong question. I think the right question is, why? Why do we delay restoration efforts 1 minute, let alone 6 months, so that it can go through one more step to get the support of the National Marine Fisheries Service.

And if the reason is, because the ESA, so they're doing what the statute tells them to do, then how come they haven't been in here kicking and screaming to you folks to change the ESA so that when we step forward in the state of Washington, which I could guaranty you we are, and try to improve and will improve the restoration of the salmon habitat, when we are taking that strong step, how come they're not helping us?

They should be helping us, not only with financial support, but they should be coming to you and telling you that we need to change this ESA so we can do what's going to help salmon, and remember that people count, too.

I see I am about out of time, so I would like to conclude with two thoughts.

If the example that I have given you is more than an isolated occurrence within this agency, then this is an agency that has a lot of problems, has a lot of difficulties, and I believe it is your job respectfully to look into that sincerely and do what it takes in Congress to make sure that they don't stop us as we try to restore habitat. And that as we do restore habitat, we will do it in a way that it helps fish, but also works with people instead of against them.

One of the men that I talked to from my district wrote me a quick note, and he said landowners are receptive to tree planting and habitat enhancement projects, but we cannot afford to let these positive projects get held up in political areas or all the grassroots work will be lost due to uncertainty and lack of trust and lack of credibility.

Many of us have a lot of concerns with National Marine Fisheries Service. I have mentioned but one. Even when we are stepping up to the plate, as these people behind me want to, to restore salmon habitat, it seems to be an impediment rather than a helping hand. We urge you to take serious consideration of our concerns.

Mr. POMBO. Senator Ferrioli.

STATEMENT OF TED FERRIOLI, OREGON STATE SENATE

Mr. FERRIOLI. Thank you, Mr. Chairman. Again, my name is State Senator Ted Ferrioli. I represent State Senate District 28 in Oregon. Senate district 28 starts about 25 miles out of the Portland metropolitan, right across the river from the Sandy River, it continues eastward to the state of Idaho, including all or parts of 11 counties, about 17,500 square miles. Population density .17 persons per square mile. I am very happy to see this large crowd appear today.

Mr. Chairman, I will try to cram 2 years of frustration into 5 minutes of testimony. You have already identified the duplication of efforts between the U.S. Fish and Wildlife Service in developing guidelines for every aspect of natural resource management associated with riparian areas, and that of the National Marine Fisheries Service, which essentially does the same thing, affecting grazing, upland management, timber harvest, water withdrawals for irrigation, vegetation management, fishing and all other aspects of that habitat management. So I won't belabor that point.

But let me give you at least a couple of examples of how that affects people living in rural communities.

We had a fire in Grant County, it was called the Summit Fire, it was started by lightening August 13th, 1996. It burned 38,000 acres. About 300 million board feet of timber was killed.

The day after the fire was put out, that timber at $400 a thousand was worth $120 million to the Federal treasury.

We began fire recovery planning, and that planning included two complete Environmental Impact Statements, primarily because we had the listing of bull trout, and the salmon issues to consider during the planning processes.

It took until July 12th, 1998 for a Record of Decision finally to be issued, and that called for the salvage and restoration, rehabilitation of approximately 6600 acres out of the 38,000 that burned. And the proposal was for harvesting of about 50 million board feet of timber.

Let's just do the math. The fire cost $25,400,000 to put out. Planning for the project cost $1.2 million for the original Environmental Impact Statement, and about $50,000 for the Supplemental Impact Statement, which included first informal conferences with NMFS, and the U.S. Fish and Wildlife Service, and finally formal conference also with both agencies, in the development of a water quality management plan for each of the listed species, with both the different agencies.

Finally the project has been awarded and sold, the timber sales have produced approximately $2 million of revenue for the Federal treasury. When you do the math, my friends, the math simply is nonsensical.

But those delays and expenses caused by this duplication of effort between the agencies on the Summit Fire might be the least costly aspect of dual administration of the Endangered Species Act.

Undoubtedly you have heard of the Oregon Plan for the restoration of salmon, and now the supplemental restoration of species. Our plan, like Washington's plan, goes far beyond what the Endangered Species Act, which is avoidance of the take.

Our plan is designed to restore aquatic habitat and to restore salmon and steelhead by involving forestland owners, irrigators, cattle producers, dairymen, farmers and municipal watershed managers in a cooperative effort.

In that process we entered into a Memorandum of Agreement with the National Marine Fisheries Service. Their draft proposal for a complete rewriting of the Oregon Forest Practices Act includes some proposals that I think are patently ridiculous, so much so that I have to read one of them to you. I hope you will indulge me. The issue is on culverts. The section is titled, Hydraulic Conditions Required for Adult Fish Passage culvert design is detailed:

"Where culvert lengths exceed 150 feet, a bridge installation should be strongly considered. Generally, culverts smaller than six feet in diameter are not adequate for fish passage and should not be used. Culverts less than 10 feet in diameter require lighting within the culvert barrel, provided by a vertical riser above the road surface or by artificial lighting every 75 feet."

In addition, the proposal contains admonitions against wet weather in Oregon. In wet weather conditions, typically two inches of precipitation in 24 hours, especially during the period of October 1st to April 30th. Hauling or skidding should not resume for 48 hours after precipitation ends or until road surfaces and ditches are not flowing with water.

Members of the Committee, Oregon is famed for many things, one of them is prodigious rainfall. We have places in Western Oregon where we log 200 inches of rainfall a year.

And to prohibit any management operations there when rain exceeds two inches is patently ridiculous and shows a particular disconnect from the real Oregon climatological condition.

An analysis was done of the NMFS proposal by the Small Woodlands Association and the Oregon Forest Industries Council, and my colleague from the Oregon House is absolutely correct, 41 percent of our total forested land base would be rendered unusable or unmanageable because of NMFS' proposals, and that converts into 3.3 million acres of forest land out of the timber base, and that converts to a total lost value of approximately $25.4 billion in foregone economic opportunities for the State of Oregon.

This $25 billion comes directly out of the pockets of our small woodland owners, who have submitted maps to show how NMFS proposals would affect their properties, and in some cases it's up to 75 percent of their land base would be involved in riparian management areas and therefore rendered impossible to manage for timber production.

I simply submit to you that this agency is out of control.

An attempt to consolidate the agency's management under H.R. 4335 will help bring some sensibility and sense of proportion to the management of natural resources in all of the State of Oregon and all of the United States, and I urge you to continue your inquiry along these lines.

One thing that you will not hear, and this is particularly for Congressman Nethercutt, you will not hear NMFS come to your Committee and ask for appropriations for management of salmon and the services to provide to Oregon and Washington. They are asking us to go lobby for that money.

So I urge you to pass H.R. 4335. Thank you, Mr. Chairman.

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

Mr. POMBO. Dr. Anderson.

STATEMENT OF JAMES D. ANDERSON, PH.D., ASSOCIATE PROFESSOR, SCHOOL OF FISHERIES, UNIVERSITY OF WASHINGTON, SEATTLE, WASHINGTON

Mr. ANDERSON. Mr. Pombo, thank you for this opportunity to talk in front of your hearing. This is a great opportunity again to try to compress 10 years of research into 5 minutes. I have failed in other attempts.

What I really wanted to discuss is NMFS flow and water policies, and I want to discuss that in terms of what it's done for how science is used.

Simply put, what NMFS has done, is try to justify benefits in a qualitative sense, without putting numbers on the benefits.

And I think that what this does is produce an unrealistic expectation for some of the actions.

It's critical that we put numbers on things so we know the cost and the benefits. And I want to use the flow as an example of how we have been misled inadvertently in many cases.

A decade ago, when the dams were put in, or several decades ago, it was felt that because the fish decreased, if we just increased the flows back to the pre-dam levels, that the fish would come back.

That simply is not true. The research that we now have shows that instead of having the thousand percent increase that would be needed to return the runs, we get about a 1 percent increase by increasing the flows.

So there is—the idea of a strong flow relationship simply don't exist; a strong relationship between survival and throw. There was not, this type of information has not been used in developing the flow objectives and the flow targets.

It needs to be really considered, and the flow targets need to be assessed for really their inability to improve fish survival.

In terms of this, this was for the spring Chinook.

The fall Chinook, where there has been a relationship observed between flow and survival down to the first dam, this is a complex matter, which is not necessarily related to the flow.

Temperature changes with flow, it also depends on when the fish move through the system, and some of the newest work we have done shows a relationship between fish size and the survival of fish down through the system.

If it is fish size which is the operative variable, then increasing flow which could decrease the temperature and move the fish sooner through the system could actually have a negative impact on the fish.

The point being, we really don't know how flow is affecting the fall Chinook, and we find no relationship in the river passage between spring Chinook and flow.

And these issues and these numbers need to be brought forward so that people have realistic expectations for the impacts of flow.

My second point is on the water withdrawals, or the moratorium on having new water withdrawals. These are blanket moratorium. If you remove water anyplace in the system, it is assumed to have the same impact on fish.

And this simply isn't true. Up in the tributaries, water can have a significant impact on their survival.

You get down into the mainstem, and we have no evidence that water withdrawals have a significant or measurable impact on fish or on their recovery. And there again, these withdrawals and the justifications for them were put in a qualitative sense that we can imagine they're good for fish, so we should implement these regulations.

My point being, that that leads to unrealistic expectations for what we can gain from these actions. And I think that whatever management goes on at the ESA, we need to put the numbers onto the fish so people are really grounded in the success of these different actions.

And that concludes my comments. Thank you.

[The prepared statement of Dr. Anderson may be found at end of hearing.]

Mr. POMBO. Thank you. I thank the panel for your testimony.

Dr. Anderson, you've—the research that you talk about, is this research that you have done yourself in terms of flow, or that you've supervised?

Dr. ANDERSON. Most of the research that I am discussing right here has been conducted by the National Marine Fisheries Service, and peer reviewed and analyzed by fisheries biologists throughout the region. One of which is me.

Mr. POMBO. You helped to peer review it?

Dr. ANDERSON. I've analyzed the data, and part of what's called the plan for analyzing and testing the hypotheses, where we are going with a fine tooth comb through each and every hypothesis that we have on the fish.

I am one of the members of that panel, and very much involved in these analyses, yes.

Mr. POMBO. But you talk about the flow impacts and the moratorium on diverting additional water as if they have little effect on the recovery of the species.

Dr. ANDERSON. That's right. That's what the science is showing us right now.

Mr. POMBO. Then why is National Marine Fisheries taking the actions that they have?

Dr. ANDERSON. There are at least two cultures at NMFS. There is a management culture and a science culture.

And I think there are another reasons why NMFS has taken its particular actions.

Mr. POMBO. Political reasons?

Dr. ANDERSON. Some political reasons. And I think that they need to readdress these and stand behind the science more strongly.

I think that that would help in grounding people's expectations.

Mr. POMBO. Do you think, and I realize that you are a scientist, but do you think that the political decisions that have to be made, and that's those of us sitting up here are the ones that have to

make those political decisions, would be easier if it was based upon good science?

Dr. ANDERSON. Oh, of course.

Mr. POMBO. One of the frustrations I have with the implementation of this Act is that we have people who come in and testify that what the Federal Government is doing just doesn't make sense.

And then we have the scientists who come in and testify and question the scientific decisions that are being made.

And it puts us in a political conflict.

It would seem much easier to be able to make a decision and to go to all of these people and to say, here is the science, back up the decision, and if it's good science, I think they can look at it and say, well, all right, we might not like it, but it makes sense, it leads to the recovery of the species, and we will go along with it.

The problem comes when they look at it and say, this just doesn't make sense, why are you doing this to us?

And that's the conflict that we have heard all over the country with this particular Act. That gives me a real problem.

Speaker Ballard, you mentioned in your testimony resource control. That you felt that a lot of the actions that were being taken had little to do with science or the recovery, but had more to do with wanting to control the resource.

Can you expand on that?

Mr. BALLARD. Well, we have been working hard in the state of Washington to be able to do something productive.

And what we have found is there is an industry who includes the ones I mentioned that I believe simply have nothing to do with the salmon recovery, but more have to do with establishing control, and with a political agenda.

I wish there was some way I could say that they had done something productive. Their production has been in spending large amounts of money of the government, in spending and controlling large numbers of citizens who virtually are being shut out of their own property, and I think it is simply something that in the end will result in not only the failure to improve any salmon recovery but will also literally decimate people's property rights and communities throughout this whole region.

Mr. POMBO. I will recognize Congresswoman Chenoweth.

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I wanted to address my questions to Dr. Anderson.

You know, first let me say, Mr. Chairman, we have been on a lot of these hearings, and we have heard hundreds of people give testimony to us.

But I think that this, the panel that we have in front of us, has been one of the most instructive and startling pieces of testimony that we have heard. Thank you so very much. Very, very good.

Dr. Anderson, I wanted to ask you, have you ever heard of Jim Bugal, an author of the book The Great Salmon Hoax, an Eye Witness Account of the Collapse of Science and Law and the Triumph of Politics in Salmon Recovery?

Dr. ANDERSON. Yes. I know James quite well.

Mrs. CHENOWETH. Do you? I would recommend that everybody read this, most especially the Federal agencies. Shame on them.

You know, Mr. Bugal, by the way, is a major in physics, and he's an environmental lawyer, and I am not real fond of environmental lawyers. But I really like this book.

But, you know, he points out the fact that the overwhelming bias of the fisheries agencies are against the dams, and yet to my knowledge, and I am asking you, have they ever produced defining documents establishing any of the other causes for what they perceive to be a decline in the fisheries, such as what are the threats of the major explosions of the terns and the sea lions and the squaw fish and the walleye and the young steelhead and the mackerel and the northern sea lions and California sea lions and so forth, have there ever really been any defining documents that really address this?

Dr. ANDERSON. In the PATH process, where we are trying to pull apart all the pieces, we have gone through the first stage of looking at some of the basic things.

What we have found was there's a huge amount of mortality in these fish that we don't have a good explanation for where it's come from. It seems to have—to have occurred about the time the dams went in.

But if you look closely at the data, you find that there were high fish runs when the Snake River dams were being put in. A lot of us believe that the climate is a very important factor, and it certainly is. We're now, in this analysis process, beginning to look at these other factors. The terns, the sea lions, the impacts of hatcheries, also the impacts of the hydro systems, and putting all of these things together in what we call a multiple hypothesis.

The trouble we have in doing this is that all of these things kind of happened at the same time, so we are having a hard time giving—pulling the pieces apart. The old statement comes up with when every scientist, we need more data to be able to give you a definite answer, is true in this case.

And so it is going to continue to be a political issue until we can resolve some of these things.

Mrs. CHENOWETH. Thank you, Dr. Anderson. Thank you, Mr. Chairman.

Mr. POMBO. Congresswoman Smith.

Mrs. SMITH. Thank you, Mr. Chairman, and gentleman, you represent your states very well. Very articulate.

And I know some of the things you've done in both states to restore salmon runs. And I would trust you more than any Federal agency in just what you have done.

I would like to address a question to Dr. Anderson. I am going to ask you to answer it pretty direct.

Are poor ocean conditions the major factor currently affecting salmon recovery?

Dr. ANDERSON. I think they are one of the major factors. And I don't think we know all of the major factors.

Just to put things in context, we're in a period that is poor fish conditions and dry weather conditions that's one of the longest periods in probably the last 500 years. So we have unusual conditions right now.

It just so happens that these flipped into the state about the time the dams went in. It could be that that's a major cause.

But we can't really give a definite answer.

Mrs. SMITH. Give me about the time the dams went in, so you say it is a fairly prolonged change.

Dr. ANDERSON. In 1977, the ocean changed. The last dam was put in in 1976. The hatcheries increased, we controlled the flows with the new storage reservoirs.

Everything happened at that time. But ocean is clearly a factor because stocks are going down all over the West Coast.

But there is a ray of hope in that, that it looks like, and there's a lot of close scrutiny of this right now, that some of these conditions may be flipping right now, and that's demonstrated by the decrease in the returns in Alaska and some small increases in runs on the West Coast.

So I think just a lot of the issues might be, will resolve themselves if the ocean does really turn around and the runs come back on their own.

Mrs. SMITH. I would like to followup a little bit on your participation in the flow augmentation program and your review.

Do you believe that the program is producing meaningful results, will it contribute significantly toward fish protection or recovery, and I guess go on to just tell me, do you think it should be continued at all, and would you modify the program if you think it should be continued?

Dr. ANDERSON. The analysis we have done on the flow and the impacts on survival indicate that it has very little impact on the fish.

So that's what the science is telling me, so that's what I would have to go with.

I think that there's better ways to spend our limited resources than putting water through the system in the spring.

In particular, with the transportation program where there are so few fish that are actually moving down through the system.

Most of the fish right now are going down the system in barges.

Mrs. SMITH. Thank you. And in summary, if you could, and I know you have way much—way too much information to really do this, but if you could be God for a day, and don't take this as sacrilege, what would you do? What would you do today, if you had all the money, all the time, you could just do it without bureaucracy?

Dr. ANDERSON. I would evaluate which programs are working, and I would then spend time trying to educate better the public on what works and what doesn't.

Mrs. SMITH. And what do you think works now, if you just think, I mean, give us that benefit.

Dr. ANDERSON. Transportation program works fairly well.

Mrs. SMITH. Barging?

Dr. ANDERSON. Barging. And it is partly responsible for the stocks not going extinct during this bad period. I also think there have been some great improvements at the dams.

And those would be two of the main things.

What I get out of most of the things we have done is it appears like a lot of it is out of our control right now.

We have made some incremental changes and we will probably continue to do that. I don't see any magic bullet that's going to save the fish.

Mrs. SMITH. Thank you, Doctor. Thank you, gentlemen.

Mr. POMBO. Congressman Romero-Barceló?

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman.

I also want to congratulate the panel. I think the testimony here today has been extraordinary, and I certainly have learned a lot.

I am here to learn. I am not here to tell you anything. But I would like to hear a little bit about the plans that Washington State and Oregon have developed to restore the salmon habitat.

I mean, what I would like to address your answers to, what is—what are the obstacles to implementing these plans and can they be identified, and if so, how do you suggest that they can be overcome so that those plans can be put into practice?

Mr. LUNDQUIST. I will start with Oregon's situation.

First of all, let me say that in response to some of the comments here about science, we have what can be called a multidisciplinary scientific team as one of the core of our Oregon Plan, as one of the core elements.

And again I think that is one of the things that will help us restore the salmon.

The doctor down here I think is saying, we don't really know, and so why go out and spend billions when we don't really know.

So point No. 1, that's what's happened in Oregon.

Second, it was very comprehensive. It really boils down to improving the quantity and quality of water. That's really what it's all boiled down to.

The impediment that we have in Oregon, since we had it approved, we put the money forth, with the legislature and the private industry, and then the courts came along and said, no, this doesn't meet the ESA standards.

And so that right now is our major impediment.

I will tell you in Oregon, we are going ahead anyway. We will probably do some revising of the plan in the next session. But we are going to go ahead.

And so the impediment is not with the landowners. The impediment is from the Federal regulations that apparently do not allow this to function.

Mr. ROMERO-BARCELÓ. Is that the Federal Court or the State Court?

Mr. LUNDQUIST. Federal Court.

Mr. ROMERO-BARCELÓ. Federal Court. And the NMFS has approved the plan?

Mr. LUNDQUIST. Yes. The National Marine Fisheries Service did not list the Coho on the central Oregon coast, and the northern coast, and then after that happened, then that's when the courts came in. There are some groups obviously that filed a court case against us.

Mr. ROMERO-BARCELÓ. Thank you.

Mr. MASTIN. The legislation we passed last year received 100 percent support in the legislature. The governor signed it without vetoing any section. And the Governor in our state is known for vetoing sections. So that's significant itself.

I am not trying to be humorous. That's true.

Probably the biggest impediment that we face, two, basically.

No. 1, our approach is based on science, and it's based on the specific river-based science, site-specific science. And then it's based on working with landowners instead of working against them. Being a partner, collaborating with them.

We have stepped up to the plate. We have spent over—about a hundred million, with some Federal dollars, we have appropriated through our state budgets on this plan to work with the landowners to improve the habitat.

These are the challenges we are facing right now.

If we start to move into a regulatory enforcement legalistic mode, which is what I've been hearing is happening not only at the Federal level but actually within our state administration, then we will undo all the work that we have begun to do to restore the habitat.

So I think the regulatory bureaucratic enforcement mode is the biggest impediment we have.

Point No. 2. Just take the example of a buffer zone. In the Touchet River, right outside my home town of Walla Walla, they have over 26 miles, over 26 miles of landowners who are willing to put in buffer zones of a hundred foot. A hundred feet. Twenty six miles.

There's been rumors that NMFS, or others, are going to require a 200 foot buffer.

If we go to a 200 foot buffer requirement, you will have less than a quarter of a mile of buffer zones on the Touchet River.

And I submit to you that whether certain scientists in certain rooms say you have to do 200 foot, in reality, if you want to improve the habitat on the Touchet River, go with the hundred foot buffer, because you will get 26 miles of it, and for every buffer you put, the landowner will also let you put in large woody debris and will do meandering and root walk, they will let you do these other things that will help the habitat as well.

So I say the biggest impediment is people who don't want to work with landowners, who don't want to listen to the people in this room, and who are more interested in a bureaucratic approach than actually solving the problem.

Mr. ROMERO-BARCELÓ. In other words, you work only from the scientific point of view but also from the political point of view, working with everyone that is concerned.

Mr. MASTIN. And I won't call it political. I would call it common sense.

The principle is this: People like to be asked, not told. And people will work with you if you respect their concerns and their interests.

Mr. ROMERO-BARCELÓ. That's what I call political.

Mr. MASTIN. You collapsed all of that in Puerto Rico.

Mr. ROMERO-BARCELÓ. Some other people look at politics in the negative, because some politicians are negative.

The difference between petty politics and politics, policy.

Mr. MASTIN. With your indulgence, Mr. Chairman, I just thought of one other point that is very important.

We ask that you folks, as Members of Congress, listen to what we did. We ask you to respect what the state legislature did last year. No dissenting votes, from the most conservative to the most

liberal. Every single member voted on what we did, and the Governor signed it.

And we ask you, when you look at appropriating dollars to the state of Washington, please respect what we did.

I think to some degree we knew what we were doing, and we would appreciate, if you are sending us money, to send it in a way that respects what we did and doesn't conflict with that and pull down the effort that we have started in Washington State.

Mr. ROMERO-BARCELÓ. Thank you. Thank you very much.

Mr. FERRIOLI. Mr. Chairman, Chairman Pombo, Representative Romero-Barceló, we have a similar story to tell in Oregon, and similar support for our effort.

We appropriated $30 million directly, and $120 million are coming from voluntary enhancements.

The key effort is cooperation. Landowners, timber operators, cattle ranchers, farmers, irrigators, folks that depend on the land, need certainty, and they need reasonable rules.

The issues that we have come up against with National Marine Fisheries Service is they have no sense of propriety. They take a regulatory approach to everything that they do.

And there's a clear choice on the table here between the regulatory approach, which would be just to virtually stand over people with the full weight of the Federal authority, or a cooperative approach, where you simply ask people to do a reasonable management regime based on certainty and based on reasonableness to improve aquatic habitat.

The word's cooperation, and so the choice is clear.

The Oregon Plan, and I think to the same extent the Washington plan, to recover the species far exceeds what could be required under the Endangered Species Act, and it is based on cooperation, as opposed to the mere avoidance of take, which is the regulatory approach, being pushed by U.S. Fish and Wildlife and National Marine Fisheries Service.

So we have come as a society to a choice. Either we are going to involve every person that lives in our state and that works with the land in recovering this species, or we are going to try and regulate every person that lives in this state as to everything that they do in society to manage their land and produce the food and the fiber and the goods that we all depend on.

We have chosen the course that is based on cooperation and involvement.

And unfortunately the courts decided on a technical issue that we can't consider cooperative efforts as being effective under the Endangered Species Act.

That's the flaw here. It wasn't that Washington's plan or Oregon's plan wasn't effective or wouldn't work or wouldn't be efficacious on this issue. It was that under the constrictions of the Endangered Species Act, you can't consider cooperation in the listing decision.

It shows you how badly flawed the Endangered Species Act is.

Mr. ROMERO-BARCELÓ. Thank you, Speaker Ferrioli.

Mr. POMBO. Congressman Hastings.

Mr. HASTINGS. First of all, I want to congratulate you legislators, not only from Oregon and Washington, but also from Idaho and I

think Montana and other Western States that are taking the bull by the horns on this issue and are trying to come up with local issues.

Because I certainly subscribe to the notion that when the issue is done at the end of the day, if it ever does get resolved, it will be better resolved and understood because of the input that you have had and decisionmaking that you have had at the local level.

Part of the reason for this hearing is to try to ascertain how NMFS has been administering this Act in the Northwest.

Both of your states have described how you have gone through this process.

My question, Dave, I suppose you would be the one from Washington since you took the lead on this, and I will ask you, and then Dave, if you are the one from Washington, or Lynn, it doesn't make any difference to me.

My question is this: As you started this process, did you attempt to include right from the beginning NMFS in this process, and if not, why not, and if so, did they participate on an active basis to try to help you through some of the hurdles that you would have. Dave?

Mr. MASTIN. Congressman Hastings, several of us met with Mr. Stelle, Will Stelle in Seattle, who's in charge of NMFS up in the Seattle area. And we also had hearings across the state. And NMFS was always willing to come and testify before our task force.

I think that the approach we took was when we started looking out there and seeing, HCPs and getting certainty and what does it take and what rock do you want, I mean, how much do we have to do and what do we have to do, and all of the maze, and no answers, and I am hearing from all of our state agencies, they are not getting a response from NMFS, NMFS won't tell them what they need to do or won't give them a clue, I am hearing this, and other legislators are hearing from this task force.

So we just did something real simple. We said, let's set aside all of the politics, let's set aside all of that stuff, and let's pretend we are God for a day, and let's figure out how can we create a system that is viable and will restore habitat.

And that is a system that is based on science and which the landowners agree to be participants. And if you do those two things, you will restore habitat. And that's what we did in the legislation.

So in a sense, we avoided all of that because it seemed like a big mess that we weren't going to get resolved. While those of us in the state of Washington are committed to reasonable and sufficient environmental and salmon habitat restoration, that is what we took to move on.

Mr. HASTINGS. One last statement in that regard. With the example of the two streams, the unfortunate part is you have the 6 month delay even though I assume in this case those two streams you are talking about, they were along with the process all the way.

But even if they are along the process, you had a problem of the 6 months delay for them to OK.

Did I hear you right?

Mr. MASTIN. That's absolutely correct. So what we have, as many of you are aware, there is a window of opportunity to get into the streams to do restoration work. And that ends September 1st.

And so each day and each month that we lose, and in this case we lost 3 months on one stream and 6 months on the other stream, each day means that that's another project we are not going to get done this year, and that just backs up the projects down the road.

So that's a major concern.

The other thing is even with the September 1st deadline, what we saw, Fish and Wildlife, every day would come out and see if fish were returning yet. And they actually got to work until September 13 because no fish—they were set to come back about September 1st, but Fish and Wildlife actually went out and made sure there were no fish and allowed the landowners to keep working in the stream to improve habitat.

That's the kind of relationship we'd like to have with NMFS, one that's cooperative and working together.

But the problems on the most part, we'd like money from the Congress so that we can go forward with our restoration efforts that we think's going to work.

Mr. HASTINGS. Go ahead, Lynn.

Mr. LUNDQUIST. Well, the process in Oregon actually was going on before the session for approximately 18 months before we even got into the session.

The Governor took the lead on this. Actually was working with NMFS and with a lot of the natural resource community, Farm Bureau, cattlemen and so forth.

So, in direct answer to your question, yes, there has been a dialogue going on there.

However, the dialogue was not with the legislature through that process. And when the legislature did get involved, NMFS I would say did participate.

However, I would characterize it as the fact that how could we meet their standards? It wasn't a matter of what was good for the fish. Even though they would say that is part of the process.

But really it seems more like, how do we meet the standards so we don't get listed. We thought we were going to get listed. And eventually, now we have. That was the situation.

Also it seemed like when you went to step A, then there was step B. And I suppose you could say part of it is it is a new endeavor, at least for the state of Oregon. Very comprehensive. If I were to bring that, it is probably about that thick, the Oregon Plan.

But once you got to one point, then you had to go to the next point.

And what I said before, the Memorandum of Agreement, we thought we were there. And then we had to have this gun to our head, Memorandum of Agreement process.

So that's the kind of history I think that Oregon has had with implementing the plan.

Mr. FERRIOLI. Mr. Chair, Representative Hastings, Dave Mastin mentioned, go get a rock.

That's the experience we had. Our speaker mentioned the feeling of have a gun to our head.

I tell you it was a very extortionary relationship. We would be told that the commitment was questioned by the Federal agency, the commitment of the people of Oregon was called into question by this agency. We don't trust you. We don't believe that you will do what you say you will do. Well, we're not sure that this organization or this plan or this aspect of the plan will be sufficient. What else can you do?

And that was a continuous relationship. Here's an example. After we agreed to collaborate and we knew National Marine Fisheries Service had a real problems of what they were perceiving in the Oregon Forest Practices Act, I thought that was because of their misunderstanding of the requirements of the Act, we knew they wanted to open a dialogue on the changes that they expected us to look at at the state legislative level.

What we got was a press conference. And what we got was the release of the document after it had that had been written.

There was no collaborative process. There was no iteration of values. There was no give and take on how we might improve the effects of the Oregon Forest Practices Act.

So the bottom line for us is that we were in an opportunity to do something cooperatively and collaboratively.

Somebody pointed out in the legislative session that collaborators were shot during World War II, and that is exactly why.

The definition of collaboration in Oregon was capitulation to the National Marine Fisheries Service. We didn't want to go there, and we still don't want to go there.

Mr. BALLARD. The way we have been treated by the National Marine Fisheries in general is one of threats, and if you don't do what we're going to tell you, no matter whether it has any basis, no matter if it will steal people's rights, if you don't do it, we will make you suffer at a greater level than what you are going to suffer.

I would submit to you if the employees that are making these decisions and the heads of these agencies were treated the same way they treat us for a period of 1 year, we would find a dramatic change.

It should not be happening in the United States, for people to do things the way they're doing. They are literally treating us as though we are their prisoners, and that's wrong.

Mr. LUNDQUIST. Congressman Hastings, one thing I did not point out in our relationship, and that is what I think you are here to find out about NMFS, was I believe there's a significant disconnect between the people that we worked with at maybe at the upper level, and with a lot of the staff in NMFS.

And if you would read the judge's decision, you will see that pointed out.

And I think that's very, very significant.

When you have an organization that I am going to say that even the upper echelon were probably more receptive, at least they were available, and were having I think a lot of staff undercutting it.

If you will read the judge's decision, you will see that. And that is just an untenable position.

Mr. HASTINGS. Thank you, Mr. Chairman.

Mr. POMBO. Congressman Nethercutt?

Mr. NETHERCUTT. Thank you, Chairman. Thank you all, gentlemen, for your testimony today.

I think you have illustrated what those of us at this panel have come to be frustrated with, and that is Federal judges making decisions under the Endangered Species Act that Federal agencies tell us and tell you that they are trying to implement.

There's an ambiguity in the ESA that is interpreted by one or more Federal judges that leads to terrible frustration.

So the ESA cries out for reform.

But from a political standpoint, my sense is it's resisted time and time again, and demagogued to the point where it becomes a very political issue at the Federal level where we have to deal with trying to change those laws.

So I sense clearly what your frustration is.

I look at H.R. 4335 to transfer the functions of the National Marine Fisheries Service and Secretary of Commerce to the Secretary of Interior, and I am not very pardoned by that, given the persuasion that we have to deal with at the Department of Interior and the Secretary of the Interior.

So maybe anything's worth trying, but, boy, we deal in spades with those kinds of frustrations in dealing with all these land management agencies, comprised I am sure of good people and good intentions, but, boy, maybe that's the fat into the fire in some respects.

But having said that, I want to address the issue of solutions, and cost.

Senator Ferrioli, you mentioned the cost issue and this unfunded mandate mentality.

Do you have specific recommendations about how we can address the issue of unfunded mandates and cost for implementation of EAs and NMFS requirements in a way other than to just eliminate some Federal agencies, which many of us would prefer, but maybe you can address that, sir.

Mr. FERRIOLI. Mr. Chairman, Congressman Nethercutt, I think the key here is to be cognizant of the fact that the states, given the challenge for managing for the recovery of species, have developed a program to do that that involves every agency in the state government and significant commitment of resources at the state level.

The National Marine Fisheries Service and U.S. Fish and Wildlife Service and other Federal agencies needs to get out of the way and let those states accomplish those goals.

We don't really have a problem with setting the goal at the Federal level. What we have a problem with is the infusion of Federal regulations at the local level and the mistrust of state activities and state efforts to accomplish the goal.

We don't have a problem with where the bar is set, but once the bar is set, leave it alone, and then let the state government and the citizens of the state and the landowners of the state go about meeting the requirements.

We will do it, and we will do it in a much more cost effective way and a much more reasonable way than anything that the Federal Government can bring to the problem.

Mr. NETHERCUTT. But that might impinge on the Federal employment of the Federal agencies.

Mr. BALLARD. My request would be to look at what the states have done with cooperation from virtually every part of the state of Washington and Oregon.

And as was pointed out, when you get unanimous votes.

What is not helpful, is for the Federal Government to send money to a state that bypasses the legislature and the intent of the legislature, and then gets put off into more programs that have absolutely no way to enhance the salmon.

So, we have good plans. And what we'd like to do is work in cooperation with you so that if you are going to send money, I must be honest with you, my preference would be to keep your money and to keep your rules and regulations.

But, having said that, the legislatures historically have been overlooked. We are the ones that have to deal—These are our constituents. We go home, they know us by our first names, they know our home phone numbers, and we have to deal with them. And it's our responsibility, and we gladly accept that.

But work with us, when you send resources, so that we can work with the people then to do what's been pointed out, is a very successful way to do it.

Mr. NETHERCUTT. Many of us would prefer not to have the money being sent in the first place back to Washington. We'd rather have people here use it and have the states make decisions about what's in the best interests of their region.

I see my red light is on. I would just make a quick comment.

Representative Mastin, you are from the district in which I serve, and you are recognized as a leader in this whole issue.

So, to the extent that there are any questions about the commitment to preserve fish habitat and have recovery efforts and respect the rights and property interests of the industries that you serve and I serve and everyone at this panel serves, that's agriculture and timber, we congratulate you and every member of this panel for your commitment to those local control goals and decisions and respect for the industries that drive our part of the country. That's why we like to be here.

So I thank you all for your testimony today. Mr. Chairman, thank you.

Mr. POMBO. Thank you. I am going to release this panel. I would like to thank you for your testimony. I can tell you that it was quite refreshing, the honesty in which you answered the questions. A lot of times when you have elected officials who have to deal with these Federal agencies on a day-to-day basis, they kind of try to sugar coat all of their answers.

And I appreciate your honesty in answering the questions.

I will tell you that there will be additional questions that will be submitted to you in writing. I know I have some specific questions that I would like to ask Dr. Anderson about his perspective on some of the things that are going on.

If you could answer those in a timely basis for the Committee hearing, we will leave the official record open to give you time to answer those.

But I know that other members will have additional questions they would like to ask of you, and I would like to thank you for your time and for your testimony. Thank you for being here.

I would like to call up the second panel. Mr. William Stelle, Jr., Mr. Jeff Curtis, Dr. Darryll Olsen, Mr. John K. Givens, and Mr. Bob Hale. If you would join us at the witness table, please.

I would like to welcome the witnesses here today. I think you heard the explanation about how the lights work. I won't do that one again.

Mr. Stelle, if you are prepared, you can begin. You will have to use that microphone there.

And just to remind you, all of you, you are going to have to speak right into the mikes, because they won't pick it up otherwise. So get it as close to you as you can.

Mr. Stelle?

STATEMENT OF WILLIAM STELLE, JR., REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, SEATTLE, WASHINGTON

Mr. STELLE. Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to testify before you today. I have a written testimony which I want to submit to the Committee. And I will summarize my comments before you.

Before I get into the substance of my testimony, I want to genuinely express my appreciation for this hearing today. I think it's an excellent opportunity for us to get together here in the Tri-Cities area and talk about this important subject.

People care about it. It is complicated. There's a lot of information. And I think a dialogue and a good, full throated discussion about these issues is useful to continue on in the salmon recovery effort here in the Pacific Northwest.

I think this hearing is useful, and I thank you for an opportunity to participate in it.

Let me summarize my comments by making a series of what I hope are fairly precise points, and then I encourage questions. I look forward to them.

First and foremost, the salmon runs in the Pacific Northwest are at serious risk of extinction, and that is the starting point for our discussions today, and for all of the efforts here on salmon recovery. They are at risk in the Snake Basin, in the Upper Columbia, in the Lower Columbia, in Puget Sound, in coastal and in the drainages of coastal Oregon, and California. We have a very serious problem, first and foremost.

Second basic point is that the causes of this problem are many and extensive. And it's important to understand that. This is not an upstream issue only. It's not a downstream issue only. We didn't get here in a day. We have come here to where we are today from over a long period of time, and we will not reverse the trends in these populations unless we have perseverance, patience, and resolve. This will not be simply a flash in the pan solution.

Third, and, again, very importantly, the Pacific Northwest are absolutely and fundamentally committed to the restoration of these salmon runs. The extinction of salmon in the Pacific Northwest is

not an option. This is not an Endangered Species Act issue per se. It's an issue about what we in the Pacific Northwest are all about.

The idea of our region, barren of salmon in the coming decades, is completely unacceptable to everyone. And we have a deep and abiding commitment to the restoration of these runs.

Salmon recovery is not fundamentally a political issue. It is not a partisan football. It is a simple matter of priorities. And the priorities of the people of the Northwest, expressed over and over from every point of view, is that we want a successful salmon restoration effort here in the region.

Fourth. The issue, the challenge most fundamentally, is an issue of habitat. Restoring salmon is the same thing as protecting our clean water, is the same thing as restoring the health and vitality of our stream and river systems. Healthy salmon runs, healthy salmon streams, good, clean water are all one in the same effort.

Let me describe to you some of the basic principles that the National Marine Fisheries Service brings to the issue of salmon recovery here in this region.

First and foremost, we have a commitment to pursue the best science available. Unequaled. It is an unequivocal commitment. Our science is open. Our science is transparent. Our science is continually submitted to peer reviews, and our decisions are based upon it. Point No. 1.

Point No. 2. It is a commitment to a comprehensive approach to salmon restoration. As earlier witnesses have testified and observed correctly, there is no silver bullet, there is no one single source of the problem, and a solution to be effective must be comprehensive. It is not just a question of the dams, though the dams are important. It is not just a question of water, though water is important. It is not just a question of fishing, though fishing is important. And it's not just a question of hatcheries, though hatcheries are important.

Any successful solution for salmon restoration over the long term in the Pacific Northwest must be comprehensive and must address all stages of risks to salmon throughout their wonderful life cycle.

In the spawning and rear tributaries, in the mainstem, in the estuaries, and in the ocean.

The third point. We are absolutely committed to fostering partnerships in salmon restoration. Partnerships with the states, partnerships with the counties, partnerships with private entities, wherever and whenever we can.

Some examples that you have heard again already is, one, with the Oregon Plan. The speaker and Senator very eloquently described it to you. From our perspective, we worked very long and very hard for a couple of years, shoulder and shoulder with the State of Oregon to construct an Oregon Salmon Plan.

We believe it is the way to go. We support it. We made decisions based upon it. And we will defend those decisions, and we will defend the continued implementation of that plan.

Closer to home, we spent several years working very hard in good faith with the state, with the Tribes, and with the Mid-Columbia utility districts to develop a long-term strategy that they fostered for the operation and improvement of fish survivals and

productivities at their projects here in the Mid-Columbia region. Again, a vital partnership.

Salmon solutions are not going to be Federal solutions alone. They will not be state solutions alone. They will not be private solutions alone. If we are going to be successful, and we must be successful, we must do so in partnerships in good constructive collaborations. And we support those.

Finally, we are committed also to, in our salmon restoration work, to honor Federal obligations to Native Americans and treaty Tribes here in the Columbia Basin and throughout the Northwest.

The restoration of the salmon is not only vital to the people of the Northwest in general, and important under the Endangered Species Act, but it is also essential to honor our centuries of commitment to our Native American Tribes here in the Pacific Northwest, to enable them to exercise their treaty preserve rights, to fish and hunt in from usual and accustomed fishing places.

We believe that the endangered species efforts and those treaty efforts are compatible, and we seek to pursue them both.

What are some of the major challenges in the salmon restoration effort?

Let me first of all cite what is not a major challenge. People care about salmon, and that is the bedrock of success upon which this effort is going to be based.

Some of those challenges are, first and foremost, scientific uncertainty.

I would love, and I can't tell you how much I would love, to be able to point to clear, unequivocal and convincing evidence on some of the important issues we face here in this region.

The fact of life is, is that there is not crystal clear science on any one particular factor. The ability to isolate one factor as the silver bullet is very limited. The ability to eliminate the noise in the system, so to speak, from a scientific perspective is, is limited, and we therefore don't have absolutely clear-cut scientific certainties. We must acknowledge that, and we must design strategies that build decisions based upon on the best scientific judgment available to us, and we do so.

Second, there are bottlenecks in the system. This is a hard job. Speaking largely from an NMFS perspective, it is hard. There are hundreds and hundreds of activities that one has to review. There are meetings and meetings, countless meetings that you are invited to at every level of the agency, and you only have a limited number of people. So you cannot be everywhere at once. And it is simply hard, a big, important challenge to our staff to try to cover all the bases that we must.

I think we are meeting that challenge in a responsible way. We have geared up to meet it. And our capabilities now are well suited, as we move into additional restoration efforts here largely, largely in the coastal areas.

The third major challenge——

Mr. POMBO. I am going to have to ask you to wrap it up.

Mr. STELLE. Yes. The third major challenge is what I consider the blame game, and that is the tendency for entities or individuals to try to pass the buck somewhere else.

You know this well. Everybody knows this well. It's a fact of life. But there is a tendency to point the fingers elsewhere, to say, no, it's not the dams, or, no, it's not fishing, or, no, it's not the habitat, or, no, it's not water.

Those assertions are all wrong. It's a little bit of everything, and all of the sectors and all of us will have to take responsibility in improving salmon survivals and in contributing to the long-term restoration effort.

The blame game will not succeed in where we must succeed.

Finally, I think building a sustainable ethic on the ground that protects our streams is vital to a healthy stream system, to clean water, to good productive land, and to an economy is part of the long-term solution.

Now, let me comment finally on the legislation. We oppose enactment of H.R. 4335. The administration opposes this bill.

First and foremost, 25 years ago with enactment of the original Endangered Species Act, Congress and then President Nixon made a judgment that the consolidated management of putting this in one single Federal agency made sense. It made sense then, and it continues to make sense. Over that 25 year period the National Marine Fisheries Service has built up decades of experience, expertise, and world class science in the execution of these responsibles.

Shifting these responsibilities to the Fish and Wildlife Service would take years, it would take years for the dust to settle on that kind of change.

I can't think of a worse time than to do that in the middle of the effort here in the Pacific Northwest we are in. And it would constitute a major disruption to salmon recovery efforts that we don't need.

What are the problems that this legislation is intended to avoid?

First, there are suggestions that there are inefficiencies in having joint management of the endangered species program between the Fish and Wildlife and NMFS.

It would be my contention that in fact we have a joint collaborative effort in the implementation of the program and a record that we are proud of here in the Pacific Northwest and nationwide. We do things together. We do not duplicate, and we make sure that our policies and strategies line up. If there are efficiencies to be garnered from this legislation, they are minor.

Second, the second is that the real remedy for this legislation that NMFS is too tough and that maybe if we shift responsibilities elsewhere, it won't be so tough.

These problems are not the problems of the National Marine Fisheries Service. They are salmon problems. The science won't change and the solutions won't change by simply changing the labels and the hats that people wear.

In conclusion, Mr. Chairman, again, I want to express my appreciation to be here, and I look forward to answering questions of the panel.

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

Mr. POMBO. Thank you. Mr. Curtis.

STATEMENT OF JEFF CURTIS, WESTERN CONSERVATION DIRECTOR, TROUT UNLIMITED, PORTLAND, OREGON

Mr. CURTIS. Mr. Chairman, thank you for the opportunity to testify. Trout Unlimited is an organization of over 100,000 members. We have about 7,000 members in Oregon, Washington and Idaho.

It is somewhat of a coincidence that here in Pasco you have two former counsel of the Subcommittee on Fisheries Wildlife Conservation and the Environment on the same panel, both Will and I served at different times as counsel to that subcommittee.

And during the time I served as counsel I know I often wondered and I think Will probably did, too, about the division of responsibilities between the two agencies.

I mean, some of it really doesn't make sense. Why, for example, would the National Marine Fisheries Service have jurisdiction over all pinnipeds but walrus, is an interesting question. So in a global sense, looking at the division of responsibilities between the agencies makes some sense, and perhaps the Committee should consider that at some point in the future.

But like Will, I say, not now. We are in a crisis situation. This year, less than 10,000 spring Chinook made it to Idaho. Less than probably a third of those were wild fish. And they are going to 42 separate sub-basins. We are in an extinction spiral. That's down from an average of 15,000 over the last 10 years, and untold thousands prior to when the dams went in.

At this time, moving anadromous salmonid recovery responsibilities to an agency not previously involved in these issues is a recipe for mass confusion. The chance that the upcoming decisions would have a random quality to them would be greatly enhanced.

And I don't think we should get basically different decisions out of the two agencies. Frankly, I was at the U.S. Fish and Wildlife Service as a legislative person when the snail darter situation came up, and that agency was not known then and is not known now for backing down on these issues.

Rather than tinkering with agency roles, we have endorsed the development of a regional process along the lines of the three sovereigns process. We believe that a process that brings the major government agencies in the Basin together, state, tribal and Federal, that is open to participation by other parties, could move the region closer to a consensus on the salmon and energy issues.

We are not so naive to think it would bring complete consensus, but I think it would flush out the science and economics better and get us in the region closer to a common understanding of what the problems are.

But in the end, Mr. Chairman, members of the Committee, it will not be process but rather dramatic action that is needed to restore salmon. Current measures are clearly not working.

Several weeks ago, at our national meeting, our National Resource Board made up of grassroots members throughout the Nation endorsed proposals to retire the dams on the lower Snake River.

We recognize this is a dramatic proposal. But after 20 years of failed experiments to engineer salmon recovery, we believe like the independent Science Advisory Board, that the time has come to

look at returning portions of the river to conditions more closely approximating the conditions in which the salmon evolved.

I recognize that many question whether such dramatic actions are worth it to the region. Obviously, to those who believe that salmon are an icon, it is worth it, but to those who look at economics more traditionally, I believe it is worth it, as well.

We have two assets at risk in the Northwest. One is salmon, the other is our low cost energy.

In an era of energy deregulation, the question must be asked why the rest of the Nation should subsidize cheap power in the Northwest. More importantly, why should New Yorkers pay more to heat and cool their homes than folks from Seattle or Pasco? Why should Californians pay more for energy for their businesses than Oregonians?

The answer is that we in the Northwest have a power system that provides public benefits as well, investments in renewal energy assistance for the poor, and most importantly salmon restoration.

If the system does not provide for those benefits, if the power system we are defending for our own advantage is killing a natural resource we are charged with protecting, our position in defending the region's low-cost power is weakened.

It is apparent that the drawdown and the dam breaching scenarios will have both significant negative and positive effects on the economy.

We believe the negative effects should be mitigated, but it is clear that these economic impacts are far less than we could face if we lost the benefits of low-cost power that we have enjoyed since the 1930's.

We believe, as in the past, when Native Americans relied on salmon in the Columbia for both sustenance and economics, that salmon and economics are still tied together.

And we believe that if we do something, we do the right thing, and make tough decisions to restore salmon, we can have a future with both a good economy and strong salmon runs.

But if we make decisions based on short-term economic interests, we could lose both.

Thank you for the opportunity to testify. And I will be happy to answer any questions.

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

Mr. POMBO. Dr. Olsen.

STATEMENT OF DARRYLL OLSEN, PH.D., THE PACIFIC NORTHWEST PROJECT, KENNEWICK, WASHINGTON

Dr. OLSEN. Good morning, Chairman Pombo, members of the Committee.

My name is Darryll Olsen. I am a resource economist with the Pacific Northwest Project, which is a resource economics consulting firm located here in Tri-Cities, Washington. I have about 15 years experience working directly on Pacific Northwest water, fish and power issues.

I would like to thank the House Resources Committee for having the foresight and the courage to question how the National Marine

Fisheries Service is implementing the National Marine Species Act within the Columbia-Snake River Basins.

In particular, the Resources Committee should review carefully the actions being invoked by NMFS to take control from the states over water management in the Pacific Northwest and discern whether these actions actually advance the best interests of the fish resources and the social and economic well-being of the Pacific Northwest citizens.

My comments to you today are principally from the perspective as the principal investigator for the White Paper Review, the Columbia-Snake River Flow Targets/Augmentation Program. Copies of the executive summary are attached to the testimony and I believe full reports have been provided to you.

The Review Study focuses on both policy and technical features of the NMFS flow targets/enhancement program.

Dealing with policy issues NMFS has put forward the no net loss water policy. This is a policy of confrontation. If accepted by the states, this policy would prohibit any additional water withdrawals for new municipal, industry or irrigation purposes. Including the perfection of existing state granted water permits. The states would cease to have control over water management decisions.

The Review Study also focuses on a number of technical issues.

Concerning hydrology, the NMFS flow targets ignore the physical hydrology of the Columbia-Snake River Basin system.

Based on U.S. Bureau of Reclamation hydro data and studies, the NMFS flow targets cannot be met in all months during low and average water years, with or without the net effects of irrigation withdrawals.

The net irrigation depletions are not the primary reason why the NMFS flow targets cannot be met. The problem rests with the technical basis for the flow targets themselves. The targets are well beyond the Basin's hydrologic capabilities.

Regarding biological impacts, Dr. Anderson has covered several points, and I will simply summarize by saying that our observations indicate that attempts to use flow augmentation to improve spring migrant survival, which is the bulk of the flow augmentation program, will provide no measurable fish benefits. And in the case of fall Chinook, the benefits are uncertain and convoluted at best.

Concerning economic impacts, based on the Bonneville Power Administration, the flow augmentation program consists of about a $50 to $70 million per year program. These costs would increase substantially if irrigation sector impacts were to begin.

The review also focused on the question of what are NMFS' objectives. The Review Study made clear recommendations to NMFS regarding changes to the flow target augmentation program that optimized flow regime for biological benefits and economic costs. Let me say that again. To optimize the flow regime for biological benefits and economic costs.

But today NMFS has shown no indication whatsoever toward restructuring the flow chart augmentation program. In fact, the way that NMFS is managing the program right now, they are putting forth a scientific double standard.

Given this response, it is simply not possible to explain NMFS' actions based upon the model of the prudent resource manager seeking to enhance effectively fish benefits while administering public funds and attempting to limit social and economic impasse.

Moreover, by failing to restructure the flow augmentation program, NMFS is clearly misallocating large volumes of water to the west.

The flow regime cannot pass the classic criteria for water allocation, which is the demonstration of beneficial use.

The agency has embraced the policy of water misallocation, and that policy hinders other more beneficial approaches to resource management. Other approaches described for an optimization of fish enhancements with economic costs and could seek out collaborative partnerships for new water resource projects and multiple benefits of the region.

Thank you for the privilege of offering this testimony.

[The prepared statement of Dr. Olsen may be found at end of hearing.]

Mr. POMBO. Mr. Givens.

STATEMENT OF JOHN GIVENS, EXECUTIVE DIRECTOR, PORT OF KENNEWICK, KENNEWICK, WASHINGTON

Mr. GIVENS. Good afternoon, Chairman Pombo, and members of the Committee.

Can everyone hear me?

I appreciate the opportunity to testify here today. My name is John Givens. I represent the Port of Kennewick, which is one of 76 port districts in Washington authorized in public service by the state legislature with a mission of fostering economic development.

We care about people. We also care about fish, too, because our mission is very important as we carry it out in being responsible environmental stewards of the resources we manage.

Let me take a second to talk about the Endangered Species Act.

I have been in the port industry now for about 15 years. Thirteen years as a commissioner in the Port of Clarkston, in Congressman Nethercutt's district, and 2 years as the Executive Director of the Port of Kennewick, in Congressman Hastings' district.

I think the Act was written with the purest of intent to be a good piece of legislation that could be reasonably interpreted and easily managed.

But during the past several years I think it's grown into a 900 pound gorilla with an attitude. It's very difficult to manage, and oftentimes implemented on requirements that lack common sense. And I think it's time that it be revisited by Congress. That Act needs to be reauthorized with a serious overhaul.

Let me share with you a good example of a potential recovery plan alternative currently being explored that, if carried out, would in my opinion be contrary to what most of the people in the Northwest feel would be a common sense solution to the problem.

The Columbia-Snake River system is one of our country's most valuable resources. That vital multiple use resource provides critical economic, recreational, and safety benefits to millions of people. It stretches for 465 miles of a navigation corridor through a series of about 30 ports opening international trade markets to more than

40 states. Forty three percent of all the wheat shipped from this country travels through that remarkable system. Yearly cargo volumes exceed 50 million tons and provide revenues exceeding $16 billion.

Employment just in ports alone are estimated to exceed 50,000, and I think about 1600 of your own Port of Lewiston, Congresswoman Chenoweth.

The federally authorized dams have the capacity to produce 75 percent of the Northwest energy needs using renewable, plentiful and non-polluting hydropower.

About 50 percent of the 7.3 million acres of the producing farm land and ranch land in Idaho, Oregon, and Washington are irrigated with water supplied from that system. Yearly sales from those farms and ranches exceed $10 billion.

During 1996 and 1997 that system, the dams on that system, were credited with saving more than $4.8 billion in property damage from two major flood events. I think that's difficult to mitigate.

And I think people care about fish, but fish also care about people.

In spite of those unsurpassed benefits, serious consideration is being given to breaching several of those dams and destroying the integrity of that federally authorized system because of mandates required under the ESA listing requirements. Yet the ESA has no accounting responsibility for the potential aftermath that decision might make if those dams are torn down, and, God, I hope Congress doesn't allow that to happen.

In 1992 I served as a commissioner of the Port of Clarkston, and at that time the U.S. Army Corps of Engineers, after consultation with NMFS under the ESA, elected to stage a 30 day test drawing water down to a near natural river level on the Lower Granite pool of the Snake River.

The purpose of the test was to measure infrastructure integrity under drawdown conditions.

The economic interests of the area were not involved under the test planning, except shippers were told to make alternative arrangements for barging their transportation needs during the test period.

The result of that 30 day activity related serious distress, lost business revenue was estimated in the millions of dollars. Substantial physical damage occurred including sloughing embankments, heaving and separated highways, twisted commercial and recreation docks, and inoperative water intakes. No cargo moved from our port for more than a month, and one local marina operator ended up filing bankruptcy as a result of the unrecoverable damage and lost business of his—loss of business revenue.

Thousands of resident fish were killed after being trapped in ponds which dried up when the river receded. The river corridor through Lewiston and Clarkston almost immediately became a stinking mud flat as habitat decayed.

And while some mitigation was later made available for documented physical loss to private property, the pot was too small and the reimbursement was very difficult to obtain. An overwhelming majority of the people who experienced that drawdown never want

to go through an experience like that again, and I don't think the people in this area want to do it for the first time.

The red light is up. I will quit. Thank you.

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

Mr. POMBO. Mr. Hale.

STATEMENT OF BOB HALE, HALE FARMS, HERMISTON, OREGON

Mr. HALE. Mr. Chairman, members of the Committee, my name is Bob Hale. And I am an irrigator. I have owned and operated farms in the Hermiston, Oregon area my entire life.

Water is the lifeblood of my community, and it is the lifeblood of my business.

I am also a partner in Inland Land. Inland was formed by three family farms to complete the development of an existing farm with existing state water rights.

Inland appreciates the opportunity to address you because our farm development has been stopped in its tracks by NMFS and its unreasonable, unscientific and unrealistic biological opinion of our project.

My testimony will focus on Inland's experience with NMFS' implementation of the Endangered Species Act.

When we began our project, the Oregon Fish and Wildlife Service expressed concerns that increased pumping from the existing farms pump station would harm listed fish by attracting them into the mouth of Willow Creek from the Columbia.

In response, Inland agreed to build a new pump station on the mainstem.

On May 2nd, 1996, Inland filed a permit application with the U.S. Army Corps of Engineers for this new pump station. This application triggered consultation with NMFS under ESA.

In addition, we have obtained zoning approval, a state permit for construction, a Clean Water Act certification, and water right permit extensions from the State of Oregon.

However, we still cannot begin work on the project.

Why? The NMFS 1997 biological opinion.

The Corps of Engineers determined in July 1996 that our new pump station would not adversely affect any of the listed salmon.

In spite of this, NMFS concluded in May 1997 that issuance of an Inland permit would be likely to jeopardize the continued existence of listed salmon.

The ESA requires the action agency and the NMFS to use the best available science. In my opinion, NMFS failed to do so.

Why did NMFS reach this conclusion? NMFS reached its jeopardy conclusion entirely based on the cumulative impact of Inland's water withdrawals, when combined with all irrigation withdrawals in the Basin. NMFS decided that no more water should be allowed to be diverted from the river until target flows are met.

There are two fundamental problems with the NMFS analysis.

First, NMFS target flows are unrealistic.

Second, NMFS' analysis of the impact of irrigation withdrawals is flawed.

Both of these problems arise from NMFS' opinions about river hydrology, not biology. It is baffling to me that NMFS, with no apparent expertise on the river hydrology, could trump the opinion of the Corps who truly is the Federal expert on river flows and modeling.

NMFS' use of the Bureau's interim draft report on the cumulative impacts is even more flawed.

Based upon our discussions with Bureau staff, we believe NMFS knowingly misused and misinterpreted the data to reach the result it wanted to reach politically.

The Bureau study counted the full amount of water use authorized under all state water rights. Inland's water that wasn't even being used was counted in this environmental baseline. They even counted non-hydraulically connected deep wells as contributing to the alleged flow depletions of the Columbia.

As a result, with Inland, NMFS adopted an unprecedented zero net impact policy. NMFS believes this policy can only be satisfied if Inland does not divert water during periods when target flows are not being met or replaces any water Inland does divert with additional upstream water rights.

Inland cannot develop its project not knowing from year to year whether it will be able to irrigate the land. Inland cannot afford to purchase another farm upstream and shut it down.

You can imagine our frustration, then, when NMFS announced in June 1998 that it had entered into a Habitat Conservation Plan with two public utilities in the Mid-Columbia.

Why will NMFS reach an HCP agreement with public utilities, a no jeopardy opinion for the Federal hydro system, and a no jeopardy opinion for the sport and commercial fish harvests, allowing them to directly kill fish, while they will not allow a farmer to move an irrigation diversion point that will have no measurable impact on the flows and fish survival.

Inland believes that the biological opinion was issued for political purposes to pacify environmental organizations, not because of scientific justification.

As NMFS interprets the biological opinion, Inland's water rights are essentially worthless. NMFS is taking existing water rights from landowners in order to create theoretical benefits for fish that cannot be measured in reality.

Is NMFS implementing the ESA consistent with the law Congress passed? In my opinion, no.

Is NMFS implementing the ESA cost effectively? In my opinion, no.

In our 4 year effort to permit this farm, with the assistance of four regional law firms, three wildlife habitat consulting firms, two salmon recovery consulting firms, two engineering firms, and a Project Manager, we have spent nearly one million dollars and we still cannot proceed. A fisheries biologist for the Corps' Portland office said it best, when he interrupted me during a technical presentation I was making and said, excuse me, Bob, this isn't about science and biology, this is about politics.

Thank you.

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

Mr. POMBO. Thank you. Thank you for your testimony.

I would like to recognize Congresswoman Smith for her questions at this time.

Mrs. SMITH. Thank you, Mr. Chairman. I passed him a note saying that I was going to have to leave close to one o'clock for another public event in Yakima. So I appreciate you allowing me to ask questions first.

I would like to begin with just commenting to Mr. Hale. There was a bill dealing with takings, if a Federal action took your property, made you unable to use it, they should pay for it. And it sounds to me like you effectively had a taking, if you do have a taking, if you are totally prohibited from using your property.

But I would like to start with Mr. Stelle, just some quick questions.

Do you support or oppose the initiative of state water rights? Do you believe the state should have water rights?

Mr. STELLE. Yes.

Mrs. SMITH. OK. So would you believe your action and your authority could override those water rights by determining water levels or such?

Where the issue involves the operation, for instance, of Federal dams, Federal facilities, then we do have the authority with those Federal operators to modify those operations to improve flows for salmon.

So therefore you do abrogate the state water rights by changing the flow and making the water rights of no value?

Mr. STELLE. I am not sure, Ma'am, whether I would consider that an operation of state water rights. It is an operation of a Federal facility.

Mrs. SMITH. Mr. Stelle, do you support or oppose—Well, let's state this a little different, we're having—We both have been in government too long it sounds like.

Do you believe that NMFS has a legislative authority to abrogate state water rights in the Pacific Northwest?

Mr. STELLE. No.

Mrs. SMITH. You do not. You do not believe what you are doing is abrogating water rights?

Mr. STELLE. No.

Mrs. SMITH. I have read quite a bit of the testimony, and you have been reluctant to consider the recommendations put forth by the Review Study. With testimony that suggests you have been kind of strident in ignoring the technical problems raised within the review.

The researchers who conducted the review appear by my review to be prominent figures in conducting this type of research.

Do you just believe that their findings should be ignored because they are inaccurate or incompetent, or what? Because they appear to be totally ignored. Can you address that?

Mr. STELLE. Yes, Representative Smith. Are you referring to Dr. Olsen, et al's, report? I am not sure.

Mrs. SMITH. That is one of them, yes.

Mr. STELLE. As for the recommendations of Dr. Olsen's report, they have in fact been reviewed by our scientists.

I think in keeping with that, we have referred those ideas and those recommendations to an inter-governmental group that we have established with the states, four states and the Indian tribe and the Federal operators, who determine flow operations for the Federal system.

And thus far that group has declined to adopt or recommend the adoption of those recommendations.

Mrs. SMITH. Did the agency in reviewing them send them with comment as to whether they were right? Because you do comment on the recommendations and you do send them in a way that is weighted by your agency.

You have not been silent in your opinion. I have read quite a bit about what you do believe.

It appears you as an agency are ignoring this except for shuffling them off, and you are saying you don't believe that.

What would be right about some of the review? What would you agree would be right in your perspective? I mean, I am sure in the review there are some things you agree with and some you don't. What's wrong and which things should be ignored and which things should be gone forward with in the review?

Mr. STELLE. To the question, have we formally commented on or responded to the Olsen report. The answer I believe is no. Do you know whether——

Dr. OLSEN. Capital N-O, no.

Mrs. SMITH. When did you actually get that?

Mr. STELLE. I don't know.

Dr. OLSEN. You received it in February.

Mrs. SMITH. Is that because you are too busy or he is incompetent?

I am very serious. I get reports from people that don't have the ability, the background to give me a report. It's not weighted as much as someone that gives me a report that is qualified.

Is Dr. Olsen's report not a qualified report to spend time to review after 6 months, 7 months?

Mr. STELLE. Ma'am, our scientists and technicians have reviewed the report. They have also reviewed those recommendations with the state and tribal managers, through which we make decisions on and recommendations on the operation of the Federal projects.

Mrs. SMITH. Just in conclusion, I guess I want to ask one question. I have been looking over qualifications. What is your background in science or resource economies?

Mr. STELLE. I'm an attorney. I am trained as a lawyer.

Mrs. SMITH. I am sorry, Mr. Stelle. That was really probably a lot more lawyers than just you. But thank you for your answer.

Mr. POMBO. Thank you. Mr. Romero-Barceló.

Mr. ROMERO-BARCELÓ. No.

Mr. POMBO. Ms. Chenoweth.

Mrs. CHENOWETH. Mr. Stelle, I think we heard some startling testimony from two very distinguished and highly regarded speakers of the House, and equally distinguished member of the Oregon Senate and the House in Washington.

We heard the speakers and both of those gentlemen testify that the treatment that they have received at the hands of your agency in putting together a plan and trying to work with your agency and

in the restoration of salmon habitat was very sad. It was disrespectful. And it appeared that their recommendations were not regarded.

The buck has to stop somewhere, Mr. Stelle. Does it stop with you, or Katie McGintie, or the Vice-President? Where does the buck stop?

Mr. STELLE. To the first part of your question, Representative Chenoweth, as I mentioned, we worked very hard with the State of Oregon, both the executive branch and the legislative branch, to help make the Oregon Plan a reality.

I am actually proud of the effort we put into it. It was a good faith effort. It was based on a mutual commitment that it was the right way to go. And I believe it has opened an important doorway for state and local restoration efforts here in the Pacific Northwest.

I absolutely regard the effort of the legislature and the Governor with the utmost respect. It is and continues to be a genuine and substantial effort. We support it. We approved it. We have defended it before Federal Court. We disagreed with the ruling of the court that found that it was inadequate.

We believe it is in fact adequate under the terms of the Endangered Species Act. And we have persuaded the Department of Justice to appeal that ruling. We are defending the Oregon Plan and we fully support it.

To your second question, the responsibility for the administration of the Endangered Species Act has been delegated from the Secretary of Commerce to me as the regional administrator in the north region, and I execute those responsibilities.

Mrs. CHENOWETH. Thank you, Mr. Stelle. I think that more than just the defense of the Oregon Plan, I think these members of both the House and the Senate were talking about the treatment of the agency, too. And I appreciate your owning up to it.

I do want to say that you said the idea of our region being barren of salmon is completely unacceptable. And I will look forward to hearing from you about results and hearing from the members of the legislature about results in there being a better working relationship.

But I think also what they are trying to say and what I and other members of this region who serve in the House are trying to say, that, yes, we admit that the fish are cultural icons. We admit that.

But the idea of our region's being barren of irrigated fields and orchards and recreation and hydropower base is completely unacceptable, too.

And I also want to say that I look forward to hearing—I look forward to the day when I can hear from you and other agency personnel and leaders, I look forward to more substantive results rather than saying that meetings like this are good for dialogue and good for collaborative results. Dialogue, we have got to move beyond.

And, Mr. Stelle, yes, you are an attorney, but you are a very bright man, and you have put forth your agenda very, very well. But it is not a satisfactory agenda to the future of this area.

Mr. POMBO. Mr. Nethercutt.

Mr. NETHERCUTT. Thank you, Mr. Chairman. I found this panel's testimony really quite revealing.

There seems to be an assumption here, Mr. Stelle, with all due respect to you, and to you, Mr. Curtis, that only the Federal Government and its scientists and its employees have the endangered species' best interests at heart.

I want to follow on Representative Chenoweth's comments about National Marine Fisheries Service testimony here, with respect to the treatment of the states of Washington and Oregon.

There seems to be in government today, and perhaps illustrated clearly by your agency, a belief that the Federal Government is always right, that its employees and its scientists are only the ones who have any wisdom. The treatment of Dr. Olsen's report seems to prove that in some respect. With regard to state's rights, whether it's the habitat conservation desires of the state, or the best judgments of the states of Oregon and Washington, those seem to be a subject of suspicion and question by your agency.

And at what cost? I mean, the cost is tremendous.

Mr. Hale, my goodness sakes, I don't know how you can do it. That's a horror story, but it's one of many that people like me and others on this panel hear of regularly from people—normal, ordinary, good citizens—in our districts.

So it's very difficult it seems to me for you to sit here, again respectfully, sir, and try to defend and make the statements that I wrote down, your comments that you are meeting your responsibilities in—meeting your obligations in a responsible way.

You know, bankrupting Mr. Hale or costing him a million dollars and causing, and ignoring in many respects, the good work of the scientists and the people of the states of Washington and Oregon, and ignoring Dr. Olsen's report, who has put a lot of effort and good scientific background into that, seems to me to be the height of arrogance, and that is what is really bothering me.

I will allow you to respond.

Mr. Curtis, you talk about failed experiments on our river system, and drawdowns and other ways to try to restore salmon and fish recovery.

My goodness, sir, and now you advocate breaching of the dams and saying that essentially it doesn't matter that the citizens of the Pacific Northwest are going to have to pay more for power.

That's a very real consequence. It's not some theory that we're talking about here. That's a very real consequence. Breaching the dams are going to cause tremendous dislocation, not only to the integrity of our river systems, the recreational use, the power generation costs for sure, but the environmental quality would be deteriorated.

So, it's easy to come in and testify blithely about and theoretically about how we all ought to be fair and pay more, how we should worry a lot about salmon, that everybody has to pay their share, and the Federal Government's always right.

Sir, that's wrong. And you are going to find, in the real world of people who are here in this room that we speak to those real concerns. I know it's difficult to be in government, but it shouldn't be difficult to use common sense, and look at the cost consequences of

Federal actions and the policies that are implemented by your agencies.

So I have given my speech. I will be happy to have you respond.

But I am very serious about this. I think that's a very real problem of government now. And this talk about breaching the dams is just inflammatory, and I get real emotional about it, as many others do, too.

So a quick comment. I am sorry to take all the time.

Mr. STELLE. Congressman, let me just respond briefly. I left a misimpression. I think that frankly in a number—to your question of do we believe that the Federal scientists or the Federal employees are the sole repository of truth and knowledge, the answer is absolutely no. We don't believe that.

Here in the Columbia Basin, obviously there's a lot of dispute about what works and what doesn't work. And we with the National Marine Fisheries Service essentially brought in the National Academy of Sciences and through the national academy set up an independent science advisory board, specifically to get independent, good transparent scientific advice on some of the issues that are so difficult here in the Columbia Basin.

So, too, in the Oregon effort, we absolutely support the convening of the multidisciplinary science team by the State of Oregon. It's the right thing to do and we support it, and we take what they do very seriously.

To the issue of working with the states, I can only say it's absolutely my hope that we continue to build a good, solid, effective, constructive relationship in the implementation of the Oregon Plan, and as the state of Washington and the counties work hard on their efforts. It's a good effort. We are 100 percent behind it. And frankly, I hope we try our very best to work day to day.

Mr. CURTIS. Thank you. Just two comments. One, I think it's unfortunate we don't have some of the state biologists who participated in the PATH process here today.

I have the greatest respect for the state biologists and the tribal biologists, as well as Federal people working on this. Howard Schaller, Rick Williams, if somebody like that were here, I think we could get some different approaches to some of the scientific questions that have been raised.

The second question, though, with regard to suggestions and recommendations with regard to dam breaching, which I realize is a highly inflammatory issue out here.

Let me just say that that is the reason that we continue to support a process to get closer to a regional consensus, so that we can have a process where we can look at these tough scientific questions and the tough economic questions and come to a better understanding of what's going on. And we support that.

If in the end the region comes to the conclusion, looking at the best scientific data available, and the real economics that it's not the way to go, then I am sure the Congress, who makes the ultimate decisions on this and we recognize that, is not going to do it.

Mr. NETHERCUTT. I guarantee it.

Mr. CURTIS. Congressman Nethercutt, when these dams were put in, they were very difficult decisions to do. People looked at

winners and losers. Towns were moved. And hatcheries were put in. They were very difficult decisions.

I don't second guess the people who made those decisions to put those dams in.

I think we're facing a similar decision process now. And I think we should face those tough decisions the same way.

Mr. NETHERCUTT. Thank you.

Mr. POMBO. Congressman Hastings.

Mr. HASTINGS. You know, it's interesting to listen to the first panel and this panel.

And I want to address my questions to Mr. Stelle. Because we heard, at least I heard, one member up here, very specifically that the relationship between the state legislature, at least two of them here, Oregon and Washington, and NMFS was not very good. I mean, I think that came across loud and clear.

That being the case, then your perception of the things working is probably not very good. And you have to deal with what reality is.

So, I guess that's something that you need to work on.

I think George, by colleague, George Nethercutt said it very well, this is very serious. And there is a notion that one size doesn't fit all. The Federal mandate isn't exactly—I just want to make that observation.

Because the stark testimony difference between the respective speakers and legislatures from where you sit, just don't jibe.

You can say those were different settings and it didn't make sense, but they didn't make sense today.

Now, having said that, Linda Smith asked you about state water rights, and you didn't elaborate, you just said that she asked you directly, should states have water rights, and you said yes.

Now, I understood you to say that the Federal Government has higher authority over state water law vis-a-vis Federal facilities.

Did I hear you correct?

Mr. STELLE. Representative, what I meant to say was that in the operation of the Federal dams on the Columbia system, those operations are the responsibility of the Corps of Engineers and the Bureau of Reclamation on the advice of the National Marine Fisheries Service. And they make those decisions on how to operate those dams, in the winter, spring, summer and the fall.

And my understanding is they have solid, firm responsibility to do so. And that exercising that responsibility doesn't abridge state water rights one way or the other. That is the point I was making. But they do so.

Mr. HASTINGS. Well, it seems like it does. There are people here that will probably attest that they are affected. I think that Mr. Hale here would suggest that there is a cause and effect. And he's on the same panel that you are on.

But now, having said that, though, having given the qualification that you just gave me, that the operation of the Federal facilities, how far upstream does that affect? Does that affect all tributaries, then, from a flow standpoint.

Mr. STELLE. No, sir, it doesn't. It operates, I am not sure I can give you the technical answer on that, but basically——

Mr. HASTINGS. Mr. Stelle, I am not the attorney, you are.

Mr. STELLE. The Federal projects, the decisions of the Corps and the Bureau how to operate those mainstem projects are really whatever water is coming in from Canada and flows into the system, flows into those pools.

Now, there is some Federal involvement through a treaty with Canada on the operation of the big Canadian projects, to try to coordinate——

Mr. HASTINGS. Let me try to be specific. There's a report out, and maybe you can clarify this, Lake Chelan, up in Central Washington here, NMFS suggested that they were going to reduce the water in Lake Chelan to augment the flow in the Columbia River.

You categorically deny that that's not going to happen by NMFS?

Mr. STELLE. I know absolutely nothing about that. I've heard that talk about what's going on in Lake Chelan.

To the best of my knowledge, none of my staff have ever talked to me about any intentions on Lake Chelan. I have no knowledge about any kind of drawdowns of Lake Chelan. That is not true from my perspective.

Mr. HASTINGS. Great. I want to ask Dr. Olsen a question here, talking about flow, though, because we were talking about flows here and you indicated in your testimony some regard about flows and there's a disconnect or some point as to how NMFS is implementing this.

I would just like you to elaborate on the flows based on what my conversation with Mr. Stelle has been right here, vis-a-vis water rights.

Dr. OLSEN. There's actually several responses to that.

In my testimony I brought up the double standard issue. And what we're seeing now is public statements from NMFS officials saying, we have some correlations.

Now, between flow and survival, 3 years worth of data, for flow and survival with fall Chinook. They ignore other convoluting factors, they ignore other significance variables and say, aha, this is it, this justifies the flow augmentation, we obviously need another million acre-feet or something.

They are public statements. I can provide you with those, if you would like those.

Mr. HASTINGS. Please do. I won't speak for the Chairman, but please do. I think the Committee would like to have those statements.

Dr. OLSEN. In the same breath, NMFS turns around and in basically the supplemental buy off which came out in March, and in other quarters, personal conversations with management with NMFS, they come back and say, that's right, we don't have any flow survivals, statistical relationships for spring migrants for 5 years worth of data.

It's higher quality data, more data than what they have for fall Chinook. But they just ignore that, say, we don't care.

So on one hand the standard is, aha, there is statistical correlation, that's important, so that justifies their flow augmentation, but we will totally ignore other data, better quality data that doesn't justify statistically the relationship.

There is a double standard being put forward for the science.

Mr. HASTINGS. Mr. Stelle, I might want to have a dialogue here.

Mr. STELLE. Representative, I would be happy to share with the Committee and with Dr. Olsen, I think he knows the reviews that our science center does of the flow survival relationships. We do it every year to determine what the evidence appears to be on whether or not there is one, and if so, to what degree, what is the strength of that relationship.

We will be conducting another technical review of the data this fall for the 1997 runs. And I would be happy to share those reports with the Committee. Dr. Olsen I think knows them. And they get distributed broadly throughout the region.

Mr. HASTINGS. Mr. Stelle, one last thing——

Mr. POMBO. Dr. Olsen would like to respond.

Mr. HASTINGS. Dr. Olsen, thank you.

Dr. OLSEN. Just a comment back on that. Yeah, we're well aware of the data. It's in our report, we use the raw data as well as the summaries, we are well aware of that data.

But I think more importantly about the issue, about how you are approaching this in open science, back in November I was working on a contract for Bonneville Power Administration, where they asked us to review the cost and benefits of various salmon methodologies of various regions, various things, drawdown, flow augmentation, spill, other types of things.

We presented an alternative to be reviewed by the scientific community, actually part of what is essentially I guess loosely called the three sovereigns process. We presented an alternative and asked for its review using the NMFS data, University of Washington data, and the response directly from Mr. Stelle was a letter to the acting CEO of Bonneville Power Administration saying, you don't even have the right to introduce a low flow scenario for being reviewed through the process.

I will be glad to provide you copies of the letter.

Mr. HASTINGS. Thank you. Mr. Stelle, western water law is very, very complex, and I am certainly not by no means an expert on that.

But I have to tell you, what you said is not satisfactory to me, and what I would like you to do is to present at least to me, and I hope the Committee would accept it also, a response as to what is your interpretation of state water rights are, how that interacts with your agency, so that we can understand where you are coming from and how all of this works together.

Because I heard yes, and then I heard no, except. And I just heard some things that are troubling to me.

I think maybe for the benefit of this member and maybe for the benefit of this Committee, let's hear precisely. And you said in your testimony you want to be as precise as possible. Let's hear precisely exactly how this reacts with you. I would appreciate that.

The next question I wanted to ask you, this is one thing I learned in my years in Congress, when I make a request for response from a panel in writing later on, I've learned to ask when I should be expected to get that. All right?

And so I will ask you, Mr. Stelle, when could you get me that response?

Mr. STELLE. How about October 1st, Congressman?

Mr. HASTINGS. October 1st. If that's not a weekend, but in other words, what you are saying, within 30 days.

Mr. STELLE. Yes.

Mr. HASTINGS. And that should not be a weekend, if my calculation works, that should be on a Friday. I think we can handle that. Thank you.

Mr. POMBO. Mr. Romero-Barceló.

Mr. Romero-Barceló. Thank you, Mr. Chairman. I would like to ask Mr. Stelle something.

Have you ever considered, have you found any other country in the world where salmon have also disappeared and they have restored them? Do you have any knowledge of any other country where that has happened?

Mr. STELLE. That's a great question. I have heard some sort of episodic talk about New Zealand and salmon restoration efforts about New Zealand.

I myself am not an expert on them, but I hear there is some very interesting stuff going on in salmon.

Mr. ROMERO-BARCELÓ. I happen to know about some, and I am going to tell you, and I think sometimes we tend to isolate ourselves and forget about that other people might have solved the problems. They might not be the same problems.

But when I was growing up in Puerto Rico, I considered Switzerland, to take a look at the small dairy farmers, where they were so successful. And what I mean by small, 6 or 12 cows, and they were successful. They had reasonable income from that.

And while I was there, one of the high officials of the Department of Agriculture started talking about the fishing and the plentiful salmon in Switzerland. And he said, well, salmon used to be very, very, very plentiful, so plentiful that they used to pass laws that gave food to their employees as part of the salaries or whatever, to give them salmon more than once a day and for no more than 5 days a week.

Anyway, he said that because of the pollution in the lakes and the rivers, the salmon just about disappeared.

And now when I was there, the salmon was back.

What they did, it was long ago, I was not looking into that subject matter, so I didn't pay much attention, but I think we should be checking to find out if that story was correct, and if it did happen in Switzerland, what did they do?

I mean, who knows? They might have some answer that we don't, or they might have some solutions that might be helpful for us.

I will throw that out for consideration for you and for others. Thank you.

Mr. POMBO. Thank you, Mr. Barceló.

Mr. Stelle, I allowed you to extend your oral testimony because I felt it was important for you to have the opportunity to get your side of this out. I thought it was important for the Committee to understand what your position was. And also I felt it was important for the members of the community that are here today to have the opportunity to hear what you had to say.

One of the things that you said in your statement I think probably exemplifies a great part of the problem that we have had with

the implementation of the Endangered Species Act, and that's whether it's through NMFS or whether it's through Fish and Wildlife, because the culture is very similar within the Federal agencies.

Dr. Anderson, you said that extinction is not an option, that people of the Pacific Northwest want the salmon runs to be restored, they want the salmon to be here.

And you went on to say that it is also part of clean water and having clean and non-polluted water here. And then you go on to give a very distinct inference that if anyone disagrees with what you are doing, then they are in essence in favor of extinction and dirty water.

And that's a big part of our problem that we have. Because in my experience with the Endangered Species Act, and unfortunately I have had a great deal, I can tell you that the local people care a lot more about the salmon than you do or I do. The local people care more about clean water than anybody in the entire District of Columbia. And that what we have seen is a disconnect between what the Federal agencies are saying this is what you have to do and what the solutions that are being generated locally are.

And I don't think you can deny when you have the Speaker of the House of Washington, the Speaker of the House of Oregon, distinguished colleagues that they serve with, coming in and saying that they don't have a good relationship with the Federal agencies, that they felt that it was extortion, they felt that they were being put upon by a Federal agency, I don't think that you can realistically come in here and testify and say that you've got a great relationship. Because there's a disconnect there.

And if we are ever going to have an Endangered Species Act that works, it has to be done with the support of the locals. And we're not getting that. And that's whether it's here in the Pacific Northwest or California or anywhere else we have gone.

I just don't see that happening right now. I would like to ask you about the difference between what's happened here and what happened with the Atlantic salmon. We had a similar types of agreements between the regions of the country, National Marine Fisheries Service on agreeing to go ahead with the management plan. With the management plan being thrown out in Oregon, how are you going to proceed with the Atlantic salmon at this point?

Mr. STELLE. Mr. Chairman, that's a good question. Let me first of all clarify.

The Oregon Plan stands on its own. And as Speaker Lundquist testified earlier, the State of Oregon continues to move forward with it.

We absolutely believe that's the right thing to do. We have worked with them in the development of that plan. And we believe it should be the road map for recovery for coastal salmonids in Oregon.

The issue was, the specific issue was whether or not our decision not to list coastal salmon runs in Oregon and rely instead upon the Oregon Plan was appropriate under the Endangered Species Act.

We made that decision. We support the Oregon Plan. And we defended that decision in court. We were sued by a coalition of environmentalists I think in southwest Oregon. The District Court

ruled that we inappropriately relied upon the voluntary measures in the Oregon Plan.

We do not believe that the Endangered Species Act prohibits voluntary measures. We believe that our reliance on those efforts was lawful, that the Endangered Species Act provides that flexibility, and we are appealing that suit.

Meanwhile, the State of Oregon has made a commitment to continue on with its plan.

The implication is, the question then is, well, what about the Maine Plan? In the state of Maine, again, the National Marine Fisheries Service and the state of Maine entered into an agreement to implement an Atlantic salmon plan for their potentially listed salmon runs in I think seven rivers in Maine.

First of all, let me note that the geographic scale is very, very different. These were seven drainages in southern Maine, versus essentially the entire Oregon coast.

The nature of the problem facing Atlantic salmon is different, and therefore the automatics of a one-to-one correlation do not work, because the situations are different.

In that situation, we deferred the listing in reliance on the Oregon Plan, we intended to defend that plan, too, and as of yet that continues to hold.

There is a possibility, as usual, that folks may file a lawsuit to challenge that decision. I don't believe that's happened yet, and I hope it doesn't, because I don't think it's very productive.

Mr. POMBO. So you don't at this time even tend to list the Atlantic salmon?

Mr. STELLE. No, sir.

Mr. POMBO. Just to conclude my questioning, in your statement you say that over the past 20 years you've developed a world class expertise on evaluation of impacts of differing human activities on the salmon life cycle, and you go on to list dam operations and fish passage, fishing activities, fish husbandry and on and on and on, and their impact on salmon.

We had testimony at a previous hearing, and at that hearing it was testified that there is approximately a billion dollars a year, and this was about 2 years ago, so I am guessing that the figure has gone up, about a billion dollars a year that is being spent by public and private sector on the recovery of the salmon.

Mr. Curtis testified that we are continuing to decrease numbers on the return of the salmon. I believe, as he said, we have gone from 15 in recent years down to 10,000 return, over a billion dollars a year, 20 years of experience in studying these.

At what point do you think we're going to see some results?

Mr. STELLE. That is a great question. If I had my druthers, tomorrow. But as I think most of the scientific consensus here in the region will report, this thing isn't going to turn around because of any one particular thing that we do, because it's all too complicated.

I think as Dr. Anderson testified, the ocean is a huge issue. And we need to get a better scientific understanding of the relationship of ocean conditions and estuarine conditions and the productivity of salmon populations, salmon survivals.

We have in fact submitted a multifaceted research program starting this year, and I will be happy to submit it to the Committee, that is trying to get into that black box and develop a better understanding of the ocean's conditions through the estuary. If the oceans turn around, sir, I am optimistic.

Mr. POMBO. I guess my point is, I respect the work that has been done by the biologists, by the scientists on this. I don't necessarily respect the work that is being done in the regulations, because I think that many times the regulations that come out are political and have little or no basis on the science.

And I think that that is a huge mistake that we are making in the implementation of this. It is at times extremely frustrating to sit as Chairman on a hearing like this, but the effort is being made to educate the Committee on the real problems that real people are having.

At the same time I think it gives all of you a window into how frustrating it is to go back to Washington, DC and represent you at times.

I would like to thank this panel very much for your testimony.

As in the previous panel, there will be additional questions that will be asked. I ask you to respond to those in a timely fashion so that we can include them in the hearing record.

Thank you very much. We are going to take a 10-minute break, and I mean 10 minutes. So if any of you plan on leaving the room, we are going to start in 10 minutes. So please respect that.

[Recess.]

Mr. POMBO. Thank you very much. I would like to welcome our third panel. We have Mr. Jim Baker, Northwest Salmon Campaign Coordinator of the Sierra Club; we have Mr. Fred Ziari, Chairman of the Eastern Oregon Irrigation Association; Mr. Richard Erickson, the secretary manager of the East Columbia Basin Irrigation District; and Mr. Rob Phillips, Director of the Northwest Sport Fishing Industry Association. Welcome to our panel.

Mr. Baker, if you are prepared, I am sure that you understand the lights, if you could try to conclude your testimony in 5 minutes. Your entire written statement will be included in the record. But if you could try to conclude your oral testimony in 5 minutes, the Committee would appreciate it. If you are ready, you may begin.

STATEMENT OF JIM BAKER, NORTHWEST SALMON CAMPAIGN COORDINATOR, SIERRA CLUB, PULLMAN, WASHINGTON

Mr. BAKER. It's in my best interests to complete my testimony in 5 minutes, because we have already gone past the lunch hour. I have already run out of blood sugar.

Good afternoon. Thank you for this opportunity to testify on H.R. 4335.

For the record, my name is Jim Baker, and I serve as Northwest Salmon Campaign coordinator for the Sierra Club.

The Committee does have my written statement with my completed disclosure forms.

Let me briefly summarize my remarks for my verbal testimony before the Committee.

Although the National Marine Fisheries Service, NMFS, listed wild Sockeye in the Snake River Basin under the Endangered Spe-

cies Act in December, 1991, tragically throughout this decade the numbers of spawning adult salmon and steelhead have continued to decline toward extinction, despite these listings.

More often, the NMFS nearly 7 years after the first listing has not adopted a recovery plan for Snake River Basin salmon and steelhead. If the agency meets its self-imposed and court ordered deadline, the NMFS will decide late in 1999 the key question of how to lift the deadly toll taken on four Federal dams on the Lower Snake River. Nor has the agency provided these listed salmon or steelhead runs with adequate or effective interim protection under the ESA.

NMFS has dismally failed to implement its current biological opinion which began under court order in 1995.

The agency did not adopt a spread the risk strategy between barged and in-river migration of juvenile salmon, did not provide adequate spill for safe passage of young fish past the eight dams, did not bring the elevation of John Day reservoir on the lower Columbia River to minimum operating elevation, did not release adequate volumes of water from upstream storage reservoirs, and did not meet targets for flow augmentation.

The salmon desperately need all of these minimal protections, and the Sierra Club intends to hold all of the Federal agencies' collective feet to the fire for delivery of these measures in the courts, in the Congress, and in the Clinton Administration.

While I do not see due diligence or proper performance on the part of NMFS, the agency is just one of several Federal agencies which has built this record of poor performance on Columbia Basin salmon recovery under the ESA.

The U.S. Army Corps of Engineers has pursued an expensive and wasteful agenda of gold plating its dams with new equipment and technologies of at best dubious value to fish.

The Bureau of Reclamation has not provided additional water volumes for flow augmentation in the Snake River, and indeed until recently, had not even consulted with the NMFS as required in the ESA.

For most of this decade the Bonneville Power Administration has blamed fish and wildlife costs for its financial straits when the actual causes are BPA's crushing debt load from WPPSS bonds and wholesale electricity deregulation in 1992.

So what we have here is a failure by numerous Federal agencies, in other words, a general failure of the Clinton Administration to save salmon and steelhead in the Columbia Basin.

Turning now to H.R. 4335, I must tell you, Mr. Chairman, that the Sierra Club opposes this bill because it is not responsive to the root problem, the failure of the Clinton Administration to protect and restore Columbia Basin salmon and steelhead under the Endangered Species Act.

This administration's U.S. Fish and Wildlife Service is unlikely to perform any better than this administration's national marine fisheries service. Moreover, the transfer of ESA functions between the two agencies would inevitably cause even further delay in taking necessary actions to save these magnificent fish. It would particularly delay the 1999 decision on the Lower Snake River dams.

So to adapt Shakespeare a bit, I come not to praise NMFS, nor to bury it.

What should the Congress do to put Columbia Basin salmon recovery back on a successful track?

No. 1. Appropriate full funding for needed studies into the biology, engineering, economic impacts and mitigations of proposed salmon recovery actions. Similarly, the Congress should refuse funding for wasteful gold plating technological fixes such as juvenile fish transportation which offer little or no benefit to salmon and steelhead.

Two. Support and promote preparation of a single unified salmon recovery plan among the three sovereign governments within the Columbia Basin. Federal Government, the four states, and the 13 American Indian tribes. All three sovereign governments have legal authorities and obligations for Columbia Basin recovery to all three must participate together in the planning and implementation of the recovery program.

No. 3. Keep the Clinton Administration to its promised 1999 decision on the Lower Snake River dams. In this particular case, delay makes for huge waste. Multi hundred million dollar waste.

And fourth, follow the independent biology, such as the independent scientific advisory board.

The best available science is telling us that the salmon need river ecosystem restoration, not more techno-fixes.

Thank you for this opportunity to testify today. And I welcome your questions.

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

Mr. POMBO. Thank you. Mr. Ziari.

STATEMENT OF FRED ZIARI, CHAIRMAN, EASTERN OREGON IRRIGATION ASSOCIATION, HERMISTON, OREGON

Mr. ZIARI. Good afternoon. My name is Fred Ziari. I am the chairman of the Eastern Oregon Irrigation Association. We are located in Hermiston, Oregon, which is about 20 miles south of here.

Our members are, represent local farmers, ports and water users in Eastern Oregon.

I should mention before I start that if you want to know who killed the Oregon Plan, and consequently delayed fish recovery, the man to my right, the Sierra Club, did that, and Trout Unlimited, the ones that filed the lawsuit that killed that good voluntary program that was supposed to save salmon.

Our members have a long history of working in a cooperative manner with Congress, state, Tribes and Federal agencies in implementing and enhancing fish runs in Eastern Oregon.

Over the past 15 years our farmers working cooperatively with the Confederated Tribes of Umatilla and the related agencies have successfully implemented the Umatilla Basin Project which has brought the salmon back to our river and has become a model of successful salmon recovery in the Northwest.

In other words, we have been and we are committed in salmon recovery for long time. We irrigate some 200,000 acres of irrigated land in Eastern Oregon. Almost all of our products are processed locally and values are added. Annually over 80 percent of our prod-

ucts are valued between $8 to $900 million annually, exported out of our region, and most overseas market through one of the most efficient and economical Columbia River barge transportation system.

Over 8,000 people in our sparsely populated area are employed in agriculture and other food related industries.

We do all of these with the use of only three-tenths of 1 percent of Columbia River water. And that's about all of the water the state of Oregon uses in the whole state, three-tenths of 1 percent.

Let me make one thing very clear. Columbia River system, which is the second largest river in the country, is not an over-appropriated river as some may want you to believe. The total of only 7 percent of the Columbia River water is utilized for agricultural, municipal and industrial use in Oregon, Washington, Idaho, Montana and British Columbia combined. Only 7 percent. Ninety three percent of all the water is untouched and is used for fish and hydro.

Our farmers are a vital part of providing food for our citizens at home and hungry world abroad. And we are very proud of these achievements. As the world population are expected to reach over 10 million people in the coming decades, our ability to produce high quality and affordable food supplies become even more vital.

All of these achievements are now in jeopardy through unrealistic dam removals over our dead bodies and excessive flow augmentation proposals by our Federal agencies. We watch with bewilderment how NMFS and an army of Federal agencies have totally abandoned cooperative spirit of working with local officials and the resource users.

When they are presented with the resolution to a problem by resource users, they instead decided to implement a mean spirited policy to inflict pain and suffering to water users and landowners, which you have seen one, Mr. Hale.

The zero net water policy, which they have implemented, totally stops all of the irrigation. It has no meaningful analysis has been done, no consultation with the local agencies, and it's not prudent and reasonable alternative. And it violates our state laws.

This no net water loss policy not only stopped all irrigation, it also impacts all of our cities. A good example, the city of Umatilla, which I am engineer for, has a total of 3300 people, and following a statewide search for a suitable site, the State of Oregon now is constructing the newest state prison in Umatilla, which will house 1500 prisoners, and employ 500 staff, doubling the town's population.

To serve this facility, the state holds a state approved water rights for a mere 23 cfs, cubic feet per second, out of over 200,000 cfs, but this permit, they cannot meet NMFS flow policy, and the city is wondering, now what? And how will they meet the needs of their citizens?

There are other cities around Eastern Oregon that face the same situation.

Maybe we should stop the criminal and send them all to Mr. Stelle's neighborhood.

My time is up. I have the recommendation for Congressional action, and I hope you will consider that.

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

Mr. POMBO. Thank you. Mr. Erickson.

STATEMENT OF RICHARD ERICKSON, SECRETARY/MANAGER, EAST COLUMBIA BASIN IRRIGATION DISTRICT, OTHELLO, WASHINGTON

Mr. ERICKSON. Good afternoon. My name is Dick Erickson. I am the present manager of the East Columbia Basin Irrigation District. I would like to thank the members of the Committee for the opportunity to provide information about the effects of NMFS flow augmentation policies. The Columbia Basin Project was constructed by the United States Bureau of Reclamation to provide approximately 622,000 acres of farmland by diverting at Grand Coulee Dam approximately 3 percent of the river's flow.

The project is authorized by Congress to ultimately irrigate 1,095,000 acres.

The NMFS mandated flow policy caused the Bureau of Reclamation in July 1993 to impose an administrative moratorium on new Columbia Basin Project water service. That moratorium immediately resulted in the shelving of all planning for further development for the Columbia Basin project.

That action hit late in the EIS study process to enlarge the existing canal to 87,000 acres. This delay or cancellation of further development appears to many who are unfamiliar to be simply an opportunity foregone.

It is more complicated than that. Between one-third and one-half of the 87,000 acres are irrigated by deep wells. All those wells were permitted by the state of Washington in the late 1960's and early 1970's at a density estimated to give that aquifer a 30 year economic life.

Thirty years have now nearly passed and many of those wells are not sustainable long-term.

The NMFS inspired Bureau moratorium has also taken authorized water supplies amounting to about 85,000 acre-feet per year from the already developed first half of the project. Because of the moratorium the Bureau has rescinded previously authorized contractual authorities for the districts to irrigate about 13,000 more first half acres, translating to about 39,000 acre-feet per year.

Also reneged on was the authority to provide up to 60,000 acre-feet per year of project water to area industries and communities for municipal and industrial use. The project's M & I ability is now capped at the amount then already in use which is about 14,000 acre-feet per year, locking up the balance of 46,000 acre feet.

This NMFS driven, Bureau enforced moratorium, exacerbated by the scarcity of groundwater, has brought much of the Columbia Basin Project area to the threshold of a no-growth scenario.

To better understand that situation please consider the attached letter from the Port of Moses Lake which I will now summarize.

Much of Moses Lake's industries are food processing companies that convert Columbia Basin raw agricultural products to value added consumer food products for domestic and export markets.

In recent years, other types of industries have also located in the Moses Lake area which manufacture non-ag products such as elec-

tronics materials, automotive components, industrial chemicals and metal products. And this diversification is important to our economy and the area's working people to, among other things, help smooth out the inherent cyclical nature of the ag section.

These industries have located around Moses Lake for a variety of reasons, but an economic supply of electricity and a dependable water supply are common needs of nearly all these manufacturers. Both of these fundamentals are now being threatened by the NMFS flow policies.

The Moses Lake area's electricity is supplied by Grant County PUD and is generated at Priest Rapids and Wanapum Dams on the Columbia.

NMFS flow policies enforced by FERC are you know at the point where the Grant PUD is having to spill something like 60 percent of the Columbia's flows. This results in the need to purchase replacement power at higher cost. Grant's rates will need to increase and there is concern they may eventually exceed the region's market rate.

Most of Moses Lake's industries' economic feasibility is very sensitive to power costs. Most of these industries also need water for the manufacturing processes and also for fresh water to blend with processed waste water so they can be treated by land application. The proportion of this processed water and either canal water or groundwater for blending is critical for both waste water treatment requirements and for crop nutrient requirements.

The use of groundwater in the Moses Lake area has been maximized. Complicating this is the fact that Moses Lake area groundwater is naturally high in sodium and other salts, making it more difficult to use for some manufacturing processes and for blending water for wastewater treatment. A number of Moses Lake area food processors are using Columbia Basin Project canal water for blending water and process water. These project industrial municipal supplies should be our supply for the future. However, that is not presently possible on any meaningful scale, because of the Bureau's scale has caused the Bureau of Reclamation to impose a moratorium on any new Columbia Basin Project water services, including M & I.

The letter concludes by saying, please give careful consideration to Moses Lake's energy and water needs as you look into these NMFS flow policies.

This letter is signed by Port of Moses Lake Commissioner Larry D. Peterson.

On behalf of the East Quincy and South Columbia Basin Irrigation Districts, I ask this Committee to use its considerable authority toward reducing the NMFS flow targets to levels supported by valid hydrology and valid biology and to end the Bureau's moratorium.

Thank you very much.

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

Mr. POMBO. Mr. Phillips, last but not least.

STATEMENT OF ROB PHILLIPS, DIRECTOR, NORTHWEST SPORT FISHING INDUSTRY ASSOCIATION, OREGON CITY, OREGON

Mr. PHILLIPS. Like those preceding me, I also wish to thank the Committee for this opportunity today to comment on H.R. 4335 specifically, and in general, upon the execution of the Endangered Species Act.

My name is Rob Phillips, and unlike those preceding me, I am not a doctor or a scientist, I own a little advertising agency up in Yakima, Washington, and most of you might wonder what's this guy doing here. Well, much of our business is derived from sport fishing. We have accounts that advertise to support fishermen, sell equipment, and because of the decline in the salmon and steelhead in the last 10 years, our business has seen much of that effect, as well, and gone downhill.

My concern over this has led me to serve on the board of the Northwest Sport Fishing Industry Association, and that's who I am representing today.

Our association consists of hundreds of businesses and thousands of family wage jobs dedicated to our rivers, lakes and streams, full of fish.

Many of our businesses have been deeply impacted by the implementation of the Endangered Species Act. Fishing closures and extensive regulations which are barriers to participation have severely impacted sport fishing opportunities for salmon and steelhead. Quite a few of our members have actually had to close their businesses in the last several years.

Most of us recognize, however, that the Endangered Species Act is merely the messenger and not the message. Our watersheds are in trouble, and the salmon are the indicator species. Admittedly, the current manner in which the ESA is executed is very heavy handed in dealing with sport fisheries. Sport fishing is often the favorite short-term target.

The problem is these burdensome short-term measures are meaningless without substantial long-term measures. This is where the current implementation of the ESA falls short in our opinion.

There are scarce to no examples of enforcement action for the very real multi-generation take of salmon, steelhead and trout which occurs in many different areas.

We feel that NMFS can and should play a stronger role in defining take and in enforcing serious violations, while helping to define and implement restoration actions for the remainder of the problems.

Recovery will never be accomplished on the backs of the fishermen. Decades of fishing constraints have not brought about recovery. Massive smolt and adult mortalities caused by the Columbia/Snake River hydro operations are causing constraints on fisheries from Northern California to the Gulf of Alaska.

Operations of the Columbia River hydro system must be dealt with in the same scrutiny and severity as sportfishing. NMFS, the U.S. Fish and Wildlife, Bureau of Reclamation, Corps of Engineers and BPA must all coordinate together to reduce the impacts which are strangling healthy fisheries throughout the region.

H.R. 4335 does get to the heart of an important issue, however. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service must be better partners if the precious fresh water resources of the region are to recover to fishable levels, reassuring the health of our watersheds.

There are no laws prohibiting better cooperation between the agencies. Indeed, the dire plight of the resources demands better communication and cooperation throughout the Federal family.

In Mr. Stelle's defense, we feel NMFS did the right thing by working with Governor Kitzhaber and the State of Oregon to build a state supported and executed cover recovery plan.

In summary, from our perspective, the timing of the bill is inappropriate. Salmon and steelhead don't need new laws and don't need agency changes. What they need first, is enforcement of existing laws, regulations and authorities.

Federal agencies need to have a better cooperation. Other improvements would include earlier work with the states before the situation is so severe. The longer we delay tackling the problem the more drastic and costly the measures for recovery become.

Earlier participation by NMFS, or whatever Federal agency it might be, would facilitate a partner role with the states, rather than an enforcement role. Step in earlier.

Northwest Sportfishing Association appreciates any intent in which the bill may have been written which strives to enhance the ability of the ESA to recover salmon and steelhead in our region.

The Northwest Sportfishing Industry recognizes that the improvements in our watersheds and operations of the hydro system which benefit the weakest stocks will only further enhance the healthy populations available for harvest.

We applaud any effort that allows us to plan for secure jobs and futures, and even to rebuild the 10,000 jobs lost during the salmon and steelhead decline. Thank you for the opportunity.

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

Mr. POMBO. Thank you. Ms. Chenoweth?

Mrs. CHENOWETH. Thank you, Mr. Chairman.

I wanted to ask Mr. Baker in followup to a question that the Chairman had asked earlier about the Atlantic salmon, where does the Sierra Club stand on listing the Atlantic salmon? And I am sure you are aware of the notice in the Code of Federal Regulations, suddenly it was mysteriously withdrawn.

Where does the Sierra Club stand?

Mr. BAKER. I must confess, I am not familiar with the case. My colleague on the East Coast deals with that issue for the Sierra Club.

I will be happy to get in touch with him——

Mrs. CHENOWETH. Would you?

Mr. BAKER [continuing] and I will apprise the Committee of what our position is and what we are striving to accomplish.

Mrs. CHENOWETH. Thank you. And following up on Mr. Hastings's technique, when do you think we could expect that?

Mr. BAKER. Oh, if you are willing to accept the same 30 days, I can assure you we will get you a response by October 1st. If you

would like it in a shorter term, I would be willing to talk to you about that, to check.

Mrs. CHENOWETH. October 1st is fine. And I was reminded, I think it's a Thursday.

You endorsed the three sovereigns concept. And that troubles me. The three sovereigns concept involves the state and Federal and tribal governing authorities.

Mr. BAKER. Correct. Governments, not just governing authorities, but governments.

Mrs. CHENOWETH. And you indicate in your testimony you thought that there's a legal basis for that already in the law for the Tribes, for instance, to be one of the governing authorities in the management of the water in the Columbia system.

Where is that legal authority?

Mr. BAKER. I didn't say management of water. I said that the Tribes have legal authority and obligation for salmon recovery in the Columbia Basin.

The courts in three consecutive decades, three consecutive judges, have ruled that the Tribes do have a right to salmon in the Columbia Basin under their 1855 Treaty. That litigation has gone all the way to the Supreme Court.

I would view that as an accepted fact that the Tribes do have an authority over salmon recovery, and we should honor that.

In fact, we will probably be unable to proceed with a single unified recovery plan until we honor all of the legal authorities, all of the sovereign governments in the Columbia Basin. That would also include the states and the Federal Government.

Mrs. CHENOWETH. Mr. Baker, I am familiar with those cases, too, and I can't totally disagree with them.

But as we study the objectives of the three sovereigns, it goes beyond just the Tribes having the right to the fish. It actually goes to river governance.

And I think you will have to admit that, too, won't you?

Mr. BAKER. Obviously, when so many scientists have told us that the bulk, not the exclusive, but the bulk of mortalities to fish inflicted in the Columbia Basin, upper Columbia Basin, come at these dams, there is no alternative, if we're trying to build a single unified recovery plan, but to address that impact from the dams.

Mrs. CHENOWETH. Let me ask you, you are familiar with the pit tag results, aren't you?

Mr. BAKER. Yes, I am.

Mrs. CHENOWETH. Then you are probably aware that our pit tag results show that 719,850 adults salmonids passed over the fish ladders at Bonneville Dam, and that's more than a hundred thousand more than the 60 year average for that particular dam.

Yet at The Dalles Dam, there was only 425,716 fish that passed that dam in that same year, 1997, and that's below it's 41 year average.

And one of the largest impacts between those two dams is about 800 or so gillnets. It appears that the gillnets have contributed to significant losses.

I also want to say, Mr. Curtis testified that there was only 10,000 salmonids that got into Idaho last year, and I do want for the record to note that there was 159,385 adult salmonids that as-

cended the fish ladders at Ice Harbor Dam in 1997. So I think those figures are important.

And I do want to say that you did give us a list of actions that should be taken, but I do think that together we need to deal with the problems that I've just mentioned, and that is the gillnetting. I think some day we're going to have to deal with whether that is an appropriate method for one single entity in this nation to deal with an endangered species.

Thank you, sir.

Mr. BAKER. Mr. Chairman, would you like me to respond?

Mr. POMBO. Yes. Go ahead.

Mr. BAKER. On the pit tag data, the scientists in the PATH group, which Dr. Anderson talked about on the first panel, have reviewed those pit tag data. They are unanimous in conclusion, that we must have an adult survival rate of smolts delivered to the estuary of the Columbia River, plus have a survival rate of at least 2 percent if we are to avoid extinction.

We must have a rate of survival above 4 percent in order to, preferably 6 or 7 percent, if we are going to rebuild the runs to harvestable levels and meet our obligations, not only under the Endangered Species Act but those treaties, in addition the treaty with Canada.

The pit tag data now is completely in from the 1995 class of smolts, and it indicates that the survival rate was less than one-half of 1 percent. That's a program that is simply not going to produce the results we need to make sure that these fish do not go extinct.

With regard to, forgive me, there were a lot of things that you discussed there, Representative Chenoweth, with regard to the three sovereigns program and the Indian fishing rights, I would remind you that the Bolt decision requires the Tribes to participate in regulation of the fishery in the Columbia River, and while we agree with you that there need to be changes in harvest, a long list of experts over the last two decades, experts including those from the National Marine Fisheries Service, the Northwest Power Planning Council, the Oregon Department of Fish and Wildlife, the Columbia Basin Fish and Wildlife Authority, and even the Bonneville Power Administration, have estimated that the dams on the Snake River and the Lower Columbia are responsible for at least 80 percent of the human inflicted mortalities to these fish.

That's not to say that we should not address impacts from harvest. But it is to say that if we are going to restore these fish, we're going to have to put at least 80 percent of our effort into relieving this total taken by these dams.

Mr. POMBO. Mr. Romero-Barceló.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman.

Mr. Baker, in your testimony you suggest there should be a river system restoration, the full scope, and for the rest of your testimony I also gather that that river ecosystem restoration would include the elimination of the Lower Snake River dams.

Mr. BAKER. The Sierra Club does support breaching the dams, removing the earthen portion of those dams and leaving the concrete structures in place.

We take this position very reluctantly. We recognize the kind of impacts that Congressman Nethercutt talked about earlier with the second panel.

But the scientists are telling us, they've told us in a number of blue ribbon studies now, that only if we have a healthy river are we going to have healthy salmon runs.

Mr. ROMERO-BARCELÓ. When were those dams built, and how many are there?

Mr. BAKER. On the Lower Snake River, there are four Federal dams, Ice Harbor, Lower Monumental, Little Goose, and Lower Granite is located about five miles from where I live in Pullman, Washington, as the crow flies. The head of those four reservoirs is in Lewiston, Idaho, in Representative Chenoweth's district.

Each of the dams was built consecutively upstream, beginning in 1961, and completed in 1975 with the impoundment at Lower Granite. Since that time salmon runs in the Snake River Basin have all trended downward.

Mr. ROMERO-BARCELÓ. From the time they were built?

Mr. BAKER. As each of those dams was built, the trend line has been downward and increasingly downward as each of those dams was brought on line.

Mr. ROMERO-BARCELÓ. Forgive my ignorance, but if those dams that have been there, there are other dams in other places where there are also salmon, in the other rivers, in the system, in the states of Oregon and Washington.

Well, as you have heard in testimony today, there are rivers within the Northwest that have declining salmon runs that have no dams.

I have never even tried to suggest that there aren't other causes of mortality to fish runs. And if you look at those rivers in the Northwest which have declining salmon runs but no dams, you will find another tale, another story of how human kind has had such an impact on the fish that they are declining.

Typically in the Northwest, as you heard from Mr. Curtis and Mr. Stelle, the fish are spawning and rearing habitat.

But the scientists are also clear that if we make a river that does not have good, healthy migratory habitat, such as by putting a dam in a river that has no safe passage for juvenile fish, you will bring that run to extinction, just as surely as silting up or otherwise destroying spawning and rearing habitat.

I might add, sir, if you would allow me, responding to Mr. Nethercutt's concerns about impacts, we worry about them, too. I personally worry about them. I live just up from Lower Granite Dam. My wife's and my financial fortunes are tied to the local economy, just as so many of the people in the audience here today are.

I can assure you I don't take this position lightly. It's come after an exhaustive review of the independent science. And I would observe that we as a society have shown a remarkable ability to find any number of very cost effective ways to run our economy, to get products to markets, to produce electricity that is affordable and serves as an engine for our economy.

We have found a number of ways to conduct irrigation in an efficient way as Mr. Sierra just testified.

What the scientists are telling us, that we are going to have to use that ingenuity, find some other ways than we are currently using to run this economy, because the fish need this river.

I don't like that probably any more than some of the folks in the audience who are heckling me right now. It's a biological fact.

We're going to have to find some way to make these rivers healthy again, or we are going to be without the salmon.

I am here to assure you, Mr. Nethercutt, and members of the panel, that the Sierra Club has always had as its policy that whatever those economic impacts may be, we will support, we will advocate, we will fight for the best possible mitigation of those impacts and to try our utmost to make sure that every economic layer who is impacted by actions taken for salmon recovery is to the best of our ability kept whole.

Mr. Romero-Barceló. If the economic livelihood of people that live nearby, have their businesses nearby, agricultural farms nearby, do they need that system, those dam systems for their economic survival, which is your choice between the two?

Mr. BAKER. I believe we don't have to make that choice.

Mr. ROMERO-BARCELÓ. In the meantime. If they are stopped now, if they no longer can have access now, I understand that's the situation——

Mr. BAKER. Representative, as I said earlier, the Federal waterway in the Lower Snake River was completed in 1975. There was a thriving agricultural economy in my part of Washington State long before the completion of those dams, and the initiation of that waterway.

Since it has been completed, yes, the barge companies now enjoy a near monopoly on shipping from the lower Snake valley on a 50 mile area on either side of the river.

But it wasn't always so. We managed to build a very strong agricultural economy by shipping crops to market on rail and truck, and we can convert back to doing so again. I am not saying that's easy. But it can be accomplished. And if we go about mitigating these kind of closures, like the closure of the Federal waterway, we can perhaps in the 21st century enjoy a win-win solution, healthy salmon runs that are responsive to our treaty obligations and an economy in the local area that continues to thrive.

That's what I am seeking, and I hope that's what the Congress would be seeking, as well.

Mr. ROMERO-BARCELÓ. Thank you very much. I have run out of time.

Mr. BAKER. I thank you, sir.

Mr. POMBO. Mr. Nethercutt?

Mr. NETHERCUTT. Thank you, Mr. Chairman.

Mr. Baker, I can't resist following up, sir, on your comments.

I would like to explore in this brief time how much sacrifice you and your organization are willing to accept.

Assume that agriculture in the Columbia Basin disappears. Would that be acceptable, if the dams are breached? Assume that consequence occurs. Would that be acceptable to you and your group?

Mr. BAKER. Well, that's a hypothetical, and——

Mr. NETHERCUTT. I am asking you to assume that, sir. Would that be acceptable?

Mr. BAKER. I am not in a position to really play these kinds of hypothetical games, sir, with all due respect.

I would challenge you, if you want to put that hypothetical situation to me, to find an economist who really sincerely believes that that's the alternative we're facing.

Mr. NETHERCUTT. What if I found a lot of farmers who believed that? Would that be sufficient to you, or does it have to be scientists who make the judgments about real life problems?

The Sierra Club has a policy of zero net water loss. The Sierra Club has a no harvest policy in our forest.

And I think the facts are, with a zero harvest policy in our public lands, you are going to see the disappearance of the timber industry, which in my judgment, from some people that I've talked within, the group you represent, that's just fine.

I don't think you've heard anybody on any panel today say we find it acceptable that salmon disappears. Everybody on these panels are saying, we want to respect the salmon recovery efforts, but we also want to be reasonable about it, and understand the consequences of the action.

But what I am hearing, sir, is that if the dams are breached, and I am going to resist that with every fiber I have while I am in Congress, you can assume that there will be a dramatic increase in power cost and the replacement of a clean power resource with a less environmentally acceptable resource, whether it's fossil fuels or nuclear. There's going to be a tremendous disruption to the use of the river system, the transportation that it is used for multiuse transportation, not just agriculture. There will be a tremendous impact on our roads, a tremendous impact on recreation, and all with a huge dollar cost.

I think you can also assume that the Congress has to approve and appropriate funds to breach dams, which can run in the multi hundreds of millions.

Now, the taxpayers are going to have to pay for all of that.

I am not convinced that taxpayers are willing to sacrifice the economies of the Inland Northwest for your standard of acceptability for environmental protection or species protection. I just don't think that's going to happen. And it shouldn't.

Talk about breaching the dams. I find a reluctance on your part to breach the gillnetting. I don't hear you saying that.

I hear you say, well, we need to work through all of that.

And I don't disagree with that either. But there seems to be a selective principle under which the Sierra Club operates.

So, I think we have a rough road ahead of us. We have to look at the middle ground we heard from those witnesses saying that we have to work hard to do both, we can't sacrifice the farm and timber economies for the salmon, but we're going to try, and the states are going to try to find a balance.

We shouldn't have this bureaucracy in place that restricts so much of common sense in the way public policy is decided.

I want to say, too, to Dick Erickson, thanks. I went and looked at Rodeo Lake yesterday, and talked to people about the ground-

water conservation area, and efforts to be environmentally responsible.

It's these kinds of people who are in opposition I think to what are extreme feelings and policies that you and your group advocate, for a single purpose rather than looking at the economic consequences of the policies you espouse.

So I am happy to have your response. I am sorry to take so long to lecture, or at least make my expressions known. But this is a very serious issue. I think there has to be some reason in the policies that the Sierra Club adopts in order to have more credibility with a lot of people who care deeply about both the economy and species protection.

If you have any comments.

Mr. BAKER. Well, we do not see a solution to the salmon crisis in the Columbia Basin which would lay waste to farms in this watershed. We never have, we never will.

We always looked at every proposed action to save salmon to make sure that it has high biological benefit according to independent scientists, and that it is responsive to the needs of society's expressed in the political system.

We have always recognized that nothing will go forward in the way of modifying these dams unless Congress approves it.

And I take your challenge very seriously, Congressman.

As the studies continue to, in the various Federal and state agencies, we are learning, that the value of the dams, as you've just stated it, is perhaps a bit overstated. The dams do not produce more than 5 percent of regional generation. The Northwest Power Planning Council has analyzed what the impacts would be of losing that generation, as well as breaching the dams and providing mitigation.

Their analysis shows that BPA will continue to be a strong, viable public utility, if you will.

We are looking at studies which indicate we can convert back to rail and truck.

We would support the kind of infrastructure that needs to be made. We wouldn't just support them. We would advocate them, we would fight for them.

These dams, contrary to some of the testimony I heard today, provide no flood control. If you would care to bring in a witness from the U.S. Army Corps of Engineers, you will learn these four dams are in front of the river projects, they are not capable of providing flood control.

If anything, if I might be allowed to finish my statement, if anything, breaching these projects would probably provide more flood control to the cities of Lewiston and Clarkston. That's an engineering fact. Whether people like to accept it or not.

Mr. POMBO. Thank you. I am going to recognize Mr. Hastings, but I would like to say one thing in the audience, that it's against the rules of the House to allow responses from the audience, to allow reaction from the audience. I've tried to be very lenient with that today. But I would like to encourage the audience to please try to restrict your comments during the testimony.

It makes it difficult for those of us sitting up here if things get a little bit out of control. So I would just appreciate it if you would kind of keep it down.

Mr. Hastings?

Mr. HASTINGS. Mr. Baker, I think I will ask you some questions, too.

Mr. BAKER. I am starting to feel like a bartender at a Southern Baptist convention.

Mr. HASTINGS. I am not going to pursue that one.

Mr. BAKER. I don't think I want to go any farther there either, Congressman.

Mr. HASTINGS. I will just say, I know the last comment you made regarding flood control you make in reference to the Snake River dams.

But I am old enough to have remembered the flood of 1949 which came down the Columbia River. It was a pretty devastating flood.

Now we have dams, about as many dams, in fact there are that many dams that were in-place, put in place since then, and we have had no terrific floods, and yet we have had high water years.

I guess I would just question the scientific data that you refer to. But that may be an honest disagreement.

You in your testimony, in answers to questions, referred a lot to scientists, so I am going to make the assumption that you believe that whatever decisions are made should be made on good and valid, scientific data. Is that a very good assumption on my part?

Mr. BAKER. That is a very fair assumption and a very accurate one.

Mr. HASTINGS. Have you read Dr. Howard's White Paper Review with recommendations——

Mr. BAKER. Dr. Howard?

Mr. HASTINGS. Dr. Howard Olsen. I am sorry.

Mr. BAKER. Yes, I have.

Mr. HASTINGS. Would you care to comment on their conclusion in that study regarding the flow targets? Because you are critical of NMFS regarding their flow targets.

The White Paper, as I understand it, says that the flow targets can be reached. Would you care to comment on that?

Mr. BAKER. Yes. I will comment. I will point out first of all, I am not a biologist, and the Sierra Club has no staff biologist. We have tried to review the entire scientific record.

I must tell you that there are a number of scientists in the Federal Government, the state governments, at the Tribes, and on independent bodies, that do not agree with the conclusions in that White Paper.

Dr. Anderson this morning said that his paper had been peer reviewed. Well, that's true. But it has not undergone independent peer review.

And in the salmon biology that has been cut and quartered so frequently because of the very high stakes involved, that is the kind of review we would want to see.

When we talked to independent biologists, they believed that the flow targets are needed by the salmon. They will not provide for a restoration of the runs, but they will give the salmon important protections in the interim.

On the question of hydrology, I was a seated participant at the salmon summit which Senator Mark Hatfield convened in the winter of 1990-1991, in order to try to get ahead of the curve on the potential listings for salmon in the Columbia Basin.

At the salmon summit we heard and viewed studies about hydrology which indicate that it is indeed difficult at best to meet these targets.

That's one of the reasons why we have, the Sierra Club, and other fish advocates, have always tried to impress upon Members of Congress and other decisionmakers that we have a relationship on the hydrology where if we're going to have salmon runs, we have got to pull the reservoir down somewhere. You can either pull down the storage reservoir and get new augmentation, or you can breech dams on the lower Snake, and get far better benefit.

Mr. HASTINGS. That begs the question, then. How much is enough? How much flow is enough?

Where does the Sierra Club reach a conclusion that we will have maximized the flow? At what level is that? How many cubic feet per minute? Give me something——

Mr. BAKER. What I am suggesting, Congressman, with the dams in place, operating as they currently are, we will be unable with certainty to provide all of the flow augmentation that the fish need.

Mr. HASTINGS. Does that include the Columbia stem, as well as the Snake?

Mr. BAKER. Yes, sir.

Mr. HASTINGS. Let me just make this observation that Mr. Erickson made, then, in that regard.

The Columbia Basin Project, over 500,000 acres, is irrigated by a net less than 3 percent of the water behind Grand Coulee Dam.

Everybody has acknowledged that when Grand Coulee Dam was built, it was built without fish ladders, so all the runs are gone there. Those were gone a long time before. So we are only using 3 percent of the water behind Grand Coulee Dam.

Now, that Lake Roosevelt goes all the way into Canada. I think it is a hundred and some miles there. So there is a lot of water back there clearly.

Now, below Grand Coulee Dam you have, what, five rivers, the Cokononda, the Nettaw, the Entiot, the Wenatchee and the Yakima, that augment the flows into the Columbia River system.

And you are saying that because the irrigation districts and the irrigated agriculture takes 3 percent of the water behind Grand Coulee Dam, and all the flows of those five rivers that I am saying, is not enough?

Mr. BAKER. I neglected in responding to Representative Nethercutt——

Mr. HASTINGS. But answer——

Mr. BAKER. We have not embraced a zero net policy.

Mr. HASTINGS. Thank you for responding to that. I am asking you, I am asking you a direct question. Is what I just outlined, is that not enough?

Mr. BAKER. The biologists tell us that that would probably not be enough, undoubtedly would not be enough to restore salmon runs.

It would provide, however, important interim protection.

Mr. HASTINGS. Let me understand this, then. Lake Roosevelt, I don't know how many cubic acres or feet that that holds, but presumably if what you are saying, that breaching dams on the Snake River will augment runs, then I think it is logical to follow what you are saying, that if one were to breach dams on the Columbia, you would come up with the same net result in your opinion, which would be more runs.

Now, I really have a hard time accepting that, when all of that water behind Grand Coulee Dam keeps a constant flow in the Columbia River and it is augmented by these other rivers.

Am I missing something in my understanding?

Mr. BAKER. Yes. I have been previously testifying about the Sierra Club's position on the Lower Snake River dams. We have also listened to the independent biologists, specifically the independent scientific group, which has told us we need to lower, not breach, but lower the reservoir level at John Day pool on the Lower Columbia, in order to, among other——

Mr. HASTINGS. Of course that's downstream from the Snake, so you are still talking about the Snake River.

Mr. BAKER. I am sorry?

Mr. HASTINGS. You are still talking about the Snake River.

Mr. BAKER. It is also intended to be responsive to the need to meet the kind of water velocities, flow, water temperatures and a healthy river that the salmon need in the upper Columbia.

As I understand the hydrology from the salmon summit given to me by competent hydrologists from the salmon summit on——

Mr. HASTINGS. One hydrologist?

Mr. BAKER. No, sir. A number of hydrologists.

If you want to reduce the flow augmentation from Grand Coulee and other projects in the upper Columbia, you must lower reservoir in the lower part of the river that the salmon are going through.

That's the only other solution to the problem of providing the fish with the healthy flows and ecosystem that they need.

Mr. HASTINGS. Let me just conclude my remarks by asking you, I say this very seriously, I'd like to know, I think everybody here and certainly this Committee wants to know how much is enough. What is adequate? How many cubic feet, you pick it, cubic feet per second at any point, maybe four or five points on the Columbia River. Because otherwise you are just saying we need more water. We need more water. But what is adequate? What is adequate? And that has not to me ever been answered.

In fact I asked you directly, and I am not saying you are skirting the issue but you certainly haven't answered me directly. Maybe you know what the answer is or maybe you have to research that. But if that's the case, I would like to you respond to me.

I don't care where you want to pick it. Do you want to pick the flow of Wanapum Dam, you tell me what is adequate at that point, and then you can go on down stream, if you want to go to the Snake River, do it at Ice Harbor Dam, if you want to do it at John Day, at The Dalles, that's already on the record, if you want to do it at Bonneville, I don't care where, but if you would give me a position in writing on what is adequate as far as flow at those particular points on the river system, I would appreciate it.

Could you do that for me?

Mr. BAKER. Sure. And I assume the same October 1 deadline——

Mr. HASTINGS. Since you anticipated my next question, I will accept that gratefully. Thank you.

Mr. POMBO. I hate to do this, but Mr. Baker——

Mr. BAKER. Boy, do I wish I had that lunch now.

Mr. POMBO. Just so I can understand the Sierra Club's vision on this, is that we would breach the four dams on the lower Snake.

Mr. BAKER. Yes.

Mr. POMBO. We would return the agriculture of the area to predam conditions, operate in a way that they did before that? I am just trying to understand your testimony previously.

Mr. BAKER. No, sir. I didn't say that.

Mr. POMBO. You said we had a vibrant agriculture before the dams and we could return to the way we were doing things at that time.

Mr. BAKER. Well, since the building of Ice Harbor Dam, the reason I stopped you was not out of disrespect, I want to assure you, the reason I stopped you is that since the building of Ice Harbor Dam in the early 60's, there have been installed some 13 pumps for taking irrigation water out of that pool and cultivating a number of thousands of acres of cropland, which was not there previously.

From testimony I've heard from Mr. Ziari, among others, it is feasible to extend those pumps and intakes so that we can continue to, with the irrigation ag along that pool.

Mr. POMBO. So you would allow irrigation to continue?

Mr. BAKER. Absolutely. It's a water right.

Mr. POMBO. It is the barges would be the part that would not continue?

Mr. BAKER. That appears from the economic studies I have seen to be the major impact upon agriculture in the lower Snake valley. And if the dams are bypassed, that is one of the results, that the Federal waterway would close, yes, sir.

Mr. POMBO. You also said, and you can correct me if I am wrong, you have also said that you would support trucking or railroads and the infrastructure necessary in order to accomplish that.

Am I correct in assuming that?

Mr. BAKER. Yes, sir. We would support those investments.

Mr. POMBO. That is somewhat inconsistent with my experience in California in terms of the positions that the Sierra Club has taken in terms of trucking and establishing that kind of infrastructure.

There's been a lot of opposition, building the roads and freeways and stuff necessary to accomplish that in that particular state.

But just so I can understand, up here you guys would support that?

Mr. BAKER. Well, I am going to have to answer that question, Mr. Chairman, two ways.

First of all, I am not familiar with the particular roads and railroads that you are referring to in California. If you would provide me with some of the proposed infrastructure investments that you feel the Sierra Club was opposed to, I would be more than happy to take that up with my California colleagues and respond to you, why we took a position——

Mr. POMBO. No. I know where they are opposed. They filed lawsuits and stuff. I can very easily go to the lawsuit and determine why they were opposed.

Mr. BAKER. Uh-huh.

Mr. POMBO. But what I am interested in is if I am going to tell these folks you can't use barges anymore, you've got to use trucks, and diesel is not inexpensive, and it's also known for some impact on air quality, if I am going to tell you you can't use barges any more, these guys are using trucks, I don't want you to come back in 5 years and say, well, we were kidding about trucks, you can't use those either.

I just want to make sure that we understand each other.

Mr. BAKER. Sure. And that leads to——

Mr. POMBO. You support freeways, you support all of the infrastructure necessary to truck their products to a port to export their product?

Mr. BAKER. That leads me to the second part of my responsibilities. I don't know what particular highways might be proposed. I do not know what particular new roadbeds——

Mr. POMBO. I can promise you there will be hundreds of miles of six lane freeways that will be necessary in order for us to replace the current transportation system.

I wish we had a barge system where I am from that we could effectively move our products to port. Unfortunately, we don't.

But as a result California is criss-crossed with major freeways.

Mr. BAKER. The County Commissions where I live, looking at this, didn't propose any six lane highways. It was upgrades of the current highways, to four lanes, and in another cases, simply an upgrade of the pavement on a number of county roads.

That proposal, I would see no opposition from the Sierra Club.

As I said earlier, we would probably be fighting for those kind of proposals.

Mr. POMBO. I don't want to look back in the previous testimony, but I forget how many million ton of product we were talking about.

I can assure you that repaving county roads is not going to move millions of tons.

Mr. BAKER. I am simply reporting to you what the County Commissioners where I live tell me is needed. About $32 million worth of road improvements.

Mr. POMBO. Let me go to a different topic. That goes to power generation. You can correct me if I am wrong. You said that there were other forms of power generation that the Sierra Club would support.

Mr. BAKER. Yes, sir.

Mr. POMBO. Can you let me in on what those are?

Mr. BAKER. First and foremost, this region takes great pride in the strides we have made forward in capturing the resource of energy conservation. That was——

Mr. POMBO. Excuse me. I didn't say energy conservation. I said power generation. Let me know which forms of power generation the Sierra Club now supports.

Mr. BAKER. If I might be permitted to complete my answer about energy conservation. This region in the Northwest Power Planning

Act declared conservation a generating resource for the purposes of planning and providing energy supply.

Mr. POMBO. Well, as far as a cowboy from California is concerned, can you tell me what forms of power generation the Sierra Club supports?

Mr. BAKER. Yes, sir. We support energy conservation, which is estimated to offer a resource much larger than the average output of these dams.

We have also supported and continue to support clean—the development of clean renewables, another cornerstone of the Northwest Power Planning Act. There is a huge resource in this region in wind and solar power, and we support its acquisition, bringing it on line.

Mr. POMBO. I represent the area that probably has the largest wind generation facility in the world, and have been part of that industry from day one. I am probably more familiar with wind energy generation than any Member of Congress, past, present, or probably future. Because I have great hopes that some day a great portion of our energy could be produced by wind.

But I can tell you the technology is not there at this time.

The ability to supplement existing systems is there with wind energy. But for it to be a source of generation, for people to depend upon, it's just not there yet.

It's interesting that when we began the wind energy generation project in San Joaquin County and Alameda County in California, the environmental groups were in support of that.

But they are now no longer in support of that because it has destroyed the view in the hills of having all the windmills up there, and they filed a number of lawsuits to try to take them out.

So, you know, you are damned if you do and you are damned if you don't.

And this is a huge concern to me, when you start talking about, we could do away with the dams, and energy production could be replaced by some mythical thing out there in the future, and the transportation infrastructure can be replaced by some mythical thing out there in the future, where the reality is the money is not there to build all your freeways to move this stuff, the technology does not exist to have wind or solar energy replace all of the stuff, the future of what we could get out of the dams.

So it is not as cut and dried as the way you would like to put it.

Finally, I would like to ask you specifically about the Oregon Plan. And it's my understanding that Sierra Club was party to the lawsuit that resulted in that plan being rejected.

Mr. BAKER. Yes, sir.

Mr. POMBO. It's difficult for me to understand why, when you have a state and Federal Government get together on an environmental issue like saving the salmon and all of the bloodshed and everything that comes with that, how difficult that is to get the state and local government to agree with the Federal Government on any.

It appears at least from my vantage point that the vast majority of the citizens in Oregon agreed to this plan.

I know I've been contacted by a number who felt that the plan went way too far and that Oregon was giving up way too much.

But it is difficult for me to understand why, if you have this kind of collaboration that's put together with the state and Federal Government agreeing that this is the best thing for salmon, we would have the Sierra Club file a lawsuit to stop them from doing that.

Mr. BAKER. Actually, we filed a lawsuit, Mr. Chairman, in order to make certain that the fish were listed under the Endangered Species Act. We did not file a lawsuit to disrupt the Oregon Plan.

Mr. POMBO. But the purpose of the Oregon Plan was to prevent it from being listed on the Endangered Species Act. You wanted to list it under the Endangered Species Act.

So it appears that your effort was to undermined what they were trying to do.

Mr. BAKER. You first characterized the Oregon Plan as a bona fide good faith effort to stave salmon and steelhead.

To the extent that that was what the plan intended to do, we supported it.

To the extent that it was intended to substitute or defer or otherwise prevent a listing of coho, which they deserve under law, we were opposed to the Oregon Plan, and filed our lawsuit.

We were not in any way trying to dispute the Federal, state partnership in the plan. We were trying to make sure that fish got the protection under the law that they deserved.

Mr. POMBO. Well, apparently there were a lot of people that disagreed with you on that position. Which brings me to my final point, and then I will stop.

The Sierra Club have, if you go back to the original Endangered Species Act and read the original Endangered Species Act, read the testimony that occurred before Congress at the time, it's really pretty difficult to find any major problems with the original Act.

But we end up here today with all of these problems. And I think that if you study case history on this, a lot of it has been through lawsuits. And it's been judges, courts in different parts of the country who have taken what was the original Endangered Species Act and interpreted it in different ways. And we have ended up with a law that I believe today is impossible to implement.

That's why we ended up with so many conflicts when this reaches real people.

Do you think it's time that the Sierra Club and other environmental organizations sit down and look at the law and say, these are the problems we have with it, let's try to make some changes, let's reauthorize this Act, but these are the problems we have, and we know we're not going to get everything we want, but let's try to make some change in this so we don't have the kind of conflicts that we currently have?

I would venture to say that there are very few issues that you could come to this community and have over 400 people show up on for a Congressional hearing. Obviously there is a major conflict. We have major problems.

Is it time for you guys to sit down and realistically say, these are the problems with the Act and let's go?

Mr. BAKER. Mr. Chairman, us guys have done that. We have sat down——

Mr. POMBO. Well, I am going to interrupt you here. I've been the Chairman of the Endangered Species Task force, the principal author of the revisions, the principal in the Republican Party over the past 4 years, and you haven't sat down with me.

Mr. BAKER. I can't explain why that might not have happened, other than you may not have asked us to come to your door.

Mr. POMBO. I have asked on numerous occasions.

Mr. BAKER. I can assure you that we have carefully reviewed the endangered species for reauthorization, we have proposed a number of changes which we believe would be responsive not only to making for better assurances that species will not decline, much less go extinct, and will be responsive to making it possible for the Act to be implemented in a way that's responsive to the concerns of people in society.

We have to my knowledge brought our documents to Capitol Hill. I cannot explain to you why we may not have come by to talk to you. But if you are inviting us, if you are opening your door——

Mr. POMBO. My door is open. It has always been open. I have invited you in on a number of occasions. Even after I was named the eco-thud of the year.

I realize that this—I appreciate you coming and testifying and sharing with us your opinions. I would greatly appreciate you and the rest of the panel answering any further questions that we have.

This issue is obviously quite emotional. This issue is obviously a source of great conflict in the country today.

I don't think that you can put all the scientists and biologists and politicians in the world in one room, and it doesn't make any difference, because as long as real people are being hurt by it, we have got a problem. And unless we fix that problem, we're not going anywhere.

And I thank all of you very much for being here, for your testimony.

As we continue to work through this, as Congress continues to try to make an Endangered Species Act that works for wildlife and for people, the testimony we receive today will be a great help to all of us.

And thank you very much. The hearing is adjourned.

[Whereupon, at 2:45 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF HON. ROBERT F. (BOB) SMITH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Thank you, Mr. Chaimman, for holding this hearing. The National Marine Fisheries Service's (NMFS) implementation of the Endangered Species Act (ESA) is a very important issue for not only my district, but for the entire Pacific Northwest. This region's effort to recover salmon species protected under the ESA is unparalleled and the cost of this effort on the lives of our people and the economy of our region is immeasurable. I think that it is safe to say that almost every person and industry in this region have felt, or will soon feel, the effects of the decisions of NMFS. If not from the consequences of the listing of the coastal Oregon coho, then through the long-temm recommendation for operation of the Federal Columbia River Power System (FCRPS) due from NMFS next year. Consequently, this hearing is not only very important, but also very timely.

As you will hear from many of the witnesses present, NMFS has failed to implement the ESA in a manner consistent with its mandates. NMFS does not implement the ESA in a timely manner. Instead, decisions are delayed well beyond statutory deadlines. It does not base its policies on sound science or even reality. It fails to provide applicants with prudent and reasonable alternatives that are technologically and economically feasible. In addition, it has yet to identify the overall goal of the region's efforts, spending hundreds of millions of the region's dollars every year on measures that they cannot say with any certainty will benefit the protected salmon. The list goes on and on. The overall effect has been a haphazard effort based upon speculation, rather than science.

This cannot continue. NMFS's irresponsible implementation of the ESA has had a detrimental effect on our economy. The Columbia River and its system of 30 multi-purpose Federal dams are the backbone of our regional economy. Since 1937, when the first dam was built, the system has grown to provide the region with a low-cost and stable supply of electricity, navigation through a series of locks from the Pacific Ocean to Lewiston, Idaho, irrigation for agriculture, flood control capabilities and recreational opportunities. As a result, the Pacific Northwest has enjoyed a strong economy built up around the FCRPS.

The measures required by NMFS under the ESA have diminished the value of the FCRPS to the region, particularly with regard to hydroelectric power production. Now, certain policies and measures being implemented or discussed threaten to diminish the system's value even more.

No Net Loss Policy on Water Withdrawals. NMFS is implementing a new policy on water withdrawals in the Columbia River and its tributaries that is called "No Net Loss." NMFS has said that no new water withdrawals, including withdrawals under existing but undeveloped water rights, will be allowed until the flow targets it set in its 1995 Biological Opinion are met. As you will hear from my good friend and constituent, Mr. Bob Hale of Inland Land Company, this policy is not based on sound scientific evidence or even reality. There is no conclusive evidence that more water in the river will actually benefit the salmon. Even more troubling and reflective of NMFS's tendency to base costly policies on bad science is that there is no evidence that the river's flow was ever at the level required by NMFS in its '95 Biological Opinion. Recent studies have shown that those flow targets cannot be met even if all irrigation withdrawals in the Columbia basin were stopped.

Nevertheless, this unrealistic policy is being used as a basis for denying existing water rights no matter how small the impact of the proposed withdrawal to the overall flow of the river or to the health of threatened or endangered salmon. Just as troubling is the fact that NMFS is implementing this policy without regard for state water rights. This utter disregard for state rights to water, the viability of our regional economy, and existing scientific evidence is unconscionable.

If this policy continues to be implemented, family farms like Inland Land Company will be forced to reduce production or to go out of business. As more and more water withdrawals are denied, valuable agricultural land will not be used and industries dependent upon agriculture, abundant water and low-cost electricity will locate elsewhere.

Breaching Dams. As the time for the new recommendation for operating the FCRPS nears, more and more conservation groups are calling for breaching the Lower Snake River dams and the John Day dam on the main stem of the Columbia River. Some say that this is the only way to recover threatened and endangered salmon. Again, this is an irresponsible statement. It completely ignores the impact on salmon of overfishing, adverse natural trends and other activities. In addition, no objective scientific analysis has yet to determine, conclusively, that removal of the dams will save the salmon runs. Yet, the economic, social and environmental costs will be enormous. At a minimum, the region will lose all barge transportation

to Lewiston, Idaho, a good portion of its low-cost electricity supply and the stability of its transmission system. All of which will have to be replaced at a huge environmental and economic cost to the region.

The bottom line from my perspective is that the region's economy cannot continue to bear the uncertainty and risk resulting from irresponsible environmental policies and statements. In addition, it will not bear the devastation that will occur if the dams are breached.

The Federal Government, whether through NMFS or the U.S. Fish and Wildlife Service, must, at a minimum, make the following changes:

- It must adopt fiscally responsible policies that are supported by good science. The region cannot continue to pay hundreds of millions of dollars every year on measures that NMFS thinks *may* benefit protected salmon.
- It must work closely with those people and interests impacted by their decisions to find reasonable solutions. No policy is a good policy if it does not reflect the concerns of those directly impacted.
- It must also be held accountable for its decisions and actions. The region cannot continue to finance costly measures that do not accomplish its intended goals. Finally, it must develop recommendations for future FCRPS operations and water use that can be implemented within the current configuration of the system and that are consistent with state water rights.

Thank you, again, Mr. Chairman, for holding this hearing today.

STATEMENT OF SPEAKER LYNN LUNDQUIST, OREGON HOUSE OF REPRESENTATIVES

Chairman Young and members of the Committee, I am Lynn Lundquist from Powell Butte, Oregon and serve as Speaker of the Oregon House of Representatives. I appreciate the opportunity to testify before you today on an issue that has had a significant impact on the local communities that comprise this region. There is no question that the Federal Endangered Species Act has, and unless changed, will continue to adversely impact the Northwest region's economy, environment and sense of community.

I will keep my comments brief and to the point. I hope I am able to give you an illustration ofthe concern in the region by passing along three points this morning.

Point one: a bad law can not be administered as a good policy.

The Federal Endangered Species Act (ESA) does not provide effective mechanisms for species recovery and fails to encourage states' participation in the recovery of threatened and endangered species. The comments and frustrations that will be expressed during this hearing are due partially to the fact that the ESA has not proven to be an effective mechanism in encouraging the recovery of species.

To further demonstrate my point, I would encourage you to consider what has happened to Oregon's efforts to recover the Oregon Coastal coho salmon. Facing a potential listing, Oregon developed a plan to address Oregon Coastal coho salmon recovery. The plan is referred to as the Oregon Plan for Salmon and Watersheds or "Oregon Plan." The Oregon Plan outlines hundreds of measures state agencies are currently undertaking to recover the species. The Oregon Legislature authorized over $30 million to be used for implementing the provisions of the plan. In addition to the $30 million, contributions in the form of habitat improvements on private lands have been estimated to be well beyond $100 million. Let me again stress that this is on private land where private citizens and companies are conducting the work. The Oregon Plan includes a variety of actions that would not be achieved by a listing under the ESA.

When the NMFS made a decision not to list one of the evolutionary significant units of the Oregon Coastal coho salmon, the decision was immediately challenged in court. In a significant blow to the Oregon Plan, and further proof that the ESA needs to be changed, the court concluded that the ESA does not allow for the consideration of the biological effects of future or voluntary conservation measures, thus the decision to not list should be reevaluated. This conclusion resulted in the NMFS listing the species effective October 9, 1998.

The fact is Oregon has a plan, the money and an unprecedented commitment from industry and landowners to save Oregon's salmon and streams while the Federal Government literally has no tools to achieve species recovery. The Federal Government's track record is dismal when it comes to developing a timely recovery plan, let alone implementing measures that result in increased numbers of salmon. Reform of the ESA is needed to bring about a new approach to the way the states and Federal Government can work together to achieve species recovery.

Point two: agencies can make a bad law even worse.

Although I have highlighted some of the concerns with the ESA itself, not all of the disappointment has been solely as a result of the law. Obviously, agencies have discretion in how the law is to be administered. The NMFS has created considerable frustration among legislators, state agencies and citizens, especially those citizens who have to comply with the directives or uncertainty created by NMFS. A primary concern with the NMFS is their apparent mistrust of the motives of local communities to develop local solutions to the issues surrounding species recovery. The forcing of Federal mandates upon the communities will be less than successful in recovering species.

In Oregon we have a variety of examples in which the actions of NMFS has not furthered the species recovery but has instead created resentment with the agency. Examples include the development of a variety of Memorandum of Agreements (MOA) that involve the NMFS in areas including forest practices, water withdrawal, agricultural activities and even gravel removal. In addition, the agency has told state legislators to help secure funding for salmon recovery yet has failed to request any Federal assistance to support Oregon Coastal salmon recovery efforts.

A way to judge the effectiveness of the NMFS is to look at what it has accomplished. With respect to salmon recovery in the Columbia Basin, the NMFS has not yet developed an acceptable plan, provided a definable objective or created a process that has resulted in progress towards the recovery of species. Something needs to change if we are to be successful in our objective.

Point three: it is imperative NMFS and other Federal agencies do not infringe upon Western water law and the states' sovereignty over the allocation of the resource.

I believe you will hear examples how the NMFS has impacted and will continue to impact the allocation of water in the West. To be blunt, this is unacceptable and will not be tolerated. NMFS has indicated its desire to consult with state water resource agencies on all water withdrawals in regions where fish are listed under the ESA. This strategy appears to be more a tactical maneuver to influence or prevent the withdrawal of water.

It is important to note the actions and requirements by NMFS create an additional burden on state agencies as well. If NMFS wishes to consult with state water agencies on all water withdrawals in areas impacted by the ESA, who is responsible for the increased expenses associated with the state having to respond to NMFS' concern? My experience has been that NMFS is happy to tell you what to do yet they don't want to help pay for it.

In summary, my request is simple, change the ESA law to allow for local solutions to species recovery, direct the agency or agencies to be a partner in the process and stay away from infringing on states' authority over water rights. I would again like to thank Chairman Young and the members of the Committee for the opportunity to share with you my thoughts on the issues regarding the NMFS and the ESA.

STATEMENT OF HON. TED FERRIOLI, OREGON STATE SENATOR

Mr. Chairman and Members of the Committee, thank you for the opportunity to testify in favor of H.R. 4335 that would consolidate administration of the Endangered Species Act under authority of the Secretary of the Interior.

Mr. Chairman, as you well know, the two Federal agencies that administer the Endangered Species Act are U.S. Fish & Wildlife Service (USF&WS) and National Marine Fisheries Service (NMFS).

U.S. Fish & Wildlife Service is responsible for managing listed or protected avian and terrestrial species and native aquatic species. National Marine Fisheries Service is responsible for managing listed and protected marine mammals, aquatic species and anadramous (fresh-to-salt water migratory) fish.

Because some aquatic species and marine mammals are migratory and some aquatic species are non-migratory but share the same spawning and rearing habitat, there is an overlap of administrative and management authority between these agencies. For instance, USF&WS is responsible for managing Bull Trout which spawns and rears in very cold, clear water normally associated with uplands and headwaters.

In managing for Bull Trout, USF&WS has developed guidelines affecting virtually every aspect of natural resource management associated with riparian areas and uplands, including grazing, timber harvesting, water withdrawals for irrigation, vegetation management, recreational fishing and other aspects that affect habitat.

In addition to these guidelines, a formal reconciliation with USF&WS—called Conferencing—is required for virtually all management actions proposed on or near Bull Trout habitat whether on Federal or non-Federal lands.

Mr. Chairman, listed species of salmon and steelhead trout spawn and rear in some of the same habitat as Bull Trout. Salmon and steelhead are anadramous, or fresh-to-saltwater migrating fish. As such, they fall under the authority of NMFS.

NMFS has developed its own steelhead guidelines for proposed management actions on or near riparian areas—guidelines which are similar, but not identical to USF&WS guidelines for Bull Trout. Conferencing with NMFS for listed anadramous species is also required.

Mr. Chairman, on the same reach of a headwaters stream, land and resource managers must develop a set of prescriptions to meet the requirements for Bull Trout, including Conferencing with USF&WS, and a similar but not identical set of prescriptions to meet requirements for steelhead or Salmon, including Conferencing with NMFS.

This obvious duplication of efforts is costly and unnecessary, not only to landowners and taxpayers, but also to those who rely on timely and efficient Federal decisionmaking. Let me provide an example: The Summit fire was caused by lightning on August 13, 1996. During 24 days, the fire burned across 37,961 acres of mixed conifer forestlands, damaging riparian areas and leaving a mosaic of fire-killed timber estimated at approximately 300 million board feet.

Because of the extreme complexity of planning for management actions on Federal lands, especially where reside threatened or endangered species—Malheur National Forest Planning Staff wrote, then rewrote the Summit Fire Recovery Project, eventually preparing two Environmental Impact Statements. On July 12, 1998, a Record of Decision was issued calling for salvage and rehabilitation of approximately 6,600 acres producing about 50 million board feet of timber.

Major requirements of the fire recovery project draft EIS included development of a Water Resources Management Plan, Consultation with USF&WS for Bull Trout, and Consultation with National Marine Fisheries Service for steelhead.

Mr. Chairman, although prescriptions for Bull Trout management on riparian areas in the project area were designed to protect cold, clean water and spawning and rearing habitat for all aquatic species, the complexity and cost of the Summit Fire Recovery Project was considerably accelerated by the development of yet another complete set of management prescriptions for steelhead under direction of NMFS, also designed to protect cold, clean water and spawning and rearing habitat for aquatic species.

Along with other planning delays, and the continuing threat of litigation by radical environmentalists, the Summit Fire Recovery Project, which should have taken no more than six months from planning to implementation, required more than 23 months to complete. The cost of suppression for the Summit Fire was $25,400,000. Planning for this project cost approximately $1.2 million for the original DEIS and additional $356,432 for the Supplemental DEIS.

During the months between the fire and the eventual approval of the recovery project, insects and blue stain fungus infested the stands and severe checking reduced the value of salvageable timber. If conducted in August 1997, the project could have produced $6.9 million for the Federal treasury according to the Final Environmental Impact Statement (page 2-21). Today, the project will produce less than one sixth of that amount, or $1.1 million according to the Final Supplemental Environmental Impact Statement issued July 12, 1998 (page S-6).

Members of the Committee, the delay and expense caused by mere duplication of effort as we saw in the Summit Fire Recovery Project may be the least costly aspect of dual administration of the Endangered Species Act.

Mr. Chairman, you may have heard of the Oregon Plan for the recovery of Salmon and steelhead. It is a state-driven plan for the recovery of Coastal Coho salmon and many species of steelhead.

The purpose of The Oregon Plan is not merely to avoid the "take" of listed species,—the only requirement on landowners under the Endangered Species Act—but actually to recover aquatic species by involving forestland owners, irrigators, cattle producers, dairymen, farmers and municipal watershed managers in a cooperative effort to improve water quality and aquatic habitat.

Early in the process of developing the Oregon Plan leading to a Memorandum of Agreement to facilitate a "no-list" decision for Coastal Coho salmon, NMFS expressed its intense dislike of the Oregon Forest Practices Act, indicating a strong desire to rewrite the Act and demanding changes in virtually every aspect of forestland management.

Eventually, NMFS submitted a proposal to the Oregon Board of Forestry titled *A Draft Proposal Concerning Oregon Forest Practices.* The proposal was developed

by NMFS staff without input from those familiar with Oregon forest practices. Some of the proposed changes are, in a word, preposterous. For instance, in the section titled "Hydraulic Conditions Required for Adult Fish Passage" culvert design is detailed:

> "Where culvert lengths exceed 150 feet, a bridge installation should be strongly considered. Generally, culverts smaller than six feet in diameter are not adequate for fish passage and should not be used. Culverts less than 10 feet in diameter require lighting within the culvert barrel, provided by a vertical riser (above the road surface), or by artificial lighting at least every 75 feet (Draft Proposal on Oregon Forest Practices, February 17, 1988—Appendix VI, page VI-3).

The document also proposes to increase the buffer width for fish-bearing streams, in some cases to 300 feet on each side. Elsewhere, NMFS advocates the prohibition of forest management activities ...

> "... in wet weather conditions (typically two inches of precipitation in 24 hours) especially during the winter period (October 1-April 30). Hauling or skidding should not resume for 48 hours after precipitation ends or until road surfaces and ditches are not flowing with water." (Draft Proposal on Oregon Forest Practices, February 17, 1988—Section V, 2 A page 47-48).

Mr. Chairman, Western Oregon is famed for many things, among them is its prodigious rainfall—measured at more than 200 inches per year in some coastal areas. A shutdown of operations in coastal areas for rain, or throughout the state during the period from October 1 to April 30 is particularly disconnected from the reality of Oregon climatological conditions.

Analyis of NMFS February 17, 1998 Draft Proposal Concerning Oregon Forest Practices prepared by Oregon Small Woodlands Association and Oregon Forest Industries Council concludes that NMFS proposals will cost Oregon forestland owners an estimated $25.4 billion in lost economic value and render forestry operations impossible or unfeasible on 41 percent or 3.3 million acres of private forestland. ("Summary of Macro Economic Impact of NMFS Forest Practice Proposal," Oregon Small Woodlands Association and Oregon Forest Industries Council, April 1998).

Mr. Chairman and members of the Committee, this is an unconsionable intrusion by a Federal agency into the management authority of the state of Oregon and an even more egregious intrusion against the interests of private landowners.

I urge you to bring to heel what is clearly an agency out of control and to remove administrative authority under the Endangered Species Act from the Department of Commerce and National Marine Fisheries Service.

Mr. Chairman and members of the Committee, even though our experience with the Department of Agriculture and U.S. Fish & Wildlife Service in administration of the Endangered Species Act leaves much to be desired, administration of the Act by the Department of Commerce acting through NMFS is a disaster. We therefore strongly urge passage of H.R. 4335.

Mr. Chairman and members of the Committee, again, I thank you for the opportunity to provide testimony and stand ready to answer your questions.

STATEMENT OF JAMES J. ANDERSON, ASSOCIATE PROFESSOR, SCHOOL OF FISHERIES, UNIVERSITY OF WASHINGTON

I wish to thank the House Resource Committee for the opportunity to appear at this hearing. I am an Associate Professor in the School of Fisheries at the University of Washington and have been involved with Columbia research for over a decade. My group and I have developed models for fish passage through the hydrosystem and for harvest management. I am currently a member of PATH, which is a group of scientists tasked with quantitatively evaluating proposed fish recovery strategies including increased smolt transportation and breaching the lower Snake River dams. In these studies I have worked extensively with National Marine Fisheries Service scientists and managers.

My specific comments concern the NMFS flow targets as an Endangered Species Act management tool. I also note my thoughts and observations on how science has been used in ESA salmon management. Simply put NMFS has justified many actions in terms of their qualitative benefits. Because of the increasing complexity of ESA management, the benefits of actions must be put in terms of the numbers of fish and the costs of the actions.

The Two Cultures At NMFS

NMFS has two cultures, a scientific culture responsible for basic and applied research on fish and their ecosystem and a management culture responsible for regu-

lating commercial fisheries and recently for implementing the ESA for salmon. Most of my experience has been with the NMFS scientists and I have high regard for their integrity, dedication and abilities to conduct scientific research in the charged atmosphere of endangered species issues. NMFS scientists have decades of experience with salmon and their continued involvement is essential to insure that endangered species are recovered. NMFS managers have an even more demanding task. Balancing the social and economic factors affected by the ESA is a difficult job because of the political constraints and limitations of the science that often is unable to provide clear explanations and conclusions. I believe that for effective management the two cultures must be integrated and work together.

Management Lags Science

The relationship of NMFS science and management is critical to the success and failure of the ESA implementation. A well-known observation in fisheries is that management lags science, sometimes by a decade. Management is not unaware of the recent scientific results, but in the fast moving political arena it is often difficult to resolve the scientific uncertainties to the point that they can be incorporated into management. Consequentially managers typically favor past ideas in making decisions. This is not a surprise considering that management must balance public perceptions as well as the scientific information, and in this regard, the public often takes views derived from their desire for a particular outcome. They often select or reject a scientific result according to whether or not it supports their belief. Managers of ESA resources can not take this approach.

Acceptance of scientific principles is a slow process so it is natural to focus on old beliefs in making decisions. But it is essential for that managers educate the public on the relevance of recent scientific work. NMFS has not always done this. In any case, fisheries managers must not ignore the new research, nor fail to resolve the conflicting claims. It is in this regard that ESA salmon managers need to use the available science and especially for the interim decisions involved with the daily allocation of water resources.

Flow Targets

I will focus on the flow policy of NMFS. A decade ago many fish biologists believed that the Snake River salmon decline was mainly the result of increased fish travel time through the hydrosystem. It was thought that by increasing flow to mimic the predam flows the fish would return to the predam levels. Improved survival studies and model results indicate that a strong increase in fish returns from flow increases is not possible. The current estimate of the impact of flow on spring chinook is a hundred times less than was previously believed. The flow augmentation program may produce a 1 percent increase in runs, far less than the 1000 percent needed to recover the spring chinook from its present level.

In developing the Biological Opinion for dam operations in 1995, and again for the mid Columbia stocks in 1998, NMFS did not incorporate the quantitative estimates that challenge the efficacy of flow as a fish recovery action. NMFS, in both instances, called for flow targets during the smolt migration and based the justification on circumstantial and largely outdated evidence. Nowhere in the analyses were quantitative estimates provided. It appears that the underlying NMFS belief was that, although a flow survival relationship can not be demonstrated, it is likely that one exists and therefore it is worth increasing flows to obtain an unspecified benefit in survival.

The recent analysis conducted by PATH has found no evidence that increased flows will significantly increase spring chinook returns, neither directly through improved hydrosystem passage nor indirectly through an unspecified relationship between river flow and post hydrosystem survival. For the subyearling fall chinook migrants the studies do show a relationship between survival and a number of river properties including, temperature, flow, water turbidity and the timing of the migration. My recent analysis of the fall chinook data suggests a relationship between fall chinook smolt survival and fish size. Furthermore, if the operative factor is fish size, then flow augmentation, which may cool the water and initiate early migration, could reduce fish size and decrease survival. The important point here is that, although flow correlates with survival in some years, a correlation is not evidence that increases in flow within a year will improve survival. Flow could be beneficial or detrimental; we simply do not know its affect at this time.

Under these results, no flow survival in spring chinook and uncertainty for fall chinook, NMFS made a policy decision to strongly manage flow, irrespective of proof that it benefits fish. In addition, the flow targets are hydraulically impossible to achieve in below average water years. Furthermore, NMFS has been inflexible in

reevaluating the flow targets in light of the new information and it has not aggressively pursued a resolution of the scientific claims on the impacts of flow.

Water Withdrawal Policy

To support the flow targets NMFS imposed a moratorium on new water withdrawals in the Columbia and Snake River basins. Where and when water is withdrawn is clearly important to the level of impact it has on fish. A water withdrawal above spawning grounds may impact egg survival but the same withdrawal in the mainstem will have virtually no impact on smolt survival. The NMFS policy does not distinguish these differences. It is inflexible to the individual needs of water users and the varying impact of water on fish. This failure to quantify individual actions will not work in the long term where demands for salmon restoration increasingly confront the demands for water. Since the demands for both will only increase it is essential to quantitatively assess the impacts of withdrawals on a case by case basis using the best available models and data.

Putting Numbers On Actions

For two decades now regional fish recovery actions have been justified on the grounds that they appear to benefit to fish. There has been few quantitative assessments of the actions, few peer reviews of the claims, and little flexibility in allocating resources. Although the region, through groups such as PATH, is now attempting to put numbers and probabilities on the impact of actions, only a limited number of issues are being addressed. Issues, such as the evaluation of the flow targets and water withdrawal moratoriums, are not being addressed.

I believe that the atmosphere of distrust and adversity in managing threatened and endangered salmon is to some degree, because managers have failed to quantify results and challenge unsupportable claims on the benefits or detriments of actions. Instead of addressing issues in terms of the numerical cost and benefits and ranking actions by their effectiveness NMFS has used inflexible targets and moratoriums. These qualitative and largely intuitive approaches to management encourages fish advocates to misuse the scientific information and push for unrealistic demands and it forces water users into resolving issues through the courts and governmental intervention.

STATEMENT OF WILLIAM STELLE, JR., REGIONAL ADMINISTRATOR, NATIONAL MARINE FISHERIES SERVICE, NORTHWEST REGION

Mr. Chairman, thank you for the opportunity to appear before you today. Your letter of invitation suggests I focus my testimony on the National Marine Fisheries Service's (NMFS) implementation of the Endangered Species Act (ESA), whether NMFS' ESA program overlaps or is consistent with the Fish and Wildlife Service's ESA program, and whether our implementation of the ESA is cost-effective. Finally, you asked for my views on H.R. 4335, which proposes to transfer the Department of Commerce's responsibilities for conserving threatened and endangered marine and anadromous species to the Department of the Interior. In my testimony, I will address these issues from a regional perspective, since our salmon program in the Northwest is a significant part of NMFS' ESA program. I will also raise several additional national concerns relevant to the proposed transfer of responsibilities.

Since these hearings are being held in the Pacific Northwest, we have focused our comments on NMFS' efforts to protect and recover imperilled salmon throughout this region. Clearly, Pacific salmon listings have affected almost every watershed on the West Coast and the interior Columbia Basin. Without a doubt, these listings have a more far-reaching impact than previous ESA listings. Salmon listings, proposals to list, and associated actions affect almost every ecoregion of the West Coast north of Los Angeles. These salmon listings affect one of the most precious and precarious resources of the West: water. The salmon's life cycle is complex and its migration vast. Hundreds of human activities have destroyed salmon habitat and brought salmon populations to the brink of extinction: timber harvest, farming, mining, irrigation and water development, road-building, urbanization, damming, dredging, hydropower operations, fishing, fish culture . . . the list is quite long.

As you know, the ESA imposes a number of duties on the Secretaries of Commerce and the Interior. Whenever Federal agencies take actions that affect listed salmonids, they must consult with NMFS or the Fish and Wildlife Service, whose job it is to advise whether the Federal action will jeopardize the continued existence of the listed species. This determination is a complex and difficult one when it comes to salmon because the interacting effects of so many human activities threaten salmon's very existence.

In the Northwest Region, NMFS has established a large program to help Federal agencies meet this consultation requirement. NMFS has reviewed Federal actions as geographically broad as the Northwest Forest Plan and as local as a scientific permit for a very localized Forest Service activity. Since 1991, with the first salmon listings in Idaho, NMFS has completed review of several thousand activities. NMFS has taken steps to make the consultation process more efficient. For example, we encourage Federal agencies to conduct "programmatic" consultations. That is, we ask them to consult with us on broad programs and policies. In this sort of consultation, we can jointly develop general principles and procedures to apply to individual actions. When individual actions are consistent with those principles and procedures, we can move very quickly through them. This approach was recently upheld by the Federal district court in Western Washington in reviewing NMFS' consultations on Northwest Forest Plan actions. We entered into a Memorandum of Understanding to coordinate consultation on operation of the Federal Columbia River Power System that required the operating agencies to submit only one biological assessment from which both NMFS and Fish and Wildlife Service developed their respective biological opinions.

Simply gearing up to take all of the actions required by the ESA has been a tremendous challenge for NMFS. It takes many biologists a considerable amount of time to sort through and understand the status of individual populations of a species, how various actions affect them, and whether the fish populations can withstand the impacts and remain viable. To help us do our job, since 1991 Congress has increased the total NMFS budget for salmon by $16.5 million. This has allowed us to increase the regional staff from some 50 employees in Portland and Seattle in 1991 to 150 employees spread throughout the region today. With the help of Congress, and to be more responsive to constituents throughout the region, we opened field offices in Boise, Olympia, and Roseburg.

Over the past twenty years, NMFS has developed a world class salmon science program covering a number of areas crucial to the Pacific Northwest. Our salmon science program consists of a major, nationally-renowned program on fish passage and survival research in the Federal Columbia River Power System that is absolutely vital to evaluating the effects of Federal dams on salmon recovery. That program has been in place since the mid 1970s and now consists of roughly sixty scientists. Our salmon science program also consists of a major conservation biology division which provides the risk assessments that support: (a) our listing and recovery programs; (b) habitat and chemical contaminations research programs that may be used in support of cleanup and restoration efforts for hazardous wastes sites by EPA and the Federal natural resource trustees; and (c) salmon rearing and fish disease research that is helping chart the path for improved hatchery practices in the Pacific Northwest. Finally, with funding from the Bonneville Power Administration, we have launched a major research effort into the ocean and estuarine survival of salmonids to better understand the role of ocean and estuarine conditions on salmon survival and recovery.

The success of our salmon science program also can be measured in terms of its ability to understand the factors that put salmon at risk. We have developed over the last twenty years of effort world class expertise to evaluate the impacts of differing human activities on the salmon life cycle (e.g., dam operations and fish passage; fishing activities; fish husbandry; and general pollution of the marine and estuarine environment). We are developing state-of-the-art techniques for examining the cumulative impacts of various types of activities and mitigation measures and indicating the degree to which these create a risk to a local salmon population. We can use the state-of-the-art science and technology to look at various types of impacts and mitigation measures and indicate the degree to which risk will be increased or lessened.

Probably the most difficult task in implementing the ESA for a species like salmon is trying to calculate how to allocate the conservation responsibility when there are many factors that have caused salmon to decline throughout the West. All of these factors must be addressed if we want to restore salmon. The status quo is literally driving salmon runs to extinction, and we must make basic changes in how we approach salmon and their habitat if our salmon are to remain part of the heritage of the Pacific Northwest.

To respond to your second request, I'd like to talk about coordination between the two Services to ensure consistency. Even before coastal salmon stocks were listed, NMFS began working with the U.S. Fish and Wildlife Service to ensure that Federal agencies, states, tribes and private citizens could count on the agencies to be efficient and consistent in their responses. For example, the Services worked together on the Federal technical team that developed the Northwest Forest Plan to ensure it was adequate for all aquatic species, including salmon. We also started

working with the Fish and Wildlife Service after realizing that landowners in Oregon, Washington and California were developing habitat conservation plans for the threatened northern spotted owl and wanted assurance that any plan they developed for owls would address salmon as well. To provide landowners with "one-stop shopping," NMFS and the Fish and Wildlife Service established a joint office in Olympia, Washington, where biologists from both services collaborated on the development and review of habitat conservation plans. That office was instrumental in developing the Washington DNR and mid-Columbia PUD Habitat Conservation Plans.

The Services have taken other actions to be certain we implement the ESA consistently and efficiently for Federal agencies and private landowners. Some of the more obvious actions are our joint regulations and policies on consultations and habitat conservation plans. We are issuing a number of joint policies for private landowners, including the "no surprises," "candidate conservation agreement," and "safe harbors" policies that give landowners greater future certainty when entering into conservation agreements with the Services. To make certain our staffs adhere to consistent procedures when dealing with the public and other Federal agencies, we have issued joint policy and guidance documents, such as the Section 7 Consultation Handbook and Habitat Conservation Handbook. We have issued a number of other joint technical policies such as our artificial propagation policy. Whenever one of the Services takes a major action or faces a novel situation, we communicate with each other at the regional and national level to ensure our approaches to the ESA are consistent. We are currently working on future, joint policies, like one on candidate conservation agreements, that will ensure a consistent level of service between NMFS and the Fish and Wildlife Service.

Although NMFS and the Fish Wildlife Service coordinate our activities to provide the same level and kind of service to other agencies and the public, each agency brings different strengths to the Federal ESA program. Our strengths—NMFS with extensive marine expertise and the Fish and Wildlife Service with extensive freshwater and terrestrial experience—are complementary in the ESA program. Both NMFS and the Fish and Wildlife Service implement the ESA on rivers and streams in the Pacific Northwest despite clearly divided responsibility for different listed species. To take care of listed Pacific salmon from their cradle to their graves, NMFS has had to add expertise on freshwater ecosystems to its existing marine expertise. Although this freshwater expertise and responsibility appears to "overlap" with the Fish and Wildlife Service, it is absolutely necessary to provide a coherent service for the people, communities, and industries that depend on salmon for their economic and social well being. There is no duplication of costs between our ESA programs; in fact, NMFS' ESA program is extremely cost-effective.

Finally, you asked for my views on H.R. 4335, which is your proposal to transfer NMFS' ESA responsibilities to the Fish and Wildlife Service. NMFS' largest ESA program is for salmon, which is where this proposal would have the greatest impact. The Administration opposes H.R. 4335 for the reasons discussed below.

The Pacific Northwest is in the midst of a major challenge to recover salmon runs that face extinction. Meeting this challenge will affect major facets of northwest life: power; water resources; fishing; forest and agricultural land management; and the like. This region is on the brink of some very important decisions on the Columbia River power system. We are also gearing up for major re-licensing efforts for many big hydropower projects, including some in Idaho.

The National Marine Fisheries Service is unquestionably dedicated to the recovery of salmon in the Pacific Northwest. Our leadership of and involvement in many of the key salmon efforts is substantial—from the Columbia River Power System to the Oregon Salmon Plan to the growing efforts of Washington communities to prepare for salmon listings in Puget Sound. The challenges associated with joint administration of the ESA in this region are significant but resolvable; the benefits of shifting salmon responsibilities would be fewer than anticipated, while the disruption, confusion, and delays associated with the transfer of ESA responsibilities would be very substantial.

That said, we must ask ourselves what problem this legislative proposal is intended to solve and is this proposal the best solution. Is there concern that other Federal agencies and private parties are "overloaded" trying to deal with two separate Services protecting at least two (but usually more) different species? If so, such a transfer might address that concern because there would be only a single ESA agency. There are other ways to address this concern such as steps the Services have already taken, that are not as disruptive. Earlier I provided examples of joint consultations, joint HCPs, and co-location of offices that has helped provide "one-stop" shopping services to Federal agencies and applicants. We are exploring other administrative ways of coordinating NMFS' and Fish and Wildlife Service's ESA

programs like joint processing of Federal agency actions that affect threatened or endangered species, which has streamlined the Corps of Engineers' permitting program elsewhere in the country.

Is the main concern duplication of effort, that is, several biologists analyzing the same action? Right now, there is very little duplication of effort. The number of biologists working on a consultation depends on the geographic scope of the action, the number and diversity of species involved in the consultation, and the probable environmental significance of the action. Right now, if an action affected bull trout, chinook salmon, and grizzly bears, NMFS and Fish and Wildlife Service would have to assign both fishery and wildlife biologists to evaluate the action. With the proposed transfer of ESA responsibilities, the Fish and Wildlife Service would still require both fishery and wildlife biologists to evaluate the action so there probably would not be an appreciable reduction in the number of biologists required to implement the ESA.

Some will argue that the main problem is that NMFS is too protective of species in its application of the ESA, and the best solution is eliminating us from the program. Others would argue that we are not protective enough. We respect those views as part of the public dialogue associated with the difficult task of protecting salmon and clean, healthy water. The Administration has said many times, salmon throughout the West are in deep trouble, and it is the full range of human actions that have put them there. We cannot keep doing business in the Northwest the way we have been and expect salmon to survive in the wild. The Fish and Wildlife Service, with its proud legacy of environmental stewardship, would give you the same answer.

Shifting NMFS' ESA responsibilities to the FWS would create confusion and delays that could last for years. I mentioned earlier what NMFS has done to prepare for the special challenge of managing salmon issues in the Pacific Northwest. It has taken us some years to get to a point where we can implement our salmon program efficiently. We have gathered a lot of expertise on salmon science and salmon management, and we have invested a lot of resources to develop working relationships with the hydropower industry (public and private) to address salmon issues. We now have a good staff organized and equipped to administer the ESA to conserve salmon species cost-effectively. Our organization is fairly simple, our numbers are lean, and our people are skilled at their jobs.

If NMFS' ESA responsibilities were transferred to the Fish and Wildlife Service, they would have to repeat what we did—organize to get the job done, locate and train new staff, find space, and request appropriations. In addition to preparing to handle salmon in freshwater ecosystems, the Fish and Wildlife Service would have to gear up for new marine responsibilities based on this proposed legislation. Based on our experience, we estimate that they would need a minimum of about 150 new FTEs and about $16.5 million in new money just to start handling the additional workload necessary to protect Pacific salmon. The confusion and delays associated with the transfer you propose would create major inconveniences and delays to private landowners, fishing communities, and timber interests—all whose lives are affected by listed salmon. It would, therefore, substantially disrupt ongoing efforts throughout the Pacific Northwest in salmon recovery at the worst possible time. If the transfer occurs without providing the Fish and Wildlife Service the personnel and funding to handle the new workload, the difficulties will become much larger.

Finally, I think we need to examine what the other consequences of transferring authority to the Fish and Wildlife Service might be. Right now, people engaged in marine fisheries only deal with one Federal management agency; transferring ESA responsibility will require them to deal with two agencies where listed species are involved. Hence, transferring ESA responsibility to the Fish and Wildlife Service solves a perceived problem for people on land, but creates new problems for people who make their living from the sea.

Would the benefits of this proposal outweigh the consequences? As I said, I think the main perceived benefit is to other Federal agencies and individuals who work on rivers and forests and now must deal with two Services. On the other hand, people who earn their living from the sea and now deal only with NMFS, would have to deal with NMFS and the Fish and Wildlife Service. There are trade-offs to either approach: who benefits, who loses? My agency and I look forward to engaging the Congress, and the region, on that question.

Although most of my testimony, up to this point, has involved the extensive efforts undertaken by NMFS to meet its responsibilities to protect endangered and threatened species of Pacific salmonids, H.R. 4335 would reach far beyond these troubled species.

Under the Endangered Species Act, in addition to listed salmonids, NMFS is responsible for many other marine species, including the Arctic bowhead whale, the

Pacific and Atlantic humpback whales, the blue whale, the Steller sea lion, the Hawaiian monk seal, seven species of sea turtles. Even if NMFS' ESA responsibilities were transferred, NMFS and its parent agency, the National Oceanic and Atmospheric Administration (NOAA), would continue to have significant responsibilities to protect and recover these animals pursuant to the Marine Mammal Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Whaling Convention Act, the National Marine Sanctuaries Act, and statutes implementing a dozen international conservation agreements, in addition to our other authorizing legislation. With respect to whales, sea lions, sea turtles and ESA-listed species of marine fish, H.R. 4335 would increase, rather than decrease, the need for interagency coordination and would give rise to more, not less, duplication of effort and expertise.

Setting aside the issue of salmonids for the moment, NMFS and NOAA strongly object to transferring ESA authority to Interior since NMFS and NOAA would still have to address the relevant ESA concerns in managing marine fisheries, marine mammals, and aboriginal whaling that have the potential to adversely affect other marine species such as whales, dolphins, seals, sea lions and sea turtles.

To name just a few of the ongoing ESA issues that would be made more complicated by enactment of H.R. 4335, the management of the Alaskan groundfish fisheries, now handled by the Regional Fishery Management Councils and NMFS, must take into account the needs of the Steller sea lions. Management of the lobster fishery and the gillnet fisheries in New England must also take into account the needs of the right and humpback whales. So too must management of the salmon gillnet fisheries in Alaska and recreational activities in the Hawaiian Humpback Whale National Marine Sanctuary must take into account the needs of the humpback whales that migrate from Alaska to Hawaii. Under H.R. 4335, Interior would be granted much greater control over these fisheries.

Even more significantly, NMFS' national and international responsibilities to protect sea turtles from incidental take in shrimp fisheries would not go away if responsibility for endangered species were transferred from NMFS to Interior, since sea turtles are considered "fish" under the definitions of the Magnuson-Stevens Act.

As should be obvious, the above issues concerning the interaction of marine fisheries and species protected under the Endangered Species Act, the Marine Mammal Protection Act and the National Marine Sanctuaries Act are all quite controversial. NMFS and NOAA have more than two and one-half decades of experience in coordinating conservation programs for living marine resources. NOAA is the Nation's oceans agency. The Department of the Interior could not easily acquire our expertise.

Even with respect to Pacific salmonids, NMFS and the other NOAA agencies would have to remain involved in ESA matters as a result of our broad ocean fishery resource management responsibilities, including the Federal Power Act, the Fish and Wildlife Coordination Act, the Coastal Zone Management Act, as well as the new requirements of the Sustainable Fishery Act that requires the Regional Fishery Management Councils, in cooperation with NMFS, designate essential fish habitat, which for salmonids at least, will cover much the same river basins as are now covered by our ESA programs. In short, even if NMFS' current ESA responsibilities were transferred to Interior only with respect to anadromous species, NOAA and NMFS would not be relieved of work and the public would not have fewer Federal agencies to deal with.

Mr. Chairman, thank you again for the opportunity to testify. I look forward to answering any questions you may have.

MR. STELLE'S RESPONSE TO QUESTIONS FROM THE COMMITTEE

Dear Mr. Chairman:

The Committee requested that the National Marine Fisheries Service supplement my testimony at your hearing in Pasco, Washington, on September 2, 1998. I was asked whether the Endangered Species Act abrogates state water law. I am pleased to provide the following as further response to this question.

It is inevitable that both state and Federal environmental statutes intended to protect aquatic species and their habitat will intersect with the exercise of established water rights. It has been the consistent approach of this Administration to meet ESA water needs consistent with state law. Consistent with this position, the Federal agencies have deliberately implemented their programs, including those for the ESA, to respect water rights. Some examples include:

• *Columbia and Snake River Basins, Washington, Oregon and Idaho:*

In 1995, during ESA consultations on Federal hydropower operations, the Federal Government concluded it would implement flow augmentation from the Upper Snake River through acquisition by the Bureau of Reclamation from willing sellers and express compliance with Idaho state water law.

• *Rio Grande River Basin, New Mexico and Texas:*

Similar to the Snake River Basin, the U.S. Fish and Wildlife Service and the Bureau of Reclamation are working with local and state parties to meet water needs for listed species pursuant to state law.

• *Upper Colorado Recovery Implementation Plan, Colorado, Utah, New Mexico and Arizona:*

This plan, which provides recovery measures for fish species listed under the ESA, calls for implementation of instream flow needs under state law.

In addition, compliance with state water law for ESA water needs is central to efforts in the lower Sacramento River (Bay Delta Agreement), the Platte River, and across Colorado.

With respect to aquatic species protected under the ESA, it is also important to ask where the courts are on the interaction between implementation of the ESA and the exercise of state law based water rights. Perhaps the closest case on point where the courts had to address state water rights in the context of ESA is *United States v. Glenn-Colusa Irrigation District,* 788 F. Supp. 1126 (E.D. Cal. 1992). In this case involving endangered Sacramento River winter run chinook salmon NMFS successfully sought to enjoin an irrigation district from diverting water pursuant to a state water right because an inadequately screened diversion was directly taking these juvenile salmon. The court addressed state water law issues and found that compliance with the prohibitions of Section 9 of the ESA did not abrogate water rights, but rather required that the right be exercised in a manner that did not violate the take proscription.

In our view, the fair and effective management of these issues can only be accomplished through open and candid discussion among water users and those agencies implementing programs protecting and restoring our aquatic resources. NMFS encourages such basin-wide planning efforts to meet the ESA needs of listed species as well as the needs of water users to the fullest extent possible.

STATEMENT OF JEFF CURTIS, WESTERN CONSERVATION DIRECTOR, TROUT UNLIMITED

Trout Unlimited, the Nation's largest coldwater fisheries conservation organization, appreciates this opportunity to testify at this hearing on Endangered Species Act implementation and H.R. 4335. TU has over 100,000 members nationwide in over 450 chapters. We have over 7,000 members in Oregon, Washington and Idaho.

Trout Unlimited is opposed to this legislation. From our perspective, Columbia River salmon management would not be fixed if this bill were passed. Frankly, I cannot imagine the U.S. Fish and Wildlife Service carrying out its ESA responsibilities much differently than the National Marine Fisheries Service (NMFS). And, if they did, the Federal courts would certainly force them to carry out their responsibilities consistent with ESA mandates. Let us recall that, while Judge Marsh ratified NMFSs current approach in *American Rivers v. NMFS,* he did so with a considerable degree of skepticism.

At this time, moving anadromous salmonid recovery responsibilities to an agency previously not involved in these issues is a recipe for mass confusion. Given the imperiled species status and pending court-imposed deadlines, the chance that upcoming decisions would have a random quality to them would be greatly enhanced.

Rather than tinkering with Federal agency organization and responsibilities, we endorse the development of a regional structure along the lines of the "three sovereigns" process currently being discussed by the governors of the four Columbia Basin states. We believe a process involving the major governmental agencies in the basin—state, tribal and Federal—that is open to participation by other interested parties, will move the region closer to a consensus on salmon and energy issues. While we are not so naive that we think complete consensus will ever be reached on these issues, we do believe the region as a whole can come to a more complete understanding of the issues.

But, in the end, it is not process but rather dramatic action that is needed to save salmon. To be blunt, the problem with the Columbia River is that we have changed the river to something that is now much less hospitable to salmon and steelhead. We have changed the hydrograph, running the river so it suits power production as opposed to running it the way that it ran when salmon were plentiful. We have

dewatered and degraded many of the tributaries that spring chinook and steelhead need for spawning. And perhaps most importantly, we have turned a flowing river into a series of slow moving lakes.

Recently Trout Unlimited endorsed proposals to breach the four lower Snake River dams. We recognize that we are advocating major changes in the system and we know that prompts two important questions. First, do we really have to make changes as significant as breaching dams to restore salmon? Trout Unlimited believes that to save ESA listed chinook and sockeye salmon and steelhead that return every year bound for Idaho's headwaters we do. Twenty years of failed barging and trucking experiments to get fish around these dams have demonstrated that, in essence, we can't fool mother nature. It is time to take more drastic actions. The Independent Scientific Advisory Board (ISAB) has concluded that the juvenile fish transportation program will not restore salmon. The ISAB has called for a normative river approach—restoring some sections of the Columbia/Snake River system to more natural conditions such as those found in the Hanford reach of the mainstem Columbia—to provide necessary habitat for salmon recovery.

Second, and perhaps the more obvious question, is it worth it to the region? Obviously, to those of us who believe that salmon are an icon of the region and a symbol of who we are, the answer to that question is obvious. But to those who look at these issues in more traditional economic terms, I believe the answer is still in the affirmative.

While everyone knows that one of the assets of the Northwest, salmon, is at risk, we are also in some danger of losing another asset—low cost federally subsidized power. In an era of energy deregulation, the question must be asked why the rest of the nation should subsidize cheap power in the Northwest. More importantly, why should New Yorkers pay more to heat and cool their homes than folks from Seattle or Pasco? Why should Californians pay more for energy for their businesses than Oregonians?

The answer that we in the Northwest give is that our power system provides public benefits as well—investments in renewables, energy assistance for the poor and, most importantly, salmon conservation. If the system does not provide those benefits, if the power system we are protecting for our own advantage is killing a natural resource we are charged with protecting, our position in defending the region's low-cost power is much weaker.

It is apparent the drawdown and dam breaching scenarios being considered will have both negative and positive effects on the economy. TU supports efforts to mitigate the negative impacts to current river users. But it is clear that these economic impacts are far less than what we could face if we lost the benefits of low cost power we have enjoyed since the 1930s.

Many years ago, when there were no dams on these rivers, the fate of the Native Americans who lived in this watershed was inextricably tied to the salmon in the rivers. The salmon were articles of commerce as well as a food source. The health of the people and the salmon were linked. We do not believe that link has been broken. Our salmon and energy futures are still connected. If we sacrifice salmon for what may only be very short-term energy benefits to the region, in the long run we may very well end up with salmon extinctions and the loss of the competitive advantage of low energy costs. If, on the other hand, we as a region decide to make the tough decisions necessary to restore salmon, we stand a better chance of having a future that includes both salmon and a healthy economy.

Trout Unlimited appreciates the opportunity to testify before the Committee.

STATEMENT OF JOHN K. GIVENS, EXECUTIVE DIRECTOR, PORT OF KENNEWICK

Good morning, and thank you for the opportunity to participate in this hearing.

My name is John Givens and I represent the Port of Kennewick, one of seventy-six port districts in Washington authorized into public service by the state legislature with a mission of fostering economic development. In carrying out that mission ports also work hard to be responsible environmental stewards of the resources they manage.

My invitation to speak solicited remarks on the implementation of the Endangered Species Act (ESA), and views on H.R. 4335, regarding transfer of functions.

I believe the Endangered Species Act of 1973 was enacted with the purest of intent to be a good piece of legislation that could be reasonably interpreted and easily managed. I also believe that during the past few years our changing environment has transformed the ESA into a nine hundred pound gorilla, often difficult to manage, and at times implemented on requirements that might lack common sense. I think it needs to be revisited by Congress.

I'll share with you a good example of a potential recovery plan alternative being explored that, if carried out, would in my opinion be contrary to what most Northwest residents feel would be a common sense solution to the problem.

The Columbia-Snake River system is one of our country's most valuable resources. That vital multiple use resource provides critical economic, recreational, and safety benefits to millions of people.

The 465 mile federally authorized navigation corridor flows through a series of 46 ports, opening international trade markets to more than 40 states. Forty-three percent of all wheat shipped from this country travels through the remarkable Columbia-Snake system. Yearly cargo volumes exceed 50 million tons and provide revenues exceeding $16 billion dollars.

Employment numbers created through that system exceed 50,000.

The federally authorized dams which make that system unique have capacity to produce 75 percent of the Northwest's energy needs using renewable, plentiful, non polluting hydropower.

About 50 percent of the 7.3 million acres of the producing farm and ranch land in Idaho, Oregon and Washington are irrigated with water supplied from that critical system. Yearly sales from those farms and ranches exceed $10 billion dollars.

During 1996 and 1997 the Columbia-Snake River dams were credited with saving more than $4.8 billion dollars in property damage from two major flood events. The 70,000 acre feet storage capacity behind John Day Dam alone reportedly lowered the river level at Portland by 1.5 feet during flooding.

Reservoir related recreational activities created on those reservoirs add hundreds of millions of dollars to our country's economy each year.

Yet, in spite of the unsurpassed benefits provided by that system, serious consideration is being given to breeching several of those dams and destroying the integrity of that federally authorized system because of perceived ESA listing requirements. The ESA has no accounting responsibility for the potential catastrophic aftermath a decision to tear down those dams might have on those who depend on the resources they provide. I hope Congress doesn't allow that to happen.

During 1992, while I was serving as a Port of Clarkston Commissioner, the U.S. Army Corps of Engineers, after consultation with NMFS under the ESA, elected to stage a 30 day test drawing water down to a near natural river level on the Lower Granite pool of the Snake River. The purpose of the test was to measure infrastructure integrity under drawdown conditions.

The economic interests of the area were not involved in the test planning except shippers were told to make alternative arrangements to barging for their transportation needs during the test period. The result of that 30 day activity caused serious distress. Lost business revenue was estimated in the millions of dollars. Substantial physical damage occurred, including sloughing embankments, heaving and separated highways, twisted commercial and recreational docks, and inoperable water intakes. No cargo moved from the Port of Clarkston for more than a month. A local marina operator ended up filing bankruptcy as a result of unrecoverable damage and business revenue loss.

Thousands of resident fish were killed after being trapped in ponds which dried up when the river receded. The river corridor through Lewiston and Clarkston almost immediately became a stinking mud-flat as aquatic habitat decayed.

While some economic mitigation was later made available for documented physical loss to private property, the pot was small and reimbursement was difficult obtain. An overwhelming majority of the people who experienced that drawdown never want that experience again.

Now, six years later, we who depend on the integrity of the Columbia-Snake System are still living under the dark cloud of permanent natural river level drawdown while dam breaching options are being considered. Ports have great difficulty attracting many industries to their facilities with that curtain of uncertainty threatening large investments to bring needed jobs to communities.

New ESA fish listings are occurring on a regular basis throughout the region. I understand that the Northwest has 15 species listed as threatened, and five as endangered under the ESA. In addition to those existing listings, 12 species have been proposed for threatened status, and two for endangered protection by either NMFS or USFWS.

Once a population is tagged with an endangered listing, the only option available is to develop a sustainable recovery plan without regard to cost or economic effect. It deeply concerns me when I think about how the Endangered Species Act, if not sensibly interpreted, will drive the future of economic development in this country.

Congress needs to review the ESA to make sure that recovery options are based on good science, sound economics and common sense logic. That makes for good policy. People deserve win-win solutions.

I have concerns about the tiers of governing agencies involved in the ESA recovery process. It's hard to know where to turn to find help any more. Recovery efforts for anadromous fisheries are charged to NMFS. Unfortunately, that agency has both too few people and resources to meet the growing challenges facing them. I receive reports the NMFS consultation process is very slow. Recovery plans are difficult to complete, and then when finally approved are often challenged in court. Those involved with projects affected by threatened or endangered listings are often frustrated by the amount of energy and time involved on their parts due to agency resource scarcity.

In closing, I'll say that I have no personal preference on what Federal agency, the Department of Interior or Commerce, is delegated the responsibility of coordinating ESA recovery. Consolidation seems to make sense. Single agency control is less likely to place two agencies at odds when recovering competing species. Expertise can be centralized. What is important is that the delegated recovery agency be given the tools (clear mission, people, expertise and funding levels) to do a good job.

Thank you.

STATEMENT OF BOB HALE, HALE FARMS, SHAREHOLDER, INLAND LAND COMPANY LLC

My name is Bob Hale. I am a shareholder in Inland Land Company LLC ("Inland"), 115 West Hermiston Avenue, Suite 240, P.O. Box 110, Hermiston, Oregon 97838. Inland was formed in 1994 by three family farms to develop an irrigated farm on several thousand acres of undeveloped agricultural land in Morrow County, Oregon. Inland leased the land it did because it had existing partially developed state water rights. No new state water rights were needed.

I was born and raised in the small town of Echo, Oregon and have owned and operated farms in the area my entire life. We grow potatoes, onions and other crops for local food processors. New irrigated acreage needs to be developed in our area to replace land taken out of production due to urban expansion, groundwater restrictions and conversion of cropland to tree farms. Our local communities and food processors will not survive unless we maintain our agricultural land base.

You have asked witnesses to address three questions: (1) whether the National Marine Fisheries Service ("NMFS") is implementing the Endangered Species Act ("ESA") consistent with the authority granted in the ESA; (2) whether their activities overlap or are consistent with those of the Fish and Wildlife Service; and (3) whether their implementation is being conducted in a cost effective manner. You also asked for our views on H.R. 4335, a bill that would consolidate ESA implementation in the U.S. Department of the Interior. Inland appreciates the opportunity to address these questions because our farm development has been stopped in it tracks by the NMFS and its unreasonable, unscientific and unrealistic Biological Opinion on our application to the U.S. Army Corps of Engineers (the "Corps") for a new pump station from the John Day Pool on the Columbia River.

I cannot address your second question regarding consistency between NMFS and Fish and Wildlife Service activities under the ESA. Inland has had no dealings with the Fish and Wildlife Service, only the NMFS. Given our experience with the NMFS, enactment of H.R. 4335 seems like a good idea. We certainly do not need two Federal agencies implementing the same statute. I have to think that the Fish and Wildlife Service has had enough experience under the Act that it would not have issued the unscientific, highly political Biological Opinion NMFS issued on Inland's application.

My testimony will focus on Inland's experience with NMFS implementation of the ESA: (1) its consistency with the Act; and (2) its cost effectiveness.

On May 2, 1996, Inland filed its application with the Corps for a new pump station on the Columbia River. The existing point of diversion for the water rights on the property is on the Willow Creek arm of the Columbia. When Inland advised the Oregon Water Resources Department ("WRD") of its intent to complete development of the existing water rights, the WRD contacted the Oregon Department of Fish and Wildlife ("ODFW"). ODFW expressed concern that increased pumping from the Willow Creek pump station would harm listed salmon and steelhead by attracting them into the mouth of the creek. In response to this concern and to avoid problems with the existing pump station if the John Day Pool were ever drawn down, Inland agreed to build a new pump station. A new pump station requires a section 10/404 permit. The permit application triggered consultation requirements under section 7 of the ESA. Inland included an environmental assessment and biological assessment with its permit application in May 1996.

Inland has obtained local zoning approval, a state fill and removal permit for construction, department of environmental quality 401 Clean Water Act certification, and water right permit extensions from the OWRD needed to develop the new farm. In spite of nearly a four year effort, however, we cannot begin work on the new pump station.

Why? The May 16, 1997 Biological Opinion issued to the Corps by NMFS.

A detailed permitting chronology is attached to my testimony as Exhibit A. The key points are that the Corps determined on July 19, 1996 that the proposed pump station would not be likely to adversely affect any of the listed salmon stocks in the Columbia River. NMFS disagreed with the Corps and asked for a supplemental biological assessment. Inland submitted this to the Corps on September 18, 1996. The Corps reviewed it again, and again concluded on October 31, 1996 that the proposed new pump station would not adversely affect listed species. NMFS did not issue its Biological Opinion until May 16, 1997. A copy of the Opinion is attached as Exhibit B.

The ESA and its implementing regulations require consultation to be completed within 90 days. They also require NMFS and the Corps to explain to an applicant, in writing, if a longer period of time is required. In our case, the NMFS Biological Opinion was not issued until over one year after our application to the Corps and nearly eight months after the Corps submitted the supplemental biological assessment to NMFS. These delays in the consultation process are unconscionable. Applicants are forced to agree to extensions of the statutory timelines under the threat of an adverse opinion if they do not. Congress should impose the same type of hammer on Federal agencies under the ESA that the Oregon Legislature has imposed on many state and local government permitting activities. If NMFS fails to provide its opinion in a timely fashion, the requirement for the opinion should be waived.

The ESA also requires the action agency and the NMFS to use the best available scientific information in preparing biological opinions. In our opinion, NMFS failed to do so. To understand how flawed the NMFS analysis was, you need to understand what the impacts of our project will be. You should also remember that we are completing development under existing water rights that are already partially developed.

The Inland project when fully developed will pump a maximum of 303 cfs. The peak withdrawal actually will occur only for about two weeks each season. The biological assessment reviewed and approved by the Corps concluded that this diversion would have no significant impact on smelt survival during out migration, nor on fish travel time in the John Day Pool. Under low flow conditions, the largest estimated impact on yearling chinook would be a total of 16 fewer smalls out of 16O,OOO migrants. The largest impact on travel time is 0.01 days, or about 15 minutes for fish experiencing a migration of weeks or months. The Inland project would only divert two and one half one hundredth of one percent (0.025 percent) of the Columbia River system's water. The impact on flows in the river is so small it cannot be measured. This analysis was done by leading experts on Columbia River flows and fish. The Corps' experts agreed with it. In spite of this, NMFS concluded that issuance of the permit would be likely to jeopardize the continued existence of listed salmon in the Columbia and result in destruction or adverse modification of their critical habitat.

Why did the NMFS reach this conclusion? NMFS acknowledges that the Inland diversion is only a small fraction of the river's flow and that Inland's fish screens and construction methods would avoid impacting the listed fish. NMFS reached its jeopardy conclusion entirely on the "cumulative impact" of Inland's withdrawal when combined with all irrigation withdrawals in the entire Columbia Basin. NMFS decided that no more water should be allowed to be diverted from the river, even under existing state water rights, until the target flows established in NMFS' 1995 Biological Opinion on the Columbia River hydroelectric system are met.

There are two fundamental problems with the NMFS analysis. First, the NMFS flow targets are unrealistic. Second, NMFS' analysis of the impact of irrigation withdrawals on Columbia River flows is flawed and was applied incorrectly and unfairly to the Inland project. Both of these problems arise from NMFS' opinions about river hydrology, not biology. NMFS is staffed largely by biologists, not hydrologists. It is baffling that NMFS, with no expertise on river hydrology, could trump the opinion of Corps experts on hydrologic impact analysis, when the Corps truly is the Federal expert on river flows and modeling.

Several reports analyze the NMFS flow targets. The fact is that NMFS flow targets have never been met in the known history of the river. Recent reports by consultant Darryll Olsen and by Carl Dreher of the Idaho Department of Water Resources show that the NMFS flow targets could not be met even if all irrigation in

the Columbia River Basin were eliminated. How can NMFS continue to assert that the flow targets are based on the best available scientific information?

NMFS' use of the Bureau of Reclamation's draft report on the cumulative impacts of irrigations withdrawals on flows in the Columbia are even more flawed. NMFS requested the study and acknowledges that it is only a draft and only provides rough evaluations of impacts in low flow years. Based upon our discussions with Bureau of Reclamation staff, we believe NMFS knowingly misused and misinterpreted the Bureau's data to reach the result in wanted to reach politically in issuing the Inland opinion.

Inland is being made to pay the price for all of the water withdrawals that have ever occurred in the Columbia Basin. The Bureau of Reclamation study counted the full amount of water use authorized under all state water rights (including permits, certificates and decreed rights) as water withdrawals. Based on this study, NMFS concluded that "but for irrigation withdrawals, our ability to meet spring and summer stream flow objectives would significantly improve." The NMFS rejected the Corps' analysis of the impacts of the Inland project because the Corps did not take into account the "contribution of existing water withdrawals" to the baseline condition. In its analysis of current water withdrawals and assessment of future water withdrawals, NMFS counted partially developed unperfected water right permits, such as Inland's, as contributing to withdrawals. Counting all existing certificated, decreed and permitted water rights as withdrawals of water from the Columbia in determining the effect of water withdrawals on flows makes no sense. Every water right is not used every year and most water rights do not use the full amount of duty authorized. The NMFS analysis grossly overstates the impact of water withdrawals on flows. NMFS even counted non-hydraulically connected groundwater rights as contributing to the alleged flow depletions.

Based upon this, the NMFS is not using the best science available.

The ESA requires the NMFS to provide a "reasonable and prudent alternative" to the proposed action if it issues a "jeopardy" opinion. The NMFS "reasonable and prudent alternative" for the Inland project requires that:

> "so that no water withdrawal occurs during times designated as flow objective periods in the FCRPS opinion unless: *** the permitted proves to NMFS' satisfaction that he will provide for in stream use, at the point of diversion or upstream of this point during periods when flow objectives are not expected to be met, an amount of water from completed water rights that is equivalent to the flow depletion caused by the new use. This replacement flow is intended to result in *zero net impact* of the new diversion on flow targets" (emphasis added).

NMFS adopted this unprecedented "zero net impact" policy as a reasonable and prudent alternative and imposed it for the first time ever on Inland.

The ESA and its implementing regulations are clear that in order to be a "reasonable and prudent alternative" the alternative must meet the intended project purpose, be able to be implemented consistent with the action agency's statutory authority, and be economically and technologically feasible. 50 CFR Section 402.02. NMFS believes that the alternative required in its Biological Opinion can only be satisfied if Inland either does not divert water during periods when target flows are not being met; or replaces any water it diverts with other water rights dedicated to instream flows. If this is what the alternative requires, it does not meet the definition of a reasonable and prudent alternative because (1) it cannot be implemented in a manner consistent with the intended purpose of Inland's farm project; (2) cannot be implemented consistent with the Corps' legal authority and jurisdiction; and (3) is not economically and technologically feasible.

In order to finance development of a new farm of this size, Inland must rely upon project financing from banks or other lenders. These lenders will not loan money unless they are sure that the loan can be repaid over the life of the project. Lenders will require assurance that the conditions of the 404 permit and all other permits will be able to be met over the term of any project loan. This means that Inland cannot wait and see whether target flows are being met in any given year and then arrange mitigation on an annual basis. The project cannot be built unless Inland can show lenders that it can provide replacement flows every year. Inland cannot develop its project not knowing from year-to-year whether it will be able to irrigate the land.

The Corps may have the legal authority under Section 404 of the Clean Water Act to condition permits to meet the requirements of the ESA, but the Clean Water Act expressly recogmzes the authority of the states over water rights and states that the states' authority should not be abrogated or superseded by the Clean Water Act, 33 USC § 1251(g). As NMFS interprets the Biological Opinion, Inland's existing water right permits are essentially worthless. Target flows were not even met last year when there were record snowpacks and flows in the Columbia Basin. The tar-

get flow period extends over eighty percent of the irrigation season. NMFS is requiring Inland to acquire sufficient water rights to irrigate the entire farm to replace the water that would be diverted under Inland's existing permits, or to not divert at all during eighty percent of the irrigation season. If the Corps imposes such a condition in the permit, it would violate the Clean Water Act by making Inland's existing state permits worthless.

Ever since the Biological Opinion was issued Inland has tried to figure out a way to meet NMFS' requirements. NMFS never even discussed Inland's project purpose or economic and technical feasibility of the "reasonable and prudent alternative" with us before it issued its opinion. In spite of lengthy discussions with NMFS, the Corps and state officials, we have not figured out a way to meet the requirements of this supposedly reasonable alternative. It is very difficult under current state law to acquire existing water rights and convert them to instream uses. Even the Bureau of Reclamation's flow augmentation program has been for short terms. The holders of existing water rights are not willing to transfer them for the period needed for Inland's project financing. There is no organized market for such water transfers; they must be arranged with individual landowners which is time-consuming and uncertain. For all of these reasons, Inland believes that the NMFS interpretation of its own "reasonable and prudent alternative," when tested against the real world situation facing Inland, does not meet the definition of a reasonable and prudent alternative at all.

In spite of the NMFS' questionable flow analysis and seemingly unachievable alternative, Inland met with the Corps to try and satisfy the NMFS alternative. Inland and the Corps agreed on an approach we thought would work. We met with NMFS officials on July 31, 1997 to explain our approach. Inland and its lessor offered to voluntarily cancel 12,120 acres of the existing water rights to mitigate for developing the rest. NMFS representatives were not receptive to the proposal. A copy of the Inland proposal is enclosed as Exhibit C for your information. Inland believes that the proposal exceeds the requirements of the Biological Opinion. Inland would ensure that valid existing water right permits that have been partially developed will be permanently reduced at a ratio of 1.5 to 1. The replacement flow offset would exceed the peak amount the project would ever use, even though the peak withdrawal would actually only occur for about two weeks a year. Inland believes that its proposal assures no net loss of flow as required by the biological opinion. The only reason that the NMFS disagrees is that the NMFS thinks partially developed water rights should not be counted for purposes of offsetting future diversions. NMFS suggests that reducing rights under existing permits is a "paper exercise" that will not truly replace flows diverted for the new project. As discussed in our letter to the Corps of Engineers dated February 4, 1998 (attached as Exhibit D), the NMFS position is directly contrary to its own analysis of the effects of the project which counted unperfected rights in the baseline and in the analysis of cumulative effects.

NMFS should not be able to have it both ways. If unperfected or partially perfected permits count for purposes of concluding that irrigation withdrawals are significantly impacting the listed species, then partially perfected permits should count if they are canceled in order to reduce the impact of such diversions on the species.

What does this NMFS position really mean?

- If any water permittee pumps more water next year than they pumped the year before, resulting in additional development under existing water rights, the Corps must reinitiate consultation with the NMFS on the impacts of the pumping.
- In order to continue to develop existing valid state water rights, cities, farms, ports and other businesses will have to somehow obtain duplicate water rights and dedicate them to in-stream flows even though the permittee has valid state water rights and valid existing Federal permits for their pump stations.

If the NMFS approach is followed, the Federal Government would be sending a very unfortunate message to water users in the Columbia/Snake Basin. The message would be that no one who has to divert water from the river under either a new or an existing Section 404 permit can do so and still comply with the ESA. If the Clinton Administration wants to assure that growing cities and towns and the irrigation community avoid any Federal involvement requiring ESA compliance, this would be a great way to do it. Rather than encouraging salmon recovery efforts, the NMFS policy discourages it.

As noted in the permit chronology, we were told throughout the discussions with state and Federal officials that every mitigation proposal we made and every variation we suggested was not acceptable to NMFS. Frankly, we faced a problem of "bring me a rock" with NMFS never explaining what kind of a rock they wanted. Instead, they simply rejected every feasible suggestion we made and insisted that

the only acceptable solution would be somehow obtaining water rights equivalent to the maximum water withdrawal the project would ever make and dedicating them to instream flows. Perhaps the most frustrating moment came at a meeting in November 1997 when NMFS suggested, for the very first time, that Inland might be able to do a habitat conservation plan ("HCP"). Frankly, after six months of attempting to get straight answers from the agency, Inland had no desire to embark on an HCP since NMFS could provide us with no guidance on what would be required, how long it would take or the likelihood of getting approval.

You can imagine our frustration when NMFS announced in June 1998 that it had entered into an HCP with two public utilities in the mid-Columbia allowing them to continue to operate hydroelectric facilities which kill fish. Their "no net impact commitment" simply requires them to meet a 95 percent survival rate for juvenile and adult salmon passing through the dams and reservoirs and a 91 percent overall survival rate. Inland's diversions would not impact even a fraction of the listed species affected by these dams. Why will NMFS reach an HCP agreement with public utilities, a no jeopardy opinion for the Federal hydro system and a no jeopardy opinion for sport and commercial fish harvests allowing all of them to directly kill fish while they will not allow a farmer to move an irrigation diversion point for existing state water rights that will have an immeasurable impact on flows and fish survival?

No one appears willing to insist on good science from NMFS. Inland believes that the Biological Opinion on its project was issued for political purposes to placate environmental organizations, not because of any scientific justification. NMFS seems willing to live with a flawed cumulative effects analysis that grossly overstates the impact of irrigated agriculture on river flows. The NMFS view appears to be that any water withdrawals from the Columbia Snake River system are bad and should be discouraged and cut back. This is completely unrealistic given the population growth in the region, let alone the need to maintain the net base of irrigated lands.

The NMFS no net loss policy cannot be met under existing state water law. Fundamentally, NMFS has told farmers in the Columbia Basin that further development of existing water rights will not be permitted if it requires any kind of permit from the Corps of Engineers or another Federal agency. Basically, NMFS is taking existing state water rights from landowners in order to create theoretical benefits for fish that cannot be measured in reality.

Inland is willing to address the real environmental impacts of its project. Inland is willing to give up a portion the water rights it now has and to commit to the highest standards of water conservation in its operations. Rather than providing encouragement and incentives for companies like Inland to invest in effective mitigation efforts for the listed species, NMFS prefers to impose conditions that are impossible to meet in order to shut down water development.

Is NMFS implementing the ESA consistent with the law Congress passed? In my opinion, no.

Is NMFS implementing the ESA cost effectively? Again, in my opinion no.

Inland has spent nearly $1 million trying to permit its project and because of NMFS we still cannot proceed. A fisheries biologist for the Corps Portland office said it best when he interrupted me during a technical presentation I was making on our project's non-measurable impact on fish survival when he said, "... excuse me Bob, this isn't about science and biology, this is about politics."

EXHIBIT A

INLAND FARM PERMITTING CHRONOLOGY

November 14, 1994	Inland phase of the Boeing Farm project started, to complete existing Boeing farm project.
September 25, 1995	**OWRD granted water right permit extensions on Boeing permits.**
January 5, 1996	OWRD allows environmentalist's petition for reconsideration water right extensions.
February 14, 1996	**OWRD water right permits extension re-confirmed by OWRD.**
March, 1996	Environmental Groups file lawsuit against OWRD over extensions.
May 2, 1996	Section 10/404 permit application to the Army Corps of Engineers filed with Environmental Assessment and Biological Assessment.
May 10, 1996	ODFW issues document explaining habitat plans pursuant to numerous discussions with Inland.
June 12, 1996	Morrow County Planning Commission approves farm use text change to clarify zoning.
July 19, 1996	After reviewing Inland's permit application, **the U.S. Army Corps concludes that "...the proposed work is not likely to adversely affect any of the listed salmonid stocks in the Columbia River."**
July 22, 1996	**OWRD approves new pump station point of diversion on the Columbia River.**
August 15, 1996	**ODSL issues fill/removal permit for new pump station.**
September 16, 1996	**Environmental Activists' March, 1996 lawsuit** about permit extension against OWRD and Boeing **dismissed by Marion County Judge for lack of "standing."**
September 18, 1996	Supplemental biological assessment filed with Corps in response to NMFS request.
October 31, 1996	**The Corps** reviewed the supplemental BA and **concludes that "our fisheries biologists reviewed the findings of this study and had indicated he has no reason to dispute their conclusions."**
January 29, 1997	**DEQ issues 401 Clean Water Act certification**
March 31, 1997	Environmental group filed petition seeking review of DEQ 401 certification
May 16, 1997	**NMFS issues biological opinion**

July 25, 1997	Telephone conference with Martha Pagel regarding desirability of settling Court of Appeals case on environmentalist standing; beginning of state initiation of "global settlement" discussions of permit extensions and NMFS/Corps permit conditions
July 31, 1997	Boeing-Inland meeting with NMFS and COE to present initial mitigation plan and draft COE permit condition (proposal to surrender right to irrigate approximately 12,120 acres under existing Boeing permits (303 cfs).
August 22, 1997	Inland granted request to intervene and defend DEQ's certification against Environmental petition.
September 9, 1997	**NMFS letter to Corps advising that only "wet" water bucket for bucket counts for mitigation**
September 25, 1997	Boeing-Inland meeting with state agencies to present modified mitigation proposal.
October 29, 1997	Follow-up meeting with state agencies to get their response to the modified mitigation proposal
November 5, 1997	Second follow-up meeting with state agencies to focus on identifying mitigation options meeting state and NMFS requirements
December 1, 1997	Meeting with Jim Anderson, Corps of Engineers to discuss Corps options and timing on permit issuance
December 18, 1997	Third follow-up meeting with WRD-ODFW to review results of analyzing additional options (Willow Creek, groundwater, flow averages, conservation, stored water) and settlement of permit extension issues
January 20, 1998	Jim Anderson, Corps of Engineers requested Inland to ask for suspension of permit processing to meet Corps permit processing schedule needs
February 4, 1998	Letter to Jim Anderson, Corps of Engineers enclosing formal mitigation proposal and requesting suspension of permit processing
February 9, 1998	**Judge Fisher dismissed environmental groups lawsuit challenging DEQ's 401 certification for lack of standing**
March 23, 1999	Environmentalists filed notice of appeal from Circuit Court's dismissal of its petition against DEQ's 401 certification.
August 5, 1998	**Court of Appeals confirms Environment Groups lack standing to appeal the WRD order on water right extensions.**

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STATEMENT OF FRED ZIARI, CHAIRMAN, EASTERN OREGON IRRIGATION ASSOCIATION

My name is Fred Ziari and I am the chairman of Eastern Oregon Irrigation Association, located in Hermiston, Oregon. By profession I am an irrigation engineer with over 18 years of experience in water management fields in the Pacific Northwest. The Eastern Oregon Irrigation Association appreciates the opportunity to present its views on the role of the National Marine Fisheries Service on the management of our Columbia/Snake River. Our Association represents farmers, ports and water users in Eastern Oregon.

Our members have a long history of working in a cooperative manner with Congress, State, Tribes and Federal agencies in implementing and enhancing fish runs in Eastern Oregon. Over the past fifteen years, our farmers working cooperatively with the Confederated Tribes of Umatilla and the related agencies have successfully implemented the Umatilla Basin Project, which has brought salmon back to our river and has become a model of successful salmon recovery in the Northwest.

We live in an area that on average receives less than 8 inches of rainfall a year. Consequently our communities are totally dependent on the Columbia River for its agriculture, industries and municipal drinking water supplies.

With the use of high technology such as satellite, aerial infrared, intensive soil moisture and crop monitoring, and the use of precision agriculture, our farmers have implemented one of the most extensive water conservation projects in the nation. This conservation effort has resulted in water savings of over 20 percent. We irrigate some 200,000 acres of lands in Eastern Oregon. Almost all of our products are processed locally and values are added. Annually over 80 percent of our agricultural products valued between $800 million to $900 million, are exported out of our region and most for overseas market through the efficient and economical Columbia River barge transportation system. About 8,000 people in our sparsely populated area are employed in agriculture and related food processing. We do all this with the use of only less than 0.3 percent of the Columbia River water.

Let me make one thing very clear, that the Columbia River system, which is the second largest river in the country, is not an over-appropriated river, as some may want you to believe. A total of only 7 percent of Columbia River water is utilized for agricultural, municipal, and industrial use in Oregon, Washington, Idaho, Montana, and part of British Columbia. Our farmers are a vital part of providing food for our citizens at home and the hungry world abroad, and we are very proud of that achievement. As the world population are expected to reach to over 10 billion people in the coming decades, our ability to produce high quality and affordable food supplies becomes even more vital.

All of these achievements are now in jeopardy through unrealistic dam removal and excessive flow augmentation proposals by our Federal agencies. We watch with bewilderment, how the National Marine Fishery Service and an army of other Federal agencies, have totally abandoned cooperative spirit of working with local officials and the resource users. At the same time they have wasted billions of dollars of Northwesterners' ratepayer's money with nothing to show for it. When they were presented with a resolution to a problem by natural resource users, they instead decided to implement a mean-spirited policy to inflict pain and suffering to water users and landowners. A good example of this politically driven rule making is "flow augmentation" and the total shutdown of the river system under the "zero net water loss" policy. This policy is of the utmost concern to all of our communities in Eastern Oregon.

Under the "flow augmentation" policy, NMFS arbitrarily requires a minimum flow of 220,000 cubic feet per second up to August 15th at the McNary Dam, which is more water than is naturally available in the Columbia River system. Our average flow for the month of August is 125,000 cubic feet per second. If we shut down all of our water uses in the Pacific Northwest we still can not meet this flow target. This goal is not achievable, it is not scientific, and biologically has not been shown to aid in salmon recovery.

The "zero net water loss" policy is a reactionary policy based on no meaningful or defendable analysis, no consultation with other Federal or state agencies, while at the same time they have failed to follow their mandated Reasonable and Prudent Alternative (RPA) rules. This policy impacts everyone in the Northwest that depends on the river and above all it **violates our state water laws.**

This policy not only impacts our farmers and food industries, it also severely restricts our cities' ability to meet the drinking water supply needs of their citizens. Case in point, I am the engineer for the city of Umatilla, Oregon, a town of about 3,300 people located on the Columbia River, 25 miles south of here. Following a state-wide search for a suitable sites, the State of Oregon is now constructing a new state prison in Umatilla which will house 1,500 prison inmates and employ 500

staff. To serve this facility, the City holds a state-approved water right to appropriate a mere 23 cubic feet per second from the Columbia River which has a mean river flow of over 200,000 cubic feet per second. But this permit which they worked so hard to get has been nullified by NMFS without a hearing or compensation. The City is wondering, now what, and how will they meet the needs of their citizens. There are other Cities in Eastern Oregon that are facing the same dilemma.

Recommendation for Congressional Action

It is obvious to our members that the NMFS management policy is a failure that has not produced a workable regional plan to recover endangered salmon, nor do we have any confidence in them to produce a workable plan in the future.

- It has become obvious to us that the present NMFS Salmon recovery strategy is one of **partisan political strategy,** not a scientific or even common sense solution. We ask your help in overseeing their actions and to help bring **accountability** into the process.
- Our farmers are the stewards of the land and they own over 70 percent of the riparian salmon habitat along the rivers. However, these vital economic stakeholders have been totally **dismissed and shut out of this** recovery process. American citizens would have been totally outraged if for example the government of Brazil did the same thing to Yanomami Tribe of Amazon. For a meaningful recovery plan, landowners must be part of the solution and be represented at the table. We ask your help by **empowering** the resource users in this process, and by supporting provisions in Senator Gordon Smith's S. 2111.
- The main problem may not be NMFS (although they have lost many opportunities to make a difference), but it is the **unworkable ESA** process that so far has failed miserably and in my opinion has not effectively recovered any species. We recommend that a bipartisan committee of the House and Senate with the aid of a renowned scientific panel to **investigate the effectiveness of ESA** process in recovering species and make recommendations for its improvement. NMFS management policies should provide a good case study.
- ESA must be modified so that **cooperative, and volunteer recovery plans** such as the Umatilla Basin Project which was successfully implemented by our local communities, or the one proposed by State of Oregon, the so called "Oregon Plan" can be the focus of a cost effective recovery plan. By the way a Federal Judge recently overturned this popular, voluntary "Oregon Plan" which has frustrated our Oregon Governor, Legislators and most of the citizens and is a prime example of flawed ESA processes that presently NMFS is so vigorously pursuing.
- We support the provisions of H.R. 4335 and believe it may be a more appropriate vehicle of species recovery provided some modification to ESA is implemented.

On behalf of our members we thank you for the opportunity to comment on this important issue which is vital to both our economy and our environment.

STATEMENT OF ALEX MCGREGOR, STATE PRESIDENT, WASHINGTON ASSOCIATION OF WHEAT GROWERS

A flood of economic grief would be unleashed if the four lower Snake River dams were breached. Before this experiment to save dwindling salmon runs is imposed on people of the Northwest, we must look at the effects of dam breaching objectively. We must first look at what will be sacrificed in an experiment that may fail to save the fish.

Some facts help put the impact of dams breaching in perspective.

- The 1,250 mega-watts of the four Snake dams is equal to 20 percent of Pacific Northwest residential needs, or over 100 percent of residential needs for Idaho and Montana combined.
- Navigation value is $414 million per year.
- Irrigation loss on over 36,000 irrigated acres representing annual farm value of $100 million to $150 million.
- Dam decommissioning costs would be between $500 million and $816 million—with concrete removal, between $848 million and $1.22 billion.
- Remaining BPA debt on the four dams is $864 million. BPA would lose $200-million annually, and its financial stability would be determined by an uncertain future electricity market.

I am most familiar with wheat production in Washington state and so use these figures to show the ripple effect of dam breaching beyond any one state's borders: Washington wheat contributes nearly $1.2 billion to the state's economy annually,

with up to 90 percent of wheat being exported. Commodity shipments on Lower Snake barges are expected to increase by about 1 percent per year for the next 25 years, if the dams remain. That means in 2022 there likely will be about 5.2 million tons shipped compared with about 4.2 million today. The multimillion-dollar question is, "If we lose navigation, where is all this traffic going to go?" Rail and roads are not adequate to the task.

The above question is as relevant to the environment as well as to economic health in the Northwest. Barging is efficient regarding emissions.

- Hydrocarbon emissions: navigation is 20 percent of rail and 14 percent of truck.
- Carbon monoxide emissions: navigation is 29 percent of rail and 11 percent of truck.
- Nitrous oxide emissions: navigation is 29 percent of rail and 5 percent of truck.
- Barging efficiencies also extend to fuel use.
- A ton of commodity can move 514 miles by barge on one gallon of fuel.
- A ton of commodity can be moved 202 miles by rail on one gallon of fuel.
- A ton of commodity can be moved 59 miles by truck on one gallon of fuel.

Additionally, hydropower is renewable, plentiful and non-polluting. Compare this to fossil fuels and nuclear energy as the next best alternatives for large-scale energy production.

If barge navigation were halted, an additional 120,000 rail cars would be required annually, or an equivalent of 700,000 semi-trucks, greatly increasing highway congestion and/or traffic backups at railroad crossings. It would take an additional 204,320 semi-trucks or 51,080 more railcars to handle *just the wheat* that is now carried on barges if barging were discontinued above McNary Dam.

Revenue from the natural resources industries is an economic tributary running through the Northwest and it must be guarded to protect the human species. Wheat and other exportable crops are an important part of that tributary. The wheat commissions of Washington, Oregon and Idaho, as well as the grassroots grower associations in each of the three states, are united in their opposition to an experiment that not only may fail, but may cause hardship to people in this great region.

Notions that we can turn back the clock, breach the dams, or lower the water to a "natural" level seemed farfetched when we first heard them a few years ago. Some activist groups view dam breaching as a way to return the river to its "natural" wild state of the past. Those of us who have lived near the river since before building of the dams realized no amount of money or nostalgia will bring back those former times. But the economic devastation our state would suffer in this forlorn search for the "natural" world few knew would be considerable.

DAVID J. STUECKLE,
LACROSSE, WASHINGTON,
September 2, 1998.

The Hon. DON YOUNG
Chairman, Committee on Resources,
House Resources Committee
U.S. House of Representatives,
Washington, DC.

Hearing—Pasco, Washington, September 2, 1998

Dear Sir:

Just a few words about how important the dams on the Columbia and Snake Rivers are to agriculture in the Northwest. The railroads are gone and our local roads can not handle more load. The counties can't keep up with maintaining the roads. The barge traffic is very vital to get our crops to market year around.

It upsets me a great deal that the NMFS has not considered the impact that dam removal will have on our economy.

I don't want a Federal agency messing with my water rights.

Hydroelectric power is important to our area because of the large irrigated area.

Thank you for considering my concerns.

DAVID J STUECKLE,
LaCrosse, Washington

WEST COAST SEAFOOD PROCESSORS ASSOCIATION, PORTLAND, OREGON, LETTER TO HON. DON YOUNG

We recently reviewed a copy of H.R. 4335, the "Endangered Species Consolidation Act" which you introduced with several House colleagues. We understand that your Committee will be holding field hearings on the bill in September and ask that these comments be included in the hearing record. These comments are submitted on behalf of the West Coast Seafood Processors Association, whose members have seafood businesses in Oregon, Washington, California, and Alaska.

Two years ago, you introduced legislation reforming the Endangered Species Act (ESA) which—among other things—made some of the same changes in law as does H.R. 4335. At the time, we generally supported ESA reform but expressed our concern with removal of the Secretary of Commerce from the ESA process. Subsequently, your Committee reported the bill with an amendment which maintained the Secretary of Commerce's role. We are therefore puzzled as to why the Committee is again looking at taking away the Secretary of Commerce's responsibilities under ESA.

We understand the frustration that land-owners and land-based resource industries have with the emphasis that the Department of Commerce has put on salmon restoration. As we and others testified before your Committee in April of this year, the Federal Government has poured billions of dollars into Columbia River salmon recovery, yet wild salmon returns are lower than when the recovery program started. At the same time, the Department of Commerce has virtually ignored the Pacific groundfish fishery, which in Oregon has a value greater than all other fisheries combined. Could money be better spent? We certainly think so.

We also understand the concern that land-owners have to deal with several different Federal agencies under ESA. Again, we have the same concern. For the most part, we are able to deal with one Federal agency—the Department of Commerce—when it comes to ESA actions affecting marine fisheries. However, long-liners in Alaska and gillnet fishermen in Washington must deal with both the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on seabird entanglement issues. Dive fishermen in California must deal with USFWS in regard to sea otter interaction. The problem—and the frustration—is the same at sea as it is on shore, but the answer is *not* to solve the problem on land by shifting the burden to small businessmen who make their living on the ocean.

Here are examples of some of the problems that will result if H.R. 4335 is passed. The Pacific whiting fishery off California, Oregon, and Washington is managed by NMFS under a fishery management plan developed by the Pacific Fishery Management Council. NMFS and the fishing industry have long recognized that a certain level of salmon bycatch occurs in the fishery. Accordingly, NMFS issues a biological opinion specifying the allowable level of bycatch and the industry takes steps to monitor and avoid bycatch to stay within that allowable level. Both NMFS and the Council have found this to be a logical and acceptable arrangement.

If H.R. 4335 were enacted, the issuance of a biological opinion and any arrangements to avoid salmon bycatch would fall under USFWS, an agency that has little knowledge and no experience with marine fisheries. In fact, section 2(d) of the bill would give USFWS management authority over any marine fishery that interacted with an endangered or threatened species. Marine fisheries management is convoluted enough without bringing in another Federal agency with no expertise in the area.

In Oregon, Pacific groundfish fishermen, processors, and recreational anglers are already paying the cost of marine fisheries management through licenses, fees and taxes, as well as paying for endangered salmon programs in our State. We neither want nor need the additional burden of having marine fisheries management turned over to the Department of the Interior.

A similar problem would occur in Alaska, where several marine mammal species are listed as threatened or endangered. Again, fisheries management authority would be removed from the relevant Council and NMFS, and placed in the hands of USFWS. The same problems would occur in New England (harbor porpoises and whales) and in the Gulf of Mexico (sea turtles). On the international front, NMFS would be removed from ICCAT if bluefin tuna are listed and from IATTC (threatened species of porpoises). In Hawaii, interactions between monk seals and long line fishermen would now come under the jurisdiction of USFWS.

The Alaska Congressional delegation has worked hard to prevent the Department of the Interior from taking over fish and game management in Alaska under subsistence regulations; it seems inconsistent to allow that same agency to take over marine fisheries management in the entire country.

Just this week, you were quoted in the press as saying "everyone wants the Endangered Species Act to work effectively." We agree; like you, we support "the much needed ESA reform effort." Unfortunately, H.R. 4335 does not provide that reform; it simply shifts a set of problems from small businessmen on land to small businessmen on the ocean.

We believe that there are better, more effective ways of alleviating the regulatory burden faced by land-owners and land-based resource industries. We are interested, as we have always been, in working with those entities, with you, and with your staff in finding reasonable answers to problems that we all face. However, H.R. 4335 as presently written is not one of those answers. Thank you for providing us the opportunity to comment

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LETTER FROM LINDA M. JOHNSON, DIRECTOR, GOVERNMENT RELATIONS, WASHINGTON STATE FARM BUREAU, OLYMPIA, WASHINGTON

Dear Committee Staff:

Enclosed is our testimony which we would like to have submitted for the record. I was in attendance at the hearing but in the confusion of the day, simply forgot to submit our testimony to your staff in attendance. Also included are copies of several letters one faxed to me by a member the other handed to me at the hearing. They asked me to be sure they were also submitted for the record as well.

Please thank the Chairman for scheduling this hearing and all of the Committee members who were in attendance. Also, a hearty thanks to the Committee staff as well. We know that meetings which go as smoothly as this one did only happen because of the behind the scenes effort of staff.

As you know it was well attended and our members that were in attendance were very pleased with the messages which were delivered. We truly appreciated the opportunity to attend this important hearing.

If you have any questions, please don't hesitate to call me at the number shown above.

STATEMENT OF THE WASHINGTON STATE FARM BUREAU, OLYMPIA, WASHINGTON

The Washington State Farm Bureau is very concerned with NMFS approach to saving the salmon under the jurisdiction of the ESA and their desire to breach the dams along the Snake and Columbia River.

First we feel it is important to point out that the WA State Farm Bureau actively worked with the Joint Committee on Salmon Recovery for the past year and a half to create and pass legislation which would help to protect and recover the salmon. There were several pieces of legislation which were passed unanimously by the House and the Senate and signed by our Governor. The actions and the money which was allocated proves that our state and our farmers are determined to do the right thing, protect and recover the salmon.

It is important to note that these bills depend on working closely with the landowners. Much of the habitat for salmon is located on private property. Landowners are willing to work towards this worthwhile goal as long as Agencies and Congress understand that people have to fit in this equation.

NMFS has not been an easy agency to work with and often times have been a major stumbling block to our local efforts. They seem to have forgotten that the Grand Coulee dam was specifically built for irrigation of the Columbia Basin. They seem to have forgotten how important the power generated by the dams in our state is to the survival of the farms which were created because of the promise of irrigation water and power.

As a result of these dams we have an excellent transportation system which is environmentally friendly. This barging system handles shipments of wheat and corn from as far as the midwest. By shipping freight on the river we actually help to improve the air quality in our state through fewer air emissions. We also help to cut our dependency on foreign fuel because it takes far less fuel to ship by water than by either rail or truck.

Supporters of breaching the dams state that trucking and railroads will pick up the shipments. The existing transportation infrastructure is incapable of handling the increased freight. Eliminating barging would result in a marked increase of traffic on our already overloaded freeway system which leads into our port systems on the West Coast. We already have a freight mobility problem which we are trying to solve and this will only add to the problem. The highway system in Washington State is simply not capable of handling the amount of freight that is shipped up and down these rivers.

Unfortunately, railroads eliminated a vast majority of their unprofitable spur lines years ago. This means that it will be almost impossible to bring rail back to the areas economically. Not to mention the fact that the railroads already can't meet the current needs of wheat shipments.

Supporters of breaching dams state that it won't disrupt irrigation. Unfortunately when you lower the river to the levels they suggest our irrigation pipes are left sucking air instead of water. The cost of extending these irrigation pipes is not a cheap endeavor for farmers. Who is going to help cover this cost? That's assuming the farmers would even be allowed to, which is highly questionable when you view the way the environmental organizations currently use the court system.

The power generated by the Bonneville Power system is a very important component of the success of farming in our state. As a result of reasonable electricity rates, we have farmers who have made major investments in irrigation equipment, dairy milking barns, and other capital investments. We have numerous food processing facilities which have been built to process the crops grown in eastern Washington, which also require reasonable power rates. Eliminate the access to reasonable priced power and many of these investments may not pay. Not to mention the number of jobs generated by the farms, and the supporting industries.

The dams were also built for flood control, which seems to be conveniently forgotten by supporters of breaching. Is the government prepared to fund FEMA for the flood damage which will result if dams are breached?

Contrary to the belief of supporters of breaching dams, generations of family farms would not survive for many of the reasons mentioned above.

Next we want to point out that NMFS has been remiss in its duties. They have not researched the problems of the predators to the salmon. We have sea lions which are protected under the ESA feasting on salmon at the mouth of the rivers. We have sea gulls and terns which are also voracious predators. Why have they not expressed concern about predator control and done something about this? NMFS appears to have no studies which look at what happens to salmon when they are in the ocean. This is an important part of the salmon life cycle and yet it is a black hole as far as research. Why? Where is NMFS on this important piece of the puzzle?

What about drift nets on the high seas? Not to mention the gill nets which are place in the river by the Indian tribes. Is anyone looking at these important pieces to the puzzle?

Farmers are willing to do their part to provide good habitat for the salmon. But who is going to guarantee that we have salmon returning once the habitat is fully restored?

We hope that Congress will take into consideration the complexity of this problem and allow the states of Washington and Oregon to move forward unimpeded. The ESA is not working as it is currently written and it is time to take a close look at what needs to be changed to make it work as Congress originally intended, before the economy of Washington State is devastated in the admirable hope of saving salmon.

We ask that Congress take into consideration the people of Eastern Washington who face this economic disaster. We believe that a little common sense can go a long ways and the result will be both salmon and people surviving.

STATEMENT OF RICHARD L. ERICKSON, SECRETARY-MANAGER, EAST COLUMBIA BASIN IRRIGATION DISTRICT

Honorable Members of the Resources Committee:

Thank you for the opportunity to provide information to the Committee about the effects on the Columbia Basin Project of the National Marine Fisheries Service's Columbia River flow policies. The Columbia Basin Project, constructed by the United States Bureau of Reclamation and now primarily operated by the East, Quincy, and South Columbia Basin Irrigation Districts presently provides irrigation water to approximately 622,000 acres of farmland. This irrigation is accomplished by diverting, at Grand Coulee Dam, approximately 3 percent of the Columbia's flow. The Project is authorized by Congress to ultimately irrigate 1,095,000 acres.

The NMFS mandated flow policy caused the Bureau of Reclamation in July of 1993 to impose an administrative moratorium on new Columbia Basin Project water service.

This moratorium resulted in the shelving of all planning for further development of the Columbia Basin Project. This action hit late in the EIS study process to enlarge an existing canal to provide Columbia River water to 87,000 acres. That planning effort had begun in 1983, was nearing completion at the time it was shelved and had substantiated that this next phase of CBP development was economically

feasible and had the support of both the U.S. Fish and Wildlife Service and the Washington Department of Wildlife because of the considerable new fish and wildlife habitat that would be created on the Project. This cancellation occurred in spite of the fact that the draft EIS demonstrated that the 87,000 acre development would need only another 0.3 percent of the Columbia's flow at Grand Coulee and that adverse impacts to anadromous fish would be negligible. That Bureau decision to stop planning does not appear to us to have been science driven but rather based on political expediency.

This delay or cancellation of further development appears to many who are unfamiliar to be simply an opportunity foregone. However, between one-third and one-half of those 87,000 acres are irrigated by deep wells. All these wells were permitted by the State of Washington in the late 1960's and early 1970's at a density estimated to give that aquifer a 30 year economic life. That state action was taken with the expectation that the Federal Government would continue the orderly phased development of the second half of the Project, gradually replacing that groundwater source with surface water. Thirty years have now nearly passed. Many of those wells are not sustainable long term. The draft EIS estimated that by 1989, the deep well irrigation in the CBP second half area had declined from a peak of 110,000 acres to about 90,000 acres.

This NMFS inspired USBR moratorium has also taken authorized water supplies amounting to about 85,000 acre feet per year from the already developed first half of the Project. Because of the moratorium the Bureau has rescinded previously authorized contractual authorities for the Districts to irrigate about 13,000 more first half acres, translating to about 39,000 acre feet. Also reneged on was authority to provide up to 60,000 acre feet per year of Project water to area industries and communities far municipal and industrial use. The Project's M&I ability is now capped at the amount already then in use which is about 14,000 acre feet per year, locking up the balance of 46,000 acre feet.

This NMFS driven, USBR enforced moratorium, exacerbated by the scarcity of groundwater, has brought much of the Columbia Basin Project area to the threshold of a no-growth scenario. To better understand that situation please consider the attached letter from the Port of Moses Lake.

We are often told that our response to this moratorium and the source of our future water supply should be increased water conservation. Significant conservation is ongoing but is not a solution. In the East Columbia Basin Irrigation District the average on-farm use of water is now about 3.5 acre feet per acre. That average use was about 4.3 acre feet per acre in the past. That 0.8 acre foot per acre reduction is nearly a 20 percent efficiency improvement and amounts to over 100,000 acre feet annually. However, there is no sincere willingness by government to allow the use of this conserved water to offset the effects of the Bureau's moratorium. Every time that concept is raised we are told that such use is contrary to Federal reclamation law, contrary to Bureau policy and contracts, is water spreading, should carry a much higher Bureau repayment cost and is contrary to state water law.

An outrageous example of the extent to which these NMFS flow policies is dictating Bureau of Reclamation actions is the recent agreement by USBR to run Columbia River hydrologic studies for the Columbia River Intertribal Fish Commission showing Grand Coulee diversions to the Columbia Basin Project being reduced by 1 million acre feet per year. That would amount to a 40 percent reduction in the water available to CBP farms. Crop diversity is one of the hallmarks of the Project along with the multiple purpose use of Project waters for resident fish, wildlife and recreation. Assuming a 40 percent shortage would be distributed uniformly throughout the Project, instead of growing 70 or so different types of crops each year, only a handful would be possible—the potatoes, apples, onions and alfalfa hay, to name a few, would no longer be possible. Such a shortage would also likely diminish the Project created wetlands and lakes managed by the U.S. Fish and Wildlife Service and the Washington Department of Fish and Wildlife. While the Bureau's Acting Regional Director has offered assurances that no such actual reduction is seriously being contemplated, the fact that Bureau hydrologists would undertake a study that is contrary to the Congressionally authorized purposes of the Columbia Basin Project, that violates the Federal repayment contracts between the Bureau and the Districts and that runs counter to the primary water supply mission of the Bureau demonstrates that these Federal agencies are out of control in their zeal to enforce the Endangered Species Act.

On behalf of the East, Quincy and South Columbia Basin Irrigation Districts, I ask this Committee to use its considerable authority toward reducing these NMFS flow targets to levels supported by valid hydrology and valid biology and to end the Bureau's moratorium.

Regarding H.R. 4335, which if enacted would consolidate ESA authority with the Secretary of Interior, I'm not sure if that would be an improvement or not. In the Northwest, NMFS is using its ESA authorities to further an agenda of dam removal and single purpose control of mainstem flows. Judging from his statements and actions, the current Secretary of Interior has a similar agenda, especially regarding dam removal. If Congress determines to consolidate ESA authority to a single agency, it needs to be done in a manner that requires the responsible agency to minimize social and economic impacts as it administers the Endangered Species Act.

LETTER FROM PORT OF MOSES LAKE, MOSES LAKE, WASHINGTON

PORT OF MOSES LAKE,
MOSES LAKE, WASHINGTON
August 19, 1998.

Resources Committee,
124 Longworth House Office Building,
Washington, DC.

Honorable Members of the Resources Committee:

Thank you for your interest in overseeing Columbia and Snake River fish flow augmentation targets being set by the National Marine Fisheries Service and other Federal agencies. The purpose of this statement is to be sure the Committee is aware that the NMFS flow targets are having impacts beyond those two rivers and beyond the economic sectors which are direct river users. Moses Lake, Washington is relatively far from the banks of the Columbia or the Snake but our community is being affected by these federally mandated flow policies.

Much of Moses Lake's industries are food processing companies that convert Columbia Basin area raw agricultural products to value added consumer food products for domestic and export markets. In recent years, other types of industries have located in the Moses Lake area which manufacture non-ag products such as electronics materials, automotive components, industrial chemicals and metal products. This diversification is important to our economy and the area's working people to, among other things, help smooth out the inherent cyclical nature of the ag sector.

These industries, ag and non-ag, have located around Moses Lake for a variety of reasons, but an economic supply of electricity and a dependable water supply are common needs of nearly all these manufacturers. Both of these fundamentals are being threatened by the NMFS flow policies.

The Moses Lake area's electricity is supplied by Grant County Public Utility District and most of that energy is generated at Priest Rapids and Wanapum Dams on the Columbia. NMFS flow policies, enforced by FERC, are now to the point that Grant PUD is having to spill something like 60 percent of the river's spring and summer flow thus idling many generators. This results in the need to purchase replacement power at a higher cost. Grant PUD has worked diligently with NMFS for a couple of years to develop an ESA Habitat Conservation Plan. So far an affordable HCP has not been possible. Grant's rates continue to increase and there is concern they may eventually exceed the region's market rate. Many of our Moses Lake industries' economic feasibility is very sensitive to power costs.

Most of these industries also need water for their manufacturing processes and also for fresh water to blend with the process wastewater so that it can be treated by land application. Most of this land application is done by irrigation of crops by nearby farmers so the wastewater is actually supplementing our irrigation supplies and has a beneficial effect on irrigation demands on the Columbia and on area groundwater. However, the proportion of process water and either canal water or groundwater for blending is critical both for wastewater treatment requirements and for crop nutrient requirements. These canal water and groundwater supplies are now on the verge of exhaustion.

The use of groundwater in our area has been maximized. There is little argument about this from the ag sector, from municipalities and from industries. The circumstances under which the State will issue new groundwater permits are very limited. Complicating this even more is the fact that Moses Lake area groundwater is naturally high in sodium and other salts making it more difficult to use for some manufacturing processes and for blending water for wastewater treatment.

A number of Columbia Basin Project area food processors are using CBP canal water for blending water and process water. These CBP municipal/industrial supplies should be our supply for the future. That is not presently possible on any meaningful scale. The NMFS flow policy, since 1994, has caused the Bureau of Reclamation to impose a moratorium on any new CBP water services, including M&I, even though previously existing reclamation contracts and state water rights certifi-

cates and permits provided for several thousands of acre feet of M&I service. The only M&I water now available through the Bureau of Reclamation and the irrigation districts is what comes from previously issued M&I contracts that have been surrendered. We are told that most of what is available through these cancellations is now spoken for. It is ironic that this NMFS flow policy, supposedly necessitated by the Endangered Species act, is now about to complicate our area's ability to comply with the Clean Water Act.

The Port of Moses Lake has worked hard to attract these industries. These industries have invested much in locating here. These companies are national and international in scope. With today's global economy they no doubt have opportunities elsewhere. Please give careful consideration to Moses Lake's energy and water needs as you look into these NMFS flow policies.

Sincerely,

LARRY D. PETERSON,
Commissioner.

STATEMENT OF ROB PHILLIPS, DIRECTOR, NORTHWEST SPORTFISHING INDUSTRY ASSOCIATION

Honorable members of the Committee, thank you for the opportunity today to comment on H.R 4335 specifically, and in general upon the execution of the Endangered Species Act. I am Rob Phillips, joint owner of the advertising firm Smith, Phillips and Dipitrio located in Yakima. Approximately 40 percent of our advertising billings are directly tied to sportfishing and tourism related businesses. We acutely experience downturns in salmon and steelhead populations, as advertising dollars can often be the first part of a budget cut.

My concern over the declines led directly to my service on the board of directors of the Northwest Sportfishing Industry Association. Our association consists of hundreds of businesses and thousands of family-wage jobs dedicated to our rivers, lakes and streams being healthy and full of fish. Since fish live in every zip code, you will find our businesses distributing our economic benefit throughout the region. Information regarding our business membership and economic impacts of the Sportfishing Industry are enclosed with this testimony.

Our businesses have been deeply impacted by the implementation of the Endangered Species Act. Fishing closures and extensive regulations which are barriers to participation have severely impacted sportfishing opportunities for salmon and steelhead. Many of our businesses have not been able to survive the declines.

Most of us recognize, however that the Endangered Species Act is merely the messenger and not the message. Our watersheds are in trouble, and the Salmon are the indicator species. Admittedly, the current manner in which the ESA is executed is very heavy-handed in dealing with sportfisheries. Sportfishing is often the favorite short-term target. The problem is, these burdensome short-term measures are meaningless without substantial long term measures.

This is where the current implementation of the ESA falls apart. There are scarce to no examples of enforcement actions for the very real multi-generation "take" of salmon, steelhead and trout which occurs from hydro passage and habitat degradation. We feel that NMFS can and should play a stronger role in defining take and enforcing serious violations (especially where they occur under section 7) while helping to define and implement restorative actions for the remainder of the problems. In other words, enforce the worst actions, while helping with compliance in other areas.

Recovery will never be accomplished on the backs of fishermen. Decades of fishing coxswains have not brought about recovery. Massive small and adult mortalities caused by Columbia/Snake river hydro operations are causing constraints on fisheries from Northern California to the Gulf of Alaska. Operations of the Columbia River hydro system must be dealt with in the same scrutiny and severity as sportfishing. We continue to apply tune-ups to a car that needs a whole new transmission. NMFS, USF&W, BuRec, The Corps, and BPA must all coordinate together to reduce the impacts which are strangling healthy fisheries throughout the region.

H.R. 4335 does get to the heart of an important issue, however. The National Marine Fisheries Service and the U.S. Fish and Wildlife Service must be better partners if the precious freshwater resources of the region are to recover to fishable levels, reassuring the health of our watersheds. There are no laws prohibiting better cooperation between the agencies—indeed the dire plight of the resources demands better communication and cooperation throughout the Federal family.

NMFS did the right thing by working with Governor Kitzhaber in the State of Oregon to build a state supported and executed recovery plan. It is unfortunate that

Judge Stewart struck down the NMFS "no list" decision for coho in the coastal ESU, however NMFS is standing by the Oregon plan in the Courts. We hold that NMFS will accept the substance of the Oregon Plan as a recovery plan, when a final listing determination is made.

As Governor Kitzhaber facilitated coordination and communication throughout State agencies in the Oregon Plan, we must demand the same of the Clinton Administration. Truly, if there is fault to find with the National Marine Fisheries Service's implementation of the Endangered Species Act, much of it lies in the sideways accountability. Federal activities will only move in the same direction when turf issues are removed and the Administration demands more accountability from its agencies for salmon recovery.

With the onset of numerous listings and proposed listings, now is not the time to shuffle the deck chairs on the Titanic. It may be that in the future, salmon and steelhead will benefit from transferring responsibilities under the ESA. Changing into another vehicle is not something a sane person does while the vehicle is moving.

In summary, from our perspective the timing of the bill is inappropriate. Salmon and Steelhead don't need new laws and don't need agency changes. What they really need first, is enforcement of existing laws, regulations and authorities. Federal agencies need to have better accountability to the Administration and better communication and cooperation. It is pathetic that taxpayers and ratepayers fork over dollars in one hand that destroy salmon, while paying out of the other hand dollars to save salmon. ACCOUNTABILITY, COORDINATION, & COMMUNCATION!!

Other improvements would include earlier work with the states before the situation is severe. Everyone knows that an ounce of prevention is worth a pound of cure. The longer we delay tackling a problem, the more drastic and costly the measures for recovery. Earlier participation by NMFS (or any of the Federal agencies for that matter) would facilitate a partner role with the states, rather than an enforcement role. STEP IN EARLIER!

ESA levels of recovery do not often meet other standards of recovery. In this region, the Power Council, the Lower River Treaty Tribes, and the States of Washington and Oregon all have recovery to harvestable levels as their standards. The goals of ESA should be to the harvestable levels that give a return to society on the investment, as well as allow for better coordination between the sovereigns in the region.

NSIA appreciates any intent with which the bill may have been written which strives to enhance the ability of the Endangered Species Act to recover salmon and steelhead in our region. **NSIA** recognizes that the improvements in our watersheds and operations of the hydrosystem which benefit the weakest stocks will only further enhance the healthy populations available for harvest. We applaud any effort which allows us to plan for secure jobs and futures, and even to rebuild the 10,000 jobs lost during the salmon and steelhead declines.

We ask that you help our industry in demanding accountability and enforcement out of the administration and the agencies involved in salmon. The future of our industry will be dim without it.

RESPONSE FROM JAMES M. BAKER TO WRITTEN QUESTIONS FROM MRS. CHENOWETH

Re: Atlantic Salmon Recovery

At the Pasco, Washington hearing of the Committee on Resources on September 2, 1998, Rep. Chenoweth directed me to respond in writing to her and the Committee no later than this date. This letter is written in compliance with her directive.

By my recollection from the hearing, Rep. Chenoweth asked me to compare and contrast the recovery efforts under the Endangered Species Act (ESA) for. coho salmon in Oregon, and Atlantic salmon on the East Coast. She also asked me to explain any differences in Sierra Club policies or actions for the two fish on the two coasts.

In 1993 two conservation groups—not the Sierra Club—petitioned for ESA protection of Atlantic salmon throughout its historical range in New England rivers. In 1995, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service proposed an ESA listing for the fish as "threatened," but only for those stocks of Atlantic salmon spawning in seven rivers in the state of Maine.

In contrast, the Sierra Club was one of 23 organizations which petitioned the NMFS for listing of coho salmon in Oregon, Washington State, and California, and was one of several co-plaintiffs which successfully sued the NMFS in order to force the agency to propose an ESA listing for coho salmon. The 1995 proposed listings

comprehensively covered all native coho in all streams in Oregon from the Columbia River south to California, and indeed beyond to Monterey Bay.

In December, 1997, the Federal agencies declined to list Atlantic salmon in deference to the Maine Salmon Plan. Similarly, the NMFS in 1997 declined to list coho salmon in Oregon in deference to a state plan, which, like its counterpart in Maine, was entirely voluntary. The Sierra Club and several co-plaintiffs sued the NMFS for refusing to list Oregon coho, and earlier this year, a Federal district judge remanded the decision to the agency which subsequently did list the fish as "threatened" in Oregon rivers.

In contrast, conservation organizations on the East Coast, including the Sierra Club, have not yet decided whether to file a lawsuit against the Federal agencies for not listing Atlantic salmon in Maine and/or throughout New England. From Rep. Chenoweth's remarks at the September 2 hearing, I surmise that she concludes from their failure to date to challenge the Federal agencies in the courts that the Sierra Club and other New England conservation groups support, or approve of, the Maine Salmon Plan.

Such a conclusion is incorrect. First of all, the Maine plan applies to fish stocks in just seven rivers in one state, instead of the regional effort in all Atlantic salmon-bearing rivers throughout New England which conservationists continue to seek. Moreover, the Maine plan lacks funding, enforcement, and accountability, and even includes a stakeholders process which has no representation from environmental organizations. So the lack of a Federal lawsuit from conservation groups does not in any way mean support for, approval of, or even acquiescence in, the Maine Salmon Plan. At this time, the Sierra Club and other conservation organizations simply have not decided whether to file a lawsuit for ESA protection of Atlantic salmon.

Turning briefly to another matter raised at the Pasco hearing, Rep. Chenoweth asserted that PIT-tag (Passive Induced Transponder) data demonstrate that the "800 gill-nets" set by American Indians in the Columbia River below the Snake River confluence inflict an inordinate and predominant toll on upriver salmonid stocks. Federal, state, tribal, and independent biologists do not agree with this interpretation of the PIT-tag data. Moreover, the Columbia River Inter-Tribal Fish Commission informs me that, throughout this decade, American Indians have never put 800 nets in the river. Law enforcement programs by the Bonneville Power Administration confirm that the Tribes have not violated harvest limitations under *U.S. v. Oregon.*

Thank you for this opportunity to respond to Rep. Chenoweth at this later date. If you have additional questions or would like further information, please do not hesitate to contact me at your earliest convenience.

RESPONSE FROM JAMES M. BAKER TO WRITTEN QUESTIONS FROM MR. HASTINGS

Re: Flow Augmentation for Columbia Basin salmon

At the Pasco, Washington hearing of the Committee on Resources on September 2, 1998, Rep. Hastings directed me to respond in writing to him and the Committee no later than this date. This letter is written in compliance with his directive.

According to my notes from the hearing, Rep. Hastings directed me to respond to the following question: "How much flow [augmentation] is enough [for Columbia Basin salmon and steelhead]?" Rep. Hastings asked this question with regard to a white paper "The Columbia-Snake River Flow Targets/Augmentation Program" by Darryll Olsen (1998) criticizing flow targets set by the National Marine Fisheries Service (NMFS).

Over the past quarter century, biologists have identified a positive correlation between river flow during juvenile salmonid migration, and survival to spawning adulthood. In an exhaustive review of the scientific literature commissioned by the Northwest Power Planning Council, Glenn F. Cada of Oak Ridge National Laboratory (1993) concluded that "the general relationship of increasing survival with increasing flow in the C[olumbia] R[iver] B[asin] still appears to be reasonable." In its landmark Return to the River, the Independent Scientific Group (1996) noted this positive correlation, and encouraged flow regimes which approach the natural hydrograph as an important way to provide the "normative" river conditions required for salmon and steelhead recovery. The data cited in the white paper by Darryll Olsen (1998) also demonstrate this positive relationship between flow and salmonid survival.

While positive, the exact one-to-one relationship between flow and fish survival has not been determined by biologists at this time. The reason for this lack of precision is the inability of scientists to conduct the proper and necessary research. The U.S. Army Corps of Engineers and the Bureau of Reclamation have never provided

sufficient flows properly timed to meet research protocols. Moreover, the huge number of juvenile fish needed to attain statistical validity has never been available.

In 1990, the Columbia Basin Fish and Wildlife Authority (CBFWA) recommended a flow augmentation program to provide adequate salmonid survival through the mainstem dams and reservoirs on the Columbia and Snake Rivers. The CBFWA proposal set minimum targets of 300,000 cubic feet per second (cfs) in the Lower Columbia and 140,000 cfs in the Lower Snake River sustained during the spring migration, and lower targets of 250,000 cfs and 100,000 cfs respectively sustained during the summer juvenile fish migration. CBFWA recommended these flow targets based upon historical data; the CBFWA proposal has never been tested in-the-river. Nevertheless, the CBFWA recommendation for flow augmentation remains the best available answer to Rep. Hastings' question as to "how much flow is enough."

As I testified at the September 2 hearing of the Committee, hydrological evidence was brought to the regional Salmon Summit in 1990-91, and subsequently to the Northwest Power Planning Council that the current configuration of dams and reservoirs in the Columbia Basin can not attain the CBFWA flow recommendations on a sustainable basis. For this reason, the Salmon Summit explored, and the Northwest Power Planning Council in 1994 recommended, reservoir drawdowns at the four Lower Snake dams and at the John Day project on the Lower Columbia as the only way to achieve the water and juvenile fish travel speeds equivalent to the CBFWA flow proposal. Basically the salmon need either very deep drawdowns of storage reservoirs for flow augmentation, or relatively shallow (in vertical elevation) drawdowns of some of the run-of-the-river reservoirs through which the fish migrate. As I said earlier, the four dams on the Lower Snake and the John Day Dam on the Lower Columbia River have been investigated throughout this decade for these drawdowns at run-of-the-river projects.

As you know, the white paper by Darryll Olsen also argues that the currently configured system of dams in the Columbia Basin can not achieve these high flow targets recommended by CBFWA, or those specified by NMFS in its "Biological Opinion." For this reason, Olsen contends that NMFS should not set any flow augmentation targets. That the dam system can not meet the CBFWA flow targets does not mean that lesser flows are not beneficial. Therefore, the Sierra Club and fish conservation organizations reject Olsen's argument in his white paper because biologists have concluded that there is a positive relationship between flow and salmonid survival, and because the perilous situation of the salmon and steelhead close to extinctions demands the prudent course of taking the most risk adverse actions—in this case, flow augmentation.

The Olsen white paper further argues that, because scientists have not established the exact relationship between one cfs of flow during juvenile fish migration, and some resulting number of salmonid surviving to spawning adulthood, NMFS has no justification for setting any flow augmentation targets. First of all, Olsen bases his argument on a very limited set of PIT-tag (Passive Integrated Transponder) data, which, as I stated earlier, would actually support the flow-survival relationship when added to the larger data set which biologists have gathered historically. Moreover, to conclude that NMFS should set no flow targets, Olsen must prove that there is no flow-survival relationship whatsoever, which his white paper patently can not and does not do. Therefore, the Sierra Club and fish conservation organizations reject this second of Olsen's arguments, too, once again because biologists have concluded that there is a positive relationship between flow and salmonid survival, and because the perilous situation of the salmon and steelhead close to extinctions demands the prudent course of taking the most risk adverse actions—in this case, flow augmentation.

Clearly I differ with the arguments and conclusions of the Olsen white paper. In this regard, I would respectfully remind Rep. Hastings and the Committee that the white paper has not undergone independent peer review by biologists, economists, or hydrologists.

Turning briefly to another matter raised at the Pasco hearing, Rep. Hastings and others on the Committee panel expressed skepticism about my assertion that the four Federal dams on the Lower Snake River provide no flood control. Here is an excerpt from a copyrighted article in the *Lewiston Morning Tribune* of August 16, 1998:

> The four dams between Lewiston and Pasco, that are being considered for breaching—Lower Granite, Little Goose, Lower Monumental and Ice Harbor—are run-of-the-river dams. "A run-of-the-river dam has some significant application in water management, but they are not necessarily true flood control dams. That's what storage reservoirs are for," says Dutch Meter, spokesman for the corps at Walla Walla. "Run-of-the-river dams must pass virtually all the water that arrives."

Again I would respectfully submit that a witness from the U.S. Army Corps of Engineers will confirm my assertion at the hearing that the four Lower Snake dams by their design have no flood control function.

Thank you for this opportunity to respond to Rep. Hastings' question in writing. If you have additional questions or would like further information, please do not hesitate to contact me at your earliest convenience.

CHARLES R. "CHUCK" NORRIS
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Phone & FAX*: 541/567-8652
Email: blcrn123@eoni.com

September 2, 1998

SUBJECT: Quantitative Perspective Of Columbia River Flows and Severe Decline of Salmon Returns in Primitive Area of Alaska.

TO: U.S. Rep. Doc Hastings, WA
U.S. Rep. Linda Smith, WA
U.S. Rep. John Doolittle, CA

Washington and Oregon share a vital interest in the status, utilization and management of the Columbia River, and I thank you for holding today's hearing on this crucial issue. I do not expect to be able to testify, but I wish to share some information that may be of assistance in your evaluation of the true situation regarding river flows and their relation to spawning returns by salmonids.

First, attached as Enclosure 1 you will find a page detailing the magnitude and negligible impact of an annual appropriation of 50,000 acre feet. You may recognize it as related to the requested Boeing-Inland Land Company permit extension for diversion of irrigation water from the John Day Reservoir which Mr. Bob Hale may have covered with you earlier. Perhaps, however, this may serve as a convenient reference.

Second, earlier this month my wife and I cruised the Alaskan Inland Passage during which I was able to obtain a copy of the Sunday, August 23, 1998 issue of the ANCHORAGE DAILY NEWS. A featured article in the Metro Section described the serious threat of a winter food shortage for many native American villages in and around Chevak due to a severe decline in salmon returns to several waterways in the region. A copy of that article, along with an expanded map of the affected region, is attached as Enclosure 2. Chevak appears to be very remote and primitive, about 550 miles West Northwest of Anchorage. I strongly suspect that there are no dams or intensive human activity in or near any of the streams involved and that some natural factors, probably ocean conditions and predators, (and perhaps overfishing offshore) are the root causes of the shortage. This is one more indication that human tinkering is neither the sole cause nor the cure for declining salmon populations.

Again, I thank you for your visit today and urge you to do everything in your power to restore some common sense to the understanding, utilization and management of the Columbia River.

Sincerely,

C.R. "Chuck" Norris
Ex-Rep, Oregon House of Reps (1987-1997)
Chair, House Water Policy, 1991, 93 & 95

Two Enclosures: As stated above.

*For FAX transmission press "Star 51" after first ring or end of TAD message.

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September 2, 1998

50,000 Acre Feet vs. The Columbia River in General and The McNary Dam-John Day Reservoir Complex in Particular

Much of the "expert" opinion and concern expressed regarding the Columbia River tends to ignore the true magnitude of that magnificent stream and the relatively minor impact of out-of-stream beneficial uses when only the numbers involved in those uses are considered out of context. Therefore, let's examine an example which includes all the numbers.

50,000 acre feet (af) = 16,292,529,000 gallons
(50,000 x 43,560 cu ft/ac x 7.4805 gal/cu ft = 16,292,529,000)

150,000 cu ft /sec (cfs) passing McNary Dam = 67,324,500 gal per min (gpm)
(150,000 x 448.83 gpm/cfs = 67,324,500)

Note: 150,000 cfs passing through and/or over McNary Dam is an extremely conservative number which I have used, after earlier consultation with Corps of Engineers personnel at the dam, to avoid any appearance of exaggeration. When I checked with their operations unit last Tuesday, May 12, I was told the total rate of flow at that time was 314,600 cfs: 150,000 over the spillway; 160,000 through the hydroelectric turbines; the balance of 4,600 consisting of a variety of passages, including the fish ladder. Had I used 314,600 cfs in my computations, the volumes would be more than twice as much and the time of passage less than half.

At a flow rate of 150,000 cfs (67,324,500 gpm) it would take 242 minutes, 4.03 hours, for 50,000 af (16,292,529,000 gal) to pass a given point in the John Day Reservoir. (16,292,529,000/67,324,500 = 242). There being 8,760 hours in a 365 day year, those 4.03 hours would equal 0.00046, or 46/100,000 of a year.

When we look at all the numbers regarding a given withdrawal and the flow and volume available to support that withdrawal, we can see the impact is minimal and couldn't possible adversely affect salmonid passage and survival. Anecdotal emotionalism should give way to facts.

s subsistence / B-3 ■ DISPATCH: Tourism protest / B-7

METRO

ANCHORAGE DAILY NEWS SUNDAY, August 23, 1998 ★ SECTION B

Photos by STEPHEN NOWERS / Anchorage Daily News

Villages lack food for winter

Weak salmon runs leave freezers bare

By S.J. KOMARNITSKY
Daily News reporter

CHEVAK — Lillian Olson's freezer would normally be packed by fall, filled with king and chum salmon. This year, there's none. Olson's family caught less than a dozen salmon at its fish camp on the Kashunuk River. Normally she catches more than 200.

"We have just nothing," said the 39-year-old mother of four sitting in the school offices in Chevak, where she works as an administrative secretary. "It's going to be so different."

Most of the other residents in this Yup'ik village of 700 near the Bering Sea coast are facing similar straits with little to no salmon put away for winter.

Along Bristol Bay, the Yukon and the Kuskokwim rivers, residents in more than seven dozen villages are struggling to cope with some of the worst salmon returns in state history.

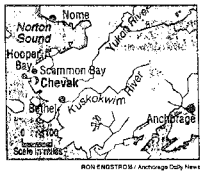
It's a double-barreled disaster. First, fish are cash. Many villagers hold licenses to sell fish catches to processors in one of the only sources of commercial income in these remote areas.

Second, fish are food. Residents stock their freezers with salmon and other meat to feed their families through the winter.

The state, which declared an economic disaster in the areas in July, is dispatching teams to help residents cope with the cash crunch.

Please see Page B-3, DISASTER

Teresa Pingayak, above, and her family caught 50 salmon this year, most of them pinks. In an average year they catch more than 100, she said. The Pingayaks have already decided not to eat the fish they do have until November. J.J. Ayagarak, right, hands out candy at a recent potlatch in Chevak. Julia Cholok, whose family caught only 25 salmon, noted the festival had less than the normal amount of food.



RON ENGSTROM / Anchorage Daily News

DISASTER: Salmon shortage leaves villagers with empty wallets, freezers

Continued from Page B-1

But in Chevak, Hooper Bay and Scammon Bay, the situation has an added twist. Not only do commercial fishermen have no cash, but the villages as a whole have much less of their traditional food than normal. Low fish runs and unusual migrations meant that the salmon — and the seals that follow them — swam too far offshore to be harvested. Like Olson, many of the 2,200 residents of the three villages are staring into empty freezers.

State disaster officials have yet to visit more than 50 of the 97 villages included in the state's disaster declaration, said Kerre Martineau, spokeswoman for the Department of Military and Veterans Affairs, which is coordinating relief efforts.

Nearly 2,400 residents across the region have already signed up for emergency grants from the state to help pay for living expenses such as heat, electricity and food, state officials said. And those numbers are expected to climb.

The grants provide up to $1,500 for individuals and $5,000 for families and are for those who own commercial fishing permits or otherwise work in the commercial fishing industry either as crewmembers, cannery workers or in processing plants.

More than 7,000 residents in western Alaska depend on commercial fishing for at least part of their income, said Terry Smith, an official with the Alaska Division of Emergency Services.

"It's obvious from the people who have been out there, there is a real need for assistance," Smith said.

While $5,000 is not much to a commercial fisherman in Bristol Bay, who spends hundreds of thousands on boats and equipment, it adds up for those who depend on small village commercial fishing operations along the Yukon and elsewhere.

Fishermen's average annual income on the Yukon has been between $5,000 and $10,000 over the past decade, said Dan Bergstrom, a state Fish and Game biologist.

While many of those suffering were hurt because of poor commercial fisheries, subsistence harvests were also bad in some areas.

Gov. Tony Knowles issued an order last week opening moose hunting season early along the upper Koyukuk River to help residents there make up for poor salmon returns. The season had been set to begin Sept. 1. The bag limit remains the same at one moose per hunter.

For Chevak, Hooper Bay and Scammon Bay, the state plans to airlift several hundred, and possibly several thousand, chum salmon caught elsewhere to the villages.

The three villages were the hardest hit in terms of subsistence, said Mary Pete, the subsistence division director for the state Fish and Game Department.

Weak salmon runs coupled with a poor seal harvest have cut residents' normal subsistence intake by about 50 percent, she said. People in the villages rely on subsistence for protein and because they are on the coast don't have readily available alternatives such as moose or caribou, she said.

Many are trying to make up for lack of salmon by gathering more berries, which have been abundant this year, as well as fishing for whitefish and tomcod. But they worry about making it through the winter.

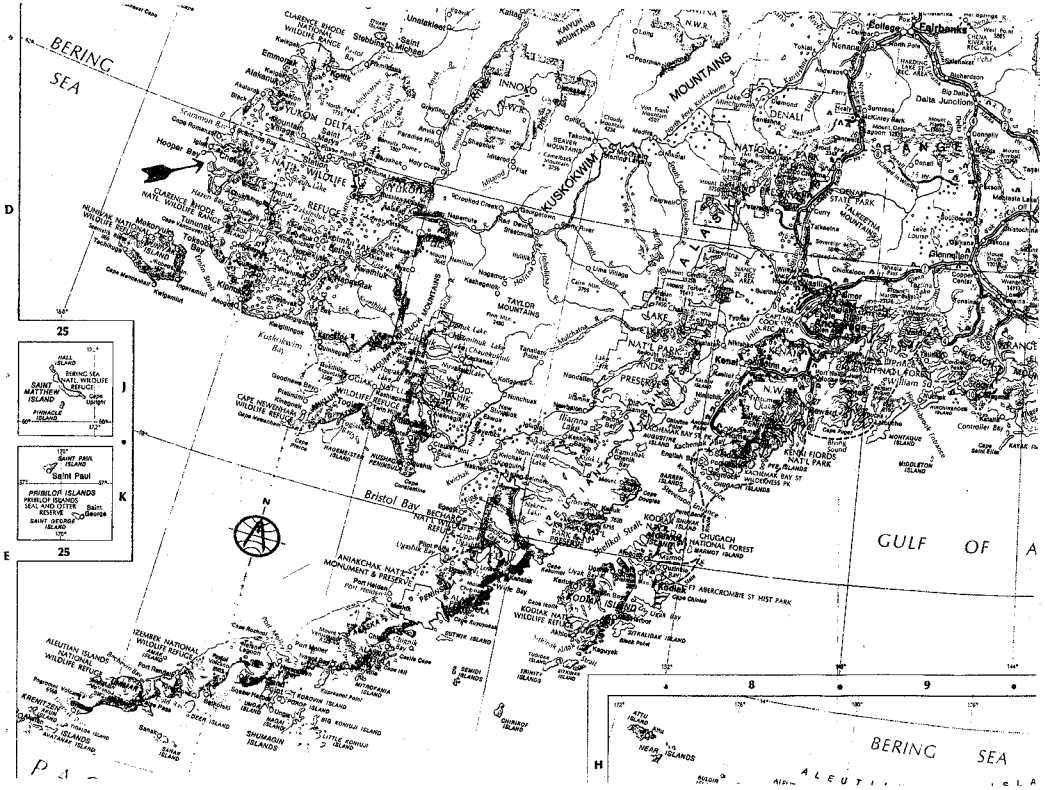
"It's going to be tight," said Teresa Pingayak, whose family caught only 50 salmon this year compared to an average of more than 100.

Pingayak said her family has already decided not to start eating the salmon they have until November to try to make it last. Others are trying to make their catches last as well.

Julia Cholok, whose family caught only 25 salmon, said she may eat salmon only every couple days. Now in her 60s, Cholok remembers tough times before when her children were starving because of a poor salmon run. She noted a recent potlatch in the village had less than the normal amount of food.

"People are starting to feel the pinch," she said.

❑ Daily News reporter Helen Jung contributed to this story.


BERING SEA
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Hooper Bay
Kuskokwim Bay
Saint Paul
PRIBILOF ISLANDS
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NW COUNCIL OF GOVERNMENTS & ASSOCIATES
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August 26, 1998
Written Testimony for House Resource Committee at Pasco, Washington, September 2, 1998.
Subject: National Marine Fisheries Service duties and management of salmon and other endangered species.

The issue of salmon recovery/dam removal has reached gigantic proportions in the northwest. The various federal agencies, primarily NMFS and US Fish & Wildlife Service, are moving headlong toward announcing the breaching/bypassing of several dams, most of them in the northwest. I have grave concerns as I study this issue. I believe that the agencies are continuing on their environmental agenda without proper study and common sense. The equation used by these agencies is flawed. Let me explain.

1. **GAO audit** of the salmon shows the following data:
   * In 1850, there were an estimated 16 million salmon in the region.
   * In 1938, the Grand Coulee Dam was built and there were an estimated 4 million salmon.
   * Today, there is an estimated 2.5 million salmon.

   These figures confirm that most of the salmon disappeared **before** the first dam was built.

2. **Ocean Habitat** is changing. The ocean temperature has gradually increased since the 1970's. This has caused the growth of plankton and algae to drop, diminishing one of the prime food sources of the salmon.

3. **Predators**. The population of ocean mammals has expanded by about 8%. Ocean mammals eat fish. An example, is the sea lion, which eats an enormous amount of salmon each day. Another predator that has devastated the salmon is the Caspian Tern, which deems salmon smolt to be its main delicacy and scoops the smolt up as fast as they can.

4. **Ocean Harvest** has taken a huge toll of the salmon.

5. **Gill Net Fishing** along the rivers takes a huge amount of fish.

In order to have a complete understanding of the real cause of salmon count reduction, one needs to have all of the parts of the equation. One cannot put the entire blame on humans and their dams. I pose three questions for the mediators to ponder.

1. Will removing the dams save the salmon and other fish? Nobody seems to have the answer to this very important question.
2. Has the salmon population declined, proportionately to the addition of each new dam? The answer is NO!
3. Why has the salmon population continued to drop after all these years of ESA and the multitude of efforts? It could be because nature is in a constant state of flux and change. Each year is not the same as the previous year. We do not have statistics

from the beginning of time. We do not know how cycles have affected the planets species from day one of the planets existence. Man cannot control and regulate nature! Nature does not always do our bidding!

Again, I ask, will removal of the dams guarantee the return of the salmon runs of old? Is it worth destroying communities, businesses, and peoples lives on a "maybe effort"? We need to factor into the equation the previously listed causes of problems to the salmon!

It's time for cool heads to prevail. It's time for the agencies to think, then act, in that order! The order of operation has been reversed for far too long. Please, don't remove/bypass/breach our lifeblood, our dams! They are too important to eliminate on a whim!

Respectfully submitted, this 26th day of August, 1998, at the NW Council of Governments & Associates office in Moses Lake, Washington.

Robert D. Lonn, Consultant/Planner
NWCOGA

FAXED to the Washington, DC office of Congressman Doc Hastings for insertion into the official record of the House Resource Committee which is holding these public meetings. 8-28-98

BIG BEND ECONOMIC DEVELOPMENT COUNCIL

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Testimony for the House Resource Committee Hearing
Columbia Basin College Pasco, Washington

This agency has attended numerous public meetings and hearings presented by the National Marine Fisheries Service.
We have concluded the following:

We support H.R 4335, transferring ESA Functions to the Dept. of Interior.

The NMFS has pre-determined that dam removal is the solution for salmon recovery but has no scientific proof to support this.

NMFS seems unable to address the problems of predator species eating salmon: sea gulls, terns, sea lions and seals.

NMFS continues to talk about wild salmon but is unable to identify what constitutes a wild salmon.

Water spilling at dams supersaturates the river water with nitrogen killing thousands of smolts yet NMFS supports spilling.

In conclusion, NMFS, has developed an arrogance of regulatory implementation, that has no scientific component, and ignores factual data. They have pre-determined to support dam removal.

The Dept. of the Interior offers an opportunity for salmon recovery, NMFS does not.

Sincerely,

William Riley
Director

"PLANNING FOR THE FUTURE.....TODAY!"

Columbia Basin Environmental Council
POB 1285 Soap Lake, WA 98851

Testimony for the House Resource Committee Hearing
Columbia Basin College Pasco, Washington
September 2, 1998

The Columbia Basin Environmental Council (CBEC) has observed and interacted with the National Marine Fisheries Service at numerous meetings throughout eastern Washington. The NMFS appears to be an agency in search of a mission.

Many of their positions are not and cannot be supported by scientific fact.

The Ballard Locks are a continuing problem with each sea lion eating 20-30 endangered salmon per day, and no solution from NMFS.

Water spilling continually occurs at Columbia and Snake River Dams, killing hundreds of thousands of smolt from gas bubble disease. The NMFS offers no solution.

Approximately 98% of salmon losses occur in the ocean yet NMFS focuses its attempts at solution on the dams.

Our members believe the passage of H.R. 4335, the transference of ESA Authority to the US Dept of the Interior, offers some hope.

NMFS continues to promote restoration of wild salmon but is unable to identify what constitutes a wild salmon.

NMFS has developed an arrogance of regulatory authority that prevents them from effectively administering the ESA.

Sincerely,

Susan Riley

Susan Riley
Secretary/Treasurer

509-545-4665 9/2/98

(7)

My name is Suzanne Sullivan. I live in Burbank, Washington. My address is 3700 Summerset Lane, Pasco, WA. 99301. I am a co-owner of farm. A first generation farmer family who turned sagebrush to fertile farm land and knows the struggle, the risk, the ever present threat of disaster, the unbelievable buracrecity and finally the joy of productive accomplishment that will leave this world a better place for my grandchildren.

Today I stand before your as a wife, mother and citizen of the grand USA. I pride myself in the privileges we have and the freedoms that the whole world admires, and I intend to defend them for my grandchildren.

Our country was founded by free thinkers who looked towards our future and took a stand, by using common sense and decency as a guide, and made the commitment to make their world a better place. Quite often those who wage the battle do not benefit from their efforts, but they held firm on the rudder of the infant" America" and steered my country the right direction. The result is that today many risk their lives to come to our free land of posterity.

Our country is a democracy where men & women have sacrificed their lives & their fortunes so that I can have my basic freedoms such as of speech, press, religion and representation by the people. Even today our best answer the call to defend our beliefs and intercede on behalf of others around the world. My son-in-law returned recently from the gulf.

Why I ask you, if what I have just stated is true are we at this meeting?

Why has our government spent literally billion of dollars on the politically correct premise of removing dams to save salmon. If our government was truly concerned about the people, and their money ~~that they represent~~ they would exercise responsible judgment. The money would have been better spent on the thomeless and starving.

No our government has picked a politically correct topic, save our environment and use, or should I say, mis-use, the endangered specie act to fund a premise that has become a whole new industry.

Yes, I value the salmon. My husband use to commercial fish. The salmon supported our family, feed and clothed me while I was pregnant with my firstborn. Yes, the dams needed to have some improvements and the public needed to be aware of responsible consummation of the resources God has given us.

But today the Salmon have been over fished and challenged further by mans attempts to save them. But:

- I am not here to ague about the scientific evidence, opinions, computer models, nitrogen saturation, commercial over fishing the resource in the ocean and at the beginning of the river, etc.

- I am not here to ague about the Indian's netting of the fish for their ceremonial tribal rites. I don't think they had 1-800 numbers or nets that extended across the mightily Columbia where the treaties were signed. Yesterday on TV I watched a commercial that said dial 1-800- buy plus 4 digits for information to buy fish. Don't forget your CASH. I sure can't run our farm that way. However I do have one question, How long do we ~~have~~ to be impacted for the transgressions of our forefathers?

Suzanne Sullivan

9/2/98
(2)

- I am not here to ague about the river before the dams, their generators and fish runs before the dams. That is history. There was a article reprinted in our local newspaper stating the necessity to introducing new stocks from Alaska because of the declining runs. The article was dated 1918.

- I am not her to ague about the irresponsible use of water by flushing additional water to encourage the fish migration, not the resulting low or non-existent watersheds in Idaho & Montana.

- I am not here to ague about the degree of flooding because of no dams' water controls that the Portland area and others will experience. Nor the government expense for disaster relief and devastating impact on families & children with the loss of homes and livelihold. But I do know that last year the water level on the Snake was up so high to protect those down river from flooding that Ice Harbor Dam was sandbagged and we had to sand bag also.

- I am not here to ague about the impact of due to the increased road & rail traffic, nor the costs, due to the inability of river navigation.

- I am not here to talk about the substantial increase of electricity rates, nor the resulting pollution from coal or gas fire generators that will be needed to supply our electricity when there are no dams.

- I am not going to ague about the pros & cons of farming nor how this area produces more farm goods per acre than any other part of our country.

What I am here to talk to you about is my family and what our country was founded upon.

For myself, I value my family above all else, but I also find great value in my community and the communities of others that would be devastated by the removal of the dams.

Very simply put, without water there is no life. With out water there is no farming, no communities no food.
You can't change a fresh water fish tank to salt water and have fish survive. Just the same you can't change the river back to what it was and have the river and supporting land survive because the environment is totally different. The mighty Columbia and Snake provides water to its people, which is used efficiently.

I like so many, thought this luticrist premise of removal of dams would pass. Just someone's folly. I watched the videos over five years ago on the costs and proceedures of removing the dams. I knew, or thought I knew, that the intellegent government representative who sat on the hearing panels would responsibly convey the logic to the people, our way of life and progress man had made by making good use of our resources. The representatives sat and agreed verbally with the logic and facts presented to them. They promised to take the common sense information and be the voice of the people who would be impacted back to their superiors and to Washington DC.

No I was wrong. The information was taken, but the end result was that a louder voice was heard. The voice of political opinions and special interest groups or environmental groups that place the value of animals equal or greater to man.. Man is unique in that we have supreme intelligence with the ability to think, reason, converse and create things to make our world a better place. God created man to have dominion over the animals

Today I ask that you reach back into your history. That means exercising common sense by using the uniqueness as human being to continue to make our world, my world a better place. Take the high road and do the right thing. No you may not become famous, and yes it may jeopardize your current vocation. But please have the decency to do the right thing and take a stand. Let our voices be heard.

Take a stand for me and my community and for the communities affected if the dams are removed.

This all comes down to a simple equation. The premise of the removal of the dams or the removal of my family's life as I know it now.

Listen and hear our pleas. I pray that the slick coating over the eyes, ears and minds of our officials who make the decisions will be removed. I had faith in them that they cared for my country, the people and my family. Please help them return the faith I had in our officials, that has been lost by all of this nonsense.

If you break the rudder of a ship, the ship goes with the tide and the waves. That is what has happens to our county today. No longer our we on a straight course of common sense decency. The waves of opinion of the proponents of dam removal to political policies have governed the country. The vocal few have been heard.

If you pull the plug in the bathtub what happens. The water goes out. If you remove the dams the people and the life as we know it will go out. Remember without water there is not life.

I intend to fight for my family, my way of life and my community.

I challenge you to assist my in this battle by taking my message and the message of the others here back to those you will need to hear, our thoughts & facts Those who will be impacted need to be heard & respected

But I also challenge you to make sure they not only hear the message but understand the battle we are prepared to fight. We here are like our forefathers, we will risk all to win this because we have nothing to loose but the ability to save our lifestyle and community.

I will do everything in my power to make sure our grandchildren benefit from our labors, from the progress of man and have the ability to enjoy this land. I know that others ~~have~~ join in battle. Join us and make a difference.

Like our forefathers continue to steer straight the course of our future. Save the dams and the communities.

SUNSET ORCHARDS & FARMS, INC.
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U.S. House of Representatives
Committee on Resources
Pasco, Washington Field Hearing
September 2, 1998

I am deeply concerned about the trend of the National Marine Fisheries policy with respect to the saving the salmon population of the Columbia River system at all costs. It is a flawed policy in that it will be impossible to save the Pacific salmon population if the policy remains the same and the administration of the policy continues as at present. The people of the Northwest want to see the salmon saved. It is not a question of whether they should be saved, but rather at what cost and how to do it without destroying the economy of the area.

The Endangered Species Act (ESA) under NMFS policy is the governing legislation driving their actions. What remains to be proven is whether it is possible that the salmon can be saved at any cost. NMFS and others assume that if water flows are maintained or increased that it will enhance future salmon runs. In other circles, it would be better to breach the dams and leave the water free flowing as before dam construction. Again, the suggested solutions are based on philosophical desires rather than scientifically proven protocols. It is time that the Congress steps up to the plate and puts a stop to this nonsense!

While the people want to see the salmon in the rivers, they are not willing to do so at any cost. The economy of Washington and Oregon, especially the eastern parts of the states, is built on production agriculture and its attendant business. You cannot take away the water, the electrical power production , the transportation, recreation and the people and expect the economies to flourish. When you take the process one step further, you affect the economies of the entire population including the businesses on mainstreet. Lenders have leant millions of dollars to businesses that cannot continue without water, power and people.

The question of overfishing in the ocean and by tribes, predators in the rivers and the ocean has never been addressed adequately. There is strong evidence to illustrate that fish populations declined in the rivers even before the dams were built and the irrigated lands developed. Yet we see government agencies, apparently with other agendas, blaming the declining species on modern river and land practices.

The ESA while good intentioned, has outlived its usefulness as it is applied in today's environment and should be changed. Species preservation should not be the ultimate goal when it threatens the economic, social and emotional well-being of a society. That is what is happening today in the Northwest. Water and its prudent use is essential to the success of the Northwest as envisioned by those who built the dams. Water rights and their use was paramount in the minds of our leaders 50- 60 years ago. The need for water rights and their utilization today is as essential now as then and the failure to protect them and to assure the future success of their original intent would be a gross error on the part of any government agency, state or federal.

My farming operation is struggling in today's economic environment. To remove an essential ingredient such as water in any form and for any unreasonable excuse would assure its immediate demise. I am angry that the Congress is even allowing these proposals to be advanced.. Please assure that they are stopped immediately.

Sincerely,

Shirley D. Christensen
President

Columbia Basin Nursery, L.L.C.

Specializing in Fruit Trees, Fruits and Seeds

P.O. BOX 458 • QUINCY, WA 98848 • AC 509/787-4411 FAX 509/787-3844

September 1, 1998

Chairman Don Young
House Resources Committee
1324 Longworth House Office Building
Washington, DC 20515

Dear Chairman Young:

As a farmer in the Columbia Basin Project, a member of the Washington State Farm Bureau and the American Nursery and Landscape Association, I have a lot of concerns with the things that are happening now with regard to water rights and policies to do with our rivers.

It is very important to us that we can have some local control. Federal Agencies are not familiar with local needs.

Grand Coulee Dam was built specifically for irrigation of the Columbia Basin. The power and recreation were secondary to this. Please help us keep this. Water is vital to this desert region which has blossomed forth with the irrigation and is supplying a large portion of the food in the United States and export.

The breaching or removal of dams is not the solution. There is not proper documentation supporting this theory. The NMSF has not included the stakeholders in their process and I feel they need to do this.

In summary, the rivers and dams in our area are necessary to the continuation of farmers providing food to the population of the United States and export.

Thank you for your consideration.

Sincerely,

Gie Perleberg

Gie Perleberg

(14)

1108/29/98

EDWARD MCLEARY
4008 PIONEER WAY E
TACOMA, WA 98443
(206) 922-0667 -PHONE (206) 926-0501 - FAX
(Request return phone calls by fax)

TO: **Chairman:**
U. S House Resources Committee
Columbia Basin College
Workforce Training Center
2600 North 20th Ave.
Pasco, Washington

PAGES: 1 **DATE:** August 29, 1998

.Honorable Representatives:

I'm fed up with the idea that backwards is the way to go and that more bureaucracy and control by the NMFS is needed on the Columbia and Snake river. Any change in the Dams and the use of the water by the residents of the area should be largely controlled by the users.

Huge improvements in lifestyle, commerce, wildlife, fishing, recreation and farming have resulted from the irrigation and other benefits of the dams on the Columbia and Snake rivers. Every facet of these benefits and the effect on the people and stakeholders should be carefully considered before changes are made.

Frankly I think it is out of order to bar Stakeholders and local people from this high impact and consequence hearing. Please! No action with chance to represent ourselves!

Please consider local judgment and impacts before you use ONE INTEREST to control what happens to all of the people dependent on and interested in these rivers.

Next time let us participate and take no action at this time.

Thanks for your consideration.

Respectfully,

Edward McLeary

Edward McLeary

P.S. I do Farm & have property on these rivers. Ed

GREATER PASCO AREA
CHAMBER OF COMMERCE

Testimony for the House Resource Committee Hearing
September 2, 1998
Columbia Basin College
Pasco, Washington

Ref: Performance of the National Marine Fisheries Service (NMFS)

The Greater Pasco Area Chamber of Commerce once more states their position on the salmon recovery plan and also encloses testimony of June 14, 1995 to NMFS which is still as appropriate in 1998 as it was in 1995. Also enclosed are letters to the U.S. Army Corps of Engineers dated September 23, 1997, and March 10, 1998.

NMFS does not seem to have the will to attack the real problems, but instead keeps proposing draw downs and dam removal as a solution instead of going to work and quantifying the real problem which is in the ocean and also Indian nets. Things that should be looked at which make sense and are good economics are:

1. Protected species of birds such as Sea Gulls and Terns take a huge toll on the migrating smolt.
2. Many smolt are eaten by bass and walleye.
3. Barging has proven to be very effective, but computer models are always used to show how effective breaching dams and draw downs are. These computer models can prove anything, but have no facts to back them up; barging has.
4. As far as wild fish vs. Hatchery fish, no one seems to be able to really identify what is a wild fish. When hatchery fish go to the ocean and return to spawn, the young smolt are now what? When NMFS was asked this question they couldn't give an answer.
5. NMFS admits seals and sea lions (2 protected species) are killing 30% of adult salmon in the ocean.
6. Foreign drift nets are not out of our waters. Read March 10, 1998, letter to the Corps of Engineers. How did an oil tanker hit one if it wasn't there?
7. Weather change and ocean temperatures should be studied. We can't blame the dams for what Mother Nature does.
8. What impact does commercial fishing and sports fishing have?
9. How come streams without dams are having as many problems as streams with dams?

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10. Why don't we use the ½ billion dollar per year budget that is spent on salmon recovery now, which is mostly wasted, and buy off those that depend on a livelihood for fishing for at least 3 years to help find out if commercial fishing is a part of the problem.

In Summary:

We are not against improving salmon runs, but the facts are not getting to the public. Good Science must be used and not someone's jerry rigged computer model to solve the problem. We need to do what we can to improve dams and generators to make them more fish friendly. We once again strongly oppose breaching dams or draw downs. The total economic structure of our area is dependent on the generating capacity, irrigation, barge transportation, recreation, and manufacturing that our dams provide.

Greater Pasco Area Chamber of Commerce

Julie Killian
President

Louis Meissner
Chairman, Governmental Affairs

LM:dh

Enclosures

GREATER PASCO AREA
CHAMBER OF COMMERCE

March 10, 1998

Walla Walla District
US Army Corps of Engineers
Walla Walla, WA 99362-9265

Re: Lower Snake River and Juvenile Salmon Issue

The Greater Pasco Area Chamber of Commerce at their March 10th regular board meeting voted unanimously to once more strongly oppose any draw downs or breaching of any dams by the Corps of Engineers or anyone else.

It is time the Corps be held accountable by who's authority they are spending $17,000,000 of our taxpayers money to try and destroy the economy and livelihood of our community. How much money has the Corps and the Bonneville Power Administration spent per fish at this point?

Your biologist admitted that 99.6 percent of the salmon disappear in the ocean and yet you keep portraying the dams as the problem. Also they assure us foreign drift nets are not in the ocean. How come then 3 years ago when the subject of Environmental Crimes was being debated at the Attorney General's office, the first topic for needing stiffer penalties was a tanker running into a Japanese fishing vessel off the Washington Coast?

We are enclosing our previous correspondence from June 14, 1995, to the National Marine Fisheries Service and also our letter of September 23, 1997 to the Corps.

Our position has not changed on the dams or the recovery of the fish. It is time that someone has the courage to address the real problem that is in the ocean. No one is talking about the gill nets in the ocean and also that Indian nets are not regulated as to mesh size. Lets do what we can to modify problems at the dams but not at the expense of breaching dams or draw downs.

Sincerely,

GREATER PASCO AREA
CHAMBER OF COMMERCE

Ken Sugden
President

Louis Meissner
Chairman Governmental Affairs

1600 N. 20TH AVE., SUITE A • P.O. BOX 550 • PASCO, WA 99301 • (509) 547-9755

GREATER PASCO AREA
CHAMBER OF COMMERCE

September 23, 1997

Walla Walla District
US Army Corps of Engineers
Walla Walla, WA 99362-9265

Re: Lower Snake River and Juvenile Salmon Issue

The Greater Pasco Area Chamber of Commerce's Executive Board at their September 23, 1997 monthly meeting voted to take the position of being strongly opposed to ***any draw downs*** or ***removal of any dams*** for the following reasons:

1. There are no scientific facts to back up such an action. There is a 2 percent return of juvenile salmon that migrate to the ocean.
2. The endangered species act does not allow hatchery fish to be included in the recovery plan.
3. Barging has been shown to help salmon recovery.
4. There is significant mortality of adult salmon in the ocean:
   a. Up to 10 percent eaten by sea lions
   b. Up to 20 percent eaten by seals
   c. Foreign drift nets in the ocean
   d. The weather change of El Nino
   e. Commercial fishermen, sports fishermen, and Indian fisheries contribute to a decrease in returning salmon.
5. The Snake River sockeye run was killed by the State of Idaho years ago.
6. Streams without dams are also having problems with salmon runs.

In summary:
We believe, we in the Northwest can manage our natural resources for the good of all and not just for some special interest groups with a cause without good science.

The dams are the life blood of this desert region as they create a huge economic impact of transportation, electric power, manufacturing, recreation and agricultural production. We are opposed to the removal of the dams. The impact would be drastically felt throughout the Northwest. We look forward to working with you for a solution to this issue that is beneficial to all.

Sincerely,

GREATER PASCO AREA
CHAMBER OF COMMERCE

Ken Sugden
President

Louis Meissner
Chairman Governmental Affairs

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GREATER PASCO AREA
CHAMBER OF COMMERCE

8-19-98

To: National Marine Fisheries Service

We Still believe this attached testimony is still appropriate as it was 3 years ago. Please keep this attached to our Chamber's current position statement.

June 14, 1995

National Marine Fisheries Service
Recovery Plan Comments
525 NE Oregon St., Suite 500
Portland, OR 97232

The Greater Pasco Area Chamber of Commerce, at their regular board meeting June 13, voted unanimously to have the following testimony entered into the record of your salmon recovery plan.

The salmon recovery plan thus far has not been based on scientific values. Lets take the issues one at a time.

1. Draw Downs and Water Spills

Large spills and draw downs have not proven to save any fish. They have proven to cost huge expenditures in increased power rates and cost many millions in damage. If we draw down dams as proposed it will cost huge amounts to extend irrigation systems as well as lost power revenue. Doing things like this, without a conclusive scientific basis, is one of the worst cases of government fraud imposed upon the irrigators, rate payers and the citizens of the Northwest that could be imagined.

They also destroy a large eco-system that the dams have created. They could also affect the level of water in our aquifers.

2. Barging & Hatchery Fish

Hatchery fish have to be acknowledged as part of the recovery plan as well as barging juvenile salmon. All the rhetoric about wild fish being the only answer has to change. If we spent the money we are now spending on all the other foolish ventures and spent it on hatcheries and barging fish, we would solve the problem of getting plenty of juvenile salmon to the ocean. Barging is the only way to protect juvenile salmon on their way to the ocean. There is a large bass and walleye population that was not in the Snake and Columbia Rivers years ago. What effect does this have on survival of smolt?

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3. Salmon Survival in the Ocean

By your own figures you estimate sea lions are killing 7 to 10 percent of the adult salmon. Their population has gotten clear out of line. Ballard Locks is a good example of no one having the courage to reduce their population for the survival of fish runs.

Are the foreign drift nets out of the ocean? No one seems to have knowledge on this subject. If they do, they are lacking courage to come forth and discuss the issue with the public.

The weather conditions in the ocean have changed and it seems as though fish runs that are not related to dams in rivers are also being affected. You tend to blame this on logging and other activities, but are you looking at the real problem?

4. Snake River Sockeye Run

Why is it our problem to restore a run of fish that Idaho tried their best to destroy years ago and obviously succeeded? If Idaho wants that run restored they should build a hatchery for that purpose. The rest of us shouldn't be saddled with that burden on our economy. If they don't propose to do that, efforts to revive this run should be abandoned.

5. The Economics Factor

The huge expense of the NMFS plan to restore salmon runs has put BPA's existence in jeopardy as well as heavy electrical users such as the aluminum companies, irrigators and others. It is one of the typical knee jerk reactions to solve a problem by throwing money at it. I think it is time our citizens of the Northwest demand value for every dollar spent. We simply can't proceed with the idea that we have to do something regardless of the costs or facts to substantiate the action.

If our region is to remain competitive with other parts of the country as well as other countries we must be concerned about our power rates and other related expenses. We may have cheaper power rates than some areas but we need that advantage because of other things that are more expensive in the Northwest.

In Summary:

NMFS should not make decisions that are not based upon good science. We simply can't afford to spend good money and gamble the future of our region and this country upon ideas and actions that are someone's solution to a problem that is based upon perceived science. We must work out solutions that

preserves our power generating capacity, maintains industry, provides barge service, provides continued opportunity for growth in the Northwest and thus strengthens the economy of the region.

We acknowledge that we must do what we can to preserve salmon runs but we must use a common sense approach to what is cost effective, reasonable and will get the job done without causing adverse effects on the citizens of the Northwest.

Louis W. Meissner

Louis W. Meissner
Chairman, Governmental Affairs

cc: Senator Slade Gorton
Senator Patty Murray
Representative Rick White
Representative Jack Metcalf
Representative Linda Smith
Representative Richard "Doc" Hastings
Representative George Nethercutt
Representative Norm Dicks
Representative Jim McDermott
Representative Jennifer Dunn
Representative Randy Tate

Board of County Commissioners
BENTON COUNTY
P.O. Box 190 · Prosser, WA 99350-0190
Phone (509) 786-5600 or (509) 736-3080
Fax (509) 786-5625

Leo Bowman
DISTRICT 1
Max Benitz, Jr.
DISTRICT 2
Claude L. Oliver
DISTRICT 3

September 2, 1998

The Honorable Don Young, Chairman
Resources Committee
U. S. House of Representatives
Washington, D. C. 20515

Dear Representative Young:

Thank you for honoring the request of the elected officials and citizens of the Columbia Basin region to hold a congressional field hearing on the National Marine Fisheries Service (NMFS) flow target levels for the Columbia River Basin drainage system.

NMFS is proposing a "zero net loss" policy that will not provide any significant benefit to salmon. Additionally, the policy is a direct challenge to state authority to manage and control water resources. Implementing the flow target levels would, in effect, transfer governance of water rights to the federal government. This is simply unacceptable. The NMFS water policy must be abandoned.

Salmon restoration measures must be based on good science, achieve positive results and have strong regional support. The NMFS flow target levels does not meet any of these criterions. It is based on flawed technical assumptions, including: 1) flow regulation levels (flow targets) that exceed the hydrologic capability of the river system; 2) biological assumptions concerning fish-flow survival relationships that are inconsistent with empirical data, and 3) failure to recognize or employ any form of biological effect or cost effect, or to consider adequately the broad range of economic impacts imposed by the proposed water policy.

NMFS attempts to assume control of Northwest natural resources have essentially disenfranchised local elected officials, regional economic interests and citizens interested in seeking balanced salmon recovery solutions.

Local governments have a role and responsibility if salmon recovery efforts are to be successful. Included with this letter are copies of two Washington State Association of Counties resolutions on salmon protection and restoration that identify some county roles and responsibilities, and express opposition to Columbia and Snake River dam removal (enclosures). Benton County has many initiatives currently underway that help recover endangered species, and more can be done. Agencies and landowners in the county are planning and implementing efforts to improve river habitat and water quality in the Columbia and Yakima River. Federal funding should be provided directly to local

Agencies to assist in studies and recovery efforts. Funding must be provided to local agencies, and private landowners to quickly quantify baseline conditions, thereby facilitating the establishment of priorities and implementing projects that improve conditions for salmon and other threatened or endangered species.

Please act quickly to reign in this agency that is out of control. Thank you for your continued support for efforts that promote healthy salmon runs and a strong economy, and meaningfully involve local elected officials.

Sincerely,

BOARD OF BENTON COUNTY COMMISSIONERS

Leo M. Bowman, Chairman

Claude L. Oliver, Chairman Pro Tem

Max E. Benitz, Jr., Member

Enclosures

cc: Senator Gorton
Senator Murray
Representative Hastings

A RESOLUTION OF THE WASHINGTON STATE ASSOCIATION OF COUNTIES SEEKING STATE AND FEDERAL FUNDS FOR SALMON AND WATER

WHEREAS, species of salmon, steelhead, and bull trout have been listed or are proposed for listing as threatened or endangered under the federal Endangered Species Act; and

WHEREAS, every county in the state will be affected directly or indirectly by such listings, including revenue declines as tax bases shrink due to economic restrictions on affected industries and citizens, increased expenditures as conditions are imposed on programs undertaken by counties, and increased regulatory burdens on counties and individuals; and

WHEREAS, counties recognize the benefits of maintaining healthy stocks of salmon, steelhead and bull trout; and

WHEREAS, counties collectively have spent over $100 million in the last two years on programs and projects aimed at protecting or restoring salmon habitat; and

WHEREAS, counties are working with federal, state, tribal governments, cities and others on the Government Council on Natural Resources and at TFW, with members of Washington's Congressional delegation, and within watersheds locally, on policies, projects and funding for salmon restoration; and

WHEREAS, in addition to adequate flows of clean water for salmon, there exist equally pressing needs for water supplies to meet population growth, economic development opportunities, and requirements of the federal clean water act; and

WHEREAS, counties lack adequate staff and capital resources to address clean water, salmon habitat, population growth and economic development needs;

NOW THEREFORE BE IT RESOLVED, the Washington State Association of Counties hereby petitions the Governor, the Legislature in the 1999 legislative session, and the Congress to make funding assistance for locally-based salmon restoration efforts a high priority.

BE IT FURTHER RESOLVED, that the Washington State Association of Counties work with cities, special districts, state agencies and others to develop a major state capital project fund to all water and salmon restoration needs, including water supply, wastewater treatment and disposal, stormwater, flood reduction, and habitat acquisition and restoration.

Recommendation of the Board of Directors: DO PASS

Action of the Association: DO PASS

Helen Fancher

Helen Fancher, President
Washington State Association of Counties
June 12, 1998 at the 92nd Annual Convention
Tacoma, Washington

A RESOLUTION OF THE WASHINGTON STATE ASSOCIATION OF COUNTIES IN OPPOSITION TO REMOVING/BREACHING ANY EXISTING DAMS ON THE LOWER SNAKE RIVER AND COLUMBIA RIVER

WHEREAS, the Washington State Association of Counties recognizes the enormous contribution the Columbia and Snake Rivers bring to the region's economic well being and quality of life; and

WHEREAS, the Washington State Association of Counties believes that drawdowns below current operating levels or removal of these dams to enhance various salmon runs would adversely impact the citizens of Washington, Oregon and Idaho through a loss of recreation, an increase in electrical rates, increasing freight mobility costs and economic hardship; and

WHEREAS, the Washington State Association of Counties believes that salmon are in decline because of many factors, including a loss of habitat, predators, weather cycles including droughts and unfavorable ocean climatic conditions, poor hatchery practices, harvest and hydro projects; and

WHEREAS, the Washington State Association of Counties believes the salmon and steelhead can be and should be preserved and enhanced in conjunction with the continued multiple use of the rivers; and

WHEREAS, within the existing hydrosystem, the Washington State Association of Counties supports scientifically-based and cost-effective strategies for recovering and enhancing threatened or endangered salmon and steelhead throughout their life span; and

WHEREAS, there is a genuine need for public debate to develop a minimum or sufficient threshold number of smolt traveling downriver which will insure the continued existence of these threatened and endangered species.

NOW, THEREFORE, BE IT RESOLVED, that the Washington State Association of Counties supports the continued multiple use of the Columbia and Snake Rivers for fish and wildlife habitat, hydropower generation, flood control, transportation, irrigation and recreation, and opposes drawdowns below the current operating levels and removal or breaching of any dams on the lower Snake River or Columbia River; and

BE IT FURTHER RESOLVED, that the Washington State Association of Counties expresses concern over any review process which does not incorporate and take into consideration the impacts upon the citizens of Eastern Washington whose economy is dependent on the operation of the dams.

Recommendation of the Board of Directors: DO PASS

Action of the Association: DO PASS

Helen Fancher

Helen Fancher, President
Washington State Association
June 9, 1998 at the 92nd Annual Convention
Tacoma, Washington

Testimony of
Kim B. Puzey, Ph.D., General Manager
PORT OF UMATILLA
P.O. Box 879, 505 Willamette Avenue
Umatilla, Oregon 97882
(541) 922-3224

Before the
United States House Resources Committee

NMFS Water Policy and Flow Augmentation Program
Under the Endangered Species Act

September 2, 1998

Thank you for the opportunity we have been given to present our views on the Columbia/Snake River Basin and the National Marine Fisheries Flow Augmentation Program under the Endangered Species Act.

The Columbia-Snake River Basin is one of the most remarkable natural environments on the planet. The relationship that exists between the flora, fauna, and people of the region is extremely rare. Quality of life in the Pacific Northwest as a result of this relationship is incomparable.

This environmental marvel is joined by one of the largest, most complex, and cleanest operating machines in the history of the industrialized world. That machine, which moves electricity at approximately the speed of light, is the federal system of hydroelectric power generation and transmission.

Through this union of environmental and technological magnificence runs an inland waterway which is one of the most efficient and environmentally friendly transportation systems ever known.

On the banks of the Columbia-Snake River irrigated-crop-yields per acre are some of the highest in the world. Wheat, potatoes, peas, lentils, onions, carrots, corn, beans, fruit, cattle, sheep, and dairy products, move from this region to feed many people in many nations. A host of other non-food products are also exported from this region.

On a personal basis, my family drinks and bathes in Columbia River water provided through a Port constructed water system which has both a municipal and an industrial component. In our small residential yard, we raise tomatoes, cucumbers, peas, squash, strawberries, raspberries, mulberries, nectarines, Italian plums, Asian pears, Fuji apples, almonds, mint, oregano, parsley, and chives.

An additional and often taken for granted benefit of the

system is flood control. The dams, that allow for generation of electricity and inland navigation, protect lives, homes, marinas, businesses; public and private property all along the banks of the river.

For these reasons, proposals to breach or destroy dams make no sense. Such proposals are extremely radical and have an inherent high risk which is simply not defensible.

Many who would argue that these proposals are good for fish may not be aware of the successes of the Umatilla Basin project, which successes continue in conjunction with the existing dams. This project succeeds as a result of extraordinary regional cooperation between irrigators and tribal members, legislators and agencies. Resource sharing, mutual respect, and habitat restoration, has resulted in the return of salmon to the Umatilla River after a 70 year absence. These fish runs are above three federal dams. Fish returning to the Hanford Reach are above four dams.

Some who suggest that the dams be breached or destroyed would transfer all river cargo to the already congested rails or highways, including the interstate highway system through the Columbia River Gorge Scenic Area, and into the Portland metropolitan area. The effects of traffic and air emissions from the additional freight trucks and freight trains would not only be detrimental to quality of life, but unnecessary.

Those who would breach or destroy dams have no adequate response for an alternative source of electric generation and transmission which is even remotely comparable to the efficiency and cleanliness of hydroelectric power. Moreover, they have no adequate alternative proposals to flood control.

Restoring fish is vital to the region. Maintaining the federal hydroelectric generation and transmission system is vital to the region. Freight transportation on the inland waterway is vital to the region. Irrigation is vital to the region. Flood control is vital to the region. Municipal water from the river system is vital to the region.

I am not, nor do I pretend to be an expert on fish, but it is clear to me that there is no simple solution to problems of fish restoration. Fish runs in the region are down whether the fish encounter dams or not. Dam breaching and dam destruction proposals come with no evidence that these will help fish. The proposals, however do carry extremely detrimental consequences. It makes no sense to take such extreme risks with no evidence of benefit to fish.

Those who make dangerous proposals about breaching or destroying dams have fallen into a current societal trap of defending special interests by rejecting one of the founding principles of the United States, namely, "e pluribus unum" or in other words, "one out of many." They would divide a region whose vital interests are united. They would propose that we squander our creative energies on being adversaries rather than allies.

The sensible solution to the difficult issues we face in the Pacific Northwest will be found in working together rather than against one another. Too much is at stake to do otherwise.

Thank you for your service on this Committee. Thank you for this opportunity to present our views on these matters.

Talk of destroying dams hurts the region

By Kim B. Puzey
Special to The Times

THE Columbia-Snake River system is one of the most remarkable natural environments in the world. The relationship that exists between the flora, fauna and people of the region is extremely rare. Quality of life in the Pacific Northwest as a result of this relationship is incomparable.

This environmental marvel is joined by one of the largest, most complex and cleanest-operating machines in the history of the industrialized world. That machine, which moves electricity at approximately the speed of light, is the federal system of hydroelectric power generation and transmission.

Through this union of environmental and technological magnificence runs an inland waterway that is one of the most efficient and environmentally friendly transportation systems ever known.

On the banks of the Columbia-Snake River system, irrigated crop yields per acre are some of the highest in the world. Wheat, potatoes, peas, lentils, onions, carrots, corn, beans, fruit, cattle, sheep and dairy products move from this region to feed many people in many nations. A host of other non-food products are also exported from this region.

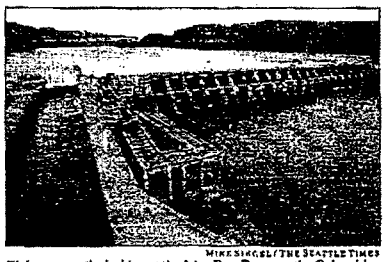
An additional and often taken for granted benefit of the system of dams is flood control. The dams protect lives, homes, marinas, businesses — public and private property — all along the river system.

For these reasons, proposals to breach or destroy dams make no sense. Such proposals are extremely radical and have an inherent high risk that is not defensible.

Many who would argue that these proposals are good for fish may not be aware of the successes of the Umatilla Basin project, which continues in conjunction with the existing dams. This project succeeds as a result of extraordinary regional cooperation between irrigators and tribal members. Resource sharing, mutual respect and habitat restoration has resulted in the return of salmon to the Umatilla River after a 70-year absence. These fish runs are above four federal dams.

Some who suggest that the dams be breached or destroyed would move all river cargo to the already congested rails or highways, including the interstate highway system through the Columbia River Gorge Scenic Area, and into the Portland metropolitan area. The effects on traffic and air emissions from the additional freight trucks and freight trains would not only be detrimental to quality of life, but unnecessary.

Those who would breach or destroy dams have no adequate response for an alternative source of electric generation and transmission that is even remotely comparable to the efficiency and cleanliness of hydroelectric power. Moreover, they have no adequate alternative proposals to flood control.



MIKE SIEGEL/THE SEATTLE TIMES

Fish can use *the ladder at the John Day Dam on the Columbia.*

Restoring fish is vital to the region. Maintaining the federal hydroelectric generation and transmission system is vital to the region. Freight transportation on the inland waterway is vital to the region. Irrigation is vital to the region. Flood control is vital to the region. Municipal water from the river system is vital to the region.

I am not, nor do I pretend to be, an expert on fish, but it is clear to me that there is no simple solution to problems of fish restoration. Fish runs in the region are down whether the fish encounter dams or not. Dam breaching and dam destruction proposals come with no evidence that these will help fish. The proposals, however do carry extremely detrimental consequences. It makes no sense to take such extreme risks with no evidence of benefit to fish.

Those who make dangerous proposals about breaching or destroying dams have fallen into a current societal trap of defending special interests by rejecting one of the founding principles of the United States, namely *e pluribus unum*, or "one out of many." They would divide a region whose vital interests are united. They would propose that we squander our creative energies on being adversaries rather than allies.

The sensible solution to the difficult issues we face in the Pacific Northwest will be found in working together rather than against one another. Too much is at stake to do otherwise.

Kim B. Puzey is general manager of the Port of Umatilla.

East Oregonian, Saturday, June 13, 1998 Page 6A

EAST OREGONIAN

Breaching dams not the answer

Comment

Kim B. Puzey

The Columbia-Snake River system is one of the most remarkable natural environments in the world. The relationship that exists between the flora, fauna and people of the region is extremely rare. Quality of life in the Pacific Northwest as a result of this relationship is incomparable.

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Thursday, June 25, 1998

The Dalles Chronicle

Serving Oregon's Wasco, Sherman, Gilliam & Hood River counties and Klickitat County, Washington

Kim B. Puzey

Columbia dams: remarkable resources

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Talk of destroying dams is divisive to our region

Guest Commentary

Kim Puzey

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Proponents of breaching dams haven't looked at the big picture

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Kim Puzey
Special to the Herald

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Umatilla and Morrow counties

Saving salmon will take planning, official says

By Theresa Goffredo
Herald Oregon bureau

UMATILLA — The solution to salmon recovery problems on the Snake and Columbia river systems won't be found in high-risk, quick-fix notions.

The answer to saving salmon must be thought out for the long term and be one that will benefit the needs of all stakeholders — and that means every citizen, Kim Puzey, manager of the Port of Umatilla, told members of the American Leadership Forum.

"It must be sensible. It needs to recognize that all elements of the river have profound collective importance to the region," Puzey said Thursday. "Fish need to be restored. Crops need to be raised. Electricity needs to be generated. Barges need to carry products to market. Cities need domestic water. We are all in this together."

Puzey spoke to the group while giving a tour of the port's container dock on the Columbia River.

The American Leadership Forum is a national nonprofit organization dedicated to getting leaders together to serve the public good. The group helps build community leaders through diversity and by promoting collaborative problem-solving within and among communities.

In addition to touring the container dock, forum members also visited other Hermiston sites including an irrigation pump station, the Hermiston Foods Inc. plant and Madison Farms.

During 1998, members of the forum will organize more than 20 trips to communities throughout the state in which key Oregon leaders get to learn about issues affecting those communities.

The results from each meeting will be recorded and included in a report to state policymakers that suggests how Oregon can work more effectively across geographic boundaries.

Puzey stood in a cold, blustery wind and talked about the complexity of the area's river systems and the vital nature of the dams as McNary Dam loomed in the background.

"They are vital to life as we know it in this region," Puzey said. "They are vital to crop production through irrigation, vital to transportation of value-added products and vital to the generation of low-cost electricity which benefits everyone in the Pacific Northwest."

Puzey said he visited Scandinavia last spring and was struck by Sweden's abundant fish returns since that country has addressed its municipal sewage problem.

When he first came here four years ago from New Mexico, Puzey said he was stunned when he didn't see fish leaping out of the river, as he imagined it would be on the Columbia.

"Fish prefer clean water," Puzey said. "They have an aversion to raw sewage. By working together, the people of the Pacific Northwest can continue to have the good life that we know and restore to greater capacity which is in danger of being lost."

■ Reporter Theresa Goffredo can be reached in Hermiston at 541-567-4459 or via e-mail at tgofftch@oregontrail.net

I am Charles D. Kilbury, mayor of the City of Pasco, and I am reporting action by the City Council of the City of Pasco.

Some few weeks ago, the City Council passed a resolution in direct opposition to an action requiring breaching or lowering of the pools behind the dams on the Snake or Columbia Rivers.

For any Federal agency to advocate breaching of any or several of the Federal dams, with the idea of increasing the number of anadromous fish returning to the upriver spawing grounds, when no evidence has been taken to prove that only rivers with dams have reduced runs of salmon; when the fact is that rivers with no dams have also had their spawing runs decimated, makes little sense, and cries out for the NMFS to be investigated for their lack of scientific study of the Columbia River basin.

Why has there been no attempt made to restrict destruction of the salmon in the ocean?

Why has there been no attempt to restrict overcatching of the salmon on their passage up the river?

Why has there been an increase in the Yakima River chinook run even with only supplementation of the wild run having taken place, when that run has come over four dams in the Lower Columbia?

What has been done to elimate the massive increase in predators at the mouth of the Columbia River?

Nor has the NMFS considered the enormous cost of removing irrigation, barge traffic and recreation from the river.

It is time, and I call upon Congress to call a halt to this bureaucratic bungling immediately.

RESOLUTION NO. 2311

A RESOLUTION opposing Snake River and Columbia River reservoir drawdowns and the removal of dams thereon.

WHEREAS, the City of Pasco recognizes the enormous contribution the Snake and Columbia Rivers bring to this region's economic well being and quality of life; and;

WHEREAS, the City supports the continued multiple use of the Snake and Columbia Rivers for fish and wildlife, hydropower generation, flood control, transportation, irrigation and recreation; and

WHEREAS, the City believes that reservoir drawdowns below current operating levels, or removal of the dams on the lower Snake and Columbia Rivers would inflict on the citizenry a loss of recreation, an increase in electrical rates, a risk of floods, economic hardship and impaired quality of life; and

WHEREAS, the City believes that the salmon decline is due to many factors including loss of habitat, an increase in predators, drought, unfavorable ocean conditions, poor hatchery practices, increased harvest and hydro projects;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PASCO, WASHINGTON, DO RESOLVE AS FOLLOWS:

Section 1. That salmon and steelhead can and should be preserved and enhanced in conjunction with the continued multiple use of the Snake and Columbia rivers.

Section 2. The City of Pasco rejects and opposes reservoir drawdowns below current operating levels or the removal of any dams solely for fish recovery and enhancement.

PASSED by the City Council of the City of Pasco at a regular meeting this 16 th day of June, 1997.

CITY OF PASCO:

Charles D. Kilbury, Mayor

ATTEST:

Catherine D. Seaman, Deputy City Clerk

APPROVED AS TO FORM:

Leland B. Kerr
City Attorney

Testimony of State Rep. Clyde Ballard

First, I would like to express my thanks to the Committee for bring forward a public hearing to provide for oversight regarding the actions being conducted by the National Marine Fisheries Serivce (NMFS) in the Pacific Northwest.

My views are those of an elected official who is directly responsible to the citizens of Washington State--the people who provide for the economics and social well being our communities, the people who are directly affected by NMFS's actions to implement salmon recovery measures and influence river system governance.

I want to be direct in my comments to you. I believe that you are here today because the National Marine Fisheries Service has sought to engage in actions that exceed its rightful authority, because is has nurtured the development of a self-serving "salmon recovery industry," and because it has failed to offer the region a workable pragmatic salmon recovery plan for the Columbia-Snake River Basin.

My first remarks focus on NMFS's attempts to control water management.

The NMFS has put forth a water policy for the Columbia River Drainage area a policy it refers to as the "zero net water loss" policy,

The end effect of this policy is to eliminate further water withdrawals from the Columbia-Snake River mainstem, tributaries to the mainstem, and related groundwater sources--including the perfection of existing state water rights-as well as review existing water withdrawals to assess impacts to salmon. Essentially, all Basin water resources are effected.

This policy directly challenges the authority of the states to review and grant water rights for municipal, industrial, and irrigations purposes--and directs all future water use for one purpose and one purpose only: fish protection.

This "water policy" not only attempts to abrogate state authority over existing (the perfection of existing water rights) and future water rights, but it presents an absurd resource management policy for the state--with the only real objective of transferring control of water management over to NMFS, not creating more fish. The NMFS is primarily interested in resource control and breaking the back of Western and state water law--to suggest that this policy is being driven by prudent resource managers with the sole objective to enhance salmon is disingenuous.

The State of Washington is willing to work to address the
salmon recovery of the region but the State will aggressively resist attempts by NMFS to control our water.

Unfortunately the most effective action of NMFS to date is to enhance what is being called the "salmon recovery industry," not improving salmon runs. The salmon recovery industry--an army of state, federal and tribal bureaucrats and their consultants has simply

sought greater political and operational control over resources and funding. Their objectives are totally self-serving. More control and funding has not created more fish in the river.

In eight years, NMFS and the salmon recovery industry have neither produced more abundant salmon runs nor even developed a recovery plan that a majority of the region is willing to accept.

The NMFS and the salmon recovery industry cannot even quantify the number of salmon is has supposedly "saved," while spending literally billions of dollars.

NMFS and the salmon recovery industry have advanced an almost total disenfranchisement of the river system's key economic stakeholders and the people who are directly affected by management actions. There is never room at the decision making table for the stakeholders: not does there appear to be room for the region's elected state officials.

Let me close with a personal experience . The State of Washington put on a moratorium on any removing any additional water from the Columbia River. This past week I had the privilege of taking Speaker Gingrich and Congressmen Dan Miller and Clay Shaw along with a number of Speakers from Western States on a tour of the Columbia River. I asked them to observe the vastness of the Columbia as we traveled up to the Hanford Reach where Congressman Hastings gave information about the River.
We gave them information that less than 3% of the Rivers

water is used for agriculture.

When the State put on the moratorium there was no scientific data to support the decision. In 1997 the Legislature passed legislation that declared void the moratorium and further they must consult with the standing committees in the future on this subject.

I met with the director of the Department of Ecology following the session to talk about the legislation. He indicated that there was a major problem with giving any more permits because NMFS's had declared the Columbia River to be over allocated.

Mr. Chairmen, members of the committees, without water
along with the threat to remove existing water rights will
guarantee that a large part of the State of Washington will
be an economic disaster along with the stealing of property values due to the threats from NMFS.

Please send a message to the agency that we not only have the ability to make the right decisions on water but it is our right, not a federal agency.

Once again, thank you for your commitment.

Pacific Northwest Project
Congressional Hearing Testimony

Testimony of Darryll Olsen, Ph.D.
Regional Planner/Resource Economist
The Pacific Northwest Project
Kennewick, Washington

Before The

U.S. House of Representatives
Committee on Resources

September 2, 1998
Pasco, Washington

Resource Management and Policy Problems Surrounding the NMFS Flow Targets/Augmentation Program

I would like to thank the House Resources Committee for having the foresight and courage to question how the National Marine Fisheries Service (NMFS) is implementing the Endangered Species Act within the Columbia-Snake River Basin. It is appropriate that the significant and far-reaching resource management actions being taken by NMFS receive oversight and scrutiny by the Resources Committee.

In particular, the Resources Committee should review carefully the actions being invoked by NMFS to take control, from the states, over water management in the Pacific Northwest, and discern whether these actions actually advance the best interests of the fish resources and the social and economic well-being of Pacific Northwest citizens.

My comments concerning NMFS's role in water management to you today are based primarily as principal investigator for the *White Paper Review of the Columbia-Snake River Flow Targets/Augmentation Program* (prepared jointly with University of Washington researchers and scientists from the HARZA Engineering Company), and as principal investigator for several water, power, and fish mitigation studies and projects in the Northwest and Western United States (I have fifteen years of experience working on federal, state, and private water resources projects).

The *Review Study* (see executive summary attached) focuses on both policy and technical features of the NMFS flow targets/enhancement program:

3030 W. Clearwater, Suite 205-A, Kennewick, Washington
509-783-1623, FAX 509-735-3140, E-Mail DOlsenEcon@AOL.com

The NMFS Water Policy.

- **Through directives contained within the published Snake River Salmon Recovery Plan, an unpublished review draft Recovery Plan, and the biological opinion formally issued on the Inland Land project, the NMFS has declared a formal water policy: the no net loss water policy.**

- **If accepted by the states, this policy would prohibit any additional water withdrawals for municipal, industrial, or irrigation purposes--including the perfection of existing state-granted water permits. The states would cease to have control over water management decisions or how to allocate future (or existing?) water supplies--state water rights would be abrogated.**

Review Study Observations and Findings.

Within the *Review Study*, we brought forward the following key observations and conclusions:

Hydrology and the NMFS Flow Targets:

- **The NMFS flow targets ignore the physical hydrology of the Columbia-Snake River Basin system. Based on USBR hydro data and studies, the NMFS flow targets cannot be met in all months during low and average water-years--with or without the effects of net irrigation withdrawals--because the targets require more water than the hydrologic system can provide.**

- **The net irrigation depletions are not the primary reason why the NMFS flow targets cannot be met; the problems rests with the technical basis of the flow targets themselves--the targets are well beyond the Basin's hydrologic capability.**

Biological Impacts and Considerations:

- **Data collected for spring migrants since 1992 (1993-1997 data sets) indicate that the within year relationship between different flow regimes and fish survival is weak, within the mainstem river corridor. This means that attempts to use flow augmentation to improve spring migrant survival (the bulk of the water used for the flow augmentation program) will likely provide no measurable fish benefits.**

- **While NMFS's recent fall chinook data for the Upper Snake River Basin indicate a correlation between flow and survival, the data also indicate: correlations with other significant factors; significant differences in survival rates given the timing of migration outside of the flow regime window; and problems of controlling water temperatures in the Lower Snake River, when water is being released from the Upper Snake Basin during the summer period--countering the effects of water withdrawals from the Dworshak Project for the purpose of lowering water temperatures. An appropriate management regime and beneficial effects of flow augmentation here are not clear (Dr. Anderson's testimony will likely cover this item in more detail).**

Economic Impacts:

- **The flow targets/augmentation program incurs high economic costs to the region. Based on Bonneville Power Administration data and estimates, the flow augmentation program consists of about $50-70 million dollars per year (average annual value across past water years reflecting lost hydroelectric power generation); with costs increasing substantially, if irrigation sector impacts occur (see *Review Study* estimates for more detail).**

What Are the Real Issues--What Are NMFS's Objectives?

The *Review Study* made clear recommendations to NMFS regarding changes to the flow targest/enhancement program to optimize the flow regime for biological benefits and economic costs.

But to date, NMFS has shown no inclination toward restructuring the flow targets or augmentation program, as made evident by written statements, comments from the agency's management, and the position taken by NMFS to reinforce the existing flow augmentation program within the 1998 Supplemental BIOP. The agency refuses to acknowledge the readily apparent technical flaws underlying their program.

Moreover, the NMFS management position on the flow augmentation program has created a "double standard" for justifying agency actions. NMFS officials either ignore or downplay data showing no statistical correlation between spring migrants and flow--where the bulk of the flow augmentation water is used--while attempting to emphasize a correlation between flow and survival for fall chinook within the Upper Snake Basin, and ignoring other convoluting factors.

Given this response, it is simply not possible to explain NMFS's actions based on the model of a prudent resource manager seeking to enhance effectively fish benefits, while wisely administering public funds or limiting social and economic impacts. The Resource Committee should ask: what is the real issue here, what is the real objective being sought by NMFS?

By failing to restructure the flow augmentation program, *NMFS is misallocating large volumes of water in the West.* There exists sufficient evidence to conclude that the bulk of the flow augmentation program is not providing measurable fish benefits but is incurring significant economic costs. The NMFS flow regime cannot pass the classic criteria for water allocation, which is a demonstration of beneficial use.

It is apparent to many in the region that NMFS's actions on the flow targets/augmentation program are being driven by factors other than the pursuit of effective resource management. The agency has embraced a policy of *water misallocation,* and that policy hinders other--more beneficial--approaches to resource management from being adequately considered and pursued by regional decision makers. Other approaches could strive for an optimization of fish enhancements with economic costs and could seek-out collaborative partnerships for new water resource projects, with multiple benefits.

The Columbia-Snake River Flow Targets/Augmentation Program

A White Paper Review With Recommendations For Decision Makers

Prepared By:

Darryll Olsen, Ph.D.
Regional Planner/Resource Economist
Pacific Northwest Project
Kennewick, Washington

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Research Biologists
Columbia Basin Research, University of Washington
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Research Biologists
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Portland, Oregon

Sponsored By:

Columbia-Snake River Irrigators Association
Eastern Oregon Irrigators Association
Idaho Water Users Association
Northwest Irrigation Utilities
Washington State Water Resources Association

February 1998

The Columbia-Snake River Flow Targets/Augmentation Program

A White Paper Review With Recommendations For Decision Makers

Executive Summary

1.0. A White Paper Review.

- **This white paper examines the Columbia-Snake River flow targets/augmentation program, and its implications for important water management actions within the Pacific Northwest.**

- **Evaluations of hydrologic, biological, and economic data indicate that the existing NMFS water policy and flow targets/augmentation program needs to be reassessed and changed.**

2.0. The Emerging NMFS Water Policy.

- **Through its flow targets/augmentation program, the NMFS is developing a water policy within the Columbia River Basin drainage of "zero net loss."**

- **The NMFS policy calls for no further water withdrawals from the Columbia-Snake River mainstems, tributaries to the main river system, and related groundwater sources; and it directs federal and state agencies to review the impacts of existing water withdrawals on its flow targets program.**

- **The NMFS policy challenges state authority to grant *future* water rights for municipal, industrial, or irrigation uses. By calling for a "review" of existing water withdrawals, the policy postures toward challenging *existing* state-granted water rights.**

- **Under the NMFS water policy, future (new) water allocations from within the Columbia River Basin drainage are to be used solely for instream fish flows.**

3.0. NMFS Water Policy Justification, Flow Targets and Augmentation.

- **The NMFS flow targets/augmentation program follows on the development of the fish flow augmentation program devised by the Northwest Power Planning Council during the 1983-1994 period.**

- **An initial "water budget" requested by the Council amounted to about 3.75 million acre-feet (MAF), but has grown with the preparation of each new Council Fish and Wildlife Program; the NMFS 1995 BIOP now calls for as much as 13-16 MAF for dedicated flow enhancement.**

- **The highest level of flow augmentation produced about 10.6 MAF, occurred during the 1994 drought water-year; about 0.8 MAF was released from the Brownlee Project and above, about 1.9 MAF was released from Dworshak Reservoir, with the remaining water being released from upstream Columbia system reservoirs.**

- **In the 1994 low water-year, about 0.5 MAF was provided from the Brownlee Project and above during the *summer period;* and about 1.0 MAF came from Dworshak Reservoir.**

- **Within the NMFS flow augmentation program, the "flow targets" serve as operational guides for in-season water management, determining when to use available water for flow augmentation.**

4.0. River System Hydro Regulation Studies and the Flow Targets.

- **The USBR hydro regulation studies demonstrate that the NMFS flow targets cannot be met in all months (affecting seasonal averages), during low or average water-years, because they require more water than the hydrologic system can provide--with or without the effects of net irrigation depletions from the Snake-Columbia River Basin.**

- **During low and average water years for the summer flow augmentation period, the NMFS flow targets exceed water levels that would be available under natural river system conditions, with or without the effects of net irrigation withdrawals.**

- **During a drought year, net irrigation depletions represent large volumes of water for the months of July and August. But the net irrigation depletions *are not* the primary reason why the NMFS flow targets cannot be met; the problem rests with the flow targets themselves--the targets are well beyond the Basin's hydrologic capability.**

- **The annual natural run-off within the Basin is highly variable; the yearly net variation in flows for a 50-year water record substantially exceeds or overshadows net irrigation withdrawals, measured at McNary Dam.**

- Given the hydrological capabilities of the river system, the NMFS summer flow targets of 200 kcfs (Columbia River) and 50-55 kcfs (Snake River) cannot be met during low water conditions, even with the complete elimination of all irrigation depletions. Basin hydrology limits summer flows to well below the NMFS target level.

5.0. Biological Basis for Flow Targets/Augmentation.

- Largely based on historical data depicting year-to-year flow and juvenile fish survival relationships, it has been assumed that flow augmentation could be used to increase flows during low water-year conditions, in an attempt to produce survival rates observed in high water years.

- Data collected for spring migrants since 1992 (1993-1997 data sets) indicate that the *within year relationship* between different flow regimes and fish survival through the hydro system corridor is weak. This means that attempts to use flow augmentation to improve spring migrant survival will provide very little or limited benefits.

- The year-to-year correlations between flow and survival--reflecting vastly different flow levels between years--support the hypothesis that ecological factors associated with drought conditions are principally responsible for fish survival.

- The year-to-year observations move toward the conclusion that better water-year conditions, in general, provide for greater fish survival than drought conditions.

- The flow-survival data collected on fall chinook is more variable and less well defined than for spring migrants. Given the existing data, flow is one variable correlated with survival, in some cases, but it has less predictive capability than other variables (such as migration timing and fish size through the upper river system). Also, some relationships, such as observed numbers of marked fish detections between years, are inconsistent among years (although dam-smolt collection operations may have been different among years, making detection comparisons difficult).

- Snake River summer flow augmentation is being used to enhance the transportation collection efficiency for fall chinook. But flow augmentation is not the only method available to increase collection efficiency. Structural changes at the projects, such as the current installation of double-length screens and/or surface collector technology, may be able to achieve the same goal and provide benefits for spring migrants, as well.

- During the summer period, Lower Snake River water temperatures can and do exceed levels that negatively affect migrating juveniles and adults. The use of some flow augmentation (from Dworshak Reservoir) to improve migration conditions should continue to be reviewed; and the biological benefits and costs should be better understood.

- **Because of the uncertainty surrounding the effects of flow augmentation on overall fall chinook survival, it is difficult to support either an increase or decrease in the amount of storage currently being used for flow augmentation (1.5 MAF) to protect summer migrants, for a drought year like 1994.** ***But resource managers should be cautious in making conclusions about the benefits gained from this flow regime, because shaping flows within a drought year will not produce the benefits fish receive under a high water-year.***

6.0. Economic Trade-offs of Flow Augmentation.

- **Using sport and commercial fisheries values and fish abundance estimates for the 1987-1991 period (relatively high catch period), the annual direct net value of the upriver (above Bonneville Dam) salmon and steelhead contributions to ocean and inriver fisheries is about $25 million. It is acknowledged (and has been measured) that salmon do retain an existence value that exceeds their direct commercial or use value.**

- **Applying some favorable economic and biological assumptions to the benefits of flow augmentation, the annual direct net economic value of the upriver contributions to commercial and sport fisheries is about $2.25 million per one million acre-feet of water used for flow augmentation–representing a** ***future value*** **estimate over 10 life-cycles (1995$).**

- **Flow augmentation causes economic impacts to hydroelectric power operations and could create future economic impacts to irrigated agriculture. For one million acre-feet of flow augmentation, the cost to hydro power operations is estimated to be about $8-10 million (BPA system costs). For Basin irrigated agriculture, the direct net value of one million acre-feet of water is estimated to be about $40-70 million; one estimate for the Upper Snake River Basin suggests about $49 million per one million acre-feet of water provided for flow augmentation (includes hydropower benefits).**

- **Both economic trade-off analyses and cost-effectiveness analyses strongly support the position that** ***any flow augmentation program should be optimized to maximize fish benefits for the costs incurred to other water resource sectors.***

7.0 Recommendations for Decision Makers.

7.1 The NMFS Water Policy.

- **Decision makers should be fully aware of the emerging NMFS water policy and its implications for state water management.**

- **The NMFS water policy--bred from the flow targets/augmentation program--directs that all future (new) water allocations from the Columbia River Basin drainage area should be used solely for fish protection.**

- **The NMFS water policy is a single-purpose, resource use strategy that subjugates new water withdrawals for other types of social and economic activity or growth within the Basin. The policy is one-dimensional in nature, and it directly or indirectly challenges state legislative authority to govern water management.**

- **The NMFS senior management, working with state water resource managers, should reevaluate and change this policy to better reach the needs of biological and economic optimization.**

7.2 Review and Restructure the Flow Targets/Augmentation Program.

- **The existing data and analyses strongly suggest that the correlation between incremental flow increases and juvenile spring migrant survival is relatively inelastic, or that the survival benefits are small.**

- **The existing data suggest that estimated river system flow benefits--though limited--favor the fall chinook. But there is considerable uncertainty surrounding the effects of flow augmentation on overall survival. This includes factors related to direct inriver survival benefits, migration timing, inter-year detection differences, and the use of flow to increase transport collection efficiency.**

- **It is more clear that flow augmentation is a measure providing marginal survival benefits and has limited effectiveness as a recovery measure.**

- **In contrast to some of the biological impacts, the economic trade-offs of flow augmentation are more predictable. Flow augmentation does increase costs to the hydropower system, and it could create significant costs to the irrigation (and other) sectors.**

Given the data and analyses presented within this paper, the following review and changes are suggested for the flow augmentation program.

Optimization Review:

- **The flow targets/augmentation program would benefit from a detailed technical review that focuses on the *optimization of water use; its source, delivery timing, temperature effects, and a clear identification of the biological or physical attributes to be targeted. This also includes applying principles of cost-effectiveness, to compare the biological benefits gained for the costs incurred.***

- **The existing flow augmentation program does not optimize water use for either survival benefits (benefit per unit of flow) or economic costs (benefit per dollar cost) to the river system.**

A flow augmentation program that better reflects a step toward optimization of the existing water resources is summarized below.

Low Water Conditions, Snake River System:

- **For the summer period (July-August), provide for experimentation a *maximum of 0.5 MAF* from the Brownlee Project and above consistent with state law and obtained from willing sellers or lessors; and a *maximum of 1.0 MAF* from Dworshak to be used for fall chinook migration and/or adult temperature control. Data to review this experimental regime would be collected through 1999, consistent with the existing NMFS decision-making process.**

Low Water Conditions, Columbia River System:

- **Direct flow augmentation releases solely for the fall chinook migration. For the summer period (July-August), provide for experimentation *0-4.0 MAF, as recommended jointly by federal and state fish and water resources managers.***

Average Water Conditions, Snake River System:

- **For the summer period (July-August), provide for experimentation a *maximum of 0.5 MAF* from the Brownlee Project and above consistent with state law and obtained from willing sellers or lessors; and a *maximum of 1.0 MAF* from Dworshak to be used for fall chinook migration and/or adult temperature control. Data to review this experimental regime would be collected through 1999, consistent with the existing NMFS decision-making process.**

Average Water Conditions for the Columbia River System:

- **Direct flow augmentation releases solely for the fall chinook migration. For the summer period (July-August), provide for experimentation *0-4.0 MAF, as recommended jointly by federal and state fish and water resources managers.***

The Restructured Flow Augmentation Program:

- **The above restructuring of the flow augmentation program would have the greatest deviation from the existing program by eliminating the current spring flow augmentation regime.**

- **During the summer period, the restructured program would limit flow augmentation in the Snake River Basin to a level not to exceed operations that occurred in the summer of 1994 (drought conditions).**

- **Without a better technical justification for the summer flow augmentation, *resource managers should refrain from taking actions to increase this flow augmentation regime.***

- **It is equally important that adequate data be obtained and appropriate analyses undertaken in order to optimize and provide a supportable technical justification for the current summer flow augmentation program.**

7.3. Future Considerations for Flow Augmentation Management and Evaluations.

It appears that using flow augmentation within a single season is not an effective recovery tool for spring chinook migration within the mainstem. What is less clear is whether mainstem flow augmentation is an effective management tool for fall chinook within the mainstem; or how flow augmentation can or should be used to improve survival within tributaries. Given these latter uncertainties and issues beyond the scope of this paper, the following recommendations are provided.

- **In the case of Snake River fall chinook, the existing data on collection efficiency (FGE) and its relationship to flow is difficult to interpret. The need exists to establish data that verifies the interaction between flow augmentation and structural improvements to FGE, and cost-effectiveness analysis should be used to assess risk and economic trade-offs.**

- **Resource managers may want to give consideration to changing the focus of flow augmentation efforts away from mainstem actions to improving habitat conditions within some tributaries. The NMFS Recovery Plan should better recognize this factor by taking into account criteria for demonstrating real biological benefits, prioritizing major production tributaries, and measuring the cost-effectiveness and benefit-cost of tributary flow enhancement actions.**

- ***Direct actions to implement flow augmentation measures should defer to the existing authority of state water rights and should allow for "locally developed" solutions within specific watersheds.* This could include an implementation of efficiency measures, water transfers, and the development of new water storage projects to benefit both fish and economic interests.**

National Marine Fisheries Service Water Policy and Flow Targets Program For the Pacific Northwest States

The National Marine Fisheries Service Is Actively Attempting to Intervene in State Water Policy and Law in the Pacific Northwest, Implementing Their Own Water Policy Under the Force of ESA Actions--Through the 1995 Biological Opinion and New Recovery Plan. This Water Policy Calls for:

* *Federal-State Agencies to Pursue Water Withdrawal Moratoria on the Mainstem Snake-Columbia River; Including Any New Water Withdrawals Under Existing Water Permits.*

* *Federal-State Agencies to Pursue Water Withdrawal Moratoria on All Tributaries to the Snake-Columbia River, Including Any New Water Withdrawals Under Existing Water Permits.*

* *Federal and State Agencies Should Review Existing Water Withdrawal Permits That Reduce the System's Ability to Meet Flow Objectives, Defined within the NMFS 1995 Biological Opinion and Draft Recovery Plan.*

The NMFS Policy Is and Will Significantly Affect All Water Users within the Columbia-Snake River Basin, Including the Municipal, Industrial, Irrigation, and Recreation Sectors.

Flow Targets/Augmentation Review/2-98

Figure 1. Milestones of the Flow Augmentation/Targets Program Columbia-Snake River System

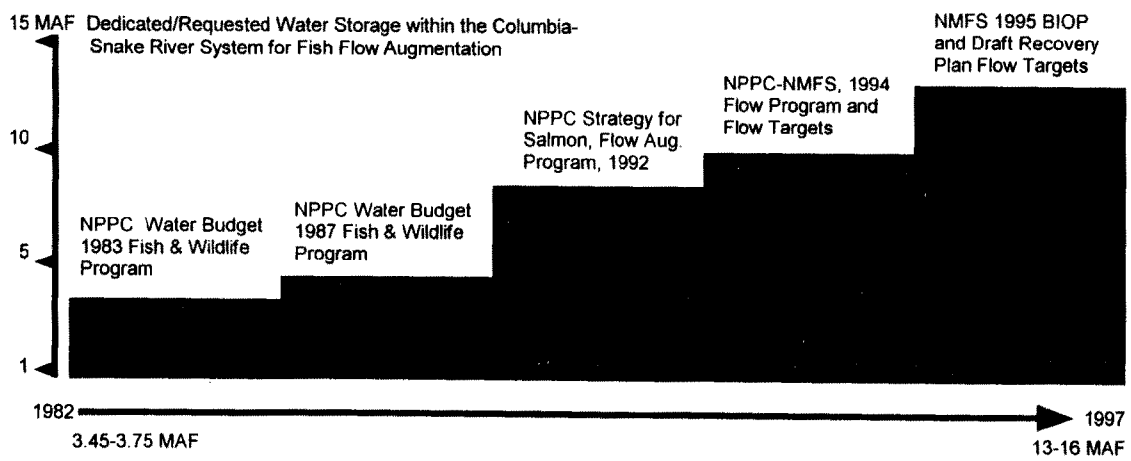
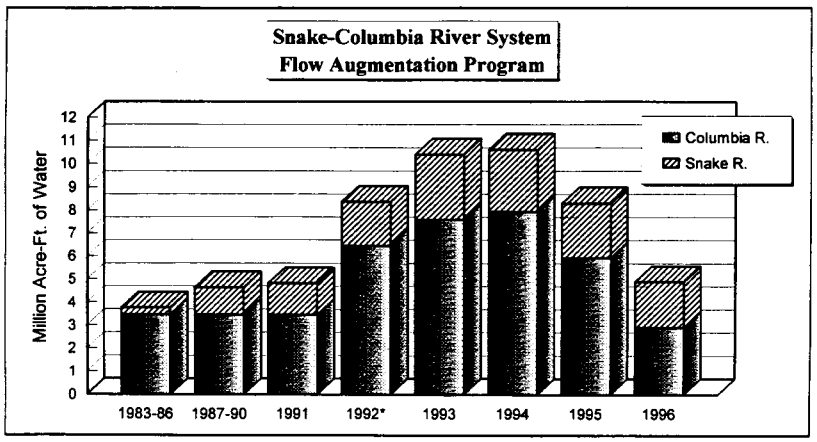


Figure 2. Columbia-Snake River
Flow Augmentation Program
1983-1996

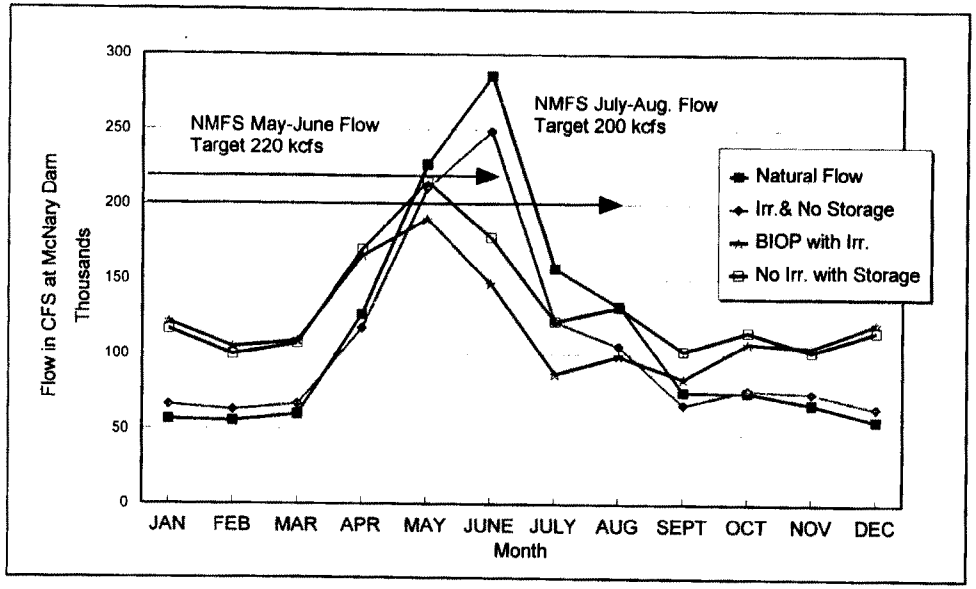


	Usable 1983-86	Usable 1987-90	Est. 1991	Est. 1992*	Est. 1993	Est. 1994	*Est. 1995*	*Est. 1996*
Snake River (MAF)								
Dworshak	----	----	----	----	2.298	1.89	*1.75*	*1.21*
Brownlee & Above	----	----	----	----	0.525	0.79	*0.61*	*0.76*
Total Snake R.	0.3	1.18	1.36	1.9	2.823	2.68	*2.36*	*1.97*
Columbia R. (MAF)								
Arrow (Canada)	----	----	----	----	----	----	*0.13*	*1.19*
Libby/Hungry H.	----	----	----	----	----	----	*1.17*	*0.71*
Grand Coulee	----	----	----	----	----	----	*4.64*	*1.02*
Total Columbia R.	3.45	3.45	3.45	6.45	7.58	7.93	*5.94*	*2.92*
Total Flow Aug.	3.75	4.63	4.81	8.35*	10.40	10.61	*8.30*	*4.89*

Data Source: Bonneville Power Administration, Dittmer Control Center, Portland, Oregon August 1997; USACE, 1994; and NPPC, Strategy for Salmon, 1992. Estimates are based on net with/without fish operations impacts to the hydro system.

* A 1992 estimate from BPA is higher than the values indicated below. The BPA estimate is about 10.79 MAF, with 8.68 MAF from the Columbia system and 2.11 MAF from the Snake.

Figure 3. Columbia River Basin Water Flows
Estimated Low Water Condition (1976-77), Average Monthly Flows at McNary Dam



Data Source: USBR, Cumulative Effects of Water Use, Interim and Draft Reports, March-October 1997.

Figure 12. Spring Chinook Survival Estimates

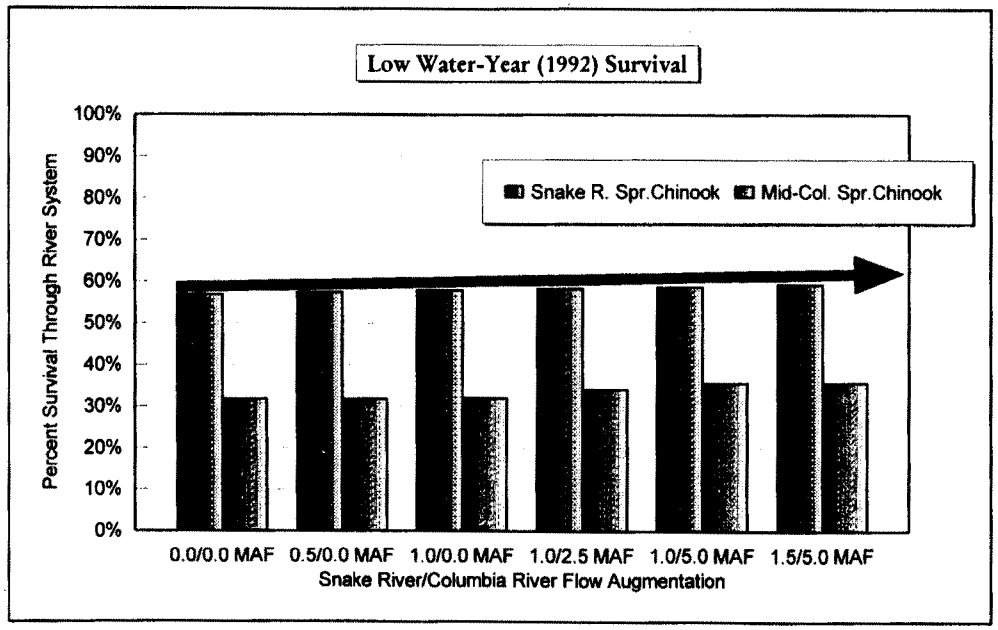


Figure 14. Factors Affecting Fall Chinook Survival and Flow Augmentation

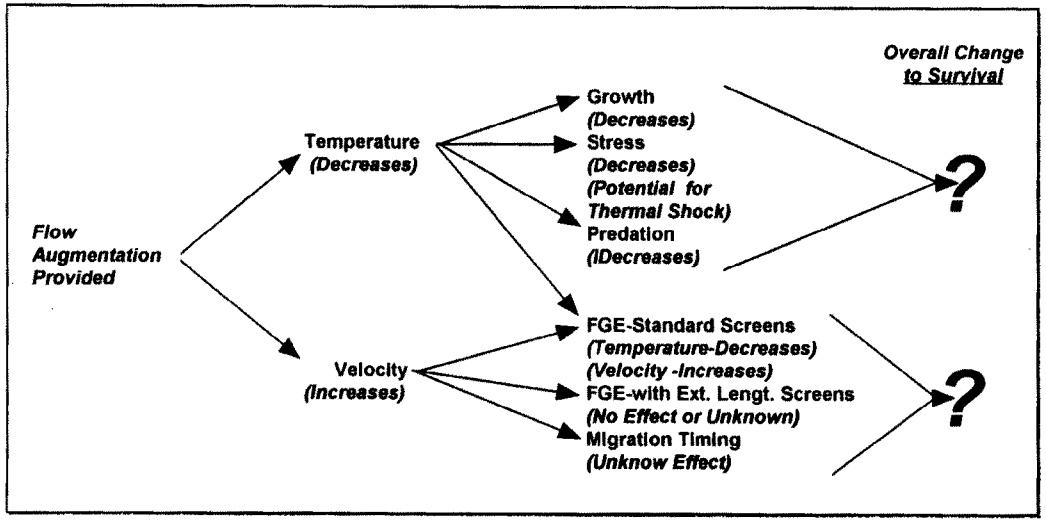


Table 5. Estimated Economic Benefits of Water Use For Major Sectors and Types of Economic Sector Trade-Offs (Direct Net Economic Value Estimates)

Economic Sector/Purpose	Estimated Benefits Annual $/MAF	Economic Trade-Offs For Water Diversion
Irrigated Agriculture*	**$40-70 Million**	Reduces water for hydropower production and fish flow augmentation.
Hydroelectric Power**	**$8-10 Million (BPA System Costs)**	Reduces water availability for fish flow augmentation; could conflict with irrigated agriculture.
Flow Augmentation--Fish Impacts Estimated Sport and Commercial+ Fisheries--Columbia Basin Origin (High Value Estimate)	**$2.25 Million**	Flow augmentation reduces hydropower production and can affect irrigated agriculture under NMFS BIOP-Recovery Plan.
Flow Augmentation--Fish Impacts Estimated Use and Existence++ Values for Columbia River Basin Salmon and Steelhead	**$4.80 Million**	Flow augmentation reduces hydropower production and can affect irrigated agriculture under NMFS BIOP-Recovery Plan.

* Assumes Direct Net Value of $40-70/acre ft. of water.

** Estimated marginal power cost impacts to Bonneville Power Administration.

\+ Assumes baseline economic value of $25 million (1995$), with compounding future value of 5% attributed to flow augmentation, for 10 migration periods (with average annual flow augmentation of about 7 MAF). The value represents a future value estimate and should be considered as presenting a high value perspective for comparison purposes here.

++ Assumes "total value" estimate (use, option and existence value) based on Columbia Basin Salmon and Steelhead study for use and non-use values; assumes that about 53% of the total value would reflect existence value (Olsen and Richards 1991). Use value based on future value estimate.

Data and Analyses Sources:

D. Huppert and D. Fluharty, Economics of Snake River Salmon Recovery: A Report to the National Marine Fisheries Service, School of Marine Affairs, University of Washington, Seattle, Washington, 1996 (and data/sources cited therein, SOR EIS).

Personal communications with Dittmer Operations staff, Bonneville Power Administration, Vancouver, Washington, August-September 1997.

D. Olsen, The Columbia Basin Project: Project Operations and Economic Benefits, A Regional Overview, The Pacific Northwest Project, Kennewick, Washington, 1996 (and Technical Memorandum Prepared for the Public Purposes Worl Group of the Comprehensive Energy Review, 1996, Evaluating Irrigation, Power System, and Flow Augmentation Benefits and Costs).

J. Hamilton and N. Whittlesey, Cost of Using Water from the Snake River Basin to Augment Flows for Endangered Salmon, Paper Presented at the Annual Western Regional Sciences Association, Napa, California, February 1996.

Flow Targets/Enhancement Program Recommendations For Decision Makers

* The NMFS Water Policy Should be Rejected:

  - Single Purpose Use, All Future Water Allocation for Fish Only, Abrogates State Water Rights.
  - Technically Questionable Flow Targests.
  - Weak Biological Justification.
  - Negative Economic Trade-Offs; Cost-Effectiveness
  - Flow Program Should Be Optimized.

* Flow Augmentation Focus Experimental for Fall Chinook.

* Smolt Transport Collection Improvements Reduces Flow Augmentation Effectiveness; "Decouple" Flow and Spill.

* Dollar "Savings" from Flow Augmentation Should Be Retained by BPA or Used for Off-Sight Mitigation.

■ Monday, July 6, 1998 ■ No. 834 ■

CLEARING UP NORTHWEST ENERGY MARKETS

Energy and Utility News for the US Pacific Northwest and Western Canada

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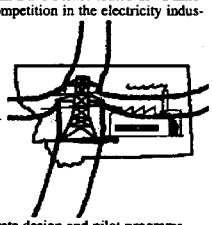
The Week in Summary

[1] State Water Managers Voice Concerns Over Fish Flows

Northwest water resource managers met in Seattle last week to discuss federal fish policy, and expressed concerns over the value of NMFS' flow augmentation strategy. They admitted disconnects with their own fish and wildlife managers and vowed to work together with their governors to create an accountable policy. Idaho managers said their legislature may vote to keep any more of their water from going down the drain. But with present and future ESA listings all over the map, NMFS policymaker Donna Darm told them, "You haven't seen anything yet." *The latest water war begins at [19].*

[2] Montana Power's Large Customers Now Have Open Access

In an order Chairman Dave Fisher touted as "a milestone on the road to competition in the electricity industry in Montana," the MPSC on June 23 approved portions of Montana Power's restructuring transition plan that provide open access to large customers. The ruling, which came just in time to meet the July 1 deadline put forth in the state's electricity deregulation legislation, included decisions on rate design and pilot programs. Notably absent, however, were determinations on transition costs and public purposes funding. *The commission rules with little time to spare at [16].*



[3] POTOMAC: White House Dereg Plan Redone in Legislative Language

The Clinton Administration's proposal for electric utility restructuring—first announced in March—is now in the form of a legislative proposal. Outgoing Energy Secretary Federico Peña delivered the bill to the Hill June 24. Senate Energy Committee Chair Frank Murkowski says he'll introduce the proposal when the Senate reconvenes after its Independence Day holiday recess. *The principles are the same, but details have been added at [21].*

[4] PNGC Carves NWEC's Turkey Award for Coffin-Butte Project

The Northwest Energy Coalition and PNGC traded press releases last week over the effect of how two PNGC members are marketing their share of the 2.5 MW Coffin-Butte landfill gas energy project.

[commission] policies," said WUTC regulatory consultant Hank McIntosh. In this case, the policies were outlined in a WUTC notice of inquiry that examined the regulation of local distribution companies in a changing natural gas industry. One portion of that NOI discussed PGA incentive mechanisms and led to a WUTC policy statement on developing such mechanisms.

Puget Sound Energy is the first IOU in the state to adopt a PGA incentive mechanism. Washington Water Power filed a PGA incentive proposal with the UTC last year, confirmed rates and tariffs manager Tom Dukich; but the utility decided to pull it and wait a while. Dukich said Water Power has looked at Puget's mechanism and thinks it "works pretty well." He said Water Power will want to do something similar and may file a proposal by the end of this month.

McIntosh said utilities aren't required to file incentive proposals, but the WUTC expects them to consider it. "It's a pretty slam-dunk idea," he said. "All parties are better off." There were no intervenors in the PSE case who had any problems with the mechanism, he said.

PSE's PGA incentive mechanism took effect July 1 and will last for three years. Exactly when customers will see adjustments under the mechanism is unclear, however; PSE's Gaines said there's no set time frame for filing a PGA. The next time one is filed, however, benefits or costs will be wrapped in under the new procedure *[Jude Noland]*.

[18] PGE Will Refile Proposed New Low Income Weatherization Pilot ■ *from [9]*

Portland General Electric is rewriting its proposed new energy management pilot for low income customers. The IOU first filed the proposal in March; commission action has been delayed while the utility responded to OPUC staff suggestions and data requests. On June 24 the OPUC suspended the utility's proposal due to "lack of specificity in the tariff," according to OPUC staffer Lynn Plamondon, and suggested the utility "go back and rethink" its proposal.

The OPUC "told us 'don't give up; go back and rewrite the tariff; put more detail in it and do it soon,'" said PGE's Mark Gosvenor. "We basically sense support for what it is we're trying to do."

What PGE is aiming for, according to Gosvenor, is a low-income weatherization program that gets more weatherization into customers' homes, but in a way that's more cost-effective and makes sense.

To get as many cost-effective kilowatt-hours as possible, PGE planned to target higher-use customers and soften the income qualification levels. The utility would work with community action agencies, which would identify eligible customers, perform blower-door tests on subjects' homes and provide the actual weatherization work. Gosvenor said the utility also planned to test some new computer software that would determine the cost-effectiveness of various weatherization measures.

OPUC's Plamondon raised several concerns about the proposal. Increasing the amount of low-income weatherization activity is in conflict with PGE's least cost plan, she said, but supports commitments the company made to parties that signed a memorandum of understanding related to the company's merger with Enron. The OPUC did not sign that MOU.

In addition, PGE proposed that the cost of the new program be covered by ratepayers; the report said a 100 percent subsidy for customers with incomes higher than those specified in the utility's existing low income program "is excessive." Besides, "program cost effectiveness has never been an important goal for the low income weatherization program," Plamondon's staff report reads. "Staff does not believe focusing on cost effectiveness is an appropriate basis for a current or future low-income program."

PGE already agreed with staff's suggestion to change the income qualification levels, Gosvenor said, but "there were some communications breakdowns" about what the tariff was actually specifying. "We look forward to working with the staff on a better approach to the low-income market," he added, and "make sure [our] objectives line up with the concerns the commissioners gave us" *[Jude Noland]*.

Environment

Fish

[19] State Water Managers Not Sold on NMFS Flow Policy ■ *from [1]*

The looming disconnect between state water policy and what the feds want for saving salmon became a bit more public last week when water resource officials from four Northwest states met in Seattle to discuss mutual concerns. After a briefing by NMFS policymaker Donna Darm, there seemed to be an even greater chasm between what the feds want and what the states may be willing to give.

Darm said her agency will be consulting with state water resource agencies on all water withdrawals in regions where fish are listed under the ESA (which now includes the entire Columbia Basin). After Darm left the meeting, the officials vowed to stick together, get their governors involved and come up with their own recommendations for managing water in the future.

Consultant Darryll Olsen, who spoke at the July 1 meeting, said later, "It is very clear that the message she gave is that NMFS is going to undermine state and western water law."

Darm said the 1999 BiOp flow targets would be along the lines of those outlined in the present BiOp, and "are based on our best estimate of what fish need

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for flows," she told the water managers.

But she got an argument from Idaho and Montana representatives, who questioned the value of using that much water to aid juvenile fish migration in the Snake and Columbia Rivers.

Carl Dreher of the Idaho Department of Water Resources said his state may vote to withhold the 427,000 acre-feet of water that the BiOp wants Idaho to provide for improving Snake flows. He said flow augmentation provides little improvement in water travel time through the lower Snake, only about one-tenth of one mile per hour. "The whole approach raises some questions--what is their agenda and why are they so focused on flow?"

Dreher described a recent report he authored, which concluded that irrigation withdrawals haven't significantly changed the hydrology of the river at Lower Granite during salmon migrations. He also noted that 90 percent of Idaho's salmon disappeared before the dams on the lower Snake were ever built. "If flows haven't contributed to the demise of salmon, why are we using it?"

He said lower Snake dams are responsible for reducing water particle travel time. "NMFS says flows equate to velocity--not true." When asked where the flow strategy originated, Dreher said the idea came from the Power Planning Council. "They're the culprits that started it."

Tim Hall, an attorney with Montana's Department of Natural Resources, said his state shared Idaho's concern over flow augmentation, and recounted frustrating events in 1997, when flow targets went from a seasonal average to a weekly average. "You can never have too much flow augmentation," Hall said, sarcastically.

Resource consultant Olsen told the group about a report (CU No. 818 [9/21]) he and other consultants recently compiled that concluded there was no technical basis for the flow targets in the BiOp. Using the University of Washington's salmon passage model and recent PIT tag data, Olsen said, "For all practical purposes, we can't measure improvements from flow augmentation."

Olsen told the water managers that the NMFS water policy should be rejected because "the effects of the policy are to abrogate state water rights as they now exist." He said if the NMFS augmentation policy was dumped, seven MAF of water would be available for future use, "no matter how you slice it"--an adequate amount of water for the next 20 years of municipal growth and agriculture.

When Washington ecology head Tom Fitzsimmons asked Olsen how NMFS has responded to his report, he said the reaction last fall was "hostile." He described a letter written by the NMFS regional administrator to then acting BPA head Jack Robertson that expressed dismay with Olsen's findings. Olsen said during the writing of the report, the consultants got the "cold shoulder" from Darm. And at a water resources commission hearing in Hermiston, OR, recently, Olsen said Darm had no technical disagreement with his findings, while she called the ESA a "blunt instrument."

But Olsen related official reaction after a recent trip to Washington DC, where "they don't know the difference between a cup of water and a million acre-feet." Among politicians, there is not a lot of desire to challenge NMFS, Olsen said. "We're kind of at an abyss of conflict, and if we don't solve this, we are facing years of conflict among users."

'It is very clear that the message she gave is that NMFS is going to undermine state and western water law.'

Jim Fodrea of the Bureau of Reclamation reported on a draft study by his agency of the impacts of water storage and irrigation on the system. The study was commissioned by NMFS, which touched off a discussion of the fish agency's motivation. Darm said they were interested in the impacts of these withdrawals on flows. She said according to NMFS biologists, flows are not adequate in the mainstem Snake and Columbia, and they want to know if irrigation is part of the problem.

Darm said the study was a rough evaluation that said in low-flow years, irrigation withdrawals reduce flows significantly. She said that was why NMFS didn't approve a water withdrawal permit for the Inland Land Co. in 1996. "It didn't make any sense." In addition, Darm said NMFS was "not certain the state would keep water in the river."

But Idaho's Dreher disagreed. "Flow is not the right parameter."

However, Darm said higher than historical in-season flows are needed because fish are still migrating in July and August; in pre-dam days, they were gone by June.

"Are we saving fish by taking this position?" Martha Pagel, director of Oregon's Department of Water Resources, asked Darm. "And when will we know if we're saving fish?"

Idaho's Dreher said he hadn't seen any correlation between salmon survival and flow objectives in the 1995 BiOp. And he told the group there was a difference

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between an estimate and science. The Bureau's conclusions were not science, he emphasized.

But Darm said the BiOp flows were based on "our best estimate of what the fish need for flows."

Dreher referred to the NMFS Inland decision as well, because the agency said irrigation withdrawal was a primary reason for missing flow objectives in the Snake River--a conclusion based on statements from the Bureau's study in progress. But he said the Inland decision was based on flow objectives that aren't feasible, because eliminating irrigation and using all the contents of upstream reservoirs for flow still couldn't guarantee that the target flows would be met.

"What are you trying to do with flow?" Dreher asked.

Darm responded the BiOp assumes that increased flows will have multiple effects, reducing turbidity and temperature, and reducing travel time of fish. She said the long-term PIT-tag study is an attempt to get answers.

Pagel said her state had trouble with this "general approach" and said that NFMS had "misused" the results of the Bureau's report in the Inland decision.

'Our goal is not flows. Our goal is to recover the fish. If we have it wrong, help us get it right.'

Darm cautioned the managers that they hadn't seen anything yet because the entire basin contains ESA-listed or proposed fish stocks. That means NMFS would be consulting with state water resource agencies on all water withdrawals.

Darm admitted that within years, the PIT-tag data showed no relation between flows and survival for spring chinook, but later-migrating fish seemed to have survival benefits from higher flows. (Olsen earlier said overall survival increased from 14 to 17 percent.)

"Realistically," she said, "dams won't be taken out--I wouldn't expect much change in the overall policy to improve flow conditions in the river."

Washington Ecology Department head Tom Fitzsimmons said if the problem is largely lack of flow in tributaries, why not leave the mainstem alone, given the questions over flow.

The managers delivered a singular message at this point: a better dialog with the feds is necessary. They told Darm that stakeholders--whether water users, the forest industry, or anyone else affected--could only be pushed so far. Besides that, more reinforcement for state actions was needed.

"If you can't accept an Oregon plan, what do you think you're going to get?" Oregon's Pagel asked.

Montana attorney Hall did his best at improving the dialog right there. "NMFS has no credibility with Montana for flow augmentation," he told Darm.

"Our goal is not flows," she said. "Our goal is to recover the fish. If we have it wrong, help us get it right."

Talking about his own state of Idaho, Dreher said his fish and wildlife department "may not be in step." Idaho state biologists have gone on record supporting removal of the lower Snake dams.

"That's your problem," said Darm. "Your state agencies say that flow is important."

After Darm left the meeting, Pagel told the other managers that they have to get fish and wildlife agencies working closer with their governors on these issues. "If we don't get together with some recommendations--we'll get the same old BiOp in the future"

[Bill Rudolph].

[20] BC Criticizes Salmon Harvest Deal Between WA and Canada ■ *from [6]*

Washington Gov. Gary Locke and Canadian Fisheries Minister David Anderson announced an agreement over salmon harvest for this year, but it's not quite the deal that it's touted. Press releases claim it will save 14,000 Puget Sound chinook, of which about 4,000 are estimated to be wild fish that could be listed under the ESA by next year. However, the additional fish would reach Puget Sound anyway, because of severe fishing restrictions planned by Canadians to aid their own depressed stocks.

But Washington has agreed to cut its sport and commercial fisheries even further to help Canadian stocks as well. The state's Fish and Game Commission, which accepted agency director Bern Shanks' resignation on June 13, met on June 30 and OK'd the cuts. As for Shanks, he finally resigned after some commission members said they were ready to fire him over the department's budget problems.

The commission's options included voting to release all coho by commercial purse seiners, setting reductions in gillnetting in areas where fish are migrating to Canadian waters, and making more cuts for sports fishermen catching coho. The measures are aimed at reducing the US interception of weak stocks of coho heading for the Thompson River, a tributary of the Fraser.

"Today we begin a new era of cooperation for the benefit of the salmon and all those who care about it," fisheries minister Anderson said on June 19. "Working together, we can avoid the mistakes of the past and take the steps necessary for responsible stewardship in the future."

Locke said Anderson has shown great courage in addressing the conservation problems. "I look forward to working with him to recover our precious salmon runs."

Anderson announced June 19 a C$400 million package to help BC fishermen cope with salmon declines, low prices, and too many boats. Two hundred million dollars was slated for fisheries restructuring costs, including buyout of commercial licenses that would reduce the number of boats by 900 to 1,500 vessels, cutting the fleet nearly in half. About 1,400 salmon licenses had been retired since 1996, when a federal plan began to reduce the size of the fleet.

Another $100 million will be spent for programs to aid displaced fishermen, and an equal amount will go to habitat restoration. Anderson said the government would also provide short-term, interest-free loans to help recreational businesses that would be hurt by the fishing cuts.

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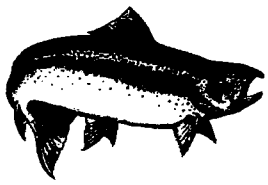

Testimony
of

Jim Baker
Northwest Salmon Campaign Coordinator
Associate Northwest Representative

of the

Sierra Club

before the

Committee on Resources
U.S. House of Representatives
Hon. Don Young, Chairman

Pasco, Washington
September 2, 1998

Good morning, Mr. Chairman and Members of the Committee, and thank you for this opportunity to testify before the Committee on H.R. 4335 which would transfer all functions of the National Marine Fisheries Service under the Endangered Species Act to the Department of the Interior. For the record, my name is Jim Baker, and I serve as Northwest Salmon Campaign Coordinator for the Sierra Club.

In my testimony this morning, I would like to first review the performance of the National Marine Fisheries Service (NMFS) and the Clinton administration in protecting and recovering wild salmon and steelhead stocks in the Columbia River Basin, and to then comment on H.R. 4335.

As the Committee is well aware, the NMFS listed wild sockeye in the Snake River Basin as endangered under the Endangered Species Act (ESA) in December, 1991, wild chinook as threatened in April of the next year, and wild steelhead as threatened last year. Throughout this decade, the numbers of spawning adult salmon and steelhead have continued to decline toward extinction. The situation is so desperate for the sockeye which spawn in central Idaho that the fish remain in a captive breeding program even as the Committee holds this hearing today.

Nevertheless, the NMFS nearly seven years after the first listing has not adopted a recovery plan for Snake River Basin salmon and steelhead. If the agency meets its self-imposed deadline, the NMFS will decide late next year the key question of how to lift the deadly toll taken on these magnificent fish by the four federal dams on the Lower Snake River. However, a full and complete recovery plan which addresses the deadly impacts of all the federal dams between Idaho and the sea may not come from the NMFS for another 5 years or more.

Nor has the agency provided these listed salmon and steelhead runs with adequate or effective interim protection under the ESA. On a lawsuit brought by the States of Idaho, Oregon, and Washington with interventions filed on plaintiffs' side by American Indian Tribes, the State of Alaska, and several conservation organizations including the Sierra Club, Judge Malcolm Marsh struck down the 1994 NMFS Biological Opinion for the federal hydropower system.

Moreover, the NMFS has dismally failed to implement its current Biological Opinion which began in 1995. The agency's record of failure is nearly complete. The NMFS did not adopt a "spread-the-risk" strategy between barged and in-river migration of juvenile salmon, did not provide adequate spill for safe passage of young fish past the eight dams, did not bring the elevation of the John Day reservoir on the Lower Columbia to "minimum operating pool," did not release adequate volumes of water from upstream storage reservoirs, and did not meet targets for flow augmentation. The salmon desperately need all of these minimal protections, and the Sierra Club intends to hold all the federal agencies' collective feet to the fire for delivery of these measures -- in the courts, in the Congress, and in the Clinton administration.

Mr. Chairman, please let me underscore my point about flow augmentation -- that the NMFS did not meet its minimum flow and water temperature targets under the current Biological Opinion. Based upon a study which has not undergone scientific peer review, witnesses are testifying before the Committee this morning that the NMFS is somehow trying to lock up all the water in the Columbia Basin for a wasteful program of flow augmentation for salmon and steelhead. This is simply not the case -- rather, the agency has fallen short of its all too inadequate goals for flow augmentation.

In one compoment of the 1995 Biological Opinion, the NMFS did succeed, and in fact, over-achieved: juvenile fish barging and trucking. In so doing, the agency ignored the judgment of two independent peer reviews of the federal fish transportation program as well as its own Independent Scientific Advisory Board, which have all concluded that fish barging can not save the Snake Basin salmon and steelhead from extinctions. What will work for salmon recovery is reliance, in the words of the National Research Council, "on natural regenerative processes ... rather than on a primary reliance ... on the use of technologies ... such as hatcheries, artificial transportation, and modification of stream channels."

New analysis from the agency's PATH (Plan for Analyzing and Testing Hypotheses) group, and recent data from its PIT-tag (Passive Induced Transponder) study are reaching the same conclusion. Regrettably, NMFS scientists last year circulated an internal memo which forecast that PIT-tag counts on returning adults from the 1995 juvenile migrants would demonstrate the effectiveness of fish barging. Now that all the PIT-tag detections are in, the actual is much less than the NMFS forecast. Fish barging continues to produce smolt-to-adult survival rates of less than 0.5 percent, when all biologists now agree that the fish need a survival rate of at least 2 percent to avoid extinctions, and 4-7 percent to rebuild salmon and steelhead to harvestable numbers. Last year's NMFS memo was premature, and in error.

None of this is what I would call due diligence or proper performance on the part of the NMFS. To my testimony, I have appended a report which I co-authored earlier this year for the Save Our WILD Salmon coalition. This report entitled "Five Years of Failure" documents in detail my remarks today, and I would respectfully ask that this report be entered into the hearing record.

However, the NMFS is just one of several federal agencies which has built this record of poor performance on Columbia Basin salmon recovery under the ESA. The U.S. Army Corps of Engineers has pursued an expensive and wasteful agenda of "gold-plating" its dams with new equipment and technologies of at best dubious value to fish. The Bureau of Reclamation has not provided additional water volumes for flow augmentation in the Snake River, and indeed until recently, had not even consulted with the NMFS as required in the ESA. For most of this decade, the Bonneville Power Administration (BPA) has blamed fish and wildlife costs for its financial straits when the actual causes are BPA's crushing debt load from WPPSS (Washington Public Power Supply System) bonds, and wholesale electricity de-regulation in 1992. So what we have here is a failure by numerous federal agencies -- in other words, a general failure of the Clinton administration to save salmon and steelhead in the Columbia Basin.

Turning now to HR. 4335, I must tell you, Mr. Chairman, that the Sierra Club opposes the bill because it is not responsive to the root problem: the failure of the Clinton administration to protect and restore Columbia Basin salmon and steelhead under the ESA. This administration's U.S. Fish and Wildlife Service is unlikely to perform any better than this administration's National Marine Fisheries Service. Moreover, the transfer of ESA functions between the two agencies would inevitably cause even further delay -- particularly the 1999 decision on the Lower Snake River dams -- in taking necessary actions to save these magnificent fish. So to adapt Shakespeare a bit, I come not to praise NMFS, nor to bury it.

What should the Congress do to put Columbia Basin salmon recovery back on a successful track?

• Appropriate full funding for needed studies into the biology, engineering, economic impacts and mitigations of proposed salmon recovery actions. In this regard, I am specifically thinking of the Corps' feasibility study for its John Day project. Similarly the Congress should refuse funding for wasteful "gold-plating" technological fixes such as juvenile fish transportation which offer little or no benefit to salmon and steelhead.

• Support and promote preparation of a single, unified salmon recovery plan among the three sovereign governments within the Columbia Basin: the federal government, the four states, and the thirteen Tribes. All three sovereign governments have legal authorities and obligations for Columbia Basin salmon recovery, so all three must participate together in the planning and implementation of the recovery program.

• Keep the Clinton administration to its promised 1999 decision on the Lower Snake River dams. In this particular case, delay makes waste.

• Follow the independent biology such as the Independent Scientific Advisory Board. The best available science is telling us that the salmon need river ecosystem restoration -- not more techno-fixes.

Thank you for this opportunity to testify before the Committee today. I welcome your questions.

Five Years of Failure:

A Performance Review of the Clinton Administration's 1993–1997 Columbia and Snake River Salmon Recovery Efforts

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Have Columbia and Snake River fish runs increased?

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Save Our Wild Salmon Coalition
January 1998

Five Years of Failure

Save Our Wild Salmon, January 1998

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Introduction:

Overbuilding of Federal Dams and Salmon Declines:

The dozens of federal dams that impound and divert the waters of the Columbia and Snake River systems have fostered cheap electricity, irrigation water, commercial barging, and aluminum production — but at a substantial price to the Northwest's salmon culture and economy. Despite warnings from scientists and fishermen, construction and operation of federal dams went largely unchecked from the 1930s to the 1970s, destroying salmon runs and habitat in the process.

When Lewis and Clark arrived in the Northwest almost 200 years ago, runs of salmon and steelhead to the Columbia and Snake numbered 10-16 million adult fish each year. By the 1950s, dams, other development, and overharvest had reduced the runs to 5 million adult fish — a dramatic drop, but still a major contribution to the region's economy.

The complex of dams that collectively form the Federal Columbia River Power System was completed in the 1960s and '70s. The construction of four final dams on the lower Snake River in Washington State, and of large storage reservoirs in the upper Columbia reaches of Canada, proved especially deadly. Some fish runs now must migrate past eight or nine dams while moving to and from the sea, with per dam death rates as high as 15% and cumulative losses as high as 90%. By the 1980s, salmon and steelhead runs were halved again, to about 2.5 million fish. By the 1990s, cumulative mortalities slashed fish runs even closer to extinction — only 1 million fish per year.

Today, in the Snake River and the middle and upper reaches of the Columbia, all but one salmon and steelhead stock is in danger of extinction, according to the American Fisheries Society. Only fall chinook salmon that spawn and rear in the Hanford Reach of the Columbia River are considered healthy and harvestable. These fish benefit from 50 miles of undammed spawning habitat and strict river flows imposed under a settlement agreement designed to mimic natural river conditions. They still must pass four federal dams to migrate to and from the sea, but seem able to thrive compared with populations that must migrate past eight or nine dams.

The serious plight of Columbia and Snake salmon and steelhead is reflected in increasing listings under the Endangered Species Act (ESA). In 1992, three Snake River salmon stocks were listed. In 1997, mid-Columbia and Snake River steelhead were listed. Further listings in Oregon and Washington are virtually certain.

The Federal Government's Failed Salmon Strategy:

Since the late 1970s, the federal government's chief strategy for dealing with lethal juvenile migration conditions in the lower Snake and Columbia Rivers has been the juvenile fish transportation, or fish barging, program. Initiation of this program was in itself an admission by the federal agencies that their dams render the rivers lethal for salmon. The program has continued, and grown, based on the premise that it is too difficult to change the structure and operation of dams to make them fish friendly. Instead of modifying river and dam passage conditions, young fish migrating to the sea are forced into collection and dewatering facilities, then channeled into barges or trucks and transported around the dams.

Recognizing the limitations of fish barging, fishery agency and tribal scientists have consistently recommended more natural river flows and dam passage conditions since the dam

overbuilding and fish declines of the late 1970s. These recommendations have been consistently opposed by the economic interests that benefit from the dams, and largely ignored by the federal dam operators. As we describe below, recent peer reviews and independent science reports support the restoration of more natural river conditions as the ONLY way to achieve salmon and steelhead recovery.

As we will show, fish barging remains the Adminstration's primary salmon recovery method today, despite 20 years of failure and scientific skepticism. After twenty years of ever increasing use of fish barging, fewer fish are returning to their spawning grounds each generation. Despite recent, misleading claims from the Administration that barged fish do twice as well as fish in the river, an indisputable fact remains: transported fish are not even replacing themselves 1:1 from one generation to the next. As the scientists put it, transportation shows "negative returns to the spawning grounds," now as it has in the past.

WHAT THIS PERFORMANCE REVIEW CONSIDERS:

The Administration's Promises, Trends in Fish Stocks, and Scientific Evidence

The Clinton Administration's salmon recovery plans for the Columbia and Snake Rivers began in 1993. For the past five years, the Administration has made legal and political commitments to reduce dam mortalities and reverse the decline of salmon and steelhead. This report shows how, despite these commitments, little has changed.

We have asked four key questions about these past five years:

- Has the Administration Done What It Promised?
- Have Snake and Columbia Fish Runs Increased?
- Has the Administration Used the Best Science?
- Is the Administration On Track to Adopt a Long-Term Recovery Plan in 1999?

The answer to each of these questions is NO. The Administration has not kept its promises to change dam operations and restore better river conditions. Fish runs have continued to fall towards extinction. The recommendations of independent scientists are being disregarded. And the Administration does not seem on track to adopt a long-term salmon plan in 1999 — seven years after Snake River salmon were listed under the Endangered Species Act.

Chapter One:

HAS THE ADMINISTRATION DONE WHAT IT PROMISED?

In order to judge whether the Admnistration has done what it promised, we examined the "1995-98 Biological Opinion on Operation of the Federal Columbia River Power System" (hereafter the Opinion).* This is the legal document, under the Endangered Species Act, which orders measures the federal dam operators must implement to reverse the decline of salmon. The Opinion was written and is to be enforced by the National Marine Fisheries Service (hereafter NMFS).

The Opinion's diagnosis of the problem is clear. It concludes that the biological requirements of Snake River salmon are not being met "under the substantial adverse effects of the environmental baseline" — that is, 1994 conditions [p. 34]. It is worth noting that river and dam operation conditions today are essentially the same as they were in 1994. Under the Opinion, NMFS allows "incidental take" (i.e., killing) by the dams of up to 86% of juvenile spring and summer chinook and sockeye salmon, and up to 99% of juvenile fall chinook salmon [p. 159].

The Opinion cites analyses showing that survival rates would have to increase "at least 200-300% to achieve a likelihood of being above the threshold escapement level that is greater than 50-75% of the likelihood associated with a 1958-1970 historical period, when stocks were much healthier [p. 35]." This is the period before the lower Snake River dams were built, when runs totalled approximately 5 million fish.

The Opinion concludes that "substantial improvement in environmental conditions... are necessary to ensure the continued existence of the species [p. 36]." The Opinion identifies "essential habitat" for listed fish in the Columbia and Snake to include "adequate: (1) substrate (gravel), (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover and shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions [p. 19]."

Most significant, the Opinion states that "NMFS has concluded that without major modifications to the Snake and Columbia River dams, it is unlikely survivals can be sufficiently improved to ensure that the operation of the FCRPS does not impede the survival and recovery of listed Snake River salmon [p.81]." Of the three possible modification options identified in this 1995 Opinion — spillway crest drawdown, natural river drawdown, and surface collectors — only the natural river option is showing promise of success based on investigations since.

The scientific verdict in the Opinion is clear: the Administration must make significant changes to the dams and in the river, or we will not recover the fish. As we now turn to examine actions promised and taken under the Opinion, we encounter a different story.

We examined seven major recovery actions promised in the Opinion to stabilize or slow the salmon decline (even the Opinion admits its measures won't reverse the decline — it promised the long-term plan to do that in 1999):

* The Administration's first Biological Opinion was issued in 1993. In 1994, it was overturned, as legally flawed, by the federal district court in *Idaho v. NMFS*. In 1995, the Administration prepared a new Opinion to comply with the court's order; it remains in effect today.

- River Flow Targets
- Additional Flow Augmentation from Upriver Reservoirs
- River Temperature Standards
- Lowering of John Day Reservoir
- Spill to Pass Young Migrating Fish Over Dams
- Progress Toward Major Dam Improvements, Like Reservoir Drawdown
- Fish Barging

Our review shows that the Clinton Administration has failed to keep its promises in every area except fish barging.

River Flow Targets:

The Opinion states that river flows are a critical factor in the survival of smolts migrating to the ocean. Reduced flow through reservoirs has contributed to the decline of all three listed species of Snake River salmon. Slow passage through reservoirs (resulting from inadequate flow) increases exposure time of juvenile salmon to predation, to higher temperatures (which increase the predation rate and susceptibility to disease), and to water quality problems such as dissolved gas supersaturation [p. 38].

Clinton Administration failed to meet sliding scale flows during the period 1993-1997 for the following numbers of days:

Snake River	Days SPRING target not met out of 72 total	Days SUMMER target not met out of 72 total
1993	24	52
1994	65	62
1995	29	46
1996	14	45
1997	7	35

Columbia River	Days SPRING target not met out of 72 total	Days SUMMER target not met out of 62 total
1993	32	62
1994	71	62
1995	21	51
1996	2	22
1997	0	11

River flows also affect returning adults. Delay of adult migrants due to flow and water quality conditions and high water temperatures resulting from low flows contribute to the decline of the listed Snake River species [p. 38].

Accordingly, in the Opinion, the Administration set minimum flow targets for spring and summer migration seasons on the Snake River and the Columbia River. All of these flow targets are at or below the lower end of the range of flows which NMFS' scientists judged beneficial for fish [p.40, 43]. Even so, the flow targets are further limited by a yearly sliding scale, which determines actual flows based on the predicted water supply for that year [p. 104].

See **Table 1** for a summary of the April 1 run-off forecast and the corresponding sliding scale flows, for the years 1993-1997. (Since the Administration assumed control of the hydrosystem in 1993, it is useful to compare the 1995 Opinion's flow targets with what the Administration actually provided for fish from 1993 forward.)

Spring (April 10 - June 20) targets on the Snake range from 85,000 cubic feet per second (85 KCFS) of flow at Lower Granite Dam in the driest years to 100 KCFS in the wettest years. Summer (June 21-August 31) flow targets on the Snake range from 50 to 55 KCFS.

Spring (April 20-June 30) flow targets on the Columbia (measured at McNary Dam) range from the low of 220 KCFS to the high of 260 KCFS. The summer (July 1-August 31) flow target on the Columbia is 200 KCFS.

CONCLUSION: By the yardstick of flow, one of the most critical factors in determining salmon migration success and corresponding adult returns two and three years later, the Administration has done poorly. The Administration has failed to consistently provide the barest minimum flows necessary, not to rebuild the runs, but simply to prevent further declines.

Additional Flow From Upriver Reservoirs:

Because the Opinion recognized that the flow targets just summarized are minimal when compared with the needs of the fish, a number of provisions in the Opinion call for additional water stored in reservoirs in the upper Columbia and Snake Rivers to be acquired and released. The common goal of these "flow augmentation" efforts is to "improve flows . . . [and] optimize fish survival [p.95, 99]."

For Columbia River flows, the Opinion directs that "BPA shall negotiate with BC Hydro" and others to obtain spring flow augmentation water from Canadian Non-Treaty Storage [p. 95]. No such arrangement has been made. The Opinion further directs BPA and the Army Corps of Engineers to attempt to "expand current arrangements for storage in Canadian reservoirs" beyond the current amount of approximately 1 million acre feet [p.100-101]. No additional water has been obtained pursuant to this provision.

For Snake River flows, the Opinion directs that the Bureau of Reclamation "secure an additional amount of water" from the upper Snake River "after 1999," citing a desired amount between 1 and 1.5 million acre feet. This amount is in addition to the current flow augmentation of 427 thousand acre feet used to meet flow targets [p.99-100]. The Opinion explains "NMFS agrees that additional augmentation volumes are essential in the Snake River during low flow years and during the summer migration period [p.100]." But no efforts to obtain this additional water for use in the year 2000 are underway, even though the legal and financial steps to do so will take several years at least.

CONCLUSION: The Administration has failed to obtain, or even begin the process to obtain, additional flow augmentation volumes promised in the Opinion and cited as essential to optimize fish survival.

Achieving Optimum River Temperatures:

The formation of reservoirs behind federal dams on the Snake and Columbia Rivers causes elevated water temperatures. The impoundments increase the surface area of the river. The increased surface area subjects the reservoirs to more solar heating. The solar heat gain, coupled with slower flows, results in elevated water temperatures.

The Opinion states that high water temperatures in the reservoirs, particularly in the summer portion of the migration, can be detrimental to migrating salmon and steelhead, both juveniles and adults. High water temperatures increase predation rate in juvenile fish and increase susceptibility of both juveniles and adults to disease [p.38].

High water temperatures also form "thermal blocks" which impede the upstream migration of adult fish. High water temperature in reservoirs often causes migrating adult fish to seek relief by detouring up cooler tributary streams, which in turn increases the frequency of "straying [Idaho Department of Fish and Game, Fish and Game News, Sept. 1997, p. 4]."

Number of days during migration period (April 10 – August 31) that reservoir water temperatures EXCEEDED Opinion or EPA limits for Columbia and Snake Rivers

	Ice Harbor Reservoir		John Day Reservoir	
Year	Opinion	EPA	Opinion	EPA
1994	102	67	112	46
1995*	93	48	88	39
1996*	82	33	87	42
1997*	76	40	79	36

* Average or higher flow year. With higher flows, temperatures are naturally lower.

Water temperatures are typically highest when juvenile fall chinook and adult fall chinook and B-run steelhead are migrating.

The Opinion states, "....maximum optimum [water] temperatures for chinook and sockeye salmon are approximately 58 degrees F [p. 165]." The Environmental Protection Agency's maximum temperature for salmon is 68 degrees F.

CONCLUSION: The Administration has consistently failed to provide optimum river temperatures for salmon and steelhead during migration, especially in summer. This failure led the Environmental Protection Agency, in December 1997, to ask the Army Corps of Engineers to develop an immediate plan whereby the federal hydrosystem will meet water temperature standards under the Clean Water Act.

Lowering John Day Reservoir:

The Opinion directed the Army Corps of Engineers to operate its lower Snake River dams at "minimum operating pool" (MOP) to provide more natural river velocities for migrating juvenile fish [p. 112]. At John Day Dam on the Columbia, however, this was not possible because irrigation pump intakes are not currently low enough to draw water at MOP. The importance of lowering John Day is linked to its size. At 76 miles, John Day Reservoir is the longest of all on the lower Columbia and Snake. Lowering this reservoir to MOP — about 5 feet below its current level — would provide increased velocity in the reservoir equivalent to that provided by 3 million acre-feet of additional flow.

The Opinion thus requires the Corps to, "continue planning, design, and construction to continuously operate John Day pool near MOP by March 1996 [p. 113]." The Opinion states that the "extension of [irrigation] pumping facilities shall be undertaken immediately by the fastest means available [Id.]."

Three years later, nothing has been done to allow John Day to operate at MOP. The Administration has never requested appropriated funds to extend the irrigation pump intakes, nor has the Administration objected to or fought Congressional action which has delayed even studying the measure. Nor has the Administration implemented compensating actions — e.g, additional flows — to achieve higher migration velocities through John Day Reservoir.

CONCLUSION: The Administration has failed to lower John Day Reservoir to minimum operating pool, or even to begin construction work needed to lower the reservoir in future years.

Spill To Pass Young Migrating Fish Across Dams:

The Opinion states that fish "[m]igration over spillways or through the bypass systems are the safest routes of passage at the dams [p. 109]." While more recent research is challenging that conclusion for bypass systems, it is confirming that spillway passage, or spill, provides good passage with negligible mortality, subject to control of nitrogen gas supersaturation.

Therefore, the Opinion directs the Corps of Engineers to "spill at the Snake and Columbia River projects in order to increase fish passage efficiency and survivals at the dams [p. 104]." The Opinion calls for levels of spill to achieve 80% Fish Passage Efficiency (FPE)* at Snake and Columbia River Dams, subject to the following constraints [p. 105-6]:

1) When flows are below 100 KCFS, spill shall not occur at Lower Granite Dam.

2) When flows are below 85 KCFS, spill shall not occur at Lower Granite, Little Goose, and Lower Monumental Dams.

3) No spill shall occur at collector dams during the summer migration.

*80% FPE means 80% of fish passing the dam other than through turbines - i.e., either over the spillways, or via the screen/bypass system, or both.

In order to achieve 80% FPE, the following percentages of flow must be spilled [p. 106].

Dam	LGR	LGS	LMN	IHR	MCN	JDA	TDA	BON
% flow, spring	80	80	81	27	50	33	64	*
% flow, summer	**	**	**	70	**	86	64	*

* 80% FPE is not attainable at Bonneville Dam
** The Opinion does not recommend spill for summer migrants at these dams

Salmon migrating down the Snake River have not benefitted from controlled spill to achieve 80% FPE for *a single day* of the spring migrations, 1993-1997, at Lower Granite, Little Goose, or Lower Monumental dams. Summer migrants in the Snake have not benefitted from spill to achieve 80% FPE at any of the 4 Snake River dams between 1993-1997. At Columbia River dams, spill is almost always constrained by dissolved gas standards before spill to achieve 80% FPE is attained.

There are two reasons for this failure to meet controlled spill targets. First, the Opinion constrains spill levels by dissolved gas (nitrogen) measured in the water below each dam. If dissolved gas levels reach water quality limits set by the states of Oregon and Washington, controlled spill is reduced. In other words, the Opinion establishes competing requirements, allowing the Army Corps to choose which requirement to meet and which not to meet. Second, the Opinion's reliance on fish barging constrains spill, since spilled fish can't be barged. These contradictions have been the undoing of the Opinion's spill standards.

CONCLUSION: The Administration has established a spill program better for fish than existed before 1993. But it has failed to achieve its explicit spill targets every year. Instead, by establishing competing requirements in the Opinion, the Administration has guaranteed that it will not achieve those targets, especially in low water years.

Progress Toward Major Dam Improvements:

This issue is covered later in Chapter Four.

Fish Barging:

Fish barging is simple to judge based on results — it has failed to restore or even stabilize the decline of Columbia Basin salmon. But the scientific dialogue about it is more complex, turning on differing phrasings of the issue. Proponents of fish barging cite favorable "transport benefit ratios" measured at the dams, and compare barging to a deadly river. Critics cite negative returns measured at the spawning grounds, and compare barging to improved river scenarios or high flow years which mimic conditions of river improvement. Two recent peer reviews of the transportation program have endorsed the latter, skeptical view, as discussed further below.

The Opinion provides for the continued use and evaluation of transportation. It indicates that approximately 56% of spring and summer chinook salmon, 35% of fall chinook salmon, and 48% of sockeye salmon may be transported under approved fish barging

operations [p. 58]. The Opinion further states that "...the region must continue... to reduce reliance on transportation of juvenile salmon [p.116]."

In contrast to their failure to implement other Opinion measures, the Administration has *over-achieved* on barging. Considering the decreasing trend in numbers of juvenile fish leaving the Snake Basin (see Table 2), the percentage (60-73%) of fish barged from Snake dams has remained relatively constant, and well above Opinion targets.

The Opinion also endorses the concept of a "transportation rule curve" to determine when and under what conditions to use fish barging, and proposes a work group to develop such a guide [p. 112]. To date, no rule curve has been developed, but the Administration is proceeding to increase the use of fish barging under all conditions, over objections of other fishery agencies and tribes.

This unwritten policy of increasing barging became clear in 1997, when the Columbia experienced one of its highest flow years on record. In previous high flow years — the mid-1980s, for example — fish barging was curtailed and large majorities of fish migrated in the river (with the result of high adult returns 2-3 years later). In March 1997, anticipating excellent flows, state and Tribal fishery agencies recommended that the Administration leave at least 2/3 of 1997 spring migrants in the river. Instead, the Administration continued maximum barging at the Snake Dams — 60% of Snake River migrants were barged.

Numbers of Salmon and Steelhead Barged from Snake and Columbia Dams, 1993-1997

Year	Snake Dams	McNary Dam	Total
1993	10,104,068	5,207,726	15,311,794
1994	9,732,577	7,652,296	17,384,87
1995**	13,117,509	*5,440,211	18,557,720
1996**	8,280,554	*2,933,991	11,214,545
1997**	5,855,289	*5,267,147	11,122,436

*The 1995-1998 Opinion discontinues barging of spring migrants at McNary
** Near average, average, or higher than average flow years. In years of higher flows, spill level increases and Fish Guidance Efficiency (FGE) decreases, resulting in lower numbers of fish captured for transportation.

It's important to note that NMFS has difficulty addressing the fish barging program objectively because its scientific research center staff receive millions of dollars from BPA and the Corps for fish barging related work each year, as they have for almost twenty years. Indeed, most of the primary researchers on fish barging are NMFS scientists funded by BPA and the Corps. As a result, NMFS often finds itself at odds with scientists from other state and federal fishery agencies and tribes, which oppose major reliance on fish barging.

We respectfully suggest that good decision-making is not well served when NMFS must regulate, under the ESA, both the program and the agencies from which it receives major funding. We recommend two possible options: (1) NMFS could refuse any further funding for fish barging work from the entities it must regulate, or (2) NMFS could recuse the

scientists who receive this funding from ESA decisionmaking, particularly on the fish barging program itself.

CONCLUSION: The Administration has over-achieved its fish barging targets. This is the only over-achieved action in the Opinion we can discover. It is significant that all of the measures under-achieved — flow targets, additional flow augmentation, spill targets, river temperatures, John Day drawdown to minimum operating pool, preparation for drawdowns — would improve conditions for fish migrating in the river. The only measure over-achieved was the target for percentage of fish taken out of the river.

Chapter Two:

HAVE COLUMBIA AND SNAKE RIVER FISH RUNS INCREASED?

The Clinton Administration took charge of Columbia Basin salmon and steelhead recovery in 1993. Snake River sockeye and chinook salmon were already listed under the Endangered Species Act. Since this Administration took charge:

- Snake River salmon have moved from "threatened" to the more critical "endangered" status.
- Snake River steelhead and upper Columbia River steelhead were listed in October, 1997.
- Additional stocks of both steelhead and salmon, in Oregon and Washington tributaries of the Columbia, are slated for listings in the next year.

The additional listings of two upriver steelhead stocks are clear evidence of failure to reverse or even stabilize the decline of Columbia and Snake River fish affected by the federal hydrosystem. But the most direct evidence is the trend of adult returns and juvenile out-migrations for both listed and unlisted stocks.

Listed Stocks: Adult returns of Snake River chinook, sockeye, and steelhead to Lower Granite Dam (hatchery and wild) from 1993-1997 are shown in **Table 3**. Sockeye salmon returns total 10 adults for the five-year period. Wild spring/summer chinook salmon returns for the five-year period range from a record low of 1,106 in 1995 to a high of 9,967 in 1993.

Within the five-year period there are two consecutive years — 1994 and 1995 — with all-time record low returns. In 1997, the return of wild Snake River spring chinook to Lower Granite Dam was 1,429 fish — less than the 1991 return (2,206) which prompted the ESA petition for listing, and far less than the 11,285 that returned in 1992, the year of the actual listing.

Based on the 1997 "jack" return (jacks are immature fish returning after one year in the ocean), the 1998 return of wild Snake River spring/summer chinook is expected to plunge further. Assuming a 7% jack predictor, the total 1998 spring/summer chinook return to Lower Granite Dam (wild and hatchery combined) will be approximately 2,950 fish.

As adult returns dwindle, the numbers of juvenile fish leaving the Snake Basin for the ocean dwindle proportionately. The direct correlation is especially apparent in the wild portions of the populations. Ever decreasing numbers of returning adults yield ever decreasing numbers of outmigrating smolts one or two years later.

Some compensation can occur for hatchery fish. When returns of adult hatchery fish decline, it is sometimes possible for hatchery managers to catch a larger portion of those adults, thus maintaining adequate hatchery broodstock. However, in the long run, dwindling adult returns to hatchery racks will force hatcheries to operate at lower levels of production and eventually fail.

In the wild population, ever decreasing adult returns and the resultant reduction in wild smolt production soon result in an *extinction vortex*. An extinction vortex occurs when so few returning adults are scattered over so wide a spawning area that many cannot find spawning mates. Smolt production falls below the potential for the given number of adult spawners present. This is the death spiral that quickly accelerates loss of genetic diversity and subsequent species or stock extinction unless reversed.

During the Administration's management of the Snake and Columbia River system, the trend in number of smolts leaving the Snake River has decreased (see **Table 2**). The predicted 1998 smolt outmigration will be dismally low. Assuming average smolt-to-adult ratios as in recent years, the class of 1998 smolt outmigration will yield a new record low adult return in the year 2000 of 806 wild spring and summer chinook salmon, and 3,180 wild steelhead. The Administration's failure to improve runs in the past five years has guaranteed poor outcomes for the next few years ahead.

This declining trend is also clear for the newly-listed upper Columbia steelhead stock, as measured by the Washington Department of Fish and Wildlife at Priest Rapids Dam. In 1987, 4,058 wild steelhead were counted at Priest Rapids — the high point since counting began. By 1992, the count had dropped to 1,618. Since the Clinton Administration took office in 1993, the count has never exceeded 1,000 wild steelhead. The 1997 count (estimated) is the lowest ever — 790 wild steelhead ["Mid-Columbia River Summer Steelhead Stock Assessment", WDFW, 1995; Larry G. Brown, WDFW, personal communication, 1998].

Unlisted Fish: Oregon's Deschutes River steelhead are a good indicator of an as-yet unlisted stock that is substantially affected, directly and indirectly, by federal hydrosystem operations. In 1985, the number of wild Deschutes steelhead counted at Sherars Falls was 9,624. Here are the counts since 1993, obtained from the Oregon Department of Fish and Wildlife:

1993	1,487
1994	482
1995	1,662
1996	3,458

This stock must pass through three dams on the Columbia, including John Day Dam. But federal operations in the lower Snake are also harming this stock. Many more stray hatchery steelhead from other basins are entering the Deschutes than are the native steelhead stock. In 1996, 23,618 strays were counted at Sherars Falls — six times the native stock count. The Oregon Fish and Wildlife Commission has said that "a significant proportion of strays are steelhead that were collected as juvenile at Columbia and Snake River dams upstream from the Deschutes and transported and released downstream from Bonneville Dam... information suggests that it is likely that homing of some adult steelhead that are transported as juveniles is impaired [OFWC letter to Will Stelle, October 21, 1997]."

Thus, the native Deschutes steelhead is declining towards extinction at the same time that "lost" barged steelhead from other drainages are entering the river in record numbers.

Are any upriver Columbia Basin salmon or steelhead stocks increasing, or holding their own, in the five years since this Administration took office? One stock is holding its own, though not increasing: Hanford Reach fall chinook. This stock spawns in the last free-flowing stretch of the Columbia River, with strictly enforced river flows intended to mimic natural river conditions.

Chapter Three:

IS THE CLINTON ADMINISTRATION USING THE BEST SCIENCE?

The call for more scientific study and independent peer review has been heard frequently from all quarters since Snake River salmon were listed. Nevertheless, the Clinton Administration has been quite selective in its adoption of "the best science." Most notable is the region's continuing debate over the use of fish barging versus in-river improvements. NMFS, BPA, and the Army Corps have continued to support fish barging for long term salmon recovery in the face of strong scientific consensus that we should move away from fish barging and rely on restoration of more natural river conditions.

We wish to highlight the Administration's failure to use the best science by summarizing the recommendations of two blue ribbon panels and the recommendations of state and tribal fishery experts — and contrasting those recommendations to the path of the Administration. There is wide divergence between the views of independent scientists and the Administration's record of action detailed above.

The following summary demonstrates that the judgment of independent scientists builds inescapably in one direction: run the river more like a river, dock the fish barges, and restore the ecosystem.

The Independent Scientific Group Report, "Return to the River" (1996):

The Independent Scientific Group (ISG) was commissioned by the States of Washington, Oregon, Idaho, and Montana (through the Northwest Power Planning Council) to help put an end to the seemingly endless debate over good science to support salmon recovery. In its precedent-setting report "Return to the River," the ISG adopted "the normative river concept" to guide salmon recovery in the Columbia and Snake. The ISG called for the establishment of more natural river and habitat conditions as the key to successful salmon recovery, rejecting technical fixes such as fish barging.

Here are some quotations from "Return to the River":

"Recommendation: Identify one or more reservoirs in the Columbia or Snake River where biological and social/cultural considerations suggest that drawdown or natural river options can enhance normative conditions and salmon production." The panel specifically recommends a drawdown of John Day reservoir in order to restore areas of highly productive habitat.

With respect to stream flows, the ISG states, "Water flows and velocity are extremely important components of the normative ecosystem... [Fish] survival during emigration depends on a multitude of factors which are related to flow and velocity, such as temperature, food availability, and hydroelectric system operations." The ISG recommends "reregulating flows to restore the spring high water peak," as well as an "increased percentage of [stream] reaches with free flowing discharge regimes in river basins where flows are largely controlled."

"Recommendation: The ISG recommends that dams be modified structurally to avoid or minimize gas supersaturation. . . Spill has a demonstrated lower level of fish mortality at dams than turbine passage and it more closely approximates the normative river system."

"Recommendation: [Fish] Transportation should only be used selectively and experimentally." According to the ISG, fish barging can not provide "the minimum survival rates

necessary for maintenance of population levels . . ., let alone those survival rates necessary for rebuilding."

In short, the ISG says John Day drawdown, Snake River drawdown, and more natural or normative river flows and habitat should be restored as the means to salmon recovery. As the Chair of the ISG, Dr. Richard Williams, testified before the U.S. Senate in 1996, "If we expect recovery of Columbia River, and particularly Snake River stocks, we must re-express natural ecosystem processes in the Columbia and Snake Rivers. If we do not do this, Snake River stocks are unlikely to persist into the 21st century." By the same token, the ISG has taken the position that barging fish should not remain our primary tool for salmon recovery.

Yet the Clinton Administration continues to maximize the use of fish barging and delay action on river restoration at Snake and Colubia River dams. These actions conflict directly with "Return to the River." The conflict is all the more surprising since the ISG, with a few new members and re-named the Independent Scientific Advisory Board, is now the Administration's official scientific advisory panel for Columbia Basin salmon and steelhead.

The National Research Council Report, "Upstream" (1995):

The National Research Council, a branch of the National Academy of Sciences, issued a report on Northwest salmon recovery in 1995. Like the ISG report, "Upstream" recommends: "a pragmatic approach to improving the situation that relies on natural regenerative processes in the long term and the selected use of technology and human effort in the short term. . . rather than on a primary reliance on substitution, i.e., the use of technologies and energy inputs, such as hatcheries, artificial transportation, and modification of stream channels."

As in the case of the ISG report, the Clinton Administration is not following the advice of the NRC report when it comes to long-term salmon recovery.

The Fish Transportation Peer Review (1994):

In 1994, NMFS and the U.S. Fish and Wildlife Service contracted for a peer review of the fish barging program because of its continued controversy. The peer review found that "transportation alone, as presently conceived and implemented, is unlikely to halt or prevent the continued decline and extirpation of listed species of salmon in the Snake River Basin." The peer review panel also concluded that "available evidence is not sufficient to identify transportation as either a primary or supporting method of choice for salmon recovery in the Snake River Basin."

Despite this independent analysis - which it commissioned and paid for — the Administration continues to rely on fish barging as its primary means of Snake River salmon recovery.

State and Tribal Fishery Agency Recommendations:

Since 1977, federal, state, and tribal fishery agency scientists have made detailed recommendations for more natural river flows and changes in the Columbia and Snake dams to recover salmon. For the most part, these recommendations have been ignored, sidestepped, and delayed by the federal dam operators.

In 1992, the fishery agencies joined together through the Columbia Basin Fish and Wildlife Authority (CBFWA) and prepared the Detailed Fishery Operation Plan for the dams, which called for reservoir drawdowns and flow augmentation to restore more natural river conditions. In 1992, CBFWA also conducted a scientists' review of the fish barging program that concluded "It is apparent that transportation is not a substitute for provision of good in-river migration conditions for many of the salmon stocks evaluated in [transportation] studies. For some stocks, it appears that transportation may have been detrimental to fish survival."

"Spirit of the Salmon" , the Columbia River Anadromous Fish Restoration Plan of the Nez Perce, Umatilla, Warm Springs, and Yakama Tribes, was prepared in 1996. Its simple goal delivers its scientific judgment: "Put fish back in the river and protect the watersheds where fish live." The plan later adds, "We must take juvenile salmon out of barges and trucks, return them to the river, and provide adequate water conditions so they can complete their downstream migration to the ocean."

On August 15, 1997, Douglas DeHart, Chief of Fisheries for the Oregon Department of Fish and Wildlife, told a Congressional committee: "Barging [juvenile fish] can't get us there in the long run. We need major changes in the federal dams to avoid extinction of naturally self-sustaining populations. Let's set the barging path aside and start building the case for river changes."

For the last five years, the Clinton Administration has taken positions entirely at odds with these views of scientists at other fishery agencies. Moreover, the Clinton Administration's approach is even at odds with the views expressed by the NMFS and FWS in the years before ESA listing.

IS THE ADMINISTRATION PREPARED TO ADOPT A LONG-TERM SALMON RECOVERY PLAN IN 1999?

As noted previously, the Administration's Biological Opinion admits that the measures it contains will not be sufficient to restore endangered fish runs [p. 81]; they are instead interim measures designed to stabilize or slow the decline of the fish. The Opinion promises that the more significant actions needed to achieve recovery will be evaluated between 1995 and 1998, decided upon in 1999, and implemented beginning in 2000.

Thus, the Administration has delayed the adoption of a long term, successful salmon recovery plan until at least eight years following the ESA listings, citing the need for further studies and evaluations. But as we explain below, even this promise of action in 1999 will be very difficult to keep. Serious decisions on major modifications to the dam and reservoir system will likely not be made in 1999 or even 2000. Moreover, it is very unlikely that implementation of decisions will begin in 2000, or even 2001.

The Opinion states that "the region must continue to explore aggressively and implement additional velocity measures to restore the inriver migratory conditions necessary to achieve rebuilding of listed populations, to reduce reliance on transportation of juvenile salmon, and to increase other salmon runs in the basin. Accordingly, the Corps of Engineers and BPA shall... accelerate as a high priority the necessary evaluations and preparations for reservoir drawdowns on the lower Snake River [p. 116]."

To ensure rapid development and implementation, the Opinion directs the Corps to "complete necessary feasibility, design, and engineering work to allow drawdown of Snake River reservoirs to begin by 2000 [p. 116]."

The Opinion lays out a decision path to implement the best of these "major modifications" [p. 92-3]. By mid-1996, the Army Corps was directed to complete interim evaluations of natural river drawdown, spillway crest drawdown, and surface collectors. After that, a preferred drawdown alternative was to be selected. This step has been taken; the selected alternatives, for various biological and economic reasons, are: 1) natural river drawdown (or retirement) of the four lower Snake River dams, and 2) lowering John Day Reservoir.

The Opinion requires engineering and design work to be completed by December 1998, "followed by completion of the NEPA process and the quest for Congressional authorization, to ensure that implementation of drawdown... may begin by 2000 [p. 92]." These critical steps are all at least 18 months behind schedule.

The Army Corps' Snake River dam retirement "feasibility studies" will not, by their own schedule, be completed until March 2000. And no "request for Congressional authorization" has even begun, even though Congressional action in 1998 — for the FY1999 budget — is necessary to begin implementation in 2000.

For John Day Reservoir, the situation is worse. The Army Corps waited until 1997 to even propose a feasibility study of deep John Day drawdown, and today have not even completed scoping for such a study. Thus a full study of John Day drawdown, including National Environmental Policy Act compliance, will be very difficult to complete before the end of year 2000. Further, although the Snake River and John Day processes are separate, the Army Corps has warned that its Snake River drawdown decisions may have to wait until the John Day study is done.

The consequences of this delay — as documented above — are dire for the endangered fish runs and river habitat that the Administration is mandated to restore.

But delay also affects the ability of the federal government to fund salmon and steelhead recovery. While major dam modifications are being studied and evaluated, significant decisions about the finances of the Federal Columbia River Power System — which will affect the ability to fund salmon recovery — will be made in the next year or two.

Two key financial decision tracks are underway. First, the Bonneville Power Administration hopes to sign new long-term power contracts shortly. BPA has announced its intention to lock in salmon recovery costs at current levels through the year 2006 — even though those levels will likely be insufficient to fund the major dam modifications being studied. The agency has so far refused to use the tool of "stranded cost recovery," a mechanism to cover sunk costs from its traditional customers, to address either current debt or future fish costs.

Second, national energy legislation may revise the mandates and assets of the Federal Columbia River Power System — including allocation of the $7 billion debt for failed Northwest nuclear plants, on the one hand, and the valuable Northwest-Southwest transmission system on the other. A number of utility interests have urged allocation of nuclear debt to the federal dam system, while supporting the spin-off of the transmission system, actions that would greatly impair, and perhaps destroy, the ability of the federal government to fund major dam modifications.

To its credit, the National Marine Fisheries Service has recently begun expressing real concern about this "disconnect" between dam decisions and funding decisions. But to date the Administration has taken no actions that assure the decisions will be connected.

The Administration is well behind, on many fronts, its promised schedule to decide on a long-term salmon recovery plan (notably on mjor dam modifications) in 1999 — even though that promise already assured an eight-year delay. This failure, if not rectified in the coming months, could doom many upriver Columbia Basin fish stocks which continue their plunge toward extinction. And this failure could render the federal government unable to fund dam modification decisions that it does eventually make.

The Clinton Administration Needs to Change Its Ways — Keep Its Promises, Use the Best Science, and Recover the Fish

As 1998 begins, the Northwest stands at a critical threshold. Looking back, we have come almost two hundred years from the Columbia River exploration by Lewis and Clark; in the last seventy years we have completely harnessed the wild rivers the explorers saw, with tragic consequences for salmon, steelhead, and our children's future.

Looking forward, after two decades of delay, we are less than two years from the date set by the Clinton Administration to choose its long-term salmon recovery path. But key parts of the analysis upon which those decisions are to be based are a year or more behind schedule. The Administration's ability to deliver on its promise, on time, is in serious doubt. Yet the current salmon plan is not and will not restore — is not and will not even stabilize the decline of — wild salmon and steelhead.

We hope that this report can help spur the on-time delivery of a real salmon recovery plan that will honor the memory of Lewis and Clark and the Native American tribes that helped them on their way. We expect, and we ask, the Clinton Adminstration to finally begin to live up to the promises the federal government has made to the tribes, to the people of the Northwest, and to the Nation to maintain and restore Columbia Basin salmon and steelhead.

Table 1:

Run-Off Volume and Flow Targets 1993-1997

Snake River	April-July Run-Off Volume Forecast*	% of Average	Spring Flow Target	Summer Flow Target
1993	17.2 MAF	79	90 KCFS	52 KCFS
1994	11.4 MAF	53	85 KCFS	50 KCFS
1995	27 MAF (Jan.-July)	92	95 KCFS	55 KCFS
1996	22 MAF	101	100 KCFS	55 KCFS
1997	32 MAF	130+	100 KCFS	55 KCFS

* Run-off forecast at end of March

Columbia River	Jan-July Run-Off Volume forecast*	% of Average	Spring Flow Target	Summer Flow Target
1993	80 MAF	75	220 KCFS	200 KCFS
1994	73 MAF	69	220 KCFS	200 KCFS
1995	99 MAF	94	232 KCFS	200 KCFS
1996	126 MAF	119	260 KCFS	200 KCFS
1997	142 MAF	130+	260 KCFS	200 KCFS

* Run-off forecast at end of March

Flow Target Sliding Scale

Snake River
Volume <= 16 MAF, flow targets = 85 KCFS and 50 KCFS
Volume >= 20 MAF, flow targets = 100 KCFS and 55 KCFS

Columbia River
Volume <= 85 MAF, flow targets = 220 KCFS and 200 KCFS
Volume >= 105 MAF, flow targets = 260 KCFS and 200 KCFS

Source: 1995-98 Biological Opinion, National Marine Fisheries Service

Table 2:

Estimated Number of Smolts Leaving Snake River
1993-1998 — By Species

	Spring/Summer Chinook		Steelhead	
1993 — 14.5 million				
	hatchery	4.98 million	hatchery	8.05 million
	wild	627,037	wild	833,501
1994 — 16.2 million				
	hatchery	7.34 million	hatchery	7.52 million
	wild	627,942	wild	735,567
1995 — 17.9 million				
	hatchery	8.09 million	hatchery	7.56 million
	wild	1.56 million	wild	693,149
1996 — 11.2 million				
	hatchery	1.79 million	hatchery	8.21 million
	wild	419,826	wild	750,991
1997 — 8.7 million				
	hatchery	539,702	hatchery	7.35 million
	wild	148,892	wild	619,729
1998 (estimated) **— 11.9 million**				
	hatchery	3.72 million	hatchery	7.15 million
	wild	350,588	wild	636,000

Note: Hatchery numbers are hatchery releases; wild numbers are numbers of smolts arriving at Lower Granite dams

Source: Idaho Department of Fish and Game

Table 3:

Total Return (and Wild Component) at Lower Granite Dam
1993-1997 — By Species

Year	Spring Chinook	Summer Chinook	Fall Chinook	Steelhead (A-run / B-run)*	Sockeye (@ Redfish weir)
1993 total	21,035	7,889	1,170	59,768	8
wild only	6,008	3,959	742	(A) 6,532 (B) 821	
1994 total	3,120	795	791	47,302	1
wild only	1,416	305	406	(A) 4,732 (B) 2,783	
1995 total	1.105	694	1,067	79,127	0
wild only	745	371	350	(A) 7,648 (B) 342	
1996 total	4,215	2,608	1,308	83,264	1
wild only	1,358	2,129	639	(A) 5,613 (B) 1,097	
1997 total	33,855	10,708	***	88,700 **	0
wild only	1,429	6,458	***	(A) 7,700 ** (B) 1,000 **	

* A-run and B-run steelhead are two different populations of the same stock.
** Estimated
*** Count not complete

Sources: Fish Passage Center, Idaho Department of Fish and Game

Five Years of Failure:

A Critique of the Clinton Administration's Plan* for Columbia and Snake River Salmon

- Are Columbia and Snake River salmon and steelhead doing better since the Clinton Administration assumed responsibility five years ago? *(see over)* **NO**
- Has the Clinton Administration done what it said it would do in its own plan* for Columbia and Snake River salmon? **NO**

Did federal dam operators and the National Marine Fisheries Service. . .	
Meet minimum water "flows" and optimum river temperatures established by the plan for key phases of salmon migration?	**NO**
Provide adequate water from upstream storage reservoirs, as called for by the plan, so that minimum water flow targets could be met?	**NO**
Meet the plan's standards for "spilling" fish safely over the dams' spillways?	**NO**
Keep the water level of the John Day reservoir at its "minimum operating pool," as the plan called for, so that this long, slow reservoir would become less of an obstacle for migrating juveniles?	**NO**
Make timely progress on preparatory work for Snake River reservoir drawdowns as called for by the plan?	**NO**
Trap and haul juvenile salmon downstream by barge and tank truck — the same plan as the past 20 years?	**YES**

- Is the Clinton Administration implementing the salmon recovery recommendations of objective, independent scientists? **NO**
- Will the Clinton Administration stick to its 1999 decision-deadline for a long-term recovery strategy for endangered Snake River salmon? **??**

*Though required to by the Endangered Species Act, the National Marine Fisheries Service (NMFS) has not yet created a recovery plan for Snake River sockeye and chinook. The only "plan" has been a series of so-called "biological opinions" issued by NMFS. These biological opinions detail what actions federal hydro-electric agencies must take to insure that their dam operations don't create further "jeopardy" for listed salmon. Since the Clinton Administration came to office, NMFS has issued three biological opinions: the first in 1993, another in 1994, and the current biological opinion, which covers the years 1995-98.

SAVE OUR WILD SALMON

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Experiments with trapping and hauling juvenile Snake River salmon and steelhead begin as early as 1968, and continue for the next seven years.

Lower Granite Dam is completed in 1975, adding an eighth dam to the migration of Snake River salmon.

By 1976 permanent smolt collection mechanisms are added at both Little Goose and Lower Granite Dams to facilitate capturing smolts for transport.

Operation Fish Run, in 1977, institutes the concept of mass fish transportation, meaning transporting all fish that can be captured. Two barges are added to the fleet of four trucks.

Permanent smolt collection mechanisms are added to McNary Dam, and two additional, improved barges are added to the fleet.

Beginning in 1981, the 13 year-old experimental fish transport program becomes an official operational program of the U.S. Army Corps of Engineers with a fleet of five trucks and four barges.

In the high water flow years of 1982-84, most smolts are left in the river, leading to improved adult returns in 1984-86.

Snake River wild coho are declared extinct.

Beginning in 1985, the Corps collects and hauls all the smolts it can capture.

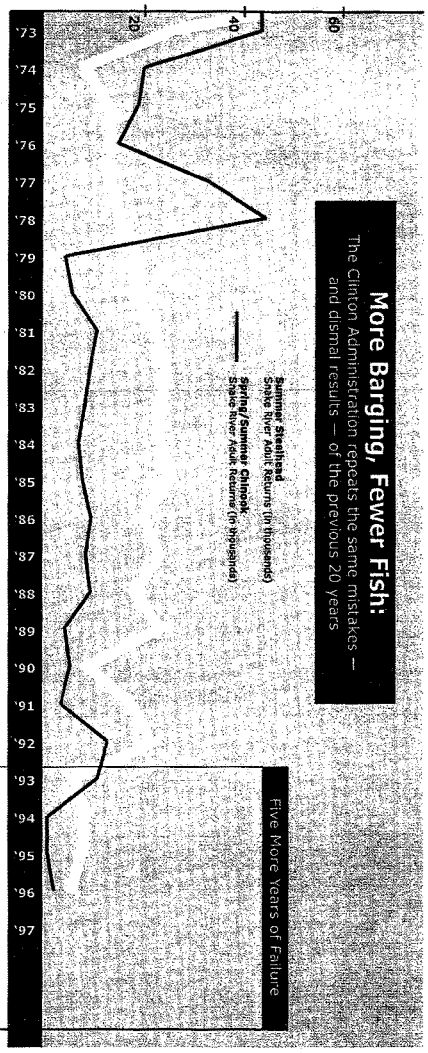
Two more barges and three more truck tanks are added to handle the growing numbers of smolts produced by federal hatcheries built in the '80s.

Snake River wild sockeye and chinook are listed under the Endangered Species Act.

The National Marine Fisheries Service issues a "biological opinion" regarding how the federal hydropower system must be adjusted to avoid further "jeopardy" to listed salmon. The Corps' smolt transportation program is continued.

The current 1995-98 biological opinion calls for a range of actions, but the only one that is fully and consistently implemented (see over) is collecting and transporting smolts — the same plan as the past 20 years.

In 1997, wild steelhead in the Snake and Columbia Rivers are listed for protection under the Endangered Species Act — clear proof that 25 years of barging and trucking juvenile migrants has not worked!



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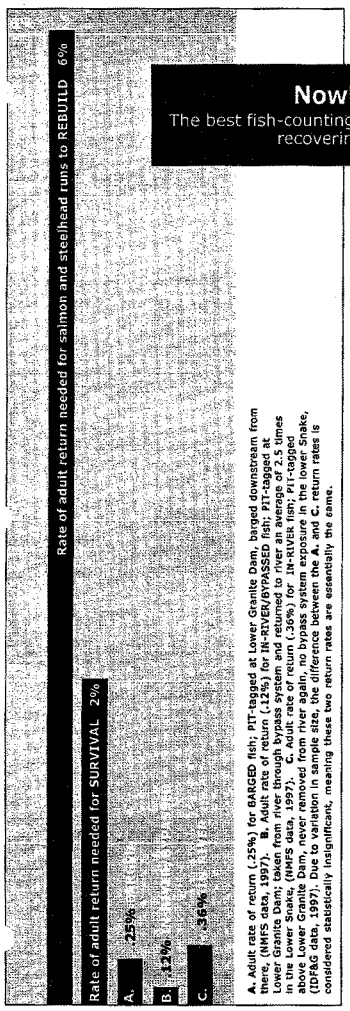

A. Adult rate of return (.25%) for BARGED fish; PIT-tagged at Lower Granite Dam, barged downstream from there, (NMFS data, 1997). **B.** Adult rate of return (.12%) for IN-RIVER/BYPASSED fish; PIT-tagged at Lower Granite Dam, never barged from there, never removed from river again, no bypass system exposure in the Lower Snake, (NMFS data, 1997). **C.** Adult rate of return (.36%) for IN-RIVER/BYPASSED fish; PIT-tagged above Lower Granite Dam, never removed from river again, no bypass system exposure in the lower Snake, (IDF&G data, 1997). Due to variation in sample size, the difference between the **A.** and **C.** return rates is considered statistically insignificant, meaning these two return rates are essentially the same.

Nowhere Near To Recovery:

The best fish-counting research shows that barging can't come close to recovering endangered salmon and steelhead

In 1999, the Northwest faces a crucial choice for the future of wild salmon and steelhead. The Clinton Administration has promised, in partnership with Northwest states and tribes, to choose the long-term path to restore wild salmon and steelhead to the Columbia River Basin. The key decision is: should we retire or modify some federal dams on the Snake and Columbia Rivers, or keep relying on removing fish from the rivers to be barged around the dams?

The Independent Scientific Group, in its *Return to the River* report (Sept. 1996), concluded that barging is "no substitute for normative [more natural] river conditions" and cannot provide "even the minimal survival rates necessary for maintenance of population levels. . . , let alone those survival rates necessary for rebuilding."

Despite fish barging's 20-year failure to restore salmon, and the scientific consensus that restoring more natural river conditions is the best path to recovery, supporters of fish barging continue to claim either that "it is working" or that "it will work." Neither claim holds water.

THE MYTH:
Fish Barging Can Restore Salmon and Steelhead

No evidence exists that fish barging can achieve the survival levels needed to restore wild salmon and steelhead in the Columbia Basin.

Federal, state, tribal, and independent scientists, working together in the PATH (Process for Analyzing and Testing Hypotheses) process, have agreed that a yearly 2% rate of returning adult fish (2 returning adults for every 100 juvenile fish migrating to the ocean) is needed to halt the plunge of salmon and steelhead toward extinction. They also agree that a 4-6% return is needed to rebuild sustainable, harvestable populations.

Since fish barging began in earnest in 1977, the return rate of barged fish has never been above 2%. Since modern PIT-tag (passive integrated transponder) research began in 1988, the return rate of barged fish has never been above 1%. For PIT-tagged juvenile fish barged in 1995, the National Marine Fisheries Service (NMFS) is estimating that the adult return rate will

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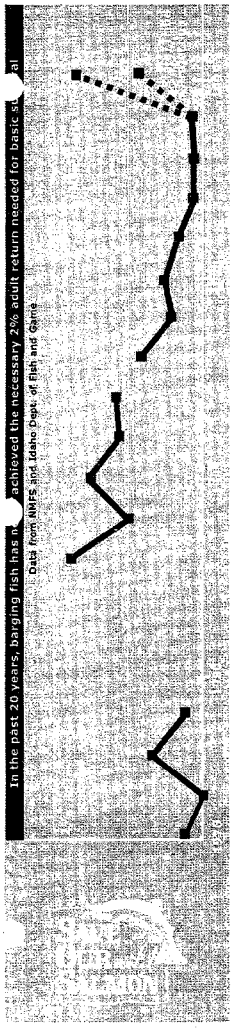

continued from reverse. . .

be 1.8%, while state and tribal fish agencies estimate it will be less than 1%.* No scientist is estimating the adult return rate of 1995 barged fish will be above 2% — yet that is what fish barging must deliver, every year, to simply stabilize wild salmon populations. Recovery of sustainable, harvestable stocks would require adult return rates never even approached in 20 years of fish barging.

THE MYTH:
Barged Fish Are Returning at Twice the Rate of In-River Fish

The fact is, PIT-tag results show that the truest "in-river fish" — fish which never passed through any mechanical collection/bypass system at the dams on their migration to the ocean — are returning at the same rate as barged fish.

NMFS has publicized PIT-tag data showing a 2:1 adult return ratio between fish barged in 1995 and what NMFS calls "in-river" fish. This comparison is misleading.

First, the comparison does not show that barging can lead to recovery, since neither barged fish nor NMFS' "in-river" fish are returning at or above the 2% rate required to simply halt the decline. NMFS' comparison offers the false choice of barging or leaving the fish in a river rendered lethal by dams and slackwater reservoirs. The real choice concerns what strategy will lead to recovery, not which of two paths to extinction is better. NMFS conveniently ignores the one option supported by independent scientists, restoring more natural river conditions.

Second, the NMFS "in-river" fish passed through an average of 2.5 mechanical dam bypass systems in the lower Snake River on their way to the ocean. That is, they were taken out of the water an average of 2.5 times and subjected to stressful bypass systems before being returned to the river. Thus, these fish are not true examples of in-river migrating fish.

The Idaho Fish and Game Department has now published PIT-tag data for other fish from the 1995 migration which are better examples of "in-river" migrating fish. They passed each dam either over the spillway or through the turbines, and were not removed from the lower Snake River and subjected to bypass system stress. These truer "in-river" fish returned at essentially the same rate as did barged fish.

The Newest Strike Against Barging

The Oregon Department of Fish and Wildlife recently revealed that, in 1994, 76% of summer steelhead in the Deschutes River were steelhead from other rivers, notably the Snake River, that strayed into the Deschutes. Such high levels of straying could threaten the genetic integrity of wild Deschutes River steelhead. The Oregon Fish and Wildlife Commission, in a letter to NMFS, suggested that high levels of steelhead barging and trucking in the Snake River is the likely main cause of the straying problem. (Barging and trucking has long been thought to impair the homing instinct of fish.)

This example illustrates a major, irresolvable problem with fish barging — its unintended and unpreventable consequences for all non-barged fish stocks sharing the Columbia River watershed.

Northwest anglers know what they're talking about when they say, BARGED FISH DON'T COME HOME.

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* NMFS' estimate assumes that nearly 90% of the juvenile fish leaving the Snake River in 1995 will spend three years in the ocean, returning this year, while the state/tribal estimate is based on the fact that, in 30 years , the highest percentage of "3-ocean fish" ever recorded is 75%.

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Two Years 'Til Decision:

Steelhead Listings Require a New Fish Plan From April 1998 Through Fall 1999

In late 1999, the Clinton Administration has promised to choose the long-term path to restore Columbia Basin salmon and steelhead. The heart of that choice concerns the federal dams: Should we retire or modify some dams on the Snake and Columbia, or keep relying on technological measures such as barging fish?

Right now, the Northwest faces an important interim choice.

By April 1998, the Clinton Administration must approve a new plan to govern Columbia River dam operations for fish. This plan needs to respond to new Endangered Species Act listings of Snake and Columbia River steelhead. It will amend the current river plan for salmon in effect since 1995. The new plan — called a "Steelhead Biological Opinion" — will govern river operations until the long-term choices are made.

WILL THIS NEW PLAN. . .

. . . Reflect the scientific consensus for more "normative" or natural river conditions, or still rely on failed technologies like barging and trucking fish?

. . . Seek to achieve goals and measures still unfulfilled in the Administration's current plan for salmon?

. . . Keep the Administration's pledge to make the long-term choices in 1999, or allow them to be delayed?

. . . Be approved in partnership with Northwest states and tribes, or by the Administration alone?

The Clinton Administration's January '98 draft plan goes the WRONG way. . .

On January 23rd, the Army Corps of Engineers, Bonneville Power Administration, and Bureau of Reclamation, released their "steelhead biological assesment" — their draft plan for operating the Columbia dam system for the next two years or longer. Their proposal:

- Makes river conditions worse by eliminating spillway flows at some dams and reducing them at others.
- Maximizes fish barging and trucking: 90-98% of migrating fish trapped and hauled.
- Rejects the scientific consensus for a more natural river, embracing a technological trap-and-transport solution for fish.
- Leaves all unachieved measures in the current salmon plan still unachieved.
- Covers river operations indefinitely, thus opening the door for a delay of the long-term decisions now slated for late 1999

NEXT STEPS TOWARD THE NEW FISH PLAN. . .

February: The National Marine Fisheries Service issues a draft "steelhead biological opinion" — its view of how to operate the dams.
February-March: Public review (public hearings are not yet promised).
March: The Administration issues a final biological opinion, which takes effect April 10th.

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New Plan Brings Another Chance to Make the Right Choices

Follow the Science: Since the salmon plan of 1995, a scientific consensus on how to restore Columbia Basin steelhead and salmon has emerged: "Return to the River," towards more natural conditions under which the fish evolved. *We believe. . .* this new plan for the dams should better reflect that consensus for a more natural river than the current plan does.

Keep the Promises: The current salmon plan promised vital actions for fish which have not yet occurred - including achieving specific riverflow and spill targets, operating John Day Reservoir at minimum operating pool, and meeting state water temperature standards for cold-water fish. *We believe. . .* the new plan should contain practical steps to achieve these promised, but unachieved, actions.

Make the Long-Term Choices On Time: In the current plan, the Administration promised that it would choose the long-term measures to restore fish in 1999. But the Army Corps of Engineer's is now saying those choices may have to be delayed a year or longer. *We believe. . .* the new plan should cover only two years (1998-99) so that the Administration *must* come up with its long-term plan to make the Columbia safer for salmon on time.

Partner with the States and Tribes: Vice-President Gore has pledged a new partnership — called the Three Sovereigns Forum — whereby the states, tribes, and feds make joint decisions on Columbia River fish and dams. *We believe. . .* the new plan for the dams should be decided by all three sovereigns.

Save Our Wild Salmon's Proposal for the New Fish Plan

No interim plan can provide the survival improvements needed to restore salmon and steelhead. That's why long-term choices must be made soon. But the interim plan should:

Help critically-endangered fish that badly need help;

Foster an ecosystem, all-species approach in the Columbia Basin;

Protect remaining core wild fish populations and habitats;

Help make the long-term decisions on time, and;

Help prepare the Northwest for the fundamental changes that lie ahead.

The Save Our Wild Salmon Plan, developed in consultation with federal, state, tribal, and independent scientists, will achieve these objectives. The 10-page plan's major elements include:

- Lowering McNary and John Day Reservoirs to minimum operating pool, as a step toward restoring more natural river reaches and migration conditions
- Optimum use of spill to pass fish past dams, a spread-the-risk policy for barging fish, and a ban on trucking fish
- Aggressive steps to reduce stress on juvenile fish in the bypass systems at the dams
- Requirements to meet existing riverflow targets on a weekly basis, and further efforts to provide sufficient water to meet those targets
- Steps to reduce damaging high water temperatures in the reservoirs
- Creation of salmon reserves, to protect the best remaining habitat
- A two-year limit on the legal duration of the new Biological Opinion

The SOS Plan rejects the Army Corps' proposal to increase fish barging. It is time to begin implementing the scientific consensus for more natural river conditions.

Copies of the full SOS Plan are available from the Save Our Wild Salmon Coalition, 975 John Street, Suite 204, Seattle WA 98109, 206-622-2904. SOS is a coalition of 47 Northwest fishing, conservation, fishing business, and energy groups.

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HEARING ON THE ENDANGERED SPECIES ACT

THURSDAY, SEPTEMBER 3, 1998

HOUSE OF REPRESENTATIVES,
COMMITTEE ON RESOURCES,
Boise, Idaho.

The Committee met, pursuant to notice, at 10 a.m. in the Boise City Hall, 150 North Capitol Boulevard, Boise, Idaho, Hon. Richard W. Pombo presiding.

Mr. POMBO. Good morning. I would ask unanimous consent that my entire statement, opening statement, be included in the record. I am, in the interest of time, going to summarize my opening statement.

It is great to be here in Boise, Idaho, today to have an opportunity to hold another in a series of hearings on the Endangered Species Act, on its impacts, what is working, what is not working, possible changes that can be made. Specifically, there is legislation that has been introduced that would deal with the National Marine Fisheries Service and the transfer of functions over to Fish and Wildlife in the Interior Department, which is one of the issues that we are covering today.

One of the—what we would hopefully like to take away from the hearing is a lot of good ideas, a lot of good discussion, good debate, on what is occurring, what is working, and what is not working. One of the major concerns that many of us have is that we continue to have major conflicts over the implementation of the Endangered Species Act.

Everyone who has testified before our hearings in the past has voiced strong support for saving endangered species and being able to have a strong and vibrant wildlife, at the same time, reducing the conflicts between people and their environment. So one of the things that we would like to do is come away with some real good discussion.

I would like to ask all of you, today, that are members of the audience, one of the House Rules that we have is that we do not allow comments coming from the audience. We have a very full and long schedule that is ahead of us. And any comments, positive or negative, shouted out from the audience do nothing more than cut time down of the people that are testifying and their ability to get their point across.

One of the things that we would like to do is to have the ability to have everyone have their say and have their opportunity to speak here this morning. So I would appreciate it if we would have the courteousness from the audience at this time.

I would like to turn to the Ranking Member on the Committee, Mr. Romero-Barceló, for any possible opening statement he may have.

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. I would like to say thank you once again for holding these hearings. I think this is important to everyone throughout the Nation. The Endangered Species Act has created a lot of issues. And wherever there are endangered species, there is conflict between what some groups feel should be done and what piques people's interest.

And I think the hearing we had yesterday and today is a way of learning. I learned a lot. The more I learned, the more I realized I have to learn from the issues involved in so many different decisions and statements that have been made and what is the cause and what are the solutions. So I think it is definitely a very important issue.

There is a lot of interest yesterday and today. We have seen a number of people who have come to these hearings. So it is my pleasure to be here, and I look forward to learning a little bit more about this and what the solutions might be.

Mr. POMBO. Well, I thank you very much. Just so everybody knows, Mr. Romero-Barceló flew all the way from Puerto Rico to participate in this hearing. We appreciate him being here.

Mr. ROMERO-BARCELÓ. We do have some endangered species over there, the manatee and the turtle.

Mr. POMBO. Well, thank you for being here. Congresswoman Chenoweth, your opening statement.

Mrs. CHENOWETH. Thank you, Mr. Chairman. I join my colleague, Mr. Crapo, in welcoming both of you to Boise. We are just thrilled that you would bring the Committee into Boise on this very, very important issue.

And before I begin my opening statement, Mr. Chairman, I would like to ask for unanimous consent to enter into our record the statement of our Senator Dirk Kempthorne, who had planned on being here and taking part in this hearing, but was called back to the Senate, as you know, and they are now in session.

Mr. POMBO. Without objection, it will be included.

[The prepared statement of Senator Kempthorne follows:]

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

I am pleased that Representative Helen Chenoweth is holding this hearing today to address the role of the National Marine Fisheries Service in implementing the Endangered Species Act. As you know, I have dedicated a considerable amount of my energy toward reforming the Endangered Species Act over the last several years. Hearings throughout the country—and particularly in the West, where we have significant ESA issues—were integral to the Senate Committee on Environment and Public Works' fact-finding mission during the development of my ESA reauthorization bill. Undoubtedly, the law needs to be reformed, and to that end I am truly glad that Representative Chenoweth has elected to hold these NMFS jurisdiction hearings in the West.

The subject of this hearing is particularly relevant to the dilemma we have been facing with regard to the decline of Idaho's salmon and steelhead. As you know, the debate has been strongly focused on flushing and spilling more Idaho water or removing the lower Snake river dams in an attempt to aid fish migration. I remember in 1995, my Senate Subcommittee on Drinking Water, Fisheries, and Wildlife held a hearing on the salmon spill policy on the Columbia and Snake rivers. At that hearing, the NMFS was criticized for the lack of good, peer-reviewed science which contributed to its decisions on the fish spill policy.

It is vital that decision-makers like NMFS take into account the effects of all factors which contribute to fish decline when determining a preservation strategy. Issues such as predation and harvest should not be eclisped by the attention focused on spill and dam removal. However, I am concerned that the issue of fish harvest has placed the National Marine Fisheries Service in a situation where it must prioritize between two competing missions. On the one hand, the NMFS facilitates and oversees commercial fishing in U.S. waters. On the other hand, the agency has been entrusted with a mission of conservation to preserve this resource for the future. I believe there must be a clear separation between NMFS's role as a conservation organization and its role as a fisheries development and management organization. At a minimum, the NMFS biological opinion on harvest should be independently peer-reviewed to ensure that harvest methods are consistent with conservation goals. For example, I am concerned about the bycatch of salmon in groundfisheries since there is no way to prevent the taking of endangered and threatened fish in a groundfish catch. The bycatch loss of any of these fish could jeopardize an entire distinct population segment. In addition, the NMFS' definition of harvestable surplus with regard to endangered fish species should be seriously questioned.

These hearings should help Congress sort out whether the two NMFS missions are truly complementary, or whether competing priorities greatly limit NMFS's ability to review the fullest spectrum of solutions when considering fish recovery options. The new avenues of debate and discussion that these hearings will produce are productive and needed. As a Member of Congress who has made ESA reform one of my most important goals, I am gratified to see these issues addressed here today, and I thank the Chairman for this opportunity to express my views.

Mrs. CHENOWETH. Thank you.

I, again, want to publicly thank Chairman Don Young, who is my good friend from Alaska, for bringing the House Resources Committee to Boise.

There are few things that are more symbolic of Idaho and the Pacific Northwest than the salmon. The salmon represents the enduring spirit of survival. And for generations, the salmon has struggled to return year after year to the same spawning grounds. This same spirit of survival is shared by the pioneers who settled the new frontier and built Idaho. Like the salmon's struggle, many Idahoans are struggling. We have to find a way for everyone to survive and to thrive. And this is why we are here today, to look for solutions that will not only save the fish but save Idaho's remarkable way of life.

Under the Endangered Species Act, the National Marine Fisheries Service, an agency within the U.S. Department of Commerce, was given responsibility for management of oceangoing fish. This authorization has unfortunately involved the National Marine Fisheries Service fish biologists managing timber, rangeland, road building, farmland, and just about every on-land activity that you can possibly imagine. What was once an agency dedicated to managing ocean fisheries now finds itself hundreds of miles inland involved in every aspect of land use.

National Marine Fisheries Service's fish management has become so incredibly single-minded that people are not longer part of the equation. We find that, like the salmon, many, many Idahoans are struggling too. Again, we must find a way where we can all live together.

There is no other issue in Idaho or the Pacific Northwest that is as emotionally charged as salmon and steelhead management. It is an issue that we can all agree has been mired in controversy. Rhetorical battles are the norm, not solutions. Yet we offer a solution.

Together, I and other members of the House Resources Committee have drafted a simple piece of legislation to take one step, only

one step, in the right direction. No one, including myself, claims this bill will solve all of our problems and put an end to the controversy. Yet it will consolidate authority. It will make government more efficient and accountable and consistent and lead, I believe, to better fish management simply because of that accountability. I believe everyone can support that concept, and I look forward to hearing constructive comments to improve the bill.

The Endangered Species Consolidation Act, H.R. 4335, authored by Don Young and cosponsored by myself, Mr. Crapo, Mr. Pombo, and others, transfers National Marine Fisheries Services' ESA functions to the Fish and Wildlife Service. By bringing under one roof all ESA functions, everyone—the farmer, the rancher, the recreationist, the lumberman, the mine, the environmental groups, State and Federal agencies—will know that U.S. Fish and Wildlife Service determinations will be final. Today's dual agency responsibility allows for feasible deniability and a lack of accountability. Our bill will paste a big sign over the Fish and Wildlife Service that says, "The buck stops here, right here."

There can be finality despite our long and bitter experience of being whipsawed between multiple Federal agencies. Further, and possibly even more frustrating, agency decisions are often contradictory.

Take, for instance, the bull trout. Steps taken by NMFS to save the salmon impact the bull trout, and steps taken by Fish and Wildlife Service to help the bull trout affect the salmon. Duplicative ESA authority results in contradictory policies and paralyzing controversy.

It is my view that if ESA enforcement authority were under one roof, there would be more consistent policies that could accomplish both salmon and bull trout recovery objectives.

There are numerous examples of duplicative and contradictory agency actions: the Fish and Wildlife Service habitat conservation plan, 2 years in the making, completely gutted by NMFS—a loss of tens of thousands of dollars; an Idaho timber sale once approved by NMFS and the Fish and Wildlife Service put on hold a year later; an Army Corps of Engineers study indicating success in the transportation of smolt downriver, but a NMFS decision stated exactly the opposite.

Clearly, interagency turf battles and contradictory policies and decisions will not piece together the salmon puzzle. But we can solve these problems by consolidating ESA authority in one agency.

A word of caution, though, don't mistake this simple piece of legislation for an attempt at ESA reform. ESA's substantive recovery requirements and legal protections remain totally intact and are in no way affected by this legislation. Our bill merely speaks to government efficiency, responsibility, and accountability. It does not solve all of the issues, but it is a start.

Since late July when we introduced our Endangered Species Consolidation Act, I have heard many comments and concerns. And it is certainly far from clear that the Fish and Wildlife Service will necessarily do a better job than NMFS of fish management.

After all, it was the Fish and Wildlife Service who introduced the wolf into Idaho—and you know how I felt about that—and is forcing the reintroduction of the grizzly bear—you know how I feel

about that—both predator species, over the objection of the people of Idaho, the Governor, our legislature, and the entire congressional delegation. The Fish and Wildlife Service has done nothing to engender the trust of Idahoans.

But when it comes to accountability, the Federal Government has become skilled at passing the buck, and we must pick our poison. This is the purpose of the bill, and this is exactly why I asked Don Young to bring the Resources Committee to Idaho. Congress must listen carefully to what Idahoans have to say.

And last, I want to say that America is the most benevolent country in the history of the world. We lead the world in humanitarian actions and helping people to a better way of life and a better future. Yet we have left people out of the equation on the salmon issue by allowing our region to be mired in controversy and our economy to degrade to a shadow of its former self.

It is inconceivable to me that many groups and individuals have focused solely on the dams for the solutions here rather than looking at the legion of issues involving salmon restoration.

And with that, I do want to say in closing that, in my opinion, the NMFS has no authority to force another government agency to violate a congressional mandate, whether it is Dworshak Dam or taking water out of Idaho for an unproven measure like salmon fleshing. And I think that we, in the Congress, must be very watchful and very vigilant with regards to those kinds of agency actions.

Mr. Chairman, without objection, I would conclude now, and I would like to enter my entire testimony into the official record. Thank you.

Mr. POMBO. Without objection.

[The prepared statement of Mrs. Chenoweth follows:]

STATEMENT OF HON. HELEN CHENOWETH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Welcome everyone. I want to publicly thank Chairman Don Young, my good friend from Alaska, for bringing the House Resources Committee to Boise. I also want to thank my good friend from California, Richard Pombo, the Chairman of the Endangered Species Task Force established by Newt Gingrich, for chairing this hearing. I welcome my colleague from Puerto Rico, Carlos Romero-Barceló, to Boise. I know my colleague and fellow Resources Committee member, Mike Crapo, is as concerned as I am about what is happening in our state of Idaho.

There are few things more symbolic of Idaho and the Pacific Northwest than the salmon. The salmon represents the enduring spirit of survival. For generations, the salmon has struggled to return year after year to the same spawning grounds. This same spirit of survival is shared by the pioneers who settled the new frontier and built Idaho. Like the salmon's struggle, many Idahoans are struggling. We have to find a way for everyone to survive and thrive. This is why we are here today—to look for solutions that will save the fish, and save Idaho's remarkable way of life.

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Clearly, inter-agency turf battles and contradictory policies and decisions will not piece together the salmon puzzle. But we can solve these problems by consolidating ESA authority in one agency.

A word of caution: Don't mistake this simple piece of legislation for an attempt at ESA reform. ESA's substantive recovery requirements and legal protections remain totally intact and are in no way affected by this legislation. Our bill merely speaks to government efficiency, responsibility and accountability. It does not solve all of the issues, but it's a start.

Since late July when we introduced our Endangered Species Consolidation Act, I've heard many comments and concerns. It is certainly far from clear that the Fish & Wildlife Service will necessarily do a better job than NMFS of fish management. After all, it was the FWS who introduced the wolf into Idaho and is forcing the reintroduction of the grizzly bear, both predator species over the objection of the people of Idaho, its legislature, its Congressional delegation, and Governor. The FWS has does nothing to engender the trust of Idahoans.

But when it comes to accountability, the Federal Government has become skilled at passing the buck, and we must therefore pick our poison. This is the purpose of the bill, and this is exactly why I asked Don Young to bring the Resources Committee to Idaho. Congress must listen carefully to what Idahoans have to say.

Lastly, I want to say that America is the most benevolent country in history. We lead the world in humanitarian actions and helping people to a better way of life and future. Yet we've left people out of the equation on the salmon issue by allowing our region to be mired in controversy and our economy to degrade to a shadow of its former self.

We've even gone so far as to consider radical, false solutions like destroying the four lower Snake River dams, when we should be looking for common sense solutions that work.

It is inconceivable to me that many groups and individuals have focused solely on the dams, rather than looking at the legion of issues involving salmon restoration. What about predation and changing ocean conditions? I recently learned that NMFS has approved a commercial harvest of threatened and endangered chinook and salmon. Last year's fall harvest from August 27 to September 20 gill netted 64,100 chinook and 22,700 steelhead. And I understand that historically this fishery has taken 40 percent of the total fall chinook run with large incidental catches of steelhead.

Let me say that I am not taking issue with tribal cultural and ceremonial salmon harvests. However, this fall chinook gill net harvest is solely commercial, often selling the fish for as little as a dollar per pound. If these fish are truly endangered,

why do we continue to harvest so many of the remaining adults? These are the only endangered species with an allowable harvest.

When NMFS' salmon decisions literally cost the region hundreds of millions of dollars annually and have had the effect of putting people out of work and shutting down industries, allowing a commercial harvest of the very chinook and steelhead that we are trying to save is a little bit insane.

Again, we are all here together. We are all struggling together. H.R. 4335 is a good start in laying the foundation to make a more consistent, efficient and responsive Federal Government.

One final note, Mr. Chairman. Last Tuesday I held a hearing in Orofino, Idaho on drawdowns of the Dworshak Reservoir to flush salmon downriver. For the last few years NMFS has forced the Corp of Engineers to "draw down" the reservoir in an unproven experiment to flush salmon downriver.

The unexpected result was a significant impact on bull trout habitat and kokanee salmon—another example of NMFS' actions adversely affecting another agency.

In my opinion, the NMFS has no authority to force another government agency to violate a Congressional mandate—in this case the legislation that authorized Dworshak Dam—for an unproven measure like salmon flushing.

Mr. Chairman, the drawdowns at Dworshak are a violation of law, and break the promises made to the local people. Dworshak's authorizing statute specifically promised the people of Idaho flood control, power generation, log transportation and recreation.

It is legally, ethically, and worst of all, morally wrong for unelected bureaucrats to re-craft the dam's mission and purpose, and wreak havoc on a community that relied on promises made by the Federal Government.

Mr. Chairman, without objection, I would like to enter this testimony into the official record as a case study of how the NMFS has gone too far.

[The above mentioned material can be seen at the Committee office where it will be kept on file.]

Mr. POMBO. Mr. Crapo?

Mr. CRAPO. Thank you, Mr. Chairman. I appreciate you and our Ranking Member for being here and for giving us the opportunity to hold this hearing on what is probably one of the most critical issues in the Pacific Northwest. And the issue, as I see it today, is not just with regard to the legislation before us, but with regard to the question of how we manage salmon and steelhead recoveries and we how manage endangered species actions.

For some time, I have been a very open and vocal critic of the National Marine Fisheries Service and the way that it has approached salmon and steelhead recovery measures.

And I think that whether one comes from the—from any of the many different perspectives that we have in the Pacific Northwest, whether it be from the perspective of the salmon and steelhead recovery effort or the perspective of the economies and the jobs in Idaho and in the Pacific Northwest that are at risk because of some of the proposed decisions that have been on the table for the last several years and that are now on the table or other perspectives.

It seems to me that there has been great concern with the management decisions and the approach of the National Marine Fisheries Service. This is not the first hearing at which I have raised these concerns. And I think that to kind of highlight what I am focusing on here today, it seems that we have got to insist on more regional State and local involvement in the decisionmaking process.

In Idaho, we have been under Governor Batt's very good leadership working on a plan to try to spread the risk and approach the issue of salmon and steelhead recovery in a sensible way by building consensus among the different competing interest groups.

Not everybody was happy with that plan. People had to give and take in order to work together. But we were getting people to give

and take and work together in Idaho, yet our voice fell on deaf ears. Our efforts to provide a path forward fell on deaf ears at the National Marine Fisheries Service.

And, in fact, the service actually, in the face of what I thought was pretty strong consensus, chose alternate approaches, which were not justified. They were not justified by science. They were not justified by politics. They were not justified in the face of the type of consensus that we move forward.

Even as recently as this year, after it looked like we were starting to make progress with some of the efforts to encourage the National Marine Fisheries Service to approach some of the ideas that we have developed here in Idaho. It turns out that the management actions taken by NMFS this year seem to ignore the very discussions that we have had and the very approaches that we have developed.

And because of that, I was very willing to lend my name to the support for this legislation if, for no reason, than to engage this debate as to how we approach decisionmaking and how the Federal Government must interact with the States and the region in this case and local communities in the decisionmaking processes.

I am very aware, as has already been referenced, that there are great concerns that people have with regard to the U.S. Fish and Wildlife Service. And had the U.S. Fish and Wildlife Service been the agency in charge for the past number of years, we would probably be holding a hearing here today about concerns with regard to the way that they had undertaken management decisions.

I know that those concerns will be raised here today by many. And I guess what I hope comes out this hearing is a full airing and a full discussion of how we will approach this critical issue. It is critical to us in this region that we save the wild salmon and steelhead. And it is also critical to us in this region that we not destroy the economy of our region. And I am confident that we can do that.

The economies of our region that have grown over the last decades are critical to the people of Idaho. And the jobs that they represent, strengthen and support the families of the people who live here in Idaho. And there are ways that we can maintain and strengthen and regain our cultural and wildlife heritage with the fish, the salmon, and the steelhead, without destroying economies.

I am very concerned that right now we in the region, even as we work aggressively to develop consensus, do not seem to have a voice in the process. And that voice must be heard. And that is one of the reasons for this hearing, and I look forward to the testimony to be heard today. Because one way or the other, efforts like we have seen in Idaho and in the region to find a path forward have got to get past the bureaucracy that is now built up around the Endangered Species Act.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you. I would like to call up our first witness here today, Governor Phil Batt. If he would join us at the witness table.

Governor, I would like to welcome you here today. We have all had the opportunity to review your testimony. Feel free to summa-

rize your written testimony. The entire thing will be included in the record. Welcome, and you may begin.

STATEMENT OF PHILIP E. BATT, GOVERNOR, STATE OF IDAHO

Governor BATT. Thank you, Mr. Chairman, members of the Committee.

I see in the rules that I am limited to 5 minutes. My testimony may run six or seven. I would like to read it, if I could.

Mr. POMBO. Yes. Go ahead.

Governor BATT. Mr. Chairman and members of the Committee on Resources, I congratulate the Committee for addressing the question of how Federal agencies could better serve the people. In this case, you are examining whether the U.S. Fish and Wildlife Service could better handle the responsibility of endangered species regulation than the National Marine Fisheries Service, the agency that now partially handles that responsibility.

I want to say with emphasis, that I do not believe some Federal agencies are serving their constituents properly or implementing their authority consistent with the intent of Congress. Examples are abundant, and I will mention just a few.

The Environmental Protection Agency has become so large and complicated that it has lost all practicality in the application of its responsibilities in the field. Its water quality actions have imposed unnecessary and indefensible burdens on the State of Idaho. EPA is not charged with protecting endangered species, but, after consultation with the U.S. Fish and Wildlife Service, they impose actions on us, which are addressed plainly for that purpose.

Another example is the censuring of Idaho's DEQ for its enforcement procedures regarding air quality. Never mind that Idaho is one of the few states, maybe the only one, that has not even a single Federal non-attainment area under the State's jurisdiction. Our air quality is excellent and has improved dramatically. Our sin is not dirty air but failure to fine enough people and to shut down enough operations and thereby put people out of jobs. We believe in a cooperative effort with clean air as the objective.

EPA believes in punishment with results only secondary. Chuck Clarke, the director, is most reasonable in his frequent discussions held between us. But when the lieutenants and privates in EPA do their work in the field, they are bureaucratic in the extreme and sound, sweet reason doesn't stand a chance. Costly State planning and remediation efforts are thrown on the scrap heap.

Let's take another example, the U.S. Forest Service. Local Forest Service managers are great. They are practical. After careful consideration of the impact, they authorize occasional timber sales. Then the inevitable protests are filed, and the sales are canceled. The agency is powerless and the forests are debilitated by disease and fires caused by a lack of timely maintenance and harvest of forest products.

The Department of Energy is another agency which is ineffective because of internal paralysis. The Pit 9 fiasco is baffling. Hundreds of millions of dollars have been spent and not a spoonful of waste has been removed. Radioactive materials, foolishly dumped into the pits years ago, continue to threaten our aquifer. President Clinton has thwarted efforts to open the central repositories necessary to

carry out the national policy of waste disposal. Our new policy is gridlock.

Federal agencies are not all bad. I believe FEMA, under James Lee Witt, has done a very good job in cleaning up disasters and also placing great emphasis on prevention.

I also believe our military does an effective, although sometimes wasteful, job of protecting our freedom. Oftentimes, their job is complicated by other Federal agencies, such as the Bureau of Land Management.

Speaking of the BLM, that agency has a history of imposing rules, which, in my opinion, are far beyond the authority granted by Congress. I must give credit to Bruce Babbitt for rescinding the proposed law enforcement rules on BLM land after I personally asked him to do so. But the agency still seems to impose arbitrary regulations in many areas.

One of these topics is the tribal gambling question. Mr. Babbitt seems to have wide authority to decide questions on Indian gaming. He has asked for even more. States' rights seem to take a back seat in these matters. Fortunately, Congress has not acquiesced to him.

President Clinton recently put out an executive order, which called for Federal supremacy over nearly all State and local matters. After a loud outcry, he put the matter on hold, but the increase in Federal power continues, occasionally taking a baby step backward but then regaining its pace.

But I have digressed from the main question: Would we be better off dealing with U.S. Fish and Wildlife Service than with NMFS regarding anadromous fish recovery?

The NMFS used to be concerned mainly with ocean fishing. Its involvement in regulating storage dams and water quality is a recent phenomenon. NMFS makes its decisions in conjunction with a myriad of Federal agencies, which you have pointed out, including the Bureau of Reclamation and the Corps of Engineers and others, as well as receiving input from state, private, and other sources.

I believe Mr. Stelle is a capable, conscientious department director. But the department is pulled and tugged in so many different directions that its decisions are almost capricious. They have little basis in science or practicality.

I proposed leaving more smolts in the river during high water years as opposed to barging so that we may get a better scientific comparison for future actions. And I have a lot of support for that proposal. But NMFS ignored that suggestion because of pressure from BOR and others. NMFS seems to be powerless to set a consistent course of action.

But to move the anadromous fish recovery to the U.S. Fish and Wildlife Service? Wait a minute. These are the folks who brought us wolves. They are the ones who tell us we are going to get grizzly bears whether we want them or not. They are the Bruneau snail people. They will probably list the lynx soon. They were the chief cause of the paralysis imposed by the Upper Columbia River Basin EIS study. They were the chief protagonist of the special interest group which brought a suit to shut down most of Idaho through a ruling of a judge sitting in Hawaii.

Mr. Ruesink is a pleasant fellow. He is a good, conscientious man, but he is a captive of the Federal rules. When he came to my office to discuss the grizzlies, he brought with him strong proponents of bear reintroduction from the private sector. They had little regard for those with opposite views. His agency has given short shrift to our plan for improving bull trout populations in Idaho. They chose to ignore the sound plans laid out by our agencies for recovery, in favor of imposing Federal dictates based mostly on shutting down our economy.

We, in Idaho, are proud to be part of these United States. Our Federal agencies have a difficult job. The absurdities which arise are usually caused by overzealous interpretation of Congress' desires. You are to be commended for trying to clarify and monitor the laws you have passed concerning our resources.

Yet in closing, I would like to gently remind you and our Congressmen that we work with these agencies every day and that we would appreciate being consulted before recommending such a major change in responsibility.

Let me also say, that this debate is a worthwhile effort, and I congratulate you on bringing this to Idaho. Thank you.

Mr. POMBO. Thank you very much, Governor.

I would like to thank the Governor very much for his testimony.

Governor BATT. Did you have questions? I am sorry.

Mr. POMBO. That is all right. Thank you for your testimony. It is a great deal. You brought up many of the concerns that members of this panel, members of the Resources Committee have about the legislation, many of the concerns that I think we will hear about later today, and thank you for your testimony.

Mrs. CHENOWETH. And Mr. Chairman, I want to join you in thanking the Governor for his testimony. I think that his testimony reveals, from a man who has been so even-handed in his governing of this State, even-handed with everyone. It has been very admirable. But his testimony brings out the frustration that one, who is the chief executive officer of this State, has felt.

And, Governor, I very much appreciate your time and your good testimony. Thank you very much.

Mr. POMBO. Thank you.

[The prepared statement of Governor Batt follows:]

STATEMENT OF PHILIP E. BATT, GOVERNOR, BOISE, IDAHO

Chairman Young and members of the Committee on Resources:

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Opinion

Federal intrusion into state timber sale unwelcomed

THE STAR-NEWS - THURSDAY, AUGUST 27, 1998

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service have hardly endeared themselves in the past to people trying to live, work and play in the forests around the region. Now these two agencies have decided to try and bully the State of Idaho over a state timber sale.

The state merely asked the Payette National Forest for a permit to use national forest roads to resume cutting of a timber sale along Contux Creek, near the South Fork of the Salmon River. Federal regulations says NMFS and FWS must review such permits because the South Fork is a habitat for endangered salmon runs.

The two agencies were only supposed to review how using federal roads would affect fish habitat, but they decided to hold up approval until the state changed the way it was going to cut timber on the state land. It seems the slopes of the timber sale area and the kinds of trees to be cut were not to the agencies' liking, so they put the squeeze on the state. To state officials' credit, they fought back, telling the two fisheries agencies to cut bait and paddle home. As of this week, however, the bickering had not yet abated enough to allow the logging to continue.

This is not to say NMFS and FWS might not have a point. State timber sales are a whole different breed of animal than federal sales, and there is much less independent evaluation of state sales. A good argument can be made that timber sales on state land should face some of the same scrutiny as sales on federal land, which many times are adjacent to each other.

The point with the Contux Creek timber sale, however, is that high-minded agencies should try to impose their will at a time when suspicion between the state and federal governments is high. Past federal reviews on projects in salmon habitat have produced long, expensive delays while the bureaucracy took its own sweet time in producing a review. This latest example sees the bureaucrats injecting their noses where they have no business, and it should stop.

If the federal government wants more control over state timber sales, it should say so up front. But that is exactly the opposite of the national trend toward returning power to the states, so federal managers should face facts, issue a public apology, and call off their regulatory dogs.

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ATTACHMENT 1

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Thursday, August 27, 1998
The Spokesman-Review
Spokane, Wash./Coeur d'Alene, Idaho

Panhandle clearcuts in the works again

New USFS opinion bolsters Steamboat Creek timber sale

By Ken Olsen
Staff writer

COEUR d'ALENE — A week after the regional bosses ruled that Idaho Panhandle National Forests hadn't done enough homework on 667 acres of clearcuts, the logging plan is back on the table.

The Forest Service's regional office in Missoula has decided Coeur d'Alene River Ranger District doesn't have to do a full-blown environmental impact statement to sell the 3.6 million board feet of timber on Steamboat Creek.

"An EIS is only required if the environmental effects of a future project proposal are determined to be significant," the Regional Office wrote in a letter to environmental groups protesting the sale. That's generating considerable anger from the protesters.

The Lands Council, Ecology Center and Kootenai Environmental Alliance appealed the timber sale, saying the ranger district overlooked sensitive plants, didn't consider bull trout and hadn't considered ways of restoring Steamboat Creek without using logging to fund the work.

Adequate consideration required an environmental impact statement, they contended. Originally, it appeared the environmental groups were correct.

But the Forest Service regional office issued a second opinion, saying it wasn't calling for such a study. The ranger district needed only to clarify how it was dealing with those three issues, said Steve Bateman of the Panhandle Forests.

That's been done and the ranger district has issued a new notice saying it still plans 55 clearcuts, ranging from 5 to 25 acres, for a total of 667 acres of clearcut in Steamboat Creek, a tributary of the North Fork of the Coeur d'Alene River. The clearcuts are needed to remove Douglas fir and grand fir and and allow the return of white pine and larch, Bateman said.

Otherwise, "white pine won't regenerate —

Continued: Forests/B2

Why clearcut?

The Coeur d'Alene District's 55 planned clearcuts will allow the return of white pine and larch and also will generate $500,000 in timber sale receipts to remove 38 miles of logging roads and 111 culverts, the Forest Service says.

Forests: 'Can't log your way to forest health,' opponent says

Continued from B1

there's not enough direct sunlight," he said.

The logging project also provides $500,000 in timber sale receipts to remove 38 miles of logging roads and 111 culverts — all likely culprits in future landslides, the Forest Service said.

That means that all of the logging alternatives involve restoration, contrary to the environmentalists' contention, Bateman said. As for sensitive plants and bull trout, the ranger district provided the documentation and clarification showing they had considered those issues, he said.

The environmentalists disagree.

"I would be very shocked if there was adequate documentation put together in five days' time," said Sara Folger of the Lands Council.

She also doesn't believe in cutting trees to fund stream work. "This isn't restoring the watershed, this is myth making . . . (and) a way to get the cut out and fund more logging," Folger said.

"All of the scientists I have talked to have said you can't log your way to forest health."

ATTACHMENT 2

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Thursday, August 27, 1998
The Spokesman-Review
Spokane, Wash./Coeur d'Alene, Idaho

High-tech map charts grizzly habitat

Crews walk wilderness to see whether areas could support the bears

Associated Press

SALMON, Idaho — Scientists are wearing out boots and packing electronic equipment to map potential grizzly bear habitat in the 22,000-square-mile Salmon-Selway ecosystem.

"We call it mud-and-boots field biology, combined with cutting edge technology," said Jack Hogg, science director for the Craighead Wildlife-Wildlands Institute in Missoula.

The U.S. Fish and Wildlife Service in 1995 proposed transplanting up to 50 bears into the area over a five-year period — before they knew whether the area had enough food to support a grizzly population, Hogg said.

When institute founder John J. Craighead heard of the plans, he was concerned enough to launch a multiyear study to find out what kind of vegetation the bears could find if they were released into the wild area near the Montana border.

"We were surprised at how little information was available at the time," Hogg said. "It was pretty much a black hole in terms of what we wanted to know."

In the field, Monica Pokorny and two other scientists are wrapping up three summers of "ground-truthing" the satellite imagery of the land that contains the Frank Church-River of No Return and Selway-Bitterroot wilderness areas.

Using global positioning systems, they record such things as the location, slope and plant makeup of each area.

Later, when the information is plugged into a computer model, they will be able to tell what kind of vegetation each color band represents on the satellite maps. All the data will be combined to give layered descriptions of any given place in the landscape, including plant species, elevation, animal distribution and soil type.

The Craighead Institute also intends to map the Greater Yellowstone and Northern Continental Divide ecosystems and the wild corridors that link them.

How long it all will take is anyone's guess.

"It's always possible that some agency will step in and do the job right and we won't have to do it," Hogg said.

The field crew looks for traditional grizzly foods, such as white bark pine nuts, berries and the tubers of beargrass. Pokorny said a lack of food is not the main obstacle to the reintroduction.

"I think foodwise it would work, but there's a lot of people whose lives it would affect," she said. "I think without their support it would be difficult to make it work."

'Ground-truthing'

Three scientists have spent three months traversing the Frank Church-River of No Return and Selway-Bitterroot wilderness areas to make ground-conditions and satellite imagery. They also used global positioning systems to record the soil type, slope and plant makeup of each area.

The field crew looks for traditional grizzly foods, such as white bark pine nuts, berries and the tubers of beargrass.

Mr. POMBO. I would like to call up our second panel: Mr. Thomas Kerr, Ms. Olivia James, Mr. Bob Maynard, Mr. Mark Limbaugh, and Mr. David Doeringsfeld. If you would, join us at the witness table.

Thank you for being with us today. For those of you that have not had the opportunity to testify in the past, I will explain the light system to you.

Your entire written statements will be included in the record. We ask you to summarize those and try to keep your oral statement within 5 minutes. The light system: Green is to begin, yellow is wrap it up, and red is to stop. And if you could try to stay within the 5 minutes, it would be appreciated by the Committee.

Mr. Kerr, if you are prepared, you may begin.

STATEMENT OF THOMAS KERR, COMMISSIONER, VALLEY COUNTY, IDAHO

Mr. KERR. I am Tom Kerr, Valley County Commissioner. I was born in 1937 in McCall, Idaho. I was raised there, educated there. I have a B.S. Degree in mining engineering from the University of Idaho in 1961. I have worked as a professional land surveyor in Valley County for 25 years, and I am very familiar with its people, conditions, and needs. I have served on the board of county commissioners since 1997.

My testimony not only represents the views of my colleagues on the Valley County Board of Commissioners but also those of the Idaho Association of Counties, which represents the elected officials in Idaho's 44 counties. I do not believe that my views on NMFS are in any sense unusual, but, on the contrary, are typical of those of my colleagues around this great state.

There is an ongoing project, the course of which has decisively shaped our view of the role of NMFS in fulfilling its responsibilities.

The Warren-Profile Gap Road was built prior to the establishment of the Payette National Forest and is a public right-of-way under the jurisdiction of Valley County.

In 1994, debris torrents washed out a 500-foot segment of the road along Elk Creek. During the Chicken Complex Fire, later in 1994, emergency funds were used to repair this damage. We experienced unusually heavy rainstorms during the year following the fire and high runoff caused the destruction of two bridges and seriously damaged portions of the road. Further storms and flooding caused even more damage to the road in the winter of 1996 and 1997.

In February 1997, the Valley County Commissioners met with the representatives from the Forest Service, Federal Highways, National Marine Fisheries, Fish and Wildlife Service, Idaho Department of Lands, the timber industry and private landowners to put together an action plan for the repair of the road which would be consistent with the needs of the community as well as the requirements of the regulatory agencies.

I am disappointed to report that the plan we agreed to in February 1997 has yet to come to fruition. There is no question that this failure is largely due to the inaction of the National Marine Fisheries Service.

NMFS has consistently taken an inordinate amount of time to complete the analysis necessary for repair work to proceed. When it finally does come back with its review, it asserts that it still needs more information to issue a Biological Opinion, even when it already has received sufficient data. This view is shared by our local Forest Supervisor, Dave Alexander, who wrote in his June 9, 1998 letter to Ms. Elizabeth Gaar of National Marine Fisheries Service regarding their delay in the issuance of a Biological Opinion:

> "I am very concerned that after 17 months of discussion, analysis and meetings, and almost 3 months after we jointly reached agreement which resulted in a four-party memorandum of understanding outlining the resolution of this issue, we are continuing to see delays in the issuance of a Biological Opinion."

Rather than participating throughout in an open and straightforward way, NMFS seems only to take potshots at the successive plans they want submitted for approval. It would seem logical for them to identify all of the conditions needing mitigation at one time, rather than picking a new one later.

On at least one occasion the NMFS representative admitted that he had not really read the report that was to be the subject of a meeting at NMFS's office in Boise with Federal Highways, Forest Service, Fish and Wildlife, Valley County, and a representative from Representative Chenoweth's office, most of whom had to travel to Boise for the meeting.

I was left with a clear impression that talking to the locals is a low priority indeed, and that our point of view is not being fairly represented or even taken seriously.

I observed that NMFS representatives have not had sufficient authority to speak for the agency, but we are convinced that the outcome may not be any different even if NMFS officials of sufficient stature participate in the process.

One NMFS representative said they did not really care what the cost and inconvenience of NMFS's might be to the public. As long as NMFS has an institutional culture so resistant to public scrutiny, accountability, and cooperation, it is hard to imagine that this situation could improve.

Meanwhile, the road remains unrepaired, local landowners are without access to their property, the State of Idaho has not been able to proceed with a timber sale, the Forest Service has limited access for forest management, and the United States taxpayers continue to foot the bill for more NMFS delays. The great irony is that more damage is being done while they are being delayed to the detriment of fish spawning and rearing habitat.

Therefore, the commissioners of Valley County and the Idaho Association of Counties urges you to support H.R. 4335. While we are not always thrilled and happy with the positions taken by the U.S. Fish and Wildlife Service pursuant to the Act, it will get it under one agency. And our experience has been that they are more responsive and cognizant of our concerns, participate more openly in discussions of proposed action, and are generally more timely and efficient in reaching conclusions than is the National Marine Fisheries Service.

Thank you.

Mr. POMBO. Thank you.

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

STATEMENT OF OLIVIA JAMES, PRESIDENT, THE RIVER COMPANY

Ms. JAMES. Mr. Chairman, members of the Committee, thank you for the opportunity to comment on the Endangered Species Act.

I represent The River Company, one of four outfitters who offer 1-day raft trips on the upper main Salmon River out of Stanley, Idaho. Stanley has a population of 69 and is almost totally dependent on tourism centered on river activities. We four outfitters, all together, do about a million dollars of business a season. We are small. Since Snake River chinook salmon were listed under the Endangered Species Act in 1992, we have been subjected to abuse of power, mismanagement, and overregulation by the U.S. Forest Service and National Marine Fisheries Service.

Five-year permits issued in August 1996 require that as soon as chinook salmon are seen exhibiting spawning behavior on August 21st, whichever is sooner, anywhere in the navigable 30-mile stretch of the Salmon River in the Sawtooth National Recreation Area, all floatboaters, commercial and private, must portage a half-mile section where salmon historically have nests or redds.

We have to take out 2 miles above the federally funded official takeout through my company's leased picnic site. What is normally an eight-mile trip is shortened to five-and-a-half. While guests are getting a shorter river trip for their money, outfitters have to add vehicles and personnel to execute the portage and carry the rafts up the steep embankment at the improvised takeout. Our costs are further increased by funding federally required monitoring.

Outfitters and the public are subject to a penalty point system for violating regulations. This resulted in the river being closed to public floating in mid-August in both 1996 and 1997.

Because new permits were not accompanied by a NMFS Biological Opinion and Incidental Take Statement, as was the case in years prior, as soon as a salmon moves off its nest, because of a passing floatboat, the river can be closed. In 1997, the river was closed on September 10 because one fish moved off its redd twice, both times for less than 15 minutes.

Previously, NMFS defined a "take" as a single fish moving off its nest three times, or eight different fish once each, at a distance of 10 feet or more for 20 minutes or more. Now, "take" is no longer applicable. No disturbance is allowed.

There is no documented evidence that displacement of listed chinook from a redd from more than 20 minutes is related to diminished spawning success or a diminished reproductive or survival rate for the species.

To the contrary, the available scientific evidence for other chinook salmon indicates that spawning salmon may leave their redds for up to 8 hours a day with no adverse effects on spawning success as measured by egg retention in female spawners.

We four tiny outfitters are victims of "over protection" of a fish listed under the Endangered Species Act. Instead of using the best

scientific and commercial data available, the Federal agencies have relied on casual observations of redd displacement as justification for decisions to restrict and even prohibit the use of the river by floatboaters.

Regulations governing floatboats have been based on two arbitrary assumptions: one, that floatboats pose a threat to endangered chinook salmon; and two, that the presence of floatboats will discourage salmon from spawning.

In 1997, salmon spawned both where we portaged and where we rafted. This indicates that the original assumptions are false. Instead of using this opportunity to measure effects of float boating on salmon spawning, the Forest Service instead elected to close the river to floatboating.

In general, the NMFS has taken a very conservative approach to the assignment of incidental take to habitat-related projects. Little or no incidental take is permissible for most Federal habitat projects, including floating on the upper Salmon River; while up to 86 percent direct mortality of juvenile salmon, is permissible in the hydropower system.

In other words, aggressive regulatory measures are being taken against activities least limiting fish, while relatively passive measures are being taken against those most limiting fish.

The Idaho Department of Fish and Game views the extreme restrictions on floating resulting from U.S. Forest Service consultation with NMFS as biologically inappropriate and economically and socially unfair. They view the current restriction on the use of floatboats in salmon spawning habitat as unnecessary given the minimal or nonexistent effects of floating on salmon that they have observed.

The NMFS and U.S. Forest Service facile resort to the precept that floatboating disturbance leads to salmon mortality, if taken to its logical extreme, could allow these agencies to close the upper Salmon River and the entire Sawtooth National Recreational Area to recreational use altogether. Clearly, this was not Congress' intent when it established the Sawtooth National Recreation Area to, among other things, "provide for the enhancement of recreational values."

Thank you.

Mr. POMBO. Thank you.

[The prepared statement of Ms. James may be found at end of hearing.]

STATEMENT OF ROBERT A. MAYNARD, PERKINS COIE, LLP

Mr. MAYNARD. Mr. Chairman and members of the Committee, thank you for inviting me to speak with you today.

My name is Robert A. Maynard. I am an attorney practicing here in Boise, Idaho with the Perkins Coie law firm. I have given you my background in my written statement. I have practiced law in the environmental/natural resources arena for many years. My experience includes Endangered Species Act issues and working with the National Marine Fisheries Service and the Fish and Wildlife Service.

A good bit of my recent private practice is focused on habitat conservation agreements which are negotiated between private land-

owners and the Services under Section 10 of the ESA. I have also been working with many people with concerns about something called essential fish habitat, which is a NMFS program based on some 1996 amendments to a statute known as the Magnuson-Stevens Act.

NMFS's responsibilities and actions regarding essential fish habitat are quite relevant to NMFS and the Fish and Wildlife Service Endangered Species Act, or ESA, responsibilities. I want to focus on this connection in my remarks.

H.R. 4335, to me, seems clearly directed at decreasing complexity and potential for conflicts between agencies in implementing the ESA. Currently, completing consultation under Section 7 and other procedures under the ESA can be quite time consuming. The complexity and time involved can be greater when both NMFS and the Fish and Wildlife Service have ESA jurisdiction regarding a particular project or program.

We have this overlapping jurisdiction in the Columbia and Snake River basins, as you have all mentioned. For instance, NMFS's responsibility for salmon stocks and Fish and Wildlife Service responsibility for bull trout. We have got that just north of here in Bear Valley. I have mentioned some other examples in my written statement.

Conflicts between agencies and substantial delays in completing these processes can be very costly to the government, businesses, and citizens.

So consolidating ESA administrative responsibilities in the Department of Interior, as proposed in H.R. 4335, could simplifiy ESA implementation and increase its cost effectiveness. However, this would not necessarily eliminate the Department of Commerce's involvement in salmon and other fish and wildlife issues.

For example, the Department of Commerce and NMFS would continue to have substantial responsibilities with respect to salmon under the Magnuson-Stevens Act. Under this statute or by virtue of fisheries expertise, NMFS could be expected to remain a consulting or cooperating agency in National Environmental Policy Act and other procedures carried out by Federal action agencies such as the Forest Service for various activities with the potential to impact salmon habitat.

On this point, the "essential fish habitat" program is particularly important. The Magnuson-Stevens Act primarily concerns management of commercial marine or ocean fisheries in offshore waters. There are several regional fishery management councils that oversee that with the help of NMFS.

The essential fish habitat—or EFH is the acronym I use—amendments to the statute provide for the councils to identify essential fish habitat for fish species included in their fishery management plans.

Federal agencies are thereafter required to consult with NMFS regarding federally funded or authorized activities which may adversely affect this identified EFH. There are some further provisions for commenting on State or Federal actions and recommending habitat conversation measures. Council-managed fish species include Pacific salmon.

NMFS EFH regulations and draft recommendations to fishery management councils take an extremely broad approach to identifying EFH and activities with the potential to adversely affect EFH. Thus far, it appears that virtually all habitat is being proposed for identification as essential.

For example, draft recommendations define EFH for Pacific coast salmon to include all fresh water habitat currently or historically accessible to salmon in Washington, Oregon, Idaho, and California, as well as coastal waters along the west coast.

The NMFS regulations state that EFH will always be greater than or equal to ESA aquatic critical habitat for any council-managed fish species listed under the ESA. The regulations furthermore set out an elaborate consultation process which can be compared to the ESA Section 7 consultation process.

And this brings me to my basic point with respect to ESA implementation and H.R. 4335.

In the event that NMFS ESA jurisdiction over salmon species is removed, NMFS could still be administering a consultation process as cumbersome as the Section 7 process over a geographic area as broad or broader than the reach of the ESA. So the process could be quite redundant with respect to activities to which the ESA applies.

In my written statement, I have included the concern that many people in affected businesses and industries have about this approach that they consider unnecessarily broad, costly, and really counterproductive to implementing the Magnuson-Stevens Act and fish protection in general.

There has been concern expressed in the Senate Appropriations Committee's report about NMFS exceeding the intent of Congress under the Magnuson-Stevens Act.

And to close, I would simply state that an effort to consolidate the ESA functions in the Department of the Interior and increase cost-effectiveness of ESA implementation should also address NMFS ESA jurisdiction and actions under the Magnuson-Stevens Act. If problems that are arising with EFH implementation are not dealt with, potential cost savings and other efficiencies of ESA consolidation may be substantially reduced.

Thank you.

Mr. POMBO. Thank you.

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

STATEMENT OF MARK LIMBAUGH, EXECUTIVE DIRECTOR, PAYETTE RIVER WATER USERS ASSOCIATION, INC.

Mr. LIMBAUGH. My name is Mark Limbaugh. I am a fourth-generation Idaho farmer. And I am also the Watermaster on the Payette River system in Idaho. I deliver over 150,000 acres of irrigation water, both natural flow and stored water, under State water law. And today I am representing the Payette River Water Users Association, an association that represents those 150,000 acres and farmers that own and operate those acres as their executive director.

First of all, I would like to enter into the testimony, if there is no objection, Mr. Chairman, the testimony of Mr. Sherl Chapman,

the Idaho Waters Users Association Executive Director, and also Mr. Dewitt Moss, a member of the Committee of Nine and a known fish expert in Idaho.

Mr. POMBO. Without objection, thank you.

[The prepared statement of Ms. Chapman may be found at end of hearing.]

Mr. LIMBAUGH. Mr. Chairman, members of the Committee, I appreciate the opportunity to talk to you today.

Currently, under NMFS implementation of the Endangered Species Act, our Idaho water rights are under attack. Idaho currently provides between 2 and 2.8 million acre-feet of water to fish down the lower Snake River under the current NMFS flow augmentation flow targets program.

Currently, however, the United States Bureau of Reclamation, under the direction of the Corps of Engineers and NMFS, is studying adding an additional million acre-feet of water from Idaho to augment flows in that reach. However, there are very little biological benefits that support this misuse of Idaho water.

Target flows on the lower Snake River are artificially set too high, in my opinion. Current studies indicate that hydrologically those flows cannot be met with all the water that is taken during average or dry years. But yet, NMFS still studies recovery methods that require Idaho water.

During the past 100 years, Idaho irrigation development has not appreciably affected the flows of the lower Snake River. The trend lines show a modest decrease in flows over the hundred-year period in the spring and a modest increase in flows during the summer critical time period that NMFS is trying to meet these target flows.

The million acre-feet, if obtained by the Federal Government, would only meet target flows 35 percent of the time.

Now, what is the impact of that million-acre feet coming out of Idaho, if, in fact, that is the route that NMFS wants to take in their 1999 Biological Opinion? Between $40 million and $70 million in lost direct net economic impact to the state. That does not include secondary economic impact, such as food processing, other jobs, and tax-base related activities.

Between 200,000 and 500,000 acres of productive Idaho farmland would be dried up forever. The remaining acres would suffer shortages in average and dry years of up to 700,000 acre-feet of water. Recreation would be impacted as reservoirs were drawn down every year down to the mud flats that we don't see right now. But we will see if the additional million acre-feet is provided by Idaho.

White water river recreation would be limited because of the increased flows in that time period. Obviously, resident fisheries and water quality in our reservoirs in Idaho would be extremely impacted.

Well, what is the benefit of this flow augmentation? Flow augmentation currently only provides one-tenth of one mile per hour increase in velocity. Flow survival studies do not show any significant improvement. Currently, we only have a 0.4 to 0.6 percent smolt adult return ratios. We need to improve those between 250 and 400 percent just to maintain current stocks.

While NMFS studies the extremes of draining Idaho of its water or taking out dams, other measures have been ignored. Predators

such as the Rice Island and Caspian terns eat between 10 and 15 million smolts. And that is only one colony out of eight colonies that are predators to the smolt salmon. Pinnipeds injure or kill up to 70 percent of our returning adults.

And while NMFS protects redds, as Ms. James suggests, in an unconscionable way, we still allowed in 1997 under an OSU, Oregon State University, study up to 1 million fall chinook to be harvested while only 360,000 spring, summer, and fall chinook collectively made it to Bonneville Dam. So this is the result of an agency that does not have the management and is not accountable for what they are doing.

In closing, using Idaho water to recover salmon and steelhead will not work. Irrigation is the reason for an abundance of food supply in this nation. Irrigated agriculture silently and reliably provides up to $60 billion in western income, and Idaho is a big part of that.

Regardless of what happens to H.R. 4335, we cannot allow Federal agencies to overturn State water law, undermine Idaho's water supply, damage our food supply, and revert our productive valleys that you see here today back to the dusty, barren, sage-covered lands that our forefathers found here over a hundred years ago.

Thank you.

Mr. POMBO. Thank you.

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

STATEMENT OF DAVID DOERINGSFELD, MANAGER, PORT OF LEWISTON

Mr. DOERINGSFELD. Mr. Chairman, members of the House Resources Committee, on behalf of the Idaho seaport, Port of Lewiston, we appreciate the opportunity to speak with you today.

Implementation of the Endangered Species Act was initially carried out with the best of intentions. However, complex and often conflicting requirements of ESA have made it almost impossible to produce a fish recovery plan which can be implemented and which produces win-win solutions.

Yesterday, you heard from one of the ports on the Mid-Columbia River concerning the implementation of ESA by NMFS. I would like to echo some of those concerns.

Once a species is listed as endangered, the only option available is to develop a recovery plan without any regard to cost, social, or economic impacts. While the people of the Northwest want to save anadromous fish, they are not willing to do so at any cost, and they don't want to be part of empty gestures or false promises for the fish.

Our Northwest lifestyle is built around the remarkable Columbia/Snake River System. The many benefits we have received have shaped our communities, our culture, and are a vital part of the Northwest economy.

Approximately 90 percent of our region's agricultural products are exported. We all rely on the Northwest's unique integrated system of growing, processing, storing, and transporting food for export. Losing one link in the chain would have serious effects and our lives would be drastically different without it.

Over 40 percent of all the wheat grown in the United States is exported through the Columbia/Snake River System. River barges carry essential cargo 465 miles from Lewiston, Idaho to Astoria, Oregon, stopping at 25 ports along the way. This extraordinary river system creates a safe river passage and has made the Pacific Northwest the market basket of the world.

Yet today, we have a black cloud hanging over the economic future of the Pacific Northwest and NMFS appears to be the only agency in charge of whether we will have prosperity or disaster.

When ESA gives a single Federal agency the power to control public and private land use, throw out state conservation plans, and dictate the amount of water that flows in our rivers, common sense would indicate that we have gone too far.

I believe that we need open discussions in which to develop a river governance framework whereby the region retains control over ESA implementation. The Governors of Idaho, Montana, Oregon, and Washington are currently exploring river governance options. We are hopeful that a broadened Northwest Power Planning Council will be given the authority to oversee ESA implementation.

I don't pretend to be an expert on fish, but if we have learned anything by now, it is that there is no magic solution to the fish problems in the Northwest. Fish runs all along the West Coast are in decline, not just the fish that encounter dams. The people in the Northwest don't like lose-lose schemes like destroying dams or massive flow augmentation, especially when it is not known whether these efforts would return even a single fish.

When we consider whether transferring ESA enforcement responsibilities from one Federal agency to another, as outlined in H.R. 4335, it is difficult to ascertain which agency would be more effective since agency control seems to make sense. Currently, we have Federal biologists from NMFS, U.S. Fish and Wildlife Service, and the Corps all working on fish recovery. Centralizing the authority and expertise to provide a clear mission and reduce conflicting goals.

So here is the bottom line in this whole debate. Along with other Northwesterners, we want to preserve the things we value most about living in the Pacific Northwest; a rural culture and a strong regional economy capable of supporting families and communities for years to come.

Our dams are a vital link in the structure of the Northwest's economy. We have grown to depend on them to provide dependable low-cost power to our homes, deliver goods to world markets, protect ourselves from floods, and provide recreational opportunities.

We simply want common-sense solutions that really work. We deserve a win-win solution for everyone connected with the river, one that allows the fish to thrive but preserves the benefits of our remarkable river system for future generations.

Thank you very much.

Mr. POMBO. Thank you.

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

Mr. POMBO. Mrs. Chenoweth?

Mrs. CHENOWETH. Thank you, Mr. Chairman. I wanted to ask Tom Kerr that you mentioned in your testimony the Chicken Creek

Fire from several years ago. Wasn't this one of the several large fires on the Payette last year? Or what year did that occur?

Mr. KERR. Representative, that was in 1964 with the Chicken Complex. We had the Savage Creek fire and the Chicken Complex that burned through that area. That was one of them. The 1994 was the one that burned up the Corral. The Blackwell Fire and the Chicken Complex was all in that fire. That is part of what precipitated the massive erosion down there.

Mrs. CHENOWETH. Do you know if NMFS was involved in any of the decisions while the fire was burning?

Mr. KERR. NMFS would not let them, it is my understanding, use borate or any other control systems on that fire down in the main south fork of the Salmon, because it would be injurious to the fish, notwithstanding the fact that several hundred thousand tons of material washed off after the fire into the stream.

Mrs. CHENOWETH. What happened to the elk and the deer and the other critters?

Mr. KERR. I didn't see too many down there.

Mrs. CHENOWETH. What was the final size of the fires?

Mr. KERR. The final size of the fires was supposedly, with the Blackwell and the Corral fire—I don't think it joined up with the Chicken, but it was the largest fire in the United States.

Mrs. CHENOWETH. Do you know how much timber was burned and how much of that burned timber has been salvaged?

Mr. KERR. Very little of it has been salvaged due to the delays. I don't know how much was actually destroyed. I do know that as a member of the Big Payette Water Quality Council, we were worried about Payette Lake quality. And while we were in the middle of the study, the Blackwell and Corral fire burned up over 52 percent of the watershed of the lake, which really didn't help the water quality too much.

Mrs. CHENOWETH. Thank you. Thank you, Commissioner.

I wanted to ask Mr. Mark Limbaugh, you mentioned a study done by the Idaho Department of Water Resources Director, Karl Dreher, showing the flow argumentation has done nothing and can do nothing to recover the fish. Why do you believe that NMFS continues with their thinking, I believe faulty, of the benefits of flow augmentation?

Mr. LIMBAUGH. You know, I don't really understand it either, Congresswoman. You know, Karl Dreher, our director, did do a study. And in his opinion, the declines in the salmon populations cannot be the result of changes in the Snake River flows as measured at the lower Granite Dam because the flows haven't changed.

NMFS is continuing to use Idaho water because we are probably the easiest target. We don't understand how our water can help when it only provides the very incremental hydrologically insignificant velocity increases that it does. However, the economic impacts, as you can tell by my testimony, are unconscionable for our state.

Currently, we are missing out on opportunities to use that very same water in this State for recharge of our aquifers, for our municipal and industrial uses that are getting very close to running out of supply and all because of NMFS continued efforts to include Idaho water in any kind of a recovery plan.

Mrs. CHENOWETH. Mark, you state that you feel NMFS flow augmentation policies really are threatening food production and food processing, which contribute, I think you said in your testimony, about $60 billion annually to the western United States besides helping feed the people of the world. Do you think the average citizen really understands these threats to the very fabric of our nation?

Mr. LIMBAUGH. Well, we are very concerned, because irrigation is the reason why we have such a reliable and sustainable food supply. Irrigation provides us the stability to grow any crop in the West that is, you know, suitable for a certain climate. And most of the fresh fruits and vegetables that we rely on and need for the 21st century for the very health of our Nation are grown in the West under irrigated projects, because of that reliability, because of that sustainability.

And so, consequently, to attack irrigation attacks our food supply. Food does come from Albertson's. It comes from our farms. And irrigation is the main ingredient that makes it possible to grow any kind of crop at all in the West.

Mrs. CHENOWETH. Thank you very much.

Mr. POMBO. Mr. Romero-Barceló?

Mr. ROMERO-BARCELÓ. Thank you very much, Mr. Chairman.

Mr. Limbaugh, do you know about drip irrigation?

Mr. LIMBAUGH. Yes, I do.

Mr. ROMERO-BARCELÓ. What kind of irrigation do you use here?

Mr. LIMBAUGH. Irrigation techniques in Idaho range from drip to pivots and overhead sprinklers, and also, there are some gravity flows.

Mr. ROMERO-BARCELÓ. The drip irrigation consumes very little water.

Mr. LIMBAUGH. The drip irrigation consumes very little water. However, economically, it is infeasible because of the price of crops. And if that price goes up, obviously, the price goes up for the consumer as well. So, you know, really, the use of water is probably the most efficient economical use and it actually passes right through to the consumer, the savings that Idaho and other irrigation areas provide.

Mr. ROMERO-BARCELÓ. Except for one thing; the drip irrigation keeps, maintains the topsoil better and doesn't allow the washing away of soil as other types of irrigation do.

Mr. LIMBAUGH. Possibly. However, we are coming up and using more and more management practices in our basin to provide for cleaner water allowing the topsoil to be left on the field. And that is very easy to do with new technology.

Mr. ROMERO-BARCELÓ. I wasn't aware of that. The other thing is, I know that the drip irrigation was, I think, basically developed in Israel where they turned the desert into a farmlands and very, very profitable farmlands. That is why I was just asking whether that was being used here. Your answer is that yes, it is being used?

Mr. LIMBAUGH. Yes, it is.

Mr. ROMERO-BARCELÓ. But it is not economically feasible for some farmers?

Mr. LIMBAUGH. It is not wide-spread, no.

Mr. ROMERO-BARCELÓ. Mr. Maynard, I want to make sure that I know what your position is regarding the bill with all of the jurisdiction of the Endangered Species Act under the Fish and Wildlife Service instead of where it is now. Are you in favor of that or do you have your doubts about that? And if you do have doubts, why is it that you are in favor?

Mr. MAYNARD. Thank you, Congressman Romero-Barceló. I don't have a position on the bill. I think it has merit. There are a lot of issues that need to be addressed. And to make it work, if we are going to get to a truly consolidated, more cost-effective ESA approach that is going to be by consolidating functions in one department, in particular this essential fish habitat program needs to be.

Mr. ROMERO-BARCELÓ. But you mentioned some of the jurisdiction that the management services still have, which they still have under this bill. Is that correct?

Mr. MAYNARD. Yes. The basic point would be, you'd take away NMFS's ESA consultation and other responsibilities and they would be still be there at the table with this essential fish habitat consultation in the same areas on the same activities.

Mr. ROMERO-BARCELÓ. If they were going to be passed over the Fish and Wildlife Service, how do you suggest that that problem be solved? Does it not have a solution?

Mr. MAYNARD. Well, in terms of the essential fish habitat responsibilities in the Magnuson-Stevens Act, you could look at, basically, bringing that program in to where it focused more on offshore marine habitat and consultation regarding that, rather than activities that are hundreds of miles inland that do not concern commercial fishing.

If ESA consultation covers those activities, an exclusion, to avoid redundancy, that would avoid duplication from the EFH program might work. You might treat it that way. If someone was doing the ESA, the consultation, there is nothing more you need to do for this Magnuson-Stevens Act.

Mr. ROMERO-BARCELÓ. So where would you suggest certain changes to this bill in order to prevent what you are just indicating?

Mr. MAYNARD. I think that sort of thing should be considered. I don't have specific suggestions today.

Mr. ROMERO-BARCELÓ. Could you come up with the some specific suggestions later on?

Mr. MAYNARD. I could sure try.

Mr. ROMERO-BARCELÓ. All right. I would ask how much of a timeframe would you like to come up with some kind of a suggestion?

Mr. MAYNARD. Give me a couple of weeks at least.

Mr. ROMERO-BARCELÓ. Fine. A month is all right too. Thank you very much.

[The information referred to follows:]

DRAFT NOTIFICATION OF H.R. 4335, A BILL TO TRANSFER TO THE SECRETARY OF THE INTERIOR THE FUNCTIONS OF THE SECRETARY OF COMMERCE AND THE NATIONAL MARINE FISHERIES SERVICE UNDER THE ENDANGERED SPECIES ACT OF 1973

Insert the following after SEC. 2:

SEC. 3 ENDANGERED SPECIES ACT PREEMPTION WHERE APPLICABLE OF MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT ESSENTIAL FISH HABITAT PROVISIONS

(a) Any essential fish habitat designated for a fish species pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall not include any critical habitat designated for the same species pursuant to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

(b) Any action for which a formal or informal consultation or conference is completed pursuant to section 7(a) of the Endangered Species Act of 1973 (16 U.S 1536(a)) covering a fish species included in a fishery management plan pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) shall not be subject to any essential fish habitat consultation, comment, coordination, or recommendation regarding the same species pursuant to the Magnuson-Stevens Fishery Conservation and Management Act

(c) For purposes of this section, the terms "action" and "species," shall have the same meaning as in the Endangered Species Act of 1973.

Mr. POMBO. Mr. Crapo?

Mr. CRAPO. Thank you, Mr. Chairman. Mr. Maynard, I will stick with you for a minute. I was interested in your testimony about the essential fish habitat. And perhaps you said this, but I am not quite clear on it. Is the function of the essential fish habitat program, which is under the Magnuson-Stevens Act. Correct?

Mr. MAYNARD. That is correct.

Mr. CRAPO. Is that duplicative of the Endangered Species Act studies or programs, or is it supplemental? See what I am asking?

Mr. MAYNARD. As currently proposed, and in the implementing regulations, it appears to me to be duplicative and kind of an add-on to such procedures as ESA's Section 7 consultation for activities that might affect salmon in the Snake River Basin, for instance. That you would be doing your ESA consultation, and then you would have to do additional documentation and procedures to get through this EFH consultation process, a document called an EFH assessment, which is similar to biological assessments that has additional requirements. So it is duplicative and adds to.

Mr. CRAPO. So in terms of trying to address the question you've raised, it seems to me there are two obvious approaches. One would be to eliminate the EFH requirements, or the other would be to consolidate the EFH requirements under the Endangered Species Act and have that all be managed by one entity. Am I correct in perceiving it that way? Are those two obvious approaches? And if so, do you have a preference between either of those approaches?

Mr. MAYNARD. I think those are each an option. Just thinking today, I do not think that giving an essential fish habitat function to the Fish and Wildlife Service—a Magnuson-Stevens Act responsibility to the Fish and Wildlife Service makes a lot of sense.

Mr. CRAPO. You don't think that does?

Mr. MAYNARD. It doesn't strike me as a logical division of labor or authority.

Mr. CRAPO. So that should stay with the National Marine Fisheries Service, if it stays?

Mr. MAYNARD. I think so. And therefore, it would make more sense to make sure that the NMFS Magnuson-Stevens Act, EFH responsibility doesn't overlap with inland terrestrial ESA responsibilities. But if it stops at the coast, it should be workable. If it is going to extend farther than that, then there ought to be an ef-

fort at just avoiding duplication. That if you do something with Fish and Wildlife Service under the ESA, that is good enough.

Mr. CRAPO. All right. Thank you.

Mr. Limbaugh, again, you may have covered this in your testimony, but I want to understand it correctly. Could you describe to me just geographically where the water users that you represent operate?

Mr. LIMBAUGH. OK. Mr. Crapo, in the Payette River Valley, we go from McCall on down to the mouth of the Payette and the Snake River. The majority of the intensive farm efforts are in the lower valley. But we also represent irrigators up on the north fork and the south fork of the Payette River System. So they are mostly livestock raisers and hay producers.

Mr. CRAPO. Now, are you aware of any studies—I know there have been some studies that have occurred over time recently about what the impact of taking another million acre-feet of water for water augmentation would do to irrigation, for example. Are you aware of any recent studies that would indicate what kind of impact that would have in the area you would represent here today?

Mr. LIMBAUGH. Currently, the only study that we have been looking at—and, of course, it is such a absurd notion, that the only study that has been done on this is the United States Bureau of Reclamation that they are continuing to complete now.

And the updates that we have had show that Cascade Reservoir, which is a water quality limited reservoir, and also provides about, oh, I would say, about 300,000 acre-feet of contracted storage space to our lower valleys, basically, would be disseminated every year because of that million acre-feet drop.

Plus the fact that by reducing the number of contracted storage space in that reservoir, it would reduce the amount of water available for the existing farmers. And that would result in some fallowing or drying up of farm ground in our valleys.

Mr. CRAPO. So do I understand you correctly that you would expect at least 300,000 acre-feet of water to be diverted to irrigation purposes?

Mr. LIMBAUGH. At least for that particular use, yes. And the reason why you look at the numbers and the reason why the Bureau is setting such huge numbers is because of reliability. If they are going to provide a million acre-feet every year, then they have to, you know, basically, get quite a little bit more water secured than that amount of storage and natural flows in order to provide that amount of water on an annual basis.

Mr. CRAPO. I see my time is up. If I could just ask one more quick question, Mr. Chairman? Do you know of any correlation in terms of how many acres of ground has to leave production for each acre-foot of water that is lost in your region?

Mr. LIMBAUGH. You know, if you are talking storage space, like I say, we have storage space that protects us during dry years and so, you know, we don't use all of our storage space every year because of that. But we have used all of it in recent history. In 1994 and 1992, we have used all of our storage space. But basically, in order to provide, let's say, 300,000 acre-feet of water from the

Payette basin, you would probably be looking at between 100,000 and 120,000 acres of fallowed ground, in my opinion.

Mr. CRAPO. All right. Thank you.

Mr. POMBO. Mr. Doeringsfeld, how many tons of products do you ship in and out of the Port of Lewiston every year?

Mr. DOERINGSFELD. Out of the Port of Lewiston we move approximately 800,000 tons of wheat barley and approximately 18,000 TEUs, or containers, out of the port.

Mr. POMBO. How many containers?

Mr. DOERINGSFELD. Containers—it is not measured by tonnage. It is measured by compound measures, TEUs, 20-foot equivalent units. And we move approximately 18,000 containers out of the port.

Mr. POMBO. And that is shipping out. What about coming in?

Mr. DOERINGSFELD. Coming in—out of the Port of Lewiston, mainly, what comes up the river visits the Port of Whitman County, which is a port within about a 5-mile radius of the Port of Lewiston. So what we have inbound from the Port of Lewiston is really almost non-existent.

For instance, if you look at the tonnage of wheat and barley that moved out of the port, and then you looked at those containers, that represents about a $12.5 million transportation savings that goes back to the—mainly to the family farmers within that area.

Mr. POMBO. And the 18,000 containers, those are the ocean shipping containers that are used.

Mr. DOERINGSFELD. That is correct.

Mr. POMBO. Thank you.

Ms. James, you talked about, in your testimony, the fish being scared off their nests when the floatboats go by. How do you know?

Ms. JAMES. How do we know that the floatboats are the reason that the fish move?

Mr. POMBO. Well, do you actually see the fish scared away?

Ms. JAMES. Well, you see the fish move. But if you watch the fish from the road when there aren't any boats, they move around too. So no one knows that they are moving because a floatboat went by. That is not possible to prove.

Mr. POMBO. I know, and that is kind of why I am asking.

Ms. JAMES. But that is what the restrictions are based on, the fact that if a floatboat goes by and the fish moves, it is assumed that we caused that fish to move. And in the old days when we had a "take" statement from NMFS, it was OK as long as the fish returned within 20 minutes. But now that we don't have any "take" statement, it isn't OK if the fish moves.

Mr. POMBO. Do you have somebody standing there watching?

Ms. JAMES. Oh, yes. The Forest Service is there all the time.

Mr. POMBO. Every time you send a boat out, somebody is standing there watching?

Ms. JAMES. Supposedly. They feel compelled to watch every redd when there is a boat on the water.

Mr. POMBO. Are you serious?

Ms. JAMES. Whether it is an outfitter or a private citizen.

Mr. POMBO. We really have somebody there watching as you go by?

Ms. JAMES. Yes. And not only that, we have to pay—we outfitters have to pay the Idaho Department of Fish and Game to watch also. Because we aren't legally allowed to pay the Forest Service, which is what they wanted. It is now written in the permits. And NMFS insists—and NMFS is there too sometimes—that we watch to make sure that these fish are not disturbed.

Mr. POMBO. You said that you have an 8-mile——

Ms. JAMES. That is all we float, 8 miles.

Mr. POMBO. An 8-mile run.

Ms. JAMES. Yeah.

Mr. POMBO. And there is somebody who stands at every point——

Ms. JAMES. At every redd.

Mr. POMBO. At every redd?

Ms. JAMES. Well, you see, most of the redds are in this half-mile section that we portage.

Mr. POMBO. What if there is one outside of that half-mile——

Ms. JAMES. Well, then they take special notice of that one. Because if the fish moves when we float, then they close the river. That is what happened last year, because that is not allowed. Fish aren't allowed to move because of floatboats.

Mr. POMBO. And does anybody stand there when the boats aren't going by?

Ms. JAMES. I don't think so. But we also are paying for a single-wing aircraft to fly up the river, the whole 30-mile stretch, once a week from August 1st to August 15th and twice a week after August 15th, to look for redds that might not have been spotted by people standing on the banks. And the outfitters have to pay for that too.

Mr. POMBO. Can they see them from an airplane——

Ms. JAMES. They can see them better from an airplane. And the reason they decided this is because last year they did their annual air survey in September, which they always do, to count the number of redds in the river. And they discovered they'd missed one. So now the Forest Service and/or NMFS has decided that the only way to be sure we have got every redd is to have twice a week aircraft spotting.

Mr. POMBO. I am going to have to get out there to see one of these next time I come.

I know my time is almost up. I wanted to ask Mr. Kerr a question.

In your prepared testimony you talk about February 1997 the Valley County Commission met with representatives of the U.S. Forest Service, Federal Highway Administration, National Marine Fisheries, U.S. Fish and Wildlife Service, Idaho Department of Lands, the timber industry, and private landowners.

You go on to say that you put together a plan for the rebuilding of this road and maintenance of this road. You state that because of the inaction of the National Marine Fisheries Service between February 1997 to now you have not done anything.

Am I to understand from this testimony that everyone else who was a party to this had agreed to it?

Mr. KERR. When we were at the meeting, it was—all of them were there. It was facilitated by the United States Forest Service.

There was a chart made up of schedules, of deadlines that were to be met by each agency, and everything. I am not sure if every agency met their deadlines and schedules.

But I do know that a primary reason that they did not was everything that they submitted that went to NMFS was either ignored—the only way we got back to a meeting with NMFS was the Federal Highways and Forest Service forced a meeting that I mentioned in Boise that forced them back to the table to sit down and talk about this. And this was almost a year and a half later.

Mr. POMBO. So the only thing stopping you from doing the work on this particular road at this point is NMFS?

Mr. KERR. Basically, yes.

Mr. POMBO. All right. Thank you.

Mr. KERR. It is so difficult to get an answer out of them. When you do answer them, then they come back with something else. And it just seems like a delaying tactic. I am not sure whether if it was all under the U.S. Fish and Wildlife if the results would be any different, but we feel that it would be quicker.

Mr. POMBO. I don't know if it would be any different or not. It is just that we do have oversight responsibility in a lot of the things that—a lot of the problems that we end up dealing with are problems within the bureaucracy. And if this is a particular problem within the bureaucracy, it is something apparently Congresswoman Chenoweth is aware of. And it is something, I think, that bears further study to find out what exactly is going on. But thank you.

I want to thank this panel. I am going to excuse you. But I will say there may be further questions that the Committee has. Those will be submitted to you in writing. You can respond in writing in a timely fashion. Your response will be included in the hearing record. Thank you.

[The information referred to may be found at end of hearing.]

Mr. POMBO. I would like to call up the third panel: Mr. Tom Stuart, Mr. Mark Pollot, Mr. Jerry Klemm, and Mr. Dell Raybould.

Thank you for joining us. I would like to welcome this panel here today. I believe you all heard the instructions in terms of the time limit. Your entire written testimonies will also be included in the record. I appreciate you all being here today.

Mr. Stuart, you may begin.

STATEMENT OF TOM STUART, BOARD PRESIDENT, IDAHO RIVERS UNITED

Mr. STUART. Mr. Chairman, thank you very much for coming to our beautiful State, and I hope you enjoy your visit.

Mr. POMBO. I always enjoy it when I come here.

Mr. STUART. My name is Tom Stuart. I am the Board President of Idaho Rivers United. I also own a business in the Stanley Basin on the Salmon River. I think it is remarkable that from a town of 69 people, we have two representatives here today, with my friend Olivia James. I really appreciate that. I had no idea we had such influence on this Committee. It is remarkable.

Today, I speak with the same sort of frustration I have heard from many of the other speakers. I also speak on behalf of a significant portion of the conservation community in Idaho, about 2,000

members of Idaho Rivers United, and another 5,000 members and club members of the Idaho Wildlife Federation.

Both of our organizations, I should point out to you, along with national organizations like Trout Unlimited, the National Wildlife Federation, America Rivers and others, have already endorsed the retirement of four unnecessary dams on the lower Snake River to restore Idaho salmon. We believe that the science is now clear.

We believe these dams produce a small amount of what is surplus power. We believe that these dams also provide no flood control since they are run-of-the-river projects. We believe that there are alternatives to move commerce from ports in the Lewiston and Clarkston region that should be exercised.

Now, H.R. 4335 is certainly about the ESA and the roles of the NMFS and the Fish and Wildlife Service. But I think we must all be honest with ourselves today. We realize that the underlying issue is really the salmon and steelhead crisis in the Northwest. And the central issue in that crisis is whether or not to mothball four unnecessary dams on the lower Snake River between Lewiston and Pasco.

First, let me discuss briefly the value of salmon restoration to our region. It is a huge economic resource for us that I believe is your responsibility as well as mine. As of 1988, the value of sport and commercial salmon fishing in this region accounted for 62,000 jobs, and a $1.2 billion annual contribution to the region's economy.

In Idaho, we don't get a lot of that, but with our remnant steelhead fishery we still have about $90 million worth of contribution annually and 2,700 jobs. We, in the fishing community in Idaho, the business community, have already suffered a great deal with the loss of chinook fishing. We have had no general chinook salmon fishing season in Idaho since 1978, with an estimated loss of about 1,800 jobs and about $60 million per year the result.

In a recent Idaho Statesman article about the little town of Salmon, Idaho, one gentleman was quoted as saying, "We lost our thriving salmon economy when Lower Granite Dam was built in 1975, and we lose $1 million a week."

I want to take a moment—I am sorry the Mr. Romero-Barceló has left—but I want to take a moment to thank the Minority party for the invitation to represent this huge sector of the region's economy. We realize that the economic value of the resource is huge. And I know that both the Majority and Minority sides have a crucial interest in this. The family wage jobs in fishery-related businesses are your responsibility, and I urge you to weigh them heavily.

In your letter of invitation the question was posed whether NMFS is implementing the ESA consistent with the Act. And the answer is, frankly, in my view, that the NMFS has not yet been allowed to.

I would criticize the NMFS in several areas; some have already been mentioned. I echo Governor Batt's criticism that the NMFS has not adequately weighed Idaho's recommendation to "spread the risk" as was strongly supported by Congressman Crapo in 1998 and in previous years; we have not been able to influence that process to the degree that I think is appropriate.

Further, the NMFS has a demonstrated institutional bias toward barging and trucking fish that I believe has significantly compromised their objectivity in future decisions. Any reasonable person might ask whether the NMFS can be truly objective. But there is more that must be said here.

I want to observe also, that there is no other single issue in the Northwest that is so contentious and so polarized as this one. I have a friend in Stanley Basin that remarked to me that no agency, NMFS or the Wildlife Service, can wade through a swamp so full of alligators and expect to arrive on the other side without a few teeth marks. We must acknowledge up front that no agency that would potentially remove dams to save salmon is likely to escape the wrath of those who oppose salmon restoration or oppose that solution.

Now, a larger question, I think, comes to the forefront, and it is not which agency should be in charge, but why the laws compelling the United States to save salmon, the Columbia Basin salmon, have not yet been upheld. I would hope this Committee would encourage new initiatives in that direction with new commitment.

It has been the goal of some Members of the Congress to weaken the content of the ESA or to disable its implementation. This may well be the goal of H.R. 4335 despite any perceived merits of transferring the ESA authority from one agency to another.

Unfortunately, the legislation is proposed by some whose credibility may be compromised or whose effectiveness in this issue may be compromised because they have been perhaps better known for ridicule of the ESA or of endangered species rather than for their concern about salmon recovery.

We all make statements we would like to take back. But with all due apologies, we can't speak effectively about salmon processes after we announce that Idaho salmon are not endangered because we can buy them at the grocery store.

The science is now conclusive. PATH process scientists now agree that retiring the four dams on the lower Snake will recover the fish with 99 to 100 percent certainty. Now, nothing would please me more than to have Secretary Babbitt in charge of removing these dams on the lower Snake. But I can't believe that is what is really being offered by this legislation.

The probable goal is to strip authority for salmon recovery from the NMFS, transfer it to the Fish and Wildlife Service, and then disable the Wildlife Service in the appropriations process. I can't see the Nation's promises being kept by this legislation.

I think it is more important to keep the regional processes, which are on track now, at least toward a solution, whatever that is, in place to make the 1999 decisions that are now imminent. At another time, perhaps 2 years ago, I would have supported this legislation.

I believe at this time with the ongoing processes well under way and a lot of water under the bridge, and with no further delay tolerable for the fish, that I cannot support H.R. 4335.

Whatever one's opinion of NMFS's past performance, I think the 1999 decision should proceed without disruption. I think we are going to hear a lot about who should be in charge. This is the im-

portant question, but it doesn't get at the root cause of our continued collective inability to solve the salmon dilemma.

I think our inability stems to date from a focus on process and justifying the status quo and justifying the fact that we simply built a few too many dams, rather than on leadership and a commitment to finding solutions and getting on with the mitigation that is appropriate.

We don't need a solution to process. We need a solution to salmon decline. As long as we are more concerned about process than solutions, I am convinced that we will fail. We can restore salmon fisheries. We can reduce the demands or eliminate the demands on Idaho water. We can save $90 to $100 million of taxpayer and ratepayer money by mothballing the four dams on the lower Snake.

And I would urge this Committee to let NMFS press ahead with their work and be ready to stand by with ready and quick action for appropriations and authorizations, and focus on the mitigation that is going to be required for the good folks of the Port of Lewiston and the others who may face economic readjustments from the need to rescue jobs in our salmon and steelhead fishing sectors.

Thank you very much. I am sorry I ran just a bit over time.

Mr. POMBO. Thank you.

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

STATEMENT OF MARK POLLOT, FOUNDATION FOR CONSTITUTIONAL LAW

Mr. POLLOT. Thank you, Mr. Chairman, members of the Committee. Before I start my remarks, I would like to request the indulgence of the Committee. I just recently got out of the hospital, so I am behind on my written testimony. I would like the consent of the Committee to submit after today's hearing.

I have to respectfully disagree with Mr. Stuart. I believe, of course, that the steelhead and the salmon are the context in which this hearing has arisen. However, the real issue here is, in fact, ensuring a valid and viable decisionmaking process and also some certainty among the people who are affected by endangered species regulation by making sure that there is one outfit that they go to, one set of regulations that they must examine to know what it is they have to do and how it is they have to go about doing it.

And some of the members of the Committee know something of my background. I started my legal career at the Justice Department in Washington and spent the better part of my time there in what is now called the Environment and Natural Resources Division. Originally, it was called the Land and Natural Resources Division, the name having been changed to protect the innocent, I guess.

In the process of being there, I had to work with agencies like NMFS and like the U.S. Fish and Wildlife Service and the Forest Service and the BLM and got to know how they operated from the inside as well as how they operated from the outside. And while most of the folks that I had to deal with were at least well-intentioned and trying to do the best job possible, I certainly ran into more than my share of people there whose grade school report cards must have read, "Does not work and play well with others."

In 1993, I published a book. And in the process of doing the research for that book, I found out that in that particular year alone, the year in which I wrote the book, there were 63,000 pages in the Federal Register in that year alone of regulations, proposed regulations, amendments, and proposed amendments to regulations.

As of last year, I believe last year there was somewhere in the neighborhood of 93,000 pages. That does not include, of course, the statutory language itself, the regulatory guidance letters, the internal guidance that is the judicial decisions and so forth that pour out of agencies and legislative bodies both at the Federal and the state level.

The idea that one may be presumed to know the law in the face of this onslaught is absurd. So the idea that one should have a multitude of agencies all addressing overlapping areas of jurisdiction with regard to species management is, one, I think it is about time that it has been examined and that legislation has been proposed to put it all in one place, one-stop shopping as it were, so that one is not now faced with even competing or even conflicting regulations, assuming one can find them in the first place.

This is not about really who would be the better manager of the Fish and Wildlife Service. I am no more happy with how the Fish and Wildlife Service than with how NMFS does it. But I do believe it is a move in the right direction to put it one place and to at least increase the chances of both quality decisionmaking and accountability.

However, having said that, I must also point out that as Mr. Maynard, for example, said, there are areas out there that remain—in the Magnuson-Stevens Act, there is only one of these areas that remains hidden. For example, the Bureau of Land Management has its own, what you might call, personal endangered species program. They refer to it as species of special concern.

But it allows them, without even the limited safeguards of the Endangered Species Act, undertakes species regulation and to control the activities not only public but on private land adjacent to but surrounded by public land just as NMFS and Fish and Wildlife Service presently do under the Section 7 consultation requirement.

The bottom line of all of this is that I can certainly point to any number of absurdities, absurd decisions that have come out there. But the bottom line also is that we deal with two kinds of laws, whether it is endangered species regulation or any other kind of regulation, that is substantive law and procedural law.

Substantive law, of course, for example, is the part in the ESA that says, "Thou shalt not take an endangered species without obtaining an incidental take permit." However, no matter how good the substantive law is—and I see my time is up here, so I will wrap up as quickly as possible.

No matter how good the substantive law is, if the procedural laws are not addressed, the substantive law might as well not even be there.

We are all familiar with the fact that it is not only State and Federal agencies but local agencies who will take the works of legislative bodies, provide their own spin and gloss to them, and essentially rewrite that legislation. And the way you do that is through administrative processes.

And the way in which that rewrite of regulation is maintained is that at the judicial review level, courts have abdicated their responsibility to interpret the laws as passed by the Congress and defer to agency determinations as to what that law means; meaning, basically, is the law is whatever the agency says that it is unless the judge or judges that are involved so find that interpretation so distasteful that they are willing to override that law.

So I believe that this is a good first step and necessary first step. But to make this work properly, you must first seek out those other areas of overlapping regulation that are more or less hidden. And second, must seek to amend such laws as the Administrative Procedure Act to require courts to give meaningful scrutiny to agency determinations.

And also, I might suggest that you look at the possibility of an analogy California has called the Permits Streamlining Act that places meaningful time limits on agency actions such that if they don't act in a meaningful and responsible fashion, they lose the opportunity to act and the regulated public is allowed to proceed.

Thank you.

Mr. POMBO. Thank you.

[The prepared statemenmt of Mr. Pollot may be found at end of hearing.]

STATEMENT OF JERRY KLEMM, PRESIDENT, PULP AND PAPERWORKERS RESOURCE COUNCIL

Mr. KLEMM. Mr. Chairman, members of the Committee, and ladies and gentlemen in the audience, before I begin my testimony, I would like to say that I am here representing the United Paperworkers International Union Local 712 in Lewiston, Idaho and the Pulp and Paperworkers Resource Council; it is a nationwide organization with over 400,000 members. I am currently the regional director for the 10-State Rocky Mountain region.

I am concerned with some of the comments that I have heard today on mitigation. Labor is not going to stand by and watch our jobs being flushed down the river. We are going to stand up tall and be heard, and you are going to hear more of us. We are not going to be replaced by minimum wage jobs. I am alarmed at the building power of small regulatory agencies to circumvent and reinvent the law of the land to meet very narrow goals established in far less than perfect legislation. What I believe are united consequences of those narrow goals that are not mitigated by that same legislation.

I do not believe, for example, that the authors of the Endangered Species Act knew that the National Marine Fisheries Service would use the Act to circumvent individual and state water rights in pursuit of their aims. This is especially troubling when dealing with issues like flow augmentation where the working hypothesis is unworkable.

NMFS believes massive flow augmentation will help fish. Idaho Fish and Game Director Steve Mealey says, "Flow augmentation will not recover the fish and it places large burdens on vital state interests." While I don't like Mr. Mealey's solution, which is dam removal, I do agree that flow augmentation is not the answer.

But flow augmentation is a perfect vehicle for NMFS to use to take water rights in an attempt to wrest control of water in the West to meet their own ends away from states and individuals and use that water.

I am not suggesting there is a malicious conspiracy at work here to take western water. I am saying that a small regulatory agency with veto power of Federal, State, and private land management has interpreted the law in such a way that the net result is the taking of Western water without due process.

While NMFS has been busily engaged following its narrow path, her sister agency in the Department of Interior, the U.S. Fish and Wildlife Service, is engaged in its own efforts to meet the same ends, but not always by the same means. How painful it must be for the leadership in these two agencies, both charged with implementing and enforcing the ESA, to have to work around, over, and through each other and everyone else to implement the Act. Their experience and training are often in conflict. Their political bosses answer to different drummers for different reasons. Their histories and clientele are so different. Their veto power and willingness to use that power shaped by their experience.

I absolutely support H.R. 4335 to consolidate those agencies that hold such power over the rest of us. While more sophisticated populations in cities far removed from Lewiston may think this is much ado about nothing, the time will come when they will appreciate what you are trying to do here.

The first time busy big city mayors go up against Will Stelle and the gang, they will realize it was the right thing to do after all. Wasn't it Will Stelle who said on 12–15–97, "Science will not give us the answers, although many pretend otherwise"?

If not science, who? The answer is, Will Stelle and NMFS, unbridled by the democratic process or the principles of republican forms of governance. Ridiculous, you say? When NMFS and the U.S. Fish and Wildlife Service vote, who may vote them down? When they enforce the flawed and often ruinous law, who may veto them? To whom are these people accountable?

The answer, of course, is that you, Mr. Chairman, and your colleagues may ultimately veto those agencies. But you cannot prevail against an administration so dedicated to sacrificing human and community needs.

You, in good faith, enacted this law to help endangered species. You could not know that your intent would so mutate as to be unrecognizable today from the legislation enacted so long ago. Who could foresee the dueling agencies and cross-purposes? Who could predict that the administration would so cynically use the law to further their own dark ends over the very particular rights of individuals and States?

Stelle's recent hostile takeover of the issuance of the 4d rule for spotted owl in Oregon demonstrates NMFS cannot be trusted to work cooperatively in an administration supposedly dedicated to collaborations. It is time to muzzle the hounds and bring some management to chaos. It is time to either bind the two agencies together or make them one. Or if that is not possible, limit NMFS's authority to the ocean and U.S. Fish and Wildlife Service inland. Make the boundary the coastline.

I am not a biologist. I am not a professional. I am a welder at the mill where I work. I don't pretend to have all of the answers. But I do know something about organizing to get something done. A prophet said we cannot serve two masters, and I believe him.

In closing, I believe that the laboring people in the State of Idaho need what we call certainty. Right now, the way things are going we have got no certainty. We end up wondering whether our jobs are going to be here today or tomorrow or the next day. It has got more gyration than Wall Street did last week. And we need to have that leveled out and have something available for us in the future for our children and their children.

Also, on behalf of UPIU Local 712, and my employer, The Potlatch Corporation, I would like to request that you keep the record open for additional testimony.

Mr. POMBO. The record will be held open for probably about 2 weeks for additional testimony for the record. Thank you for your testimony.

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

STATEMENT OF DELL RAYBOULD, CHAIRMAN, COMMITTEE OF NINE, WATER DISTRICT 1

Mr. RAYBOULD. Chairman, members of the Committee, it is a pleasure for me to be here today to testify on behalf of the Committee of Nine. I am chairman of the Committee of Nine. The Committee of Nine is an advisory committee to Water District 1. It comprises of about 15,000 irrigators in Southern and Eastern Idaho that irrigate over 1.2 million acres of agricultural farmland. We irrigate out of the Snake River and out of many reservoirs, both private and Federal reservoirs that contribute to that water system.

Today I am here to express the concerns of thousands of irrigators, and not only irrigators but also industrial water users and municipalities that depend on irrigated agriculture in Southern and Eastern Idaho.

We are talking about NMFS today. NMFS has been charged with developing a recovery plan for recovering the endangered salmon. They have avoided making the tough decisions required to protect the salmon. But instead, they shifted from a recovery plan to efforts in seeking water for flow augmentation.

We water users are not only concerned about the use of water for irrigation, but we are vitally concerned about our local economies, the resident fisheries, the beautiful recreation areas that have been created over the years by these irrigation reservoir systems.

I am just going to give a quick example. Henry's Lake is a private reservoir of which I am a director of that reservoir. It is located at the headwaters of the Henry's Fork of the Snake River, the leading tributary to the Snake River.

And over the years, since Palisades Reservoir was constructed, there has been ample storage water that we have been able to develop water exchanges between reservoirs that has allowed us to keep the water levels in these upper reservoirs at high levels by exchanges with other reservoirs. That has made it very feasible for the fisheries to develop in those beautiful streams up there.

If NMFS takes an additional million acre-feet or the million-and-a-half acre-feet they want out of Idaho, it will effectively preempt these water exchanges. These small reservoirs and and many of our Federal reservoirs will be drawn down to the very limit every year, ruining recreation, ruining fisheries, and also limiting irrigated agriculture.

That is the thing that we are most concerned about today, is that NMFS and fish and wildlife have tunnel vision. They are not looking at the overall effects that some of the decisions that they are making will affect all of us. We are all in the same boat here in this.

There has been no willingness of NMFS or other Federal agencies to admit that because of conditions beyond the control of man that maybe the recovery of salmon to the extent that sport fisheries and the Indian tribes want may not be possible. Most of this is due to the effects of climatic conditions in the Pacific Ocean, in the estuaries where the salmon grow and mature.

I am going to refer to a recent study of the Scripps Institution of the Oceanography at San Diego, California, which was published this July in the Journal of Science. Where they say that the major result of these dramatic ocean temperature changes shift salmon populations north to the Gulf of Alaska. The most spectacular shifts upward have been the sockeyes and the pink salmons.

Again, these sharp declines have been attributed to the changes in the survivorship of young and juvenile salmon in the open ocean, irrigation and reservoir storage have had nothing to do with it.

We don't hear NMFS say anything about the pinnipeds, about the terns, about all of the predators that have shifted north from California because of these climatic changes. None of that is being addressed, only taking Idaho water. Is it any wonder that many in the water community believe that the Federal Government is using the Endangered Species Act as a vehicle to control Idaho water?

As far as H.R. 4335, I talked to one irrigator that is a little bit worried about the Federal Government. And he said that "If the cannibals are going to eat you, does it matter which pot you are boiled in or which tribe does the cooking?"

Well, we are a little dubious about Fish and Wildlife. We are also dubious about the government agencies that have come in here and mandated and commandeered our water. In one instance, we have been negotiating for several years on some of these endangered species; the snails, for example, and the deerflats issue in the Snake River.

We had a deal worked out on the Deerflats. When it went back to Washington, DC, the solicitor back there came back to us and said, "No deal, we are not going to do that. We want the water." Now, on another occasion, we met with the Department of Justice officials in Pocatello. And they informed us as irrigators, that we had no right to maintain our bona fide contracts that we have with the Federal Government for space in the reservoirs. They said we will take it and that is that. If you don't like it, sue us.

We are a little bit upset about the heavy-handed way that we have been handled by some of these agencies. And I would suggest to you, Committee, in closing, that you take a deep look into the funding of these programs. Where is the money coming from for

NMFS to continue these exploratory experiments that they are proposing. Where in the BOR budget are they getting money to purchase water or to rent water?

Where in the Endangered Species Act is authority given for NMFS to require BOR to abrogate their bona fide contracts with reservoir spaceholders to acquire this 1,427,000 acre-feet of water? Where is this coming from?

I cannot believe that they have that right or authority. I can't believe that you as a Congress have given them that authority to abrogate contracts that were approved in previous legislation.

There are thousands of jobs here at stake in Idaho. Our tax base, our school system is dependent on our economy, of which the potato industry in Idaho is a little more than one-third of our total economy.

In recent studies by the BOR as to the economic effects of what would happen if this million acre-feet is taken out of Idaho, a very cursory—very small attention was given to what would happen to our economy if the potato industry were to be in demise. And this million acre-feet will do just that.

There are thousands and thousands and thousands of jobs at stake, cities at stake, businesses at stake, and our school system at stake. I could go on, and I hope that you have the opportunity to read my statement in full. It outlines a lot of these things that I have said here.

We are concerned. We as irrigators have been on the front line now on this for the past several years. And we are now seeing some of our recreation people and some of our city people all at once realizing what is happening to them. So I would suggest to you, as a Committee, that you do review these things very carefully.

And I thank you very much for the opportunity of being here today representing the water users of the State of Idaho.

Mr. POMBO. Thank you. Thank you, panel, for your testimony.

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

Mr. POMBO. Mrs. Chenoweth?

Mrs. CHENOWETH. Thank you. Your testimony was very impressive. I wanted to ask Mr. Stuart, you are President of the Idaho Rivers United. Is that your full-time employment?

Mr. STUART. No, ma'am. I am a volunteer. I am a businessman in Stanley, Idaho, and a retired military officer.

Mrs. CHENOWETH. Retired military officer?

Mr. STUART. Yes, ma'am.

Mrs. CHENOWETH. And you are a businessman in Stanley, Idaho?

Mr. STUART. Yes.

Mrs. CHENOWETH. What do you do in Stanley?

Mr. STUART. I run the Redwood Motel and Cabin Complex in Stanley. I have owned and operated it for 20 years.

Mrs. CHENOWETH. I found your testimony very interesting, especially in view of the fact that the testimony that we have heard from Mr. Klemm and Mr. Raybould about the fact that if we see destruction of our system as we know it now very suddenly, there would be a sudden loss of jobs.

What do you think after you listen to Mr. Klemm? What do you think these people are going to do?

Mr. STUART. Ms. Chenoweth, I am sensitive to that, and I appreciate your concern. I must point out, though, that the status quo is neither cheap nor benign at this point. We have a very costly series of dams on the lower Snake that ratepayers and taxpayers pay dearly for. And I am sure you are well aware of the costs to maintain and operate and sustain those operations. Workers like Mr. Klemm are not going to benefit from change, certainly.

But there is a strong case to be made that the costs far outweigh and far exceed the benefits of those particular projects.

Mrs. CHENOWETH. You are not answering my question.

Mr. STUART. I am sorry. My concern about Mr. Klemm, I share his concern. The jobs in Idaho——

Mrs. CHENOWETH. You feel his pain?

Mr. STUART. I wouldn't go that far. I share his concern. I come from a long union background. I think the jobs in Lewiston must be protected. And I would urge this Committee to be the spearpoint of that. I believe that changes in the lower Snake River to restore a very valuable resource, the fisheries resource, are inevitable.

And I would encourage—I applaud Mr. Klemm for taking a strong position. I think the unions and the workers of Lewiston must take a strong position to assure that the necessary mitigation to adjust for change is in place.

Mrs. CHENOWETH. Thank you, Mr. Stuart. They have taken a strong position, and I hope that you will study their strong position very much.

In your testimony you mentioned that we need to devise alternatives to moving commerce out of the Port of Lewiston. Do you know what those alternatives mean in the form of tens of thousands of additional truckloads of commerce going down that scenic highway? Are you prepared to support the increase in truck traffic and diesel-driven and gasoline-driven truck traffic?

Mr. STUART. Congresswoman Chenoweth, I think this is a wonderful opportunity for leaders like yourself to rebuild the road and rail network into Lewiston and Clarkston. I would be first in line to support a four-lane highway to Pasco and to modify the rail facility in the Port of Lewiston to accommodate the 26-car-plus trains to handle the grain commerce and the Potlatch traffic that we certainly need to sustain and want to sustain out of the Port of Lewiston.

That is mitigation that is totally appropriate, and I would strongly support it.

Mrs. CHENOWETH. Are you familiar with a man by the name of John Schuler, a sheep rancher in Montana?

Mr. STUART. No, ma'am.

Mrs. CHENOWETH. Who was charged with the taking of one endangered species, a charging grizzly bear?

Mr. STUART. I am not familiar with that.

Mrs. CHENOWETH. I would be happy to send you the case.

Mr. STUART. I would like for you to do that.

Mrs. CHENOWETH. They found him guilty because he defended his life by taking one endangered species.

The salmon has been listed as an endangered species.

Mr. STUART. Yes, I know.

Mrs. CHENOWETH. Why aren't we treating salmon and the bear and everyone else alike? Why are we giving a special privilege to stake the salmon in commercial fishing, gill netting, and every other way? Where in the law is there one reference to one species having an exemption?

Now, you have made broad implications and big political statements in your testimony. You cite the law for me, sir.

Mr. STUART. Ma'am, the basis for protecting our salmon fisheries is multifold in at least three——

Mrs. CHENOWETH. I want specifics.

Mr. STUART. The Indian Treaties of 1855 provide for the——

Mrs. CHENOWETH. I want the specifics in the Endangered Species Act.

Mr. STUART. Can you clarify your question for me, please?

Mrs. CHENOWETH. I don't think it could be more clear. Where in the Endangered Species Act was any one species given exemption from the provisions of the Act and allowed to be killed?

Mr. STUART. You are correct. There are no provisions, except those under section 10, the consultation process.

Mrs. CHENOWETH. Mr. Pollot, I would like to ask you with regards to the water that is stored behind the dams, who owns that water?

Mr. POLLOT. Well, the physical water is the State of Idaho's. The right to use the water is owned by the person, to the water rightholder.

Mrs. CHENOWETH. What about the unallocated water? Who owns that water?

Mr. POLLOT. Water which is unallocated is owned by the State of Idaho.

Mrs. CHENOWETH. Now, you just heard Mr. Dell Raybould talk about the fact there have been agencies who have said we are going to take the water, even up to 1.427 million acre-feet.

Mr. POLLOT. Well, I have two problems with that, Congressman. The first problem, of course, is that one cannot take which—under the Federal Constitution one cannot take which does not belong to the Federal Government without paying for it. The Fifth Amendment's Just Compensation Clause requires that if they take something for public use, they have to pay for it. And they have to pay just compensation, not mere compensation.

So Congress, for example, could not even set a rate of compensation for that. And the courts have made it very, very clear that that is their job.

Second, even under those circumstances, the Federal Government may, of course, exercise its power of eminent domain under the Fifth Amendment. However, that power belongs to Congress. Congress may delegate that to the specific agencies. If Congress does not authorize the agency to do that, it cannot even take even if it wishes to pay for it.

And by the way, the storage contracts are themselves property separate and independent from the water, separate and independent from the water rights, and are just as subject to the limitations on the Federal Government of the Fifth Amendment as to water and the water rights themselves.

Congress, actually, in the Endangered Species Act—and I can't remember the section numbers right off the top of my head—specifically provided that if water was needed for endangered species purposes, it could be acquired but it could be only be acquired in accordance with State procedures.

Now, as I read the Endangered Species Act as it currently is written, Bureau of Reclamation, Fish and Wildlife Service, and NMFS cannot merely go in without complying with State procedures and acquire that water.

Mrs. CHENOWETH. Mr. Pollot, let me ask you, are what is now commonly being called storage rights by the agencies, are those really bona fide water rights?

Mr. POLLOT. Well, I guess the best analogy to use is, if I own a parking garage. I own the parking garage.

Mrs. CHENOWETH. Now, wait a minute. Let us say that the agencies own the parking garage.

Mr. POLLOT. OK. The agencies own the parking garage. If I come to enter into an agreement, whether it is an expressed agreement or implied agreement on the back of the ticket, or whatever, and I go in and I store my car in that garage. Depending on the terms of the contract, nothing—the ownership of my car, just like the ownership of the water, does not pass to the owner of the garage.

I have rented that space. I have a contract with that person. And as long as I adhere to my contract, I am allowed to park my car there. Other than having to pay that person for that privilege—and courts would determine the contracts—I have no obligation. He has no right over my car.

Mrs. CHENOWETH. Very interesting.

Mr. Raybould, can you tell me, has the Federal Government ever offered any potential compensation for the potential loss of that 1.427 million acre-feet as it would impact the nine committees that you represent, water committees?

Mr. RAYBOULD. No. The compensation that the water users have received up-to-date for the test program that has been underway for the past 4 years—the Idaho legislature authorized a test program for 427,000 acre-feet on a willing-seller willing-buyer basis, which was negotiated kind of in Washington by Senator Craig. But that water has been rented by the Bureau of Reclamation.

At this point in time, there has been no attempt for the Federal Government to come in and take over the space in those reservoirs. However, the Bureau of Reclamation is presently undergoing an economic impact study to determine what the economic impacts would be to the economy of the State of Idaho and to individuals if the Federal Government did come in and take this 1.427 million acre-feet of water.

There has been no talk up to the present as to any compensation. And we are very concerned about the frivolous way that the BOR is determining these economic impacts. Because it doesn't take into consideration secondary and third impacts and tax bases and those kinds of things that would affect the livelihoods and the lifestyle of the people here in Idaho.

So there has been no approach yet saying we will compensate you so much for the taking of this space in these reservoirs. But so far, they have just said we may do it.

Mrs. CHENOWETH. Thank you, Mr. Raybould.

And Mr. Chairman, I want to apologize for going over my time. I try not to do that, but when I hear testimony from men like Jerry Klemm, who have left his job and traveled 400 miles to get here, that testimony is serious stuff.

And when I hear the testimony from Mr. Raybould about the impact on an entire region of our State, the southern part, and Mr. Klemm representing the northern part, I get pretty concerned. Thank you very much for your patience.

Mr. POMBO. Mr. Romero-Barceló?

Mr. ROMERO-BARCELÓ. No questions.

Mr. POMBO. Mr. Crapo?

Mr. CRAPO. Thank you, Mr. Chairman. And I will be brief.

I wanted to ask Mr. Raybould, I am sorry, but I had to step out just toward the end of your testimony. Did you state in your testimony whether there had been any studies that indicate what the loss of irrigation land would be if an additional 1 million acre-feet of water were diverted from irrigated activity?

Mr. RAYBOULD. There has been estimates in the ranges between 500,000 and 800,000 acres that would be dried up. And, of course, that would depend on the particular water year, the kind of winter that we have, and the natural flow that we have in our streams.

I think the thing that has been overlooked by the Bureau of Reclamation and by many who were talking about this is the loss of our high-value crops. We are seeing bankers, every year, because of farm conditions and because of their own interests, contacting watermasters, contacting irrigation districts every spring to find out whether or not there are ample supplies of storage water available so that they can lend money to growers to plant high-value crops like potatoes, beans, and sugar beets.

And if these water supplies are diminished and we are not sure that we have an adequate water supply to carry us completely through the season to the maturing of these crops, bankers will not loan money to plant those crops. We will be reduced to going back to pasture, to dry grazing, those kinds of things, that even though there will be acres in production, they will not be producing the kind of crops that produce the revenue that it takes to maintain our economy. That is the seriousness of it.

Even though we are talking about some acres coming out of production, it is the kind of acres that are coming out of production that is going to have the devastating effect on our economy.

Mr. CRAPO. Thank you very much. And I just wanted to talk to Mr. Stuart for just a minute.

Tom, I read your testimony, and I understand the strong concern that you are raising and I appreciate it. In fact, I share with you the concern to try and make certain that we don't disrupt and cause further delay in resolving the issue with regard to salmon recovery.

I think that as—I made a little note in your testimony that I thought that was one of the most critical issues that we have to face as we look at this legislation. The question I have to you is, I assume that you—well, you said in your testimony—you have your own problems with NMFS and some of the processes.

Mr. STUART. Absolutely.

Mr. CRAPO. Do you believe that it would necessarily require the disruption of the process for the transfer of jurisdiction to take place?

Mr. STUART. No, sir. I don't think it would necessarily require the disruption. But that is my concern, along with concerns about the appropriations process that I stated also in my testimony.

Mr. CRAPO. And that is kind of the issue I wanted to focus on, because I would certainly hope that whatever we do—and as I said at the outset of this hearing, I am very concerned that whether it is this legislation or some other approach that we start getting some results and some actions taken so that we can resolve this issue in a way that takes into consideration human and economic factors and takes into consideration the species and finds the path forward that we can get out of here.

Do you believe that, short of some type of disabling activity in the appropriations process or manipulations of the appropriations process, that a good faith effort to try to move the process forward could be achieved under either agency?

Mr. STUART. Congressman Crapo, I would like to see more detail on that. I think that despite my criticism of NMFS's past performance in many areas—I have detailed a few of those—One I forgot was the management of the upper river, which my friend, Olivia James, addressed very adequately, is a total misdirection of priorities.

And it is possible that the Fish and Wildlife Service could do the job for us. My concern is, of course, the potential disruption at this time, very late in the 1999 decision process. Of course, the NMFS, in the last couple years, has brought many processes to bear, and is heading toward a solution, whatever that solution is, with PATH, with economic studies, and other vehicles for regional consensus and collaborative efforts.

I am concerned. I don't want to delay what has been accomplished to date or restart or reaccomplish any of it. I think that would be a grave error. That is my concern.

I see no substantial gain from legislation, at this point in the process, of transferring authority to the Fish and Wildlife Service, whereas 2 years ago, I believe there would have been a substantive gain. I think the focus of your Committee should be to focus on the mitigation issues that Mr. Klemm, I think, has so articulately stated. I think that is where the focus should be.

Mr. CRAPO. Well, I think you certainly raised a very important question about the way it could be introduced into the process of what we do. On the other hand, I think we all want to be sure that we also introduce into the process the decisionmaking regime that will take into consideration the important critical factors of this panel and others have brought forward.

Mr. STUART. Yes.

Mr. CRAPO. Thank you very much.

Mr. POMBO. Just to continue on with that, Mr. Stuart, it is this Committee's responsibility. And as oversight responsibility on endangered species, over the past 20 years, we have spent billions of dollars on the recovery of salmon. I think that you will agree that we have had very little to show for that.

Mr. STUART. Yes, sir, very little to show for it.

Mr. POMBO. We have continually become more conflicted. We have the result where members of the community are very divided on the issue. It is very confrontational. You have people like Mr. Klemm and all of his coworkers that are looking at this as a loss of jobs, about wiping out an entire industry that he represents and all of the men and women that work there.

And on the other side, we have people who have made their living as fishermen off of that industry that have watched that be destroyed.

Mr. STUART. That is correct.

Mr. POMBO. In that context, we look at this and we say there is something wrong here, and we need to fix that. You continually stated people were trying to protect the status quo. I don't think there is a single person on the Committee that says a status quo is a good idea.

Mr. STUART. I am glad to hear that, Mr. Chairman.

Mr. POMBO. I don't think there is a person that is testifying before the Committee thinks that a status quo is a good idea. Nobody that I have met yet in the past 2 days have come up to me and argued don't do anything, everything is working great. Everybody has said we have major problems. And we need to fix that.

Mr. STUART. Yes.

Mr. POMBO. It is not constructive to debate, to come in and say that, Well, because this Member of Congress, whether you were referring to me or someone else, has been critical of the Endangered Species Act. That member has lost some kind of credibility, I believe was your term. Because in the last few minutes I have heard you being critical of the Endangered Species Act and of the results of that Endangered Species Act. And I would question whether or not that destroys your credibility to speak on the issue at this point.

Mr. STUART. Well, I hope not. I do share your observation that the ESA is definitely an imperfect document. I know that the NMFS is obviously an imperfect agency as is the U.S. Fish and Wildlife Service. It is an issue of balance.

I support the goals of the Endangered Species Act, as I am sure the members of this Committee do, and I am anxious to see them implemented.

Mr. POMBO. I have been very up front about my position on the Endangered Species Act. I believe in the original goals with the Endangered Species Act. I believe that what the agencies are being asked to implement today is an utter disaster both for people and for wildlife.

I think it has gotten to the point where it is nearly impossible to administer this law in any sane fashion. We have people who are having their water rights taken away from them by Federal agencies, who have no authority whatsoever to do it. But they are being told by court decisions somewhere or bureaucratic or regulatory decisions somewhere that this is what they have to do.

And it is not what—you know, the environmental community has made a lot of this law through lawsuits and court decisions. It is not going to be long before the irrigators are out there making the same kind of law based upon lawsuits. And in the meantime, your

salmon are going to disappear, because nothing is being done to go after recovery of those salmon.

Two years ago, we held a hearing in Vancouver, and I asked a representative of the fishing industry at that time, if I gave you a billion dollars a year to recover the salmon, could you do a better job than what is being done? And he said absolutely.

And I think that there are very few people who would look at the situation that we are in today and say, If I had a billion dollars a year to spend on the recovery of the salmon, could I do a better job than what is being done? And I believe whether it is people with your point of view or people with other points of view, they could do a much better job, or at least they feel they could do a better job than what is being done.

It is the responsibility of this Committee to hold oversight hearings and to determine how the public's money is being spent and whether the public interest is being fulfilled by the Federal agencies. And that is not being done, in my humble opinion.

Mr. STUART. I agree with you, sir. We need to do a better job across the board.

Mr. POMBO. If we are going to solve the problems that we have with the Endangered Species Act and come to some kind of consensus and solution, it is only going to be done when reasonable people sit down and discuss reasonable solutions that protect individual rights, which are protected by our Constitution, at the same time doing a better job of protecting wildlife.

That has not happened yet. And until we have reasonable people sit down and throw away the kind of accusations and the kind of demagoguery that has existed up to this point, it is never going to happen.

I thank the panel a great deal for your testimony. I have had the opportunity to read all of your testimony that has been submitted up to this point. There will be further questions that are going to be asked. I do thank all of you for giving us your time here today.

I believe this is an extremely important issue not just for Idaho or the Pacific Northwest, but an extremely important issue for our entire country. Because this is the battleground, this is the front line in this war that we are waging. And until we come to some kind of a reasonable solution, this is not going to end.

Thank you very much, and I will excuse the panel.

I would like to call up the fourth panel: Mr. Will Stelle, Mr. Shawn Cantrell, Mr. Jim Little, and Mr. Mitch Sanchotena.

I would like to welcome our fourth panel here today. You have heard me describe the time constraints that we are under. I will ask you to stay within the 5 minutes. Your entire testimony will be included in the record. If you do not, I will have to ask you to wrap up and finish it.

Mr. Stelle, I allowed you to go way over yesterday, and I would appreciate it if you would stay within the 5 minutes. You may begin.

STATEMENT OF WILL STELLE, NATIONAL MARINE FISHERIES SERVICE

Mr. STELLE. Thank you, Mr. Chairman and members of the Committee. Again, I appreciate the opportunity to visit with you here

in Boise on this important subject. And I will move quickly through my comments and watch the light bulbs closely.

First, some general observations about the salmon setting and then some of the basics about our approach to it. First and foremost, the most important starting point to this debate is to understand that, as a factual matter, salmon and steelhead runs are at serious risk of extinction throughout the Pacific Northwest. And that is why we are here today.

Second, equally important, the causes of the salmon problem are many and extensive. There are no single causes, and there are no single silver bullets. It is not just a question of the dams. It is not just a question of overfishing. It is not just a question of water. And it is not just a question of ocean conditions. It is all of the above. We must understand the solution must be comprehensive to be successful.

Third, the people of the Pacific Northwest are absolutely committed to the restoration of our salmon and steelhead runs. The distinction of these runs is not an option. Salmon restoration and salmon recovery is not a political issue, because everybody agrees that it must happen. Nor is it a partisan football to be tossed back and forth.

It is a simply a matter of priorities. And for the people here in the Pacific Northwest, it is a priority for all of us. The issue understood, fundamentally—the most important issue is an issue of habitat. Restoring salmon runs is the same thing as protecting the productivity of our rivers and streams, which is the same thing as protecting our clean water; clean water, healthy streams, strong robust salmon runs.

Some of the fundamentals of the approach that we are bringing to salmon restoration: First, and foremost, a commitment to good science to pursue good science, whatever way it leads us. It is an absolute rock-hard commitment.

Second, a commitment to a comprehensive life cycle approach to salmonid recovery that takes into account and addresses all of the major features of risks to our salmon populations; again, no silver bullets.

Third, fostering partnerships wherever we can with states, with localities, with public and the private sector to effectuate a more successful restoration effort.

In the Columbia River management, we have worked very, very hard with the States and the tribes and the communities in decisions on how to operate the dams and what to do literally on a week-by-week basis.

We have major habitat conservation agreements with utilities in the mid-Columbia area and with the operators up and down the West Coast. We have worked very hard with the State of Oregon, we are doing so with the State of Washington. These collaborative partnerships are essential.

Finally, we must also honor our fiduciary obligations, our trust obligations, to the treaty tribes here in the Pacific Northwest who have formal treaties with the United States.

Major challenges to salmon recovery:

One, the scientific uncertainty. There is no absolute clarity that science will give us, and we must always remember that. There will always be uncertainty. We must make judgments.

Two, the blame game. There is absolutely the tendency time and again to pass the buck and to point fingers. We will not be successful in salmon recovery unless we grow up, take responsibility, and put our shoulders to the task together.

Three, jumping to conclusions. We are too prone to jump too quickly to conclusions when the science is not in and when doing so prematurely is not responsible. And I say, in this particular, I was impressed with the discussions yesterday on the whole issue of flow survivals, which came up earlier today. And on that particular matter, I am looking forward to sitting down with some of the witnesses here and yesterday to go through the science and to see whether or not we can come to an agreement on what that science says. It is absolutely our responsibility.

Four, to build a sustainable ethic to protecting our streams, protecting our clean water, and restoring our salmon runs is vital to a healthy landscape and vital to a healthy economy.

Mr. Chairman, I will stop there. I look forward to questions from you and the other members of the Committee.

Thank you.

Mr. POMBO. Thank you.

Mr. Cantrell?

STATEMENT OF SHAWN CANTRELL, NORTHWEST REGIONAL DIRECTOR, FRIENDS OF THE EARTH

Mr. CANTRELL. Thank you.

My name, for the record, is Shawn Cantrell. I am the Regional Director for Friends of the Earth, based in Seattle, although I would note that I am originally from the State of Idaho. My father still lives here. So it is nice to be back home. I was born near Mullen, Idaho, in Mrs. Chenoweth's district, I believe.

And I would also note that my wife's family is from Puerto Rico. So it is a nice, interesting mix here this morning, unexpected but enjoyable. So thank you for giving me the opportunity to speak.

Mr. ROMERO-BARCELÓ. I haven't met anybody from Puerto Rico.

Mr. CANTRELL. My wife is from there, and my in-laws are currently back there visiting right now. So it may be wiser that I go back with you to enjoy.

Anyway, to address the subject matter at hand, I would like to begin by just highlighting a couple points from my written testimony. I won't go through all of them. But suffice it to say that my organization, and many others, have very significant problems with the National Marine Fisheries Service and their implementation or lack of implementation of the Endangered Species Act.

I would note just three basic points. One, that they have had 7 years since the first Snake River fish was listed, and they have yet to develop a recovery plan. What they have done is a series of biological opinions that we feel are wholly inadequate for actually restoring the fish. And even those inadequate biological opinions have not fully been implemented. And I could refer you to the testi-

mony and be happy to answer questions about those specific concerns.

But in the broader context of today's hearing regarding H.R. 4335, while we are not a fan of NMFS's actions to-date on ESA, we do not think that this bill would actually improve the Federal Government's ability to implement the Endangered Species Act and actually restore fish runs in the Pacific Northwest.

We are concerned, as Mr. Crapo was having some discussion with Mr. Stuart on the last panel, in regards to the delays that this bill may produce into the 1999 decision. That would be our single biggest concern about this bill.

If there is a way to have the Fish and Wildlife Service take over responsibility and still guarantee that the 1999 decision was made on time and then implemented in an expedient way, that would go along with addressing our concerns about this specific bill.

But I have serious concerns that the bill could actually allow that 1999 decision, both the decision itself and then implementation to take place in a timely way. So that is probably our biggest concern.

In my written testimony I equate this bill to—it reminds me somewhat of the adage rearranging deck chairs on the Titanic. Because while the ship is sinking we may put this agency in charge or that agency in charge, and then it doesn't necessarily help save any of the fish or the passengers on board. So that would be our biggest concern about the bill.

We do recognize the concerns that Mrs. Chenoweth and others have expressed on the idea of overlapping management authority. We have heard a number of concerns from previous witnesses. And we think that there are more direct, more straightforward ways of addressing that in a way that would actually streamline the system.

In my testimony, the written testimony, I note in the State of Washington, there is a process called JARPA, which is the Joint Aquatic Resource Permitting Application, where you have four different State agencies that previously had separate permitting processes for a single activity. And they have come up with a single joint application.

I don't know if that is an exact transferable piece, but I think it points to the type of things that can be done while separate agencies maintain their own jurisdiction or responsibility that can streamline the process, that is, in fact, the intent of the bill. So I would point the Committee to look at those sort of examples if that is the intent of the legislation.

As far as how to actually make sure that fish are restored, I was very pleased to hear every single member of the Committee this morning in your opening comments, say that that is, in fact, your goal of seeing the Northwest salmon runs, and the fish runs in particular in the Idaho basins coming out of the Snake River, see them restored.

We would offer three specific suggestions. The first, as Mr. Stelle says, science does not provide absolute answers, but it tends to provide better answers than a pure political process. And we are concerned that more often than not politics is being substituted for science on many decisions.

And we would point to a number of documents that highlight what can work and what cannot work or at least have more indications. Particularly the ISAB, the Independent Science Advisory Board, their return to the river, while not a blueprint for detailed restoration, I think is the direction I would urge the Committee to try to make sure the Federal agencies follow.

Second is to hold the administration accountable, make sure that they, in fact, make the 1999 decision, that it does not slip, whether the Army Corps or the National Marine Fisheries Service or any other agencies find reasons or excuses to setting aside the questions for another 3 or 4 or 5 years, or even 3 or 4 or 5 more months.

We will not get a definitive, absolute silver-bullet answer, but I think that there will be ample information and evidence to make informed decisions in 1999 and would encourage this Committee to make sure that the administration sticks with that time line.

Including—I would add that by helping make sure that the appropriations process that will be decided in the next month, each of you can help influence to make sure that the studies for the John Day and Lower Snake River decisions on those studies in the appropriation bill are, in fact, approved.

And the third and final point that I would mention here is that on the broader level beyond the specifics of the Snake River, if you are hoping to improve the Endangered Species Act while me and my organization probably will have a number of differences with members of the Committee on a range of issues, I would think that on one area that we could probably have significant agreement is that the benefit of providing more tax incentives for individual landowners on areas where if you find an endangered species on your property, instead of shoot, shovel, and shut up, that there is an incentive for the landowner to actually report that species.

I think that the vast majority of property owners, whether they be farmers or loggers or anybody else who own property that has endangered species on it shut up that and that there are incentive to want to comply with the law. But right now, oftentimes, there is a disincentive to comply.

We would encourage the Committee to consider ways, particularly using tax incentives, to make sure that landowners do fully comply and report and encourage that through tax incentives.

With that, I will close and thank the Committee for the opportunity to testify. And I will be happy to answer questions.

Mr. POMBO. Thank you.

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

STATEMENT OF JIM LITTLE, IDAHO CATTLE ASSOCIATION

Mr. LITTLE. Good afternoon, Mr. Chairman. I am representing the Idaho Cattle Association and the National Cattlemen's Beef Association. I am an ICA past president, former chairman of the NCBA Private Property and Environmental Management Committee, and I recently completed a 3-year term as Idaho's obligatory member on the Pacific Fisheries Management Council.

I am a forest grazing permittee with a cattle and horse grazing permit in Bear Valley in central Idaho, in Valley County, I might

add, where there are listed species that are administered by both the National Marine Fisheries Service and the U.S. Fish and Wildlife Service.

After glancing at the list of cosponsors for this legislation, I can tell it is an attempt to bring much needed common sense into the bureaucratic administration of an overly repressive Federal law. It is worthwhile to consider whether or not one Federal agency could do the job that two are currently charged with. With that in mind, I want to share some of my personal examples and some hopefully constructive comments on the pending legislation.

In the late 1980's, U.S. Forest Service did an environmental assessment on my grazing allotment to address the concerns about the spawning grounds for the Snake River spring chinook salmon. We cooperated in that assessment and came up with a mutually acceptable plan.

In 1992, the spring chinook was listed by NMFS as threatened and through the consultation process with the Forest Service, it was decided that an extensive monitoring plan would be put into place to determine whether we were achieving the desired results. This was done with a strong commitment from the Forest Service that if it didn't work, then we would be removed from that allotment.

After 5 years of extensive and extremely expensive monitoring and a comprehensive review by the National Riparian Service Team, it has been determined that our riparian areas are functioning at risk and in an improving trend. The Boise National Forest has spent in excess of $100,000 per year in monitoring three Bear Valley allotments.

To pay for this, the Boise Forest has been forced to use approximately 70 percent of its entire range betterment budget among other funding sources. Supposedly, range betterment funds are intended for use across the forest for improvements directly related to livestock usage with traditional projects like water troughs and fencing.

The bad news is that NMFS refuses to let the Forest Service off the hook for this costly monitoring and because the monitoring effort is such a deficit operation dollarwise, I feel that our future on that allotment is very limited.

This past spring, the U.S. Fish and Wildlife Service listed the bull trout as an endangered species. And just over a month ago, the Forest Service had a collaborative team meeting in Bear Valley to look at habitat for both the spring chinook and the bull trout. This collaborative team consisted of Forest Service officials, grazing permittees, representatives from both NMFS and the Fish and Wildlife Service and the interested public.

Some observations: The management scheme or our allotment is being cast in stone and inflexibly applied to a neighboring allotment with somewhat different conditions. Even though the bull trout habitat in the Bear Valley Basin is in good to excellent condition overall, there are still some restrictive conditions that are being mandated, in my opinion, only to satisfy an overarching court decision regarding consultation on any new listed species.

Another bit of information that I learned at this collaborative 3-day team meeting is that the Fish and Wildlife Service has not

been at the table throughout the Governor of Idaho's formation of a Bull Trout Action Plan that was designed to forego listing of the bull trout. The reason that they give is that there was no money to fund participation in that extensive effort still going on by the State of Idaho.

Some thoughts and concerns that I have of the proposed bill H.R. 4335:

It is my opinion that some of the conflicts with people on the ground and the administering agencies are personality conflicts and arrogance by the administrators of the Endangered Species Act. In one area I hear people railing against NMFS and in another it is the high-handedness of the Fish and Wildlife Service.

In preparing for this testimony, I contacted the presidents of two other northwest cattlemen's associations. And one thought this bill was a great idea and they should go for it. The other did not want to give Bruce Babbitt any more power of any kind. I tried to make the argument that Secretary Babbitt would be with us forever, but I made no headway in changing that strong opinion.

Idaho was given two seats on the Pacific Fisheries Management Council because of our anadromous fish habitat. At the present time, all of our anadromous fish are listed as threatened or endangered. So Idaho has virtually no impact through the council process in their management. The listing has done nothing to help the fish stocks.

1998 was supposed to, in Bear Valley, be a high fish return year. While it was above the low year average, it was still nearly 20 percent lower than the last spike 5 years ago. So we haven't turned the corner at all yet.

I am becoming more convinced that we need a change in our natural rearing conditions in the ocean before any appreciable improvements in returning numbers will take place. When and if that happens, everybody will take credit for the improving fish numbers.

Another area that I have some questions about is whether U.S. Fish and Wildlife Service has the people and expertise to deal with potential listing of ocean species. Pardon the pun, but they may be a fish out of water on this complex subject.

In summary, there are many problems that need to be solved in the authorizing language and in the administration of the Endangered Species Act. The Forest Service is whipsawed every which way by the ESA in general, and they are very uneasy in challenging the edicts that come to them from NMFS or the Fish and Wildlife Service.

Neither NMFS or the Fish and Wildlife Service are authorities in livestock management, but they assume that role rather hastily at times. One thing for certain, the lowly forest user is the loser.

Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

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

STATEMENT OF MITCH SANCHOTENA EXECUTIVE DIRECTOR, IDAHO STEELHEAD AND SALMON UNLIMITED

Mr. SANCHOTENA. Thank you, Mr. Chairman, members of the panel. I represent Idaho Steelhead and Salmon Unlimited. We are primarily a sport fishing organization consisting of about 2,300 members.

I will go through this and maybe pick up a little time for us. If I understand correctly, our purpose here is to discuss the question whether the Fish and Wildlife Service is better suited to deal with endangered anadromous salmonids in freshwater than NMFS.

Let me add, NMFS bashing in Idaho is preceded only by Clinton. It is easy to say that NMFS is a bigger part of the problem than they are the solution. But the Fish and Wildlife Service's track record on endangered species actions isn't much better, if any.

It would have been informative to have a witness from the U.S. Fish and Wildlife Service share with this Committee and the region's stakeholders their views on how to better implement the ESA for salmon and steelhead.

Presently, there is such a hodgepodge of ESA listings occurring—some with recovery plans, most without—that one hand doesn't know what the other is doing. Continuing a piecemeal approach to ESA recovery—even with a singular authority—is doomed to fail for most species.

Singular plans for salmon, steelhead, bull trout, sea lions, seals, terns, wolves, eagles, and so on are expensive and poorly coordinated. Add to this problem continual intimidation and manipulation by politicos and you have a formula for economic destruction and species collapse.

Therefore, it makes both scientific and economic sense to have a singular entity in authority. Also, the time has come for multispecies recovery plans. A plan should balance man's and nature's needs. It should consider marine mammals in the estuary at one end of the Columbia Basin and fishing and ranching at the other, then make adjustments that provides balance to both.

The legislation you are considering giving authority to a single entity has value. It also has risks. Representative Chenoweth, given some of your past reputation and comments on salmon and steelhead protection, ISSU questions why this legislation at this time? We hope you will be able to erase some of our skepticism.

If transferring ESA's authority for steelhead and salmon away from NMFS and giving it to the Fish and Wildlife Service is Congress's wish, then some explicit assurances must be accorded society that the transfer is a resolution to the declining salmon and steelhead problem.

A final version of legislation transferring authority away from NMFS should contain explicit language directing the new authority to adhere to the 1999 decision time line for a final salmon recovery plan. Any delay in this decision point is unacceptable.

All full-time employees and all appropriated funding for completion of the 1999 should be transferred as well. It seems to many of us it is easier for Congress to manipulate Interior's budget than Commerce's and NOAA's budgets. Therefore, there must be explicit assurances in any new legislation that recovery plan funding will be provided.

If you get all that done, then I would suggest that we all just step out of the way and let this entity do its job.

I would like to wrap this up by simply pointing out that there are already a multitude of laws passed by Congress to protect Snake River salmon and steelhead. In the past, these fish have provided economies from Alaska to Stanley, Idaho. They can quickly do so again if we adhere to past laws and promises.

So obey the laws that Congress has passed and fulfill mitigation promises you have made and you probably will not have to burden yourselves with trying to come up with new laws. Congress' track record of following existing law leaves us with little optimism another law on top of the magnitude of salmon laws already in place will solve the problem for our fishery or for society.

Thank you very much.

Mr. POMBO. Thank you.

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

Mr. POMBO. Mr. Sanchotena, in your statement, the final part here left me a little bit confused. You said, "Your track record of following existing laws leaves us with little optimism another law on top with multitude"—what do you mean our track record with following existing law?

Mr. SANCHOTENA. Mr. Chairman, there are laws ranging from the Endangered Species Act to the Lower Snake River Compensation Plan that protect Idaho's wild steelhead and salmon. They also protect and were designed to provide continued supplies of fish for fishing.

As you know, all of our steelhead and salmon are virtually now on the Endangered Species List. And Idaho has not had a general statewide salmon season since 1978, 3 years after Lower Granite was completed.

So the track record of implementing the laws that are there to provide mitigation to the fishermen. Believe me, I can find—I have got some sympathy with others who are now looking at having their jobs mitigated. Mitigation has not been very effective for Idaho fishermen. I was a fishing guide from 1980 to 1991 and watched our runs decline dramatically and have watched many in the fishing community in Idaho and throughout the Pacific Northwest go out of business.

Mr. POMBO. So who do you blame for not abiding by those laws?

Mr. SANCHOTENA. Well, I think the burden has to fall on Congress there. I think that you are our elected officials to ensure that the laws that you pass are administered. I am not saying you in the personal sense, but you as the U.S. Congress.

If you pass a law, and you have no intent of following up to assure that the Northwest Power Act is being implemented or the Lower Snake River Compensation Plan is being implemented, the fault must lie on you. If I am wrong——

Mr. POMBO. I don't disagree with you so far. You are right. I heard a statement earlier that was repeated back to me by a reporter that said that—someone had made the statement that this was a—that holding hearings like this was a delaying tactic—and was trying to change the subject more or less from that.

But it appears to me that our responsibility—and I do blame Congress for this. When NMFS doesn't do its job, ultimately, it is the—you know, the executive branch's responsibility that they are not implementing the laws correctly.

But it is Congress' fault for not holding oversight hearings like this and not saying, "If you don't do your job, we are going to take it away from you and give it to somebody who will." And I am no big fan of the Fish and Wildlife by any stretch of the imagination. But at the same time, it is very apparent from people in all quarters of this debate that there is a problem up here. And NMFS is the one that is responsible for implementing this part of the law today. And if they are not implementing this part of the law, it is Congress' responsibility to find out why. And if they can't do it to give it to somebody else to make sure it gets done.

And I think that that debate started this legislation as part of that. And I think the authors of the legislation would be the first to admit that this is the first step in the process of finding out how we change this so that we do have some action and that we don't have the kind of dislocation and the fights that we have had in recent years.

Mr. SANCHOTENA. May I make a statement?

Mr. POMBO. Yes.

Mr. SANCHOTENA. I guess our concern is that does this legislation get at the root of the problem or is there another vehicle that Congress has available to come at the very problems that we are discussing?

The purpose of the Lower Snake River Compensation Plan was to mitigate fisheries, and the Northwest Power Act was to create equality. And I don't have to go through the laws. You all know them. But is this the right vehicle to do that? If so—you know, Congressman Crapo has heard us say before that this is probably the place we should start.

But today we question is this the right vehicle or is there another vehicle to get at NMFS and at the entities in this? Because we are not getting them. We have had hearings on this issue over and over and the followup is another hearing. And the fish continue to go extinct and so appreciate our frustration.

Mr. POMBO. I appreciate your frustration, believe me, it is on both counts, in that nothing is being done and that all we have is a lot of talk. I can appreciate that.

One other thing about your statement, you make the statement in your written testimony about being invited by the Minority to speak. Just so you understand, all witnesses are invited by the Committee to attend.

The process that we go through as a consultation process between the Minority and the Majority to determine an adequate representation of people to be present; there are no, and there never are, any witnesses that are strictly Minority or Majority witnesses. It is a collaborative effort, and we make every effort that we can to have that kind of collaboration.

That is the normal way that it has been handled. And in every committee that I have chaired, that is the way it has been done.

Mr. SANCHOTENA. I appreciate that. Please keep in mind I am a native Idahoan. I like to be asked to do things by native Idahoans. And I am always going to be a native Idahoan and so——

Mr. POMBO. Well, you were, because that is who is on the Committee. Thank you.

Mr. CRAPO. Mr. Chairman, may I have unanimous consent to go next since I have got to leave soon?

Mr. ROMERO-BARCELÓ. Of course.

Mr. POMBO. No objection, Mr. Crapo.

Mr. CRAPO. Thank you, Mr. Chairman, and I appreciate the Ranking Member, Mr. Romero-Barceló, for agreeing to let me go next.

Mr. Stelle, in the few moments I have, you and I have had a lot of discussion over this issue and I won't go back over all of those. But with the opportunity I have here, I just wanted to discuss with you one of the concerns that I have had.

As you know, Idaho has been developing this spread-the-risk policy and has been developing a lot of consensus in the region to move toward that policy. And it was my understanding that, in the last season, NMFS has ultimately agreed to at least move toward this spread-the-risk policy and leave more of the fish in the river for an opportunity to see if we couldn't get a handle on some of the dates that we were seeking to get to evaluate these options. That is what I thought the understanding was, the decision under the Bi-Op.

But then from the data I got as a result of last year's operations, it appears that that was not done and that virtually all of the fish—well, I won't say all, but something like 80 percent of the fish ended up being barged.

Is that data correct? And if so, why did we not pursue this spread-the-risk policy?

Mr. STELLE. Thank you, Congressman. First, after all, yes, we have had good constructive discussions. And actually, I appreciate them a lot. You focus hard on substance and that is good.

In response to the issue, this spread-the-risk issue in 1997, which you, I know, track very closely. I made the decision in consultation with the implementation team and the States and tribes participating to refer the issue of how many fish in the barge and how many fish in the river to the Independent Science Advisory Board.

In recognition of the continuing debate about what the science is and in the belief that that referral in soliciting advice from the board would help—would be constructive in trying to come together on agreement on this. The board issued—our request to the board went, I think, in November of last year.

In January of this year, it issued its report to us on the issue of how many were in the river and how many in the barges and did adopt the spread-the-risk or recommend to us to so adopt it. And we did so.

At the beginning of the migration season this year, that was the overall program that the implementation team was given to design weekly operations. I do not—so in answer to the question, was that the overall direction, the answer is yes.

Mr. CRAPO. That was my understanding.

Mr. STELLE. I do not honestly know what the numbers are as they are playing out through the end of August and now into September. The migration season is just about done now. I would be happy—if there are more fish transported than a targeting 50–50 objective overall through the entirety of the season, my guess is it may have been because of the very high extreme temperatures in the lower Snake in August.

I would be happy to get you those numbers, those precise numbers. I will do it as soon as I can. And then if you want to discuss them further, I can do so either on the telephone or in writing.

Mr. CRAPO. All right. I appreciate that.

Mr. Sanchotena, do you have information—are you aware of the impact of this year's operation in terms of how many fish were barged or how many were left in the river?

Mr. SANCHOTENA. Well, as Mr. Stelle has alluded to, overall migration is just winding down. I think a lot of the concern has to focus around the spring migrants. And at the end of the spring migration period for spring chinook, summer chinook, steelhead, the ecological valuable stock of the Snake Basin, that number came out nearly 88 percent in the barges with about 12 percent being left in the rivers.

Mr. CRAPO. That is the reason I asked, because that is the number that I picked up on and was focused on.

And Mr. Stelle, at least through the spring migration, why would that be the case if, in fact, NMFS had adopted the spread-the-risk policy that we have been debating over for the last couple of years?

Mr. STELLE. I honestly don't know whether or not those are the numbers. That actually sounds very high to me.

Mr. CRAPO. It sounds pretty high to me, too.

Mr. STELLE. Again, I am not ducking this. But let me find out what the numbers are, and then I will be prepared to answer that question.

Mr. CRAPO. All right. Thank you very much.

Mr. STELLE. What they are and why.

Mr. CRAPO. Those are all the questions I have, Mr. Chairman.

Mr. POMBO. Thank you, Mr. Crapo.

Mr. Romero-Barceló?

Mr. ROMERO-BARCELÓ. Thank you, Mr. Chairman. I just wanted to thank you, Mr. Chairman, and Chairman Young for having held these hearings. These 2 days have really been an education for me in two major issues. One major issue is the implementation of the Endangered Species Act and also in the interrelationship between both conservationists and those who are looking forward only to the interests of the people and population and the business interest.

During these 2 days, we have had people testifying from all areas of interest. We have had fishermen, commercial and sports fishermen. We have had conservationists. We have had businessmen. We have had farmers. We have had cattlemen. Everyone that is involved here in Idaho and Washington.

The only one, unfortunately, we have not heard from are the salmon. It reminds of an anecdote I don't know if you have heard. But American humorist Robert Benchley, he was studying history at Harvard University and they gave him a test. They asked him

to discuss the farm and fisheries either from the British point of view or from the American point of view.

And he answered that he didn't know much about the British point of view, nor about the American point of view. But he was going to discuss it from the point of view of the fish.

So I guess if we could hear from the salmon, we might even know better what would help them along to have healthy runs. I think it is something that all of us are interested in, even those of us that don't live in the area. We have been eating salmon, which is not only a delicious fish but also a very healthy fish to eat, so it is of interest with the economy.

And as I said, I have learned a lot, but I still feel that I have even more to learn. And the issue is not easy, but there is a lot of interest. I know that Representatives Helen Chenoweth and Dick Pombo, who is our chairman, and Chairman Young and all of the members of the Resource Committee are interested in finding something that would help this along.

I just wanted to make those comments and thank you once again, all of you, for being here and testifying and thank the Committee for this opportunity.

Mr. POMBO. Thank you.

Mrs. Chenoweth?

Mrs. CHENOWETH. Thank you, Mr. Chairman.

And I also want to thank you, Mr. Romero-Barceló, and your lovely wife for joining us in our city.

Mr. ROMERO-BARCELÓ. Thank you.

Mrs. CHENOWETH. I hope you enjoy your time here.

Mr. ROMERO-BARCELÓ. What little we have seen of it we like very much.

Mrs. CHENOWETH. Mr. Chairman, before I move on to my questioning, I would like to enter into the record the written testimony of Dewitt Moss on behalf of the Northside Canal Company and the Twin Falls Canal Company and the Committee of Nine, Water District 1.

Mr. POMBO. Without objection.

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

Mrs. CHENOWETH. Thank you.

I wanted to ask Mr. Stelle, were you in the room when Ms. Olivia James gave her testimony?

Mr. STELLE. No, ma'am, I wasn't.

Mrs. CHENOWETH. She testified that she has a floatboat operation.

Mr. STELLE. Actually, I did catch the tail end of that. I am sorry, yes.

Mrs. CHENOWETH. She indicated that the document, the take document, was taken back and so the fact that a redd moving from its spawning area for more than 20 minutes no longer applied. And one redd that moved from its spawning area for just 10 minutes or 12 minutes was sufficient to impact the floatboat operations.

I wanted to give you a chance—that is so bizarre to me. I wanted to give you a chance to address that. What do you know about that?

Mr. STELLE. I don't know anything about that. To be honest with you, I don't know about the take statement and disturbance times and that kind of stuff. I would be happy to check——

Mr. POMBO. If we could yield for a minute. I am going to have the staff compile the testimony that she gave and the question and answer period and give those to you. Because I not only find it bizarre; I find it completely ridiculous. And I would like to have some kind of a statement back from you guys explaining to the Committee exactly what is going on.

Mr. STELLE. Absolutely.

Mr. POMBO. She works up there every day and she didn't seem to be able to explain to me in common-sense terms why it is happening. So if you guys have some kind of answer for it, I would appreciate it.

Mr. STELLE. Yes, absolutely.

Mrs. CHENOWETH. Mr. Stelle, right now we are operating under a biological opinion that has not taken into consideration the impacts of the bull trout. Right? And let me ask you, there are some other species, the cutthroat trout that may be listed, does the biological opinion take into consideration those other species?

Mr. STELLE. The reason I am pausing, Representative Chenoweth, my recollection is that we have actually two biological opinions governing the operation of the hydropower system, which is what I assume you are referring to, a 1995 one and then a subsequent one in 1998 to respond to the steelhead listing.

My recollection is that 1998 biological opinion, I thought was a joint opinion with us and the Fish and Wildlife Service that did not take into account bull trout but I am not sure. Absolutely, bull trout impact and sturgeon impacts as we do those biological opinions on steelhead. So that, for instance, sturgeon has been listed by the Fish and Wildlife Service for quite a while below Kootenai.

And the operations that we adopted in the 1995 and in the 1998 biological opinions for the hydropower system very much took into account both the impacts on and the needs for sturgeon as well as steelhead. So there is a very intentional, conscious effort to look at the multiple needs of whatever species may be listed and try to blend them as you formulate recommendations.

But to your question on bull trout, I think it was a joint opinion in 1998, but I am not sure.

Mrs. CHENOWETH. I looked for it. I couldn't find it.

Mr. STELLE. OK.

Mrs. CHENOWETH. I appreciate your followup on it.

Mr. STELLE. Sure.

Mrs. CHENOWETH. You know, last year our studies showed that there was about 719,850 adult salmonids passing over the fish ladder at Bonneville. And that is 100,000 more adult salmonids than the 60-year average for that dam. Of the Dalles Dam passed 425,716, that is in 1997, and it is below the 41-year average.

Now, the devastating difference of nearly 300,000 adult salmonids lost between the two dams is linked to many things; predators, of course, but in large part, the gill netting. And, you know, it looks like there has been a large number of fish that have been taken because of the gill netting.

Now, I notice that the National Marine Fisheries Service has just authorized tribes to gill-net more chinook salmon this fall, which seems to be outside the ceremonial and cultural tribal time of fishing, which has historically been in the spring.

So on the one hand, you know, Ms. Olivia James can't float her boat over a certain area because it might disturb a redd. And yet you are authorizing gill netting. And these are the inconsistencies that we are dealing with here. And it seems so very baffling to us and the questions that we do need to have answered. Would you care to address that?

Mr. STELLE. Yes. It is a fair point and an important issue on how you balance sort of the allocation impacts as you are trying to reduce overall mortalities here.

First and foremost, on this floatboating issue, the most basic fact of floatboating and redds, particularly in that drainage, is that those are the survivors. Those fish have made it back. They are the most important fish to protect, because they are the link to the next generation.

And we work very hard to try to develop—working with the Forest Service and the floatboating industry on an arrangement that can protect the redds and also continue to provide opportunities for floatboating in an important part of the tourist season. And we understand that, and we have put a lot of effort into it. I will answer the detailed questions once I get them from the Committee.

On the issue of fishing in the main stem zone, what we call Zone 6, it is fundamentally an issue of honoring our obligations under a Federal court-imposed settlement called U.S. v. Oregon, whereby the States, the Federal fish managers, and the tribal salmon managers must come together every year and reach agreements on who gets to catch what fish where. And every year we do so for the fisheries in that main stem area.

The basic rule that we have, ma'am, is that there is a division of the overall available fish pie that we have agreed to, under the Columbia River Fish Management Plan, which has been approved by the court. So those negotiations take place under that Oregon court-approved plan.

The fishery, it is a healthy fishery that originates in the Hanford Reach. It is a good robust fishery. The numbers are quite high. They can be 80,000 or so and can support a fishery. It is the last bread-and-butter fishery for the Columbia River salmon tribes.

Their spring and summer chinook fishery is gone. It has been gone for years. And it is really their last fishery. We worked very hard to authorize reductions or changes in fishing patterns on that healthy fall chinook population to reduce impacts on spring summer chinook and on steelhead in the Snake. And I think we are successful in that effort.

But fundamentally, the authorization is for the last healthy tribal fishery on the last healthy fall chinook population of the main stem of Columbia. It is not a risk to those populations in that all of those fish are there and the fishery can sustain it.

Mrs. CHENOWETH. The case that you are referring to, the decision, did the decision specifically address the fall chinook gill netting?

Mr. STELLE. No. The gill netting is simply a technique that the tribes use.

Mrs. CHENOWETH. Did they specifically address the fall chinook fishery?

Mr. STELLE. Absolutely. The Columbia River Fish Management Plan absolutely lays out agreements on how to allocate the fall chinook fishery.

Mrs. CHENOWETH. The plan does, but did that decision?

Mr. STELLE. Yes. The plan sets the overall framework. And then every year, fishery managers get together and negotiate the specific numbers based on that overall allocation pie.

Mrs. CHENOWETH. The Oregon case that you referred to?

Mr. STELLE. Yes.

Mrs. CHENOWETH. Did the judge specifically?

Mr. STELLE. Every year, the judge generally approves the agreement that the parties reach for the numbers for that particular year. And in the case of the fall chinook fishery for this year, the parties were before the court yesterday. And I don't believe he approved it yesterday, but we are expecting a court order today any time.

Mrs. CHENOWETH. For sure approval for this was given several weeks ago, wasn't it?

Mr. STELLE. The negotiations under U.S. v. Oregon with all of the state and tribal fish managers have been going on pretty much through the summer. I think the final negotiation was reached, tentative agreement, maybe 3 weeks ago. And then we had a court date with a judge who oversees the implementation of the plan yesterday.

Mrs. CHENOWETH. Thank you.

Mr. STELLE. You are welcome.

Mrs. CHENOWETH. That answered my question. Thank you.

Mr. POMBO. Just to followup on that, a question popped into my mind. You said the State fish agencies—State and Federal fish agencies and the tribes, is there anyone else involved?

Mr. STELLE. Yes, the National Marine Fisheries Service and the Fish and Wildlife Service. So it is the Federal, State, tribal fish managers.

Mr. POMBO. Are there any FGOs or other stakeholders that are involved with those discussions?

Mr. STELLE. No, sir. This overall framework really originated in litigation between the State fishery managers, the Federal Government, and the tribes, oh, 15 years or so ago. So that is——

Mr. POMBO. So there are no outside FGOs or other stakeholders that are involved with the discussions? It is just the intergovernmental groups?

Mr. STELLE. The meetings, I believe, are public, though a lot of them are very tedious. I warn everybody. But the actual parties to the agreement are——

Mr. POMBO. I don't know what tedious means. Let me ask you a question. We had a county commissioner, Mr. Kerr, testify earlier. And I don't know if you were present when he testified.

But in February 1997, they met with representatives of the U.S. Forest Service, Federal Highway Administration, National Marine Fisheries, U.S. Fish and Wildlife, Idaho Department of Lands, the

timber industry, private landowners, and others to get together to come up with a plan consistent with the needs of the communities as well as of the requirements of the regulatory agencies.

And again, I say this was February 1997 they met to do some work on a road that had washed out. As of this date, there has been no action by the National Marine Fisheries. I am led to believe that all of the other Federal and State agencies had signed off on a plan.

He goes on to quote a letter from a forest supervisor, David Alexander, who wrote to a Ms. Elizabeth Gaar at the National Marine Fisheries Service. And he quotes, "I am very concerned that after 17 months of discussion, analysis, and meetings and almost 3 months after we jointly reached agreement which resulted in a four-party memorandum of understanding outlining the resolution of this issue, we are continuing to see delays in the issuance of the biological opinion."

It appears the National Marine Fisheries is the one that has been holding us up for what has gone on 19, 20 months in getting this work done. Is there any explanation why they are holding that up when it appears that the other Federal agencies, environmental and otherwise, signed off on the plan?

Mr. STELLE. I am sure there is, Mr. Chairman. Let me offer a couple of thoughts on it. First of all, I am not that close to this specific road repair work. I believe, if my memory serves me correctly, that the road repair effort really consisted of the short-term emergency work and then some longer-term restoration work.

Short-term emergency work was necessary to move through quickly. And I think the approval has occurred and that work has been done. I read his testimony this morning. I saw that reference to the letter from David Alexander to Elizabeth Gaar. I don't know about this specific biological opinion.

Again, I would be happy to find out about it and actually call him if that is appropriate, or call you.

Mr. POMBO. I would like you to report back to Congresswoman Chenoweth's office what you find out on this, as well as call Commissioner Kerr.

Mr. STELLE. Sure. I would be happy to.

Mr. POMBO. And let him know when he expects approval on this. It is obviously an issue of great concern on this. In reviewing the testimony, if you go on, they have had additional meetings that included the Congressman's office and it appears that it did not result in anything happening. It is issues like this that cause the kind of legislation that we are talking about today to be introduced.

Mrs. Chenoweth?

Mrs. CHENOWETH. I would like to ask Mr. Little a question. I would like to know the types of monitoring that NMFS has required of the U.S. Forest Service that you are involved with as a cattleman and also the types of activity that you and other permittees have done to try to satisfy NMFS.

Mr. LITTLE. Yes. Thank you, Congresswoman. We, in cooperation with the Forest Service, put together a grazing scheme to establish utilization patterns not to exceed and seasons of use that were, early in the season, along the creek that is the spawning ground for the spring chinook. And then with a listing of the fish, the

measure of the success was the stream bank's ability and changes in it.

And they showed improvement every year from the time they started the monitoring except one. In that year, they had some interns go out with very little training and do the monitoring. And so they were concerned that that may have skewed what was going on. But, be that as it may, we showed a consistent improvement and the range con monitors, what we do and it helps us to verify that we don't exceed the utilization standards.

The other monitoring they do involve the—we have got two different divisions of the Forest Service doing the monitoring. And they are the ones that are doing the work and assimilating all of the data. And so they have done it. This national riparian review team came in and looked at the data, looked at the stream banks and agreed that they were, as I stated in my testimony, that they were an improving trend.

They did recommend that they continue monitoring whether livestock were there or not. Well, that sounds grand and noble. But you know when the livestock are gone—and if you keep up, we will be gone. I would be real surprised if we lasted another year there, because the Forest Service just can't continue to rape all of the budgets and put that into just a small specific area.

But the National Review Team said to continue monitoring. Without us monitoring funding will be low on their budgeting scheme. Once we are gone, it just won't happen. But anyhow, if they had backed off and said, just continue the utilization to see that we are in compliance with the plan, because we have shown the trend that we were making the changes. We could live with that.

We are about the only resource use left in the area. We have half-a-million cubic yard blowout from the upper end of the valley that filled all of the rearing pools. While the source of that blowout has been repaired, it will take time for the pools to reestablish. But we are still there. And I think it is just the nature of the beast that they have got to regulate who is there. And, of course, there is no recreation monitoring.

The height of concern for me is that we have got so many different agencies. We have got the tribes. We have got the Fish and Game. We have got the Forest Service. We have got the National Marine Fisheries. I swear to God, they are getting more traffic now along the stream bank, than we were when the cattle were unmanaged. It just blows my mind. But that is basically the gist of it.

Mrs. CHENOWETH. Is this the traditional spawning habitat?

Mr. LITTLE. Oh, yes.

Mrs. CHENOWETH. So the salmon has been there for years?

Mr. LITTLE. It has huge spawning numbers. And there is real good documentation that shows the declining number of redds that are just a direct opposite, when you graph them, compared to the increase in the hydroelectric units on the Columbia or the lower Snake and Columbia. And as those hydroelectric units come up, the redd count goes down. It is just in direct contrast.

There is no question that we were doing some things wrong. We now have turned the corner and know how to manage the livestock.

But while the grazing impacts on the fish have been negated, there is such a lag time until the spawning numbers turn around and get better, we are going to long since be history. There is too many restrictions based on the numbers of fish that are currently there. When the streams were just trampled to death at the turn of the century—well, you hear stories of fish climbing over each other to get up that creek.

There is a real good evidence of that in history. And of course, it is prime, spawning habitat for the wild fish. There are no hatchery fish in that basin.

Mrs. CHENOWETH. Mr. Stelle, would you like to respond to that? It seems as though, judging from Mr. Little's comments that grazing has had—especially grazing practices today—have had negligible impacts on the returning salmon. What is your plan for the future with regards to grazing on public lands?

Mr. STELLE. I would be happy to. First of all, I would like to note that I think it is my recollection that we were at a hearing here with you probably 2 years or 3 years ago that I think then helped lead to some further discussions amongst the agencies in June along this whole subject. And a lot of folks worked pretty hard on it.

On the issue of monitoring dollars, I think those are Forest Service monitoring dollars. And to be honest with you, I am not quite sure whether or not the issue is whether or not to ease up on monitoring requirements, and if so, how that has been presented or worked through. I just don't know, Jim.

Mr. LITTLE. It is my understanding that these monitoring dollars don't serve us. Like I say, it is almost raping the Forest Service range betterment fund budget to the detriment of other forest users in the rest of Boise Forest. And the Forest Service just can't in good conscience spend that kind of money for these three allotments, as you know, have taken so much money compared to the dollars that they have received in return.

And if you are going to make our grazing fee get up to do that you are probably talking $30, $40, $50 a day in rent. It is just incredible. The number I had put to me was $120,000 a year.

Mrs. CHENOWETH. Is this being done through a memorandum of understanding?

Mr. STELLE. I don't think anything so formal.

Jim, correct me if I am wrong. I do think it represented an agreed upon strategy for—a multiyear strategy for grazing on these allotments worked out between the forest, Jim, and the State and Federal fish and game agencies. I don't think it was formalized in some formal way.

Mrs. CHENOWETH. All right. Thank you, Mr. Chairman.

Mr. POMBO. Thank you.

I want to thank this panel for your testimony and for answering our questions. Again, there may be additional questions that will be submitted to you in writing. If you can answer those in writing for the Committee, it would be appreciated.

[The information referred to may be found at end of hearing.]

Mr. POMBO. As always, it was a very valuable hearing. The insights that you brought to the Committee, we will keep with us

and we will take back. I think it is an educational process for us all.

I want to thank all of the members of the audience for being here, all of the people who had the opportunity to testify.

The Committee hearing record will be held open for those people who wish—who did not have an opportunity to testify but wish to submit testimony to the Committee. That can be submitted to the House Resources Committee, and it will be included in the record.

[The information referred to may be found at end of hearing.]

Mr. POMBO. Thank you all very much for being here. The hearing is adjourned.

[Whereupon, at 1:24 p.m., the Committee was adjourned.]

[Additional material submitted for the record follows.]

STATEMENT OF THOMAS W. KERR, COMMISSIONER, VALLEY COUNTY, IDAHO

Mr. Chairman and Members of the Committee:

Thank you for inviting me to speak to you about the role of the National Marine Fisheries Service (NMFS) in implementing the U.S. Endangered Species Act of 1973, as amended.

I am Tom Kerr, County Commissioner, Valley County, Idaho. I was born in 1937 in McCall, Idaho, educated in the McCall-Donnelly school system and went on to earn a Bachelor of Science degree in Mining Engineering from the University of Idaho in 1961. My wife and I returned to McCall in 1973 and I have worked as a professional land surveyor in Valley County since that time. In the course of running my business, I have surveyed in every portion of Valley County and am very familiar with its people, conditions and needs. I have served on the Board of County Commissioners since 1997.

In today's testimony I am not only representing the views of my colleagues on the Valley County Board of Commissioners. My observations and comments were also prepared in conjunction with the Idaho Association of Counties, a non-profit, non-partisan association dedicated to improving county government for the people of Idaho and representing each of the elected officials in all forty-four of Idaho's counties. I do not believe that my views on NMFS are in any sense unusual, but, on the contrary, are typical of those of my colleagues around this great state.

Allow me to tell you a bit about an ongoing project, the course of which has decisively shaped our view of the role of NMFS in fulfilling its responsibilities under the Endangered Species Act.

The Warren-Profile Gap Road was built prior to the establishment of the Payette National Forest and as such is a public right-of-way under the jurisdiction of Valley County as established under both state and Federal law. The road is maintained by the U.S. Forest Service pursuant to an agreement between Valley County and the Forest Service.

In 1994, debris torrents washed out a 500 foot segment of the road along Elk Creek. During the Chicken Complex Fire later in 1994, emergency funds were used to repair this damage. Unfortunately we experienced unusually heavy rainstorms during the year following the fire. The resulting high runoff caused the destruction of two bridges and seriously damaged portions of the road along a one-and-half mile section of the road. Further storms and flooding caused even more serious damage to the road in the winter of 1996-97.

In February of 1997, the Valley County Commission met with representatives from the U.S. Forest Service, Federal Highway Administration, NMFS, U.S. Fish and Wildlife Service, Idaho Department of Lands, the timber industry and private landowners to put together an action plan for the repair of the road which would be consistent with the needs of the community as well as requirements of the regulatory agencies. I am disappointed to report that the plan we agreed to in February of 1997 has yet to come to fruition. There is no question that its failure is largely due to the action—or, rather, *inaction*—of the National Marine Fisheries Service.

Throughout the process NMFS has consistently taken an inordinate amount of time to complete the analysis necessary for repair work to proceed. When it finally does come back to us with its review, it asserts that it needs still more information to issue a Biological Opinion, even when it has already received sufficient data. This view is shared by our local Forest Supervisor, David Alexander, who wrote in his June 9, 1998, letter to Ms. Elizabeth Gaar of NMFS regarding their delay in the issuance of a Biological Opinion:

> "I am very concerned that after 17 months of discussion, analysis and meetings, and almost three months after we jointly reached agreement which resulted in a four-party memorandum of understanding outlining the resolution of this issue, we are continuing to see delays in the issuance of a Biological Opinion."

Rather than participating throughout in an open and straightforward way, making its requirements explicit, NMFS seems only to take pot-shots at the successive plans submitted for its approval. It would seem logical for them to identify all of the specific conditions needing mitigation at one time, rather than picking out a new one later.

In addition to being slow, I have observed that to the extent that NMFS has participated in planning the repairs of the Warren-Profile Gap Road, its representatives have not had sufficient authority to speak for the agency. On at least one occasion, the NMFS representative admitted that he had not really read the report that was to be the subject of a meeting at NMFS's office in Boise with the Federal Highways, U.S. Forest Service, U.S. Fish and Wildlife, Valley County Commissioners, and a representative from Rep. Chenoweth's office, most of whom had to travel to Boise for the meeting. Since NMFS has not seen fit to send actual decision-makers to the

table, we are left with the clear impression that talking to the locals is a low priority indeed, and that our point of view is not being fairly represented or even taken seriously.

Nevertheless, we are not convinced that even were NMFS officials of sufficient stature participating in the process that the outcome would be any different. NMFS representatives have made it abundantly clear that they do not share our concerns. In fact, they remain quite indifferent to the public whose agents they are meant to be. On one occasion we were actually told by a NMFS representative that they did not really care what the costs and inconveniences of NMFS's actions might be to the public. As long as NMFS has an institutional culture so resistant to public scrutiny, accountability and cooperation, it is hard to imagine that this situation could improve.

Meanwhile, the road remains unrepaired, local landowners are without access to their property, the State of Idaho has not been able to proceed with a timber sale approved years ago, the U.S. Forest Service has limited access for forest management, and United States taxpayers continue to foot the bill for more NMFS delays. The greatest irony is that past delays in repairing the road have caused more erosion and delivery of dirt and debris to the stream to the detriment of fish spawning and rearing habitat. No doubt, the continued delays will cause more unnecessary erosion, not to mention the increase in the cost of construction to the taxpayers each year.

Therefore, the Board of Commissioners of Valley County and the Idaho Association of Counties urges you to support H.R. 4335 to amend the Endangered Species Act in order to transfer the authority of the Secretary of Commerce under the Act to the Secretary of the Interior. While we are not always thrilled with the positions taken by the U.S. Fish and Wildlife Service pursuant to the Act, our experience has been that it is more responsive and cognizant of our concerns, participates more openly in discussions of proposed actions and is generally more timely and efficient in reaching conclusions than is the National Marine Fisheries Service.

Again, thank you for inviting me to speak on this important issue.

STATEMENT OF SHERL L. CHAPMAN, EXECUTIVE DIRECTOR, IDAHO WATER USERS ASSOCIATION

I am Sherl L. Chapman, Executive Director of the Idaho Water Users Association. The Association is a non-profit volunteer organization consisting of over 180 irrigation districts and canal companies, more than 100 agri-businesses and professional firms and several hundred individuals interested in managing, administering and protecting the water resources of the State of Idaho. Our members deliver nearly all of the irrigation storage water impounded in the State of Idaho. Today you have before you H.R. 4335 titled "The Endangered Species Consolidation Act." The stated purpose of the bill is to convey ESA responsibilities solely to the U.S. Fish and Wildlife Service for administration primarily because of mismanagement by the National Marine Fisheries Service. We wholeheartedly agree that the National Marine Fisheries Service has mismanaged the salmon restoration program in Idaho as well as other ESA programs around the nation. Unfortunately, the issue today is not one of whose name is attached to ESA responsibilities but of Federal irresponsibility and incompetence in administering a program to restore salmon in the Pacific Northwest. There are as many as five (5) Federal agencies and Tribal entities involved in efforts to restore salmon and their appears to be little, if any, coordination or effort to increase the efficiency or cost effectiveness of restoration programs. It is our belief that Congress must take control of the program by requiring, even demanding that the Federal agencies involved evaluate restoration programs on the basis of science, effectiveness of restoring salmon runs, cost effectiveness and efficiency. For the last several years over one-half billion dollars has been spent in the region each year in salmon recovery efforts. There is little oversight of where the funds are spent, what they are used for and in many cases the very entities receiving the funds are those who have personnel making decisions on disbursement of the funds. It appears to be an incestuous relationship and unless there is immediate control many more billions of dollars will be spent on this program without oversight or a chance of success. If the private sector were to operate in this manner any company functioning like NMFS would very quickly go bankrupt. There appears to be no oversight, project management or analysis of the effectiveness of the programs by NMFS or other Federal agencies such as the Corps of Engineers, the Bureau of Reclamation and the Bonneville Power Administration. For these reasons the Idaho Water Users Association urges Congress to immediately commission a GAO audit

of the NMFS salmon restoration programs to determine where the money is going, the management relationships and to determine the efficacy of the programs.

The National Marine Fisheries Service has attempted to characterize irrigated agriculture in Idaho as being responsible for the decline in salmon runs in the Columbia-Snake River system by blaming the industry for reduced flows in the Snake River system. In a Biological Opinion issued in 1997 related to the Inland Land Development Program in Oregon NMFS stated "A. But for irrigation withdrawals, summer flow objectives would be met every year (100 percent) (with reservoirs operated for flow augmentation) whereas with withdrawals summer flow objectives are met less than of the time." These statements would seem to indicate that NMFS believes that survival of the Snake River Chinook Salmon cannot be achieved unless the NMFS flow objectives are met and since NMFS states that "Irrigation withdrawal is the principle reason for missing flow objectives in the Snake River" they also apparently believe irrigation withdrawal must be curtailed. Historical and current data, however, clearly contradict the NMFS rhetoric. A review of the U.S. Geological Survey records for the Weiser gage on the Snake River near Weiser, Idaho since 1911 clearly show that the average runoff from the Snake River basin has not significantly changed since 1911. Additionally, as can be shown in the attached figure taken from a report written by Karl Dreher, Director of the Idaho Department of Water Resources depicts what has actually happened in the hydrologic system. The figure shows the average flows in the Snake River at Lower Granite Dam where NMFS has set the current flow targets for the Snake River system. The blue portion of the graph shows the average Snake River flows from April 10 to June 20, the spring flow target period and the tan portion of the graph shows the average flows from June 21 to August 31, the summer flow target period. The red vertical bars show the irrigated acreage in the Snake River basin above Lower Granite Dam. The most interesting aspects of the figure, however, are the trend lines that are depicted on the graph and show the average flows for the period of record since 1916. These trend lines demonstrate what actually has happened to Snake River flow at Lower Granite Dam during the 144 day period that NMFS claims is critical to salmon recovery. The upper trend line declines from about 130,000 cubic feet per second to about 120,000 cubic feet per second during the spring since 1916. This is not the result of diversion to irrigated acres but merely operations for flood control and storage of spring runoff to preserve water for use later in the season. Irrigators divert very little water during this spring period. The reduction has been less than eight (8) percent of the Snake River flow during the spring months. The more interesting portion of the graph, however, is the trend line from 1916 to 1996 for the summer flow target period when irrigation should have the most significant impact on Snake River flows if, in fact, there is an impact at all. This trend line indicates an increase in flow since 1916 from about 38,000 cubic feet per second to about 41,000 cubic feet per second, a net increase of about eight (8) percent during the period of time NMFS claims irrigation withdrawals are adversely affecting Snake River flows and the salmon. While the graph clearly does not take into account the impact of irrigation development prior to 1916 both, NMFS and the Idaho Department of Fish and Game has repeatedly asserted that there were viable fish runs in the 1950's and both were allowing major harvest until 1978. If the fish were viable in 1950 then certainly they were viable in 1916. My reason for explaining this contradiction in NMFS policy and science is to again point out that NMFS would rather speculate about salmon recovery and ignore science in an effort to force Idaho to increase instream flows to meet other agendas.

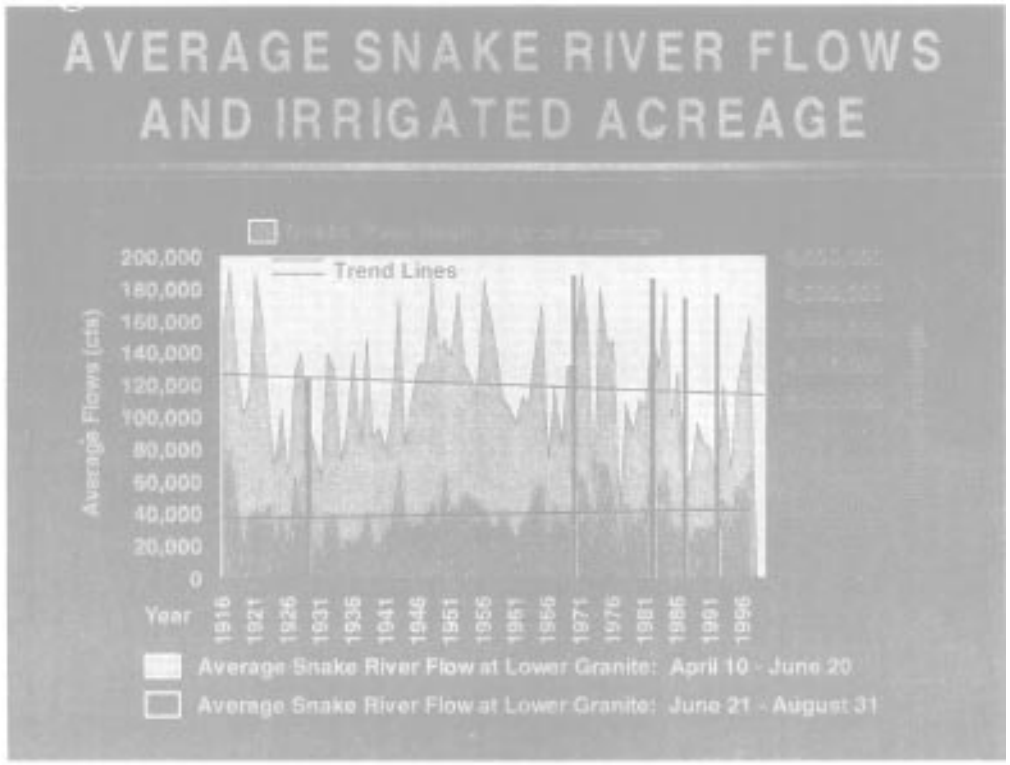
NMFS has insisted on water being taken from Idaho for flow augmentation since the early 1990's. The Northwest Power Planning Council was forced into a water budget regime in 1990 and ever increasing blocks of water have been taken from Idaho ever since. Over the last six (6) years from 1.6 to over 2.5 million-acre feet of water have been sent downstream by Idaho each year in an effort to recover fish. Part of this water has been provided by Idaho irrigators under a cooperative agreement in an effort to assist the agency in a flow augmentation experiment to determine whether or not there were any real benefits to salmon from flow augmentation. The rest has been taken without consideration for Idaho's economy or resident fisheries and without the concurrence of the state. While there are a myriad of scientific reports all over the board on this issue, the general consensus appears to be that no significant benefit can be directly attributed to flow for salmon restoration. In spite of this, NMFS appears to be continuing its efforts to take even more water out of Idaho. NMFS has insisted through the U.S. Army Corps of Engineers that the Bureau of Reclamation investigate the impact to Idaho if an additional one million-acre feet of water were to be taken each year for salmon restoration and flow augmentation. Preliminary drafts of the study indicate that under the worst case scenario (a series of dry years) use of an additional one million-acre feet of water

out of Idaho would result in over 700,000 acres of irrigated land in Idaho being dried up. This would result in an average, direct economic impact to Idaho of at least five hundred million dollars per year. This, of course, would have major secondary economic impacts throughout the entire state. The recreation and sports fishing community is also impacted. Exceedence curves developed for the study by the Bureau of Reclamation indicate that under the worst case scenario many of the major reservoirs in Idaho would be dry or without usable storage approximately five (5) to eight (8) percent of the time. Since Idaho has numerous blue ribbon trout fisheries below these reservoirs (South Fork Snake River, Henry's Fork Snake River, South Fork Boise River, Deadwood River, Boise River) the fishing and recreational opportunities and the resident fisheries established in the reservoirs and those streams would be decimated. In addition to fishing opportunities the white water rafting industry would also be largely destroyed since, in most cases, water released for irrigation during the summer months provide the flows necessary for an industry that contributes millions of dollars to the state economy. All of this for a program that clearly will not restore or recover Idaho's salmon.

I could provide many other examples of NMFS's inability to manage the programs to recover Snake River stocks of salmon. I'm sure that during the two field hearings held by this Committee that you have heard of other flagrant examples of inefficiency and incompetence. The National Marine Fisheries Service is now moving toward the adoption of a 1999 Biological Opinion. This opinion is supposed to incorporate the data and information obtained over the last several years and propose a reasonable salmon recovery effort. However, during conversations with NMFS personnel it is clear that they intend to continue to focus on flow augmentation, irrespective of the data and the studies that show little, if any, correlation between flow and survival. They continue to ignore or minimize the issues of predation, dam modification, harvest and other alternative opportunities for salmon recovery that could be initiated within one or two years. Because of their incompetence the region has been forced into a useless debate of dam breaching versus flow augmentation with little opportunity to discuss the issues that can really affect salmon recovery. Just as an example, 10-20 million smolts per year are eaten as they reach the Columbia River estuary by Caspian terns nesting on an artificial island in the Columbia River. If that one colony were eliminated 10-20 million more smolts per year that have already made the 900 mile downstream journey would reach the ocean. We believe that this is just one example of an opportunity to do something quickly that will, in fact, assist salmon recovery.

If the National Marine Fisheries Service continues blindly down the path of flow augmentation there will certainly be a major confrontation with the State of Idaho and the rest of the region, which ultimately will result in litigation and opposition resulting in stalemate and ultimately salmon extinction. It does not make sense to precipitate such a confrontation over a scientifically unsound program of flow augmentation. We urge you as a Committee and the Congress as a whole to initiate significant oversight of the National Marine Fisheries Service and force the agency to react to science and implement reasonable and prudent programs to restore salmon and move away from the flow augmentation which is scientifically unsound but politically expedient for the agency. After fighting with the agency for nearly a decade we believe that only Congress will get their attention and force them to do what is right.

I appreciate the opportunity to present this testimony to the Committee and would be happy to respond in writing to additional questions if requested.


AVERAGE SNAKE RIVER FLOWS
AND IRRIGATED ACREAGE
Trend Lines
Average Flows (cfs)
200,000
180,000
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
Year
1916
1921
1926
1931
1936
1941
1946
1951
1956
1961
1966
1971
1976
1981
1986
1991
1996
Average Snake River Flow at Lower Granite: April 10 - June 20
Average Snake River Flow at Lower Granite: June 21 - August 31

STATEMENT OF MARK LIMBAUGH, EXECUTIVE DIRECTOR, PAYETTE RIVER WATER USERS ASSOCIATION, INC.

My name is Mark Limbaugh. I am a native Idahoan and a fourth-generation farmer from Fruitland, Idaho. I am also the Watermaster for the Payette River Basin in Idaho, delivering storage and natural flow from the Payette River to over 150,000 acres of prime Idaho farmland. I also represent the Payette River Water Users Association as their executive director, whose members encompass practically all of the irrigated acres in the basin. Today, I represent those members, who are extremely concerned about their irrigation water supplies for the future of their farms and families.

As I understand it, the question posed by the Committee today is whether the National Marine Fisheries Service (NMFS) is implementing the Endangered Species Act (ESA) consistent with the authority granted in the ESA, whether their activities overlap or are consistent with those of the Fish and Wildlife Service and whether their implementation is being conducted in a cost effective manner.

Ladies and gentlemen, under the current implementation of the ESA by NMFS, our time honored water rights in this state are currently under attack. NMFS continues to promulgate recovery measures requiring more and more Idaho water be dumped from our reservoirs to augment flows on the lower Snake River at Lower Granite Dam for the purpose of aiding endangered salmon migration. The flow augmentation experiment the State of Idaho agreed to participate in during the past several years has not worked, with very little biological evidence to support this misallocation of Idaho water. In contrast to the limited effectiveness of flow augmentation as a recovery measure, the economic trade-offs are immense for the State of Idaho.[1]

In this experiment, Idaho has voluntarily provided approximately 2.0 to 2.8 million acre feet of stored water for annual flow augmentation from both willing sellers and U.S. Army Corps of Engineers-managed projects in an attempt to meet flow targets set by NMFS at Lower Granite Dam downstream on the lower Snake River. One of the main problems with the NMFS flow targets is that they are set artificially too high, resulting in target flows not being met and a call for additional water from Idaho in an attempt to meet these impossible target flows.

A recent USBR hydrologic regulation study demonstrated that NMFS flow targets cannot be met in all months (that affect seasonal averages), specifically during low or average water years, because they require more water than the hydrologic system can provide—with or without net irrigation depletions from the Snake-Columbia River Basin.[2] In fact, the past 1OO-years of irrigation development in Idaho have not significantly decreased flows during the spring and summer time periods NMFS has set flow targets for on the lower Snake River.[3] Yet, as directed by NMFS, the U.S. Army Corps of Engineers has asked the U.S. Bureau of Reclamation to study the hydrologic, economic and social implications of acquiring an additional one million acre-feet of Idaho water for enhanced flow augmentation on the lower Snake River.

If this additional one million acre-feet of Idaho water were added to the water currently flowing from our storage reservoirs, the estimated annual economic benefits lost to Idaho would range from $40 million to $70 million in direct net economic valued.[4] This huge economic loss, which does not include secondary economic effects, would devastate the economy of the State of Idaho, and wipe out most of our agricultural communities whose very existence relies upon irrigated agriculture. In order to acquire this additional million acre-feet of Idaho water, estimates call for between 200,000 and 500,000 acres of productive farmland to be dried-up and over 1.4 million acre-feet of storage space be reassigned or reacquired from irrigators.[5] The result: an annual irrigation shortfall of up to 500,000 acre-feet for the remaining irrigated acreage, which would fallow an additional 100,000 to 150,000 acres of farmland, significant additional reservoir level reductions during peak recreational and irrigation use, and higher river flows during peak summer recreational use.[6]

Idaho would experience a serious adverse impact to its recreational industries due to the reduced summertime reservoir levels and higher river flows, which would further reduce the overall usefulness of our reservoirs for regional fisheries and flatwater recreation and our rivers for whitewater recreation. Also, hydropower production efficiencies would be impacted due to these higher river flows, which may exceed productive capacities at several facilities on the river.

All these negative impacts to irrigators, recreation, hydropower, and the Idaho economy and we would still only meet the NMFS artificial target flows at Lower Granite Dam 35 percent of the time (on average).[7] Given these facts, a NMFS recovery plan which includes an additional one million acre-feet of Idaho water would,

in my opinion, decimate the economy of the state, destroy entire Idaho communities, create widespread unemployment, and abrogate Idaho water law in the process.

And what do the endangered salmon and steelhead receive in return for all this hydrologic and economic chaos? Flow augmentation, as I stated earlier in my testimony, has been something of a "grand experiment." The State of Idaho agreed to voluntarily participate in the NMFS flow augmentation project until 1999, allowing up to 427,000 acre-feet of Idaho stored water from the upper Snake River Basin to be used in this experiment on a willing seller basis. Since 1995, Idaho has experienced above-average water years, and 427,000 acre-feet have been released from the upper Snake in an attempt to meet flow targets in the lower Snake River every year. In addition to this amount of upper Snake River water, stored flows have been released from the Corps-operated Dworshak Reservoir in Northern Idaho and from Brownlee Reservoir by Idaho Power Company in order to provide an annual total of approximately 2.0 to 2.8 million acre-feet of flow augmentation. In voluntarily allowing these waters to leave the state for flow augmentation, our state has already felt substantial negative impacts to resident fisheries, flat-water recreation, and reduced availability of storage water for other uses (municipal, industrial, managed groundwater recharge, water quality and irrigation needs, to name a few). The State of Idaho has given up these opportunities in order to permit current flow augmentation efforts by NMFS to occur using Idaho water under their 1995 Biological Opinion.

But what has NMFS accomplished with all of this Idaho water? Assuming that NMFS is trying to increase water particle velocities in the lower Snake River with current flow augmentation strategies, we need to take a look at how effective they have been in accomplishing this feat. If NMFS is attempting to restore average pre-dam water particle travel times and equivalent average velocities, the volume of water necessary to meet these velocities would be equal to over four times the total average annual runoff from Idaho's river basins.[8] It is obvious that it would be futile to attempt to mimic pre-dam velocities and water particle travel times when there is not enough water in the system to accomplish this task.

So what do NMFS flow targets do to water particle travel times and velocities? Meeting the current NMFS flow objective of 55,000 cubic feet per second (cfs) at Lower Granite Dam, during an average water year, increases the effective average velocity by about 0.1 miles per hour.[9] This overall increase in velocity still results in a water particle travel time about 7 times greater and a velocity 7 times less than pre-dam flows, and an inconsequential incremental improvement to in-river flow velocity.[10]

Do the fish notice these (albeit small) improvements to velocities? Recent studies indicate that spring-migrants benefit very little, if at all, from current flow augmentation efforts, while fall-migrants are affected more variably, with a high level of uncertainty and with other variables (such as migration timing and fish size through the upper river system) having a more predictable effect on species recovery than flow-survival data.[11] In other words, current flow augmentation efforts have not resulted in any significant improvements to the survival of ESA-listed salmon smelt on their way to the ocean. Yet NMFS water policy, through its flow targets/augmentation program, is being developed within the Snake/Columbia River drainage on the premise of "no net loss," or no further development of water resources within the basin.

In effect, through ESA implementation, this NMFS policy challenges state authority to grant any future water rights for municipal, industrial, and irrigation uses, as well as attempting to challenge existing state-granted water rights as to their effect on instream flows for salmon migration. This cannot be allowed to continue, using Federal tax dollars and the seemingly infinite overall power of the Endangered Species Act to invalidate existing, state-protected water rights that tax-paying Idaho citizens have relied upon for their very existence for generations, while doing very little, if anything, for the endangered fish runs.

As to the question of H.R. 4335, in my opinion, National Marine Fisheries Service is probably doing what U.S. Fish and Wildlife Service would do in their stead. The problem is the improper use of Federal agency discretion in implementing the ESA while ignoring the "best scientific and commercial data available." [12] The power of the ESA is immense, and unfortunately, the Federal courts will probably decide what will be done under the ESA. In my mind, it is doubtful that vesting all ESA responsibilities with the Secretary of Interior will effect better results for irrigators and the citizens of Idaho. The Secretary of Interior has authority over not only the Fish and Wildlife Service, but the Bureau of Reclamation as well, which holds in trust many storage and natural flow water rights for Idaho farmers. Our concerns about ESA implementation would probably escalate if the Department of Interior took charge of salmon and steelhead recovery, as interdepartmental decisions would

take the place of adversarial consultation proceedings on the operation of Idaho's Federal storage reservoirs under the ESA, putting our water supply even more at risk.

Recently, there has been much talk about removing dams on the lower Snake River, as well as talk about drying up many Idaho farms to provide additional flow augmentation efforts, all in the name of the endangered salmon and steelhead. These options, both currently being studied by Federal agencies, seem to be the extreme positions, promoting measures that are questionable in bringing about the recovery of endangered salmon and steelhead runs, but which would carry a great and immeasurable cost to our society.

In my opinion, there is uncharted middle ground that needs to be explored before we allow any of these extreme measures to be debated. NMFS has ignored improved, "salmon-friendly" hydroelectric turbines that, if installed at the dams, would improve fish passage. Improved transportation efforts, possibly past the Columbia River estuary (another variable to salmon smelt survival) should be further explored and implemented. There is a need for additional study and improvements to in-river and in-reservoir predation mortality. NMFS cannot tell us how many juvenile salmon and steelhead are being killed in the reservoirs as a result of predation. Caspian terns at the estuary are happily consuming from 10 to 15 million smelt annually. Sea lions protected by NMFS attack almost one-third of all returning adult salmon in the river, wounding or killing many of the endangered adults headed to Idaho to reproduce.

Finally, real reform in harvest mortality, holding the fishermen and tribes just as accountable for salmon protection as river users are held in protecting redds (salmon nests) upstream on the tributaries. While admittedly not the "primary" cause for salmon and steelhead decline, harvest does play a role in decline of these fish stocks. For example, under the court-ordered Columbia River Fish Management Plan (CRFMP) adopted in 1988, up to 15 percent of A-run steelhead and 30 percent of B-run steelhead, both of which are protected under ESA, can be harvested legally. Why is NMFS still operating under a 10-year old plan for harvest level management when they should be more responsible in rebuilding endangered salmon and steelhead runs? CRFMP has been the critical variable during the last ten years in reducing rather than increasing the production of wild salmon and steelhead.[13] And NMFS is party to this court-sanctioned agreement, which puts the agency in a box, making it powerless in shaping Columbia River fisheries to protect listed fish.

If any or all of these variables were controlled, made more fish-friendly, or changed to reflect current situations, then possibly salmon runs would begin to improve without implementing other extreme, sweeping changes to the river system and the Pacific Northwest so eagerly called for by many environmental and fisheries advocates.

In conclusion, the main focus I want to leave with you today is that NMFS and its flow targets/augmentation policies are threatening irrigated agriculture's very existence in Idaho. The many small communities historically connected to those farms, both economically and socially, are at risk of disappearing, displacing thousands of people from their homes they have owned for generations. Irrigated agriculture is the main reason why we have such an abundance of fresh and processed fruits and vegetables in our grocery stores today. Without irrigation, we would not have the seasonal stability necessary to produce sustainable food supplies needed for the 21st century. Irrigated agriculture, agricultural services and food processing are the nation's "quiet industry," steadily and reliably producing up to $60 billion annually in Western income,[14] and Idaho's irrigated agricultural industries are a large part of this national food source. Allowing a Federal agency to abrogate state water laws, undermine a stable water supply, and force farmers off their lands using the ESA, with little proven benefit to the protected fish, will negatively impact our communities and our state, and eventually undermine the stability of our nation's food supply. The challenge before the Committee today is not necessarily which Federal agency should implement the ESA, but how misguided agency discretion in implementing the Act can be realigned in order to protect a state's right to appropriate and protect its valuable water resources for its citizens and its future.

Thank you for the opportunity to testify before the Committee, and I would be happy to stand for questions.

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[1] *The Columbia-Snake River Flow Targets/Augmentation Program: A White Paper Review With Recommendations for Decision Makers,* Darryll Olsen, Ph.D., James Anderson, Ph.D., Richard Zabel, Ph.D., John Pizzimenti, Ph.D. and Kevin Malone, MS, February 1998.

[2] Attachment No. 1, Columbia River Water Flows and Targets Analysis Chart.

[3] *A View on Idaho's Experience with Flow Augmentation,* Karl J. Dreher, Director, Idaho Department of Water Resources, May 1998. Also, see Attachment No. 1.

[4] Attachment No. 2, Estimated Economic Benefits of Water Use for Major Sectors and Types of Economic Sector Trade-Offs (Direct Net Economic Value Estimates).

[5] U.S. Bureau of Reclamation, One Million Acre-Feet Study, Hydrology and Economics Meeting, Boise, Idaho, July 31, 1998.

[6] U.S. Bureau of Reclamation, One Million Acre-Feet Study, Hydrology and Economics Meeting, Boise, Idaho, July 31, 1998.

[7] U.S. Bureau of Reclamation, One Million Acre-Feet Study, Hydrology and Economics Meeting, Boise, Idaho, July 31, 1998.

[8] *A View on Idaho's Experience with Flow Augmentation,* Karl J. Dreher, Director, Idaho Department of Water Resources, May 1998.

[9] Ibid.

[10] Ibid.

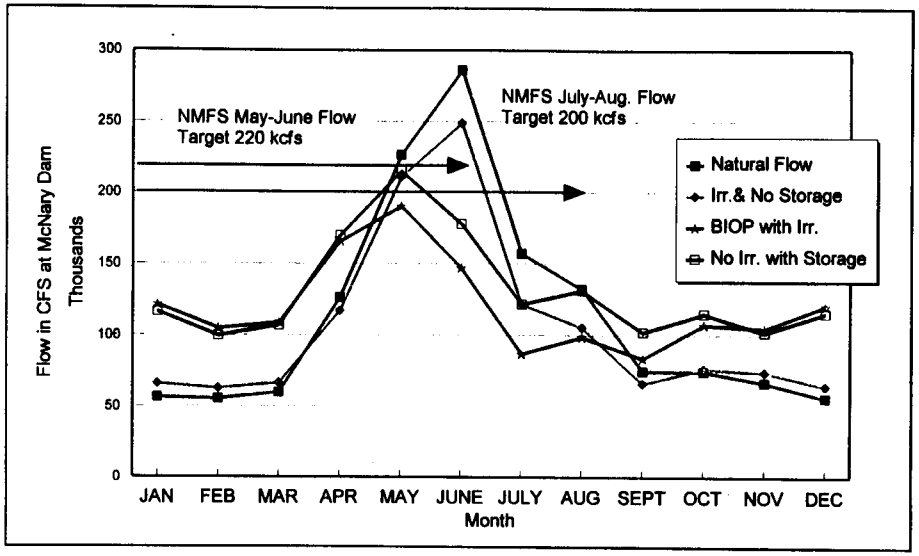
[11] *The Columbia-Snake River Flow Targets/Augmentation Program: A White Paper Review With Recommendations for Decision Makers,* Darryll Olsen, Ph.D., *et al.,* February 1998.

[12] Endangered Species Act of 1973, Section 7.

[13] *All Species Review,* 1997.

[14] *Western Irrigation Economic Benefits Review. Irrigated Agriculture's Role for the 21st Century: A Policy White Paper for Decision Makers,* Darryll Olsen, Ph.D. and Houshmand Ziari, Ph.D., June 1998.

Columbia River Basin Water Flows
Estimated Low Water Condition (1976-77), Average Monthly Flows at McNary Dam



Data Source: USBR, Cumulative Effects of Water Use, Interim and Draft Reports, March-October 1997.

Estimated Economic Benefits of Water Use
For Major Sectors and Types of Economic Sector Trade-Offs
(Direct Net Economic Value Estimates)

Economic Sector/Purpose	Estimated Benefits Annual $/MAF	Economic Trade-Offs For Water Diversion
Irrigated Agriculture*	**$40-70 Million**	Reduces water for hydropower production and fish flow augmentation.
Hydroelectric Power**	**$8-10 Million** (BPA System Costs)	Reduces water availability for fish flow augmentation; could conflict with irrigated agriculture.
Flow Augmentation--Fish Impacts Estimated Sport and Commercial+ Fisheries--Columbia Basin Origin (High Value Estimate)	**$2.25 Million**	Flow augmentation reduces hydropower production and can affect irrigated agriculture under NMFS BIOP-Recovery Plan.
Flow Augmentation--Fish Impacts Estimated Use and Existence++ Values for Columbia River Basin Salmon and Steelhead	**$4.80 Million**	Flow augmentation reduces hydropower production and can affect irrigated agriculture under NMFS BIOP-Recovery Plan.

* Assumes Direct Net Value of $40-70/acre ft. of water.

** Estimated marginal power cost impacts to Bonneville Power Administration.

\+ Assumes baseline economic value of $25 million (1995$), with compounding future value of 5% attributed to flow augmentation, for 10 migration periods (with average annual flow augmentation of about 7 MAF). The value represents a future value estimate and should be considered as presenting a high value perspective for comparison purposes here.

++ Assumes "total value" estimate (use, option and existence value) based on Columbia Basin Salmon and Steelhead study for use and non-use values; assumes that about 53% of the total value would reflect existence value (Olsen and Richards 1991). Use value based on future value estimate.

Data and Analyses Sources:

D. Huppert and D. Fluharty, Economics of Snake River Salmon Recovery: A Report to the National Marine Fisheries Service, School of Marine Affairs, University of Washington, Seattle, Washington, 1996 (and data/sources cited therein, SOR EIS).

Personal communications with Dittmer Operations staff, Bonneville Power Administration, Vancouver, Washington, August-September 1997.

D. Olsen, The Columbia Basin Project: Project Operations and Economic Benefits, A Regional Overview, The Pacific Northwest Project, Kennewick, Washington, 1996 (and Technical Memorandum Prepared for the Public Purposes Worl Group of the Comprehensive Energy Review, 1996, Evaluating Irrigation, Power System, and Flow Augmentation Benefits and Costs).

J. Hamilton and N. Whittlesey, Cost of Using Water from the Snake River Basin to Augment Flows for Endangered Salmon, Paper Presented at the Annual Western Regional Sciences Association, Napa, California, February 1996.

STATEMENT OF DAVID DOERINGSFELD, MANAGER, PORT OF LEWISTON

Implementation of the Endangered Species Act was initially carried out with the best of intentions. However, the complex and often conflicting requirements of ESA have made it almost impossible to produce a fish recovery plan which can be implemented and which produces win-win solutions.

Yesterday, you heard from one of the ports on the Mid-Columbia River concerning the implementation of ESA by the NMFS. I would like to echo some of those concerns.

Once a species is listed as endangered, the only option available is to develop a recovery plan without any regard to cost, social or economic impacts. While the people of the Northwest want to save anadromous fish, they are not willing to do it at any cost, and they don't want to be part of empty gestures or false promises for the fish.

Our Northwest lifestyle is built around the remarkable Columbia/Snake River System. The many benefits we receive have shaped our communities, our culture and are a vital part of the Northwest economy.

Approximately 90 percent of our region's agricultural products are exported. We all rely on the Northwest's unique integrated system of growing, processing, storing and transporting food for export. Losing one link in the chain would have serious effects and our lives would be drastically different without it.

Over 40 percent of all the wheat grown in the United States is exported through the Columbia/Snake River System. River barges carry essential cargo 465 miles from Lewiston, Idaho, to Astoria, Oregon, stopping at 25 ports along the way. This extraordinary river system creates a safe river passage and has made the Pacific Northwest the market basket of the world.

Yet today, we have a black cloud hanging over the economic future of the Pacific Northwest and NMFS appears to be the only agency in charge of whether we will have prosperity or disaster.

When ESA gives a single Federal agency the power to control public and private land use, throw out state conservation plans, and dictate the amount of water that flows in our rivers, common sense would indicate that we have gone too far.

I believe that we need open discussions in which to develop a river governance framework whereby the region retains control over ESA implementation. The governors of ID, MT, OR and WA are currently exploring river governance options. We are hopeful that a broadened Northwest Power Planning Council will be given the authority to oversee ESA implementation.

I don't pretend to be an expert on fish, but if we have learned anything by now, it is that there is no magic solution to the fish problems in the Northwest. Fish runs all along the west coast are in decline, not just the fish that encounter dams. The people in the Northwest don't want lose-lose schemes like destroying dams or massive flow augmentation, especially when its not known whether these efforts would return even a single fish.

When we consider whether transferring ESA enforcement responsibilities from one Federal agency to another (as outlined in H.R. 4335), it is difficult to ascertain which agency would be more effective. Single agency control seems to make sense. Currently, we have Federal biologists from NMFS, USFWS and the COE all working on fish recovery. Centralizing the authority and expertise would provide for a clear mission and reduce conflicting goals.

So here's the bottom line in this whole debate. Along with other North Westerners, we want to preserve the things we value most about living in the Pacific Northwest—a rural culture and strong regional economy capable of supporting families and communities for years to come.

Our dams are a vital link in the structure of the Northwest's economy. We have grown to depend on them to provide dependable, low-cost power to our homes, deliver our goods to world markets, protect ourselves from floods and provide recreational opportunities.

We simply want common-sense solutions that really work. We deserve a win-win solution for everyone connected with the river—one that allows the fish to thrive, but preserves the benefits of our remarkable river system for future generations.

STATEMENT OF HAROLD G. [JERRY] KLEMM, ROCKY MOUNTAIN, REGION PRESIDENT, PULP AND PAPERWORKERS RESOURCE COUNCIL AND REPRESENTING UNITED PAPERWORKERS INTERNATIONAL UNION LOCAL 712

Mr. Chairman, Members of the Committee, ladies and gentlemen, my name is Jerry Klemm. I am before you today in my capacity as president of the Rocky Mountain Region of the Pulp and Paperworkers Resource Council or PPRC. Our over

400,000 members across the United States are deeply committed to the conservation of America's natural resources in ways that benefit people and protect the wild community.

I am alarmed at the building power of small regulatory agencies to circumvent and reinvent the law of the land to meet very narrow goals established in far less-than perfect legislation. What I believe are unintended consequences of those narrow goals are not mitigated by that same legislation. I do not believe, for example, that the authors of the Endangered Species Act knew that the National Marine Fisheries Service [NMFS] would use the Act to circumvent individual and state water rights in pursuit of their aims. This is especially troubling when dealing with issues like flow augmentation where the working hypothesis is unworkable. NMFS believes massive flow augmentation will help fish. Idaho Fish and Game Director Steve Mealey says "flow augmentation will not recover the fish and it places large burdens on vital state interests." While I don't like Mr. Mealey's solution I do agree that flow augmentation is not the answer.

But flow augmentation is a perfect vehicle for NMFS to use to take water rights in an attempt to wrest control of water in the west to meet their own ends away from states and individuals and use that water. I am not suggesting there is a malicious conspiracy at work here to take western water. I am saying that a small regulatory agency with veto power over Federal, state, and private land management has interpreted the law in such a way that the net result is the taking of western water without due process.

While NMFS has been busily engaged following its own narrow path, her sister agency in the Department of Interior, the U.S. Fish and Wildlife Service, is engaged in its own efforts to meet the same ends, but not always by the same means. How painful it must be for leadership in these two agencies, both charged with implementing and enforcing the ESA, to have to work around, over, and through each other and everyone else to implement the Act. Their experience and training are often in conflict. Their political bosses answer to different drummers for different reasons. Their histories and clientele are so different. Their veto power and willingness to use that power are shaped by their experience.

I absolutely support H.R. 4335 to consolidate those agencies that hold such power over the rest of us. While more sophisticated populations in cities far removed from Lewiston may think this is much ado about nothing, the time will come when they will appreciate what you're trying to do here. The first time busy big city mayors go up against Will Stelle and the gang they'll realize it was the right thing to do after all. Wasn't it Will Stelle who said (12/15/97) "Science will not give us the answers, although many pretend otherwise?" If not science, who? The answer is, Will Stelle and NMFS, unbridled by the democratic process or the principles of republican forms of governance. Ridiculous, you say? When NMFS and the USFWS vote, who may vote them down? When they enforce this flawed and often ruinous law, who may veto them? To whom are these people accountable?

The answer of course is that you, Mr. Chairman, and your colleagues may ultimately veto those agencies. But you cannot prevail against an administration so dedicated to sacrificing human and community needs. You, in good faith, enacted this law to help endangered species. You could not know that your intent would so mutate as to be unrecognizable today from the legislation enacted so long ago. Who could foresee the dueling agencies and cross-purposes? Who could predict that the administration would so cynically use the law to further their own dark ends over the very particular rights of individuals and states?

Stelle's recent hostile takeover of the issuance of the 4d rule for spotted owl in Oregon demonstrates NMFS cannot be trusted to work cooperatively in an administration supposedly dedicated to collaboration. It's time to muzzle the hounds and bring some management to chaos. It's time to either bind the two agencies together or make them one, or, if that's not possible, to limit NMFS authority to the ocean and USFWS inland. Make the boundary the coastline.

I'm not a biologist and I don't pretend to have all the answers. I do know something about organizing to get something done. A prophet said we cannot serve two masters (Luke 16:13). I believe him.

STATEMENT OF DELL RAYBOULD, CHAIRMAN, ON BEHALF OF THE COMMITTEE OF NINE, WATER DISTRICT 1, STATE OF IDAHO

My name is Dell Raybould. I am a farmer and businessman from Rexburg, Idaho. I was born in Idaho and have lived here all of my life. I grow, process, pack and ship Idaho Potatoes. I farm in Fremont and Madison Counties, and irrigate my crops with River water, including water stored in various Snake River reservoirs.

I currently serve as Chairman of the Committee of Nine, the advisory committee elected by the water users of Water District Number 01 to represent the water users and advise the watermaster in the affairs of the district. Water District 01 is the largest water district in the United States comprising 15 thousand water users irrigating 1.2 million acres of farmland. I am also an elected director of the Consolidated Farmers Canal Co. and a director of the North Fork Reservoir Co. owner of Henry's Lake, a private irrigation reservoir known world wide for the famous Cutthroat Trout fishery at the headwaters of Henry's Fork of the Snake River.

I am here today to express the concerns of the thousands of irrigators, industrial water users, and municipalities that depend on irrigated agriculture in Southern and Eastern Idaho. Your request for comments on the implementation of the Endangered Species Act by National Marine Fisheries Service (NMFS) under the authority granted in the Act, and whether there is and overlap of activities with Fish and Wildlife (USFWS) is difficult to assess. Both Federal agencies have their own agenda, and are approaching solutions to the recovery of endangered Salmon from their own point of view. USFW has not had the responsibility for preparing the Biological Opinion that will govern the next phase of the salmon recovery program, and yet they certainly have been involved and have an overall interest in this matter. NMFS, on the other hand, has been charged with developing a recovery plan and they have avoided making the tough decision required to protect salmon, but have instead shifted from a recovery plan to efforts in seeking water for flow augmentation.

During the past four years the State of Idaho has permitted a maximum of 427,000 acre feet of stored water to be taken out of the state annually through the state water district rental pools. Fortunately most of this water has come from willing sellers of storage water. It is important to note that this has been accomplished only because of water years providing full reservoirs and above average stream flows. The years prior to 1994 were generally below average water years and no water would have been available for flow augmentation under this policy adopted by the State Legislature for a five year test program that expires at the end of 1999. This has been a very expensive and totally unproductive experiment. Currently, the BOR is studying the economic impacts of taking an additional one million acre feet of Idaho water, to meet flow targets which have little or no biological justification.

We water users are not only concerned about the use of water for irrigation, but are vitally concerned about our local economies, resident fisheries, and the beautiful recreation areas that have been created over the years by our reservoir systems. Henry's Lake is a good example of the cooperative effort of irrigators in establishing an outstanding recreation area and resident fishery. Prior to the completion of Palisades dam, Henry's Lake was utilized fully almost every year for supplemental irrigation water for the owner canal companies. After Palisades came into the system, enough storage water was available to allow water exchanges between Henry's Lake and other reservoirs on the system. This allowed water to be kept at a high level in the lake during the summer for fish and recreation with a payback to the exchanging reservoirs the following storage season. If an additional one million acre feet of water is required for flow augmentation for salmon, this water exchange will be limited and offer no stability for the resident fishery. This will undoubtedly affect the fishery of the entire Henry's Fork of the Snake River and the tourism of Eastern Idaho. In a presentation by the BOR which offered to address the economic impacts to Idaho of taking additional water, down stream beneficial storage exchanges were not even considered in evaluating impacts. This is not an isolated example of the bias and incomplete evaluation efforts of the flow augmentation theory. There are many water based recreation areas like Henry's Lake in the state that would be affected to some degree by questionable activities of NMFS, USFWS, and the BOR. Almost *one half billion dollars* are being spent by Federal agencies each year to study and implement these flawed experiments. There has been no willingness to admit that it is because of conditions beyond the control of man that the recovery of salmon, to the extent desired by sport fishermen, Indian tribes, and conservation groups, may not be possible without climatic changes in the Pacific Ocean.

The overall demise of the salmon in Idaho is not due to any one factor. There are many contributing factors that have diminished the migration and return of the salmon to Idaho in numbers great enough to support recreational fishing enjoyed in the past. The climatic conditions in the Pacific Ocean have been so detrimental in several areas that sustain life to the salmon, that minute tinkering with the river system, at huge expense to electric rate payers and taxpayers is, in our opinion, a tragic waste of time, human resources, and money. The loss of the productive food chain in the ocean estuaries, the migration of predators from the southern borders of California, and the inability to protect both the smolts going to the ocean and the adult salmon returning to our rivers from these vast numbers of predators, is

a far greater cause of the salmon problem than the flows through the Snake River system.

I refer to a recent study by scientists at the Scripps Institution of Oceanography, at San Diego, Calif. (Published in the Journal of Science, Vol. 281, 10 July 1998) The study clearly outlines climatic ocean changes that occurred in the mid 1970's and that these changes in ocean conditions are cyclical, they have occurred in the past and will occur in the future. The major result of these dramatic ocean temperature changes has been to shift the salmon populations north into the gulf of Alaska. The study states; *"The most spectacular shifts upward* (to the Gulf of Alaska from Oregon, Washington, and B.C) *were those of the sockeye and pink salmon*". Again I quote from this study concerning the decrease in the availability of salmon in the ocean after the 1970's sea surface temperature shifts. *"These decreases began well before the onset of the regime shift. Catches of Coho and Chinook salmon along the southern coast of British Columbia, Washington and Oregon, areas in the bifurcation zone of the West Wind Drift, have decreased markedly since about 1978.* **These sharp declines have been attributed to changes in the survivorship of young and juveniles in the open ocean after the regime shift."** This most recent scientific study reinforces the technical data available to NMFS for several years that the 2 degree rise in sea surface temperatures in 1977 resulted in major biological changes in the ocean including a 70 percent decline in zoo plankton, a major link in the natural food chain important to salmon. Yet these important scientific facts are being ignored by the Federal agencies in favor of tinkering with the river system and wanting to "commandeer" our precious water supplies.

Is it any wonder that many in the water community believe that the Federal Government is using the Endangered Species Act as a vehicle to control Idaho's water? It is obvious that experiments such as flow augmentation and dam removal are premature at best and probably useless in any recovery process until the major conditions conducive to salmon welfare in the ocean return to a more normal state. And yet NMFS forges ahead with developing programs to use Idaho's water with no apparent concern for the welfare of those who use it.

As to H. R. 4335, transferring the functions of the Secretary of Commerce and the National Marine Fisheries Service under the Endangered Species Act to the Secretary of Interior, I can see no real advantage one way or the other. As one water user I questioned said, "If the cannibals are going to eat you, does it matter which pot you are boiled in or which tribe does the cooking?" For my own thoughts on this, I will have to say that I have had excellent relations with the Bureau of Reclamation over the years. This has to be tempered by the present philosophy in the Department of Interior in Washington DC. If the regional people in the BOR are left responsible for decisions pertaining to our water I would be comfortable with the change. If left to bureaucrats in Washington I see no advantage in any change.

In summing up the situation we are facing here in Idaho, the Endangered Species Act is not being administered in the best interests of restoring salmon runs. It seems that we are being stampeded into implementing measures to try and restore salmon just for the sake of expediency. For several years millions and millions of dollars have been spent trying to find the magic bullet that would restore the endangered salmon, when the major culprit is oceanic conditions that affect two-thirds of the salmon's life cycle. Even though our reservoir company has been the recipient of some of the rental money from BOR for flow augmentation water, I do not believe that it was money well spent by the Federal Government. It certainly can not be justified by the results. Nor will removal of the dams on the lower Snake accomplish recovery. We have done the augmentation test, it failed. There should be no further attempt to secure water for flow augmentation. The potential result to local economies, resident fisheries, recreation, agriculture and the disruption of thousands of lives clearly is not justified by the results. The waste of money for no achieved result is abhorrent, but it will continue unless Congress reigns in the abuses of regulations supposedly granted to these agencies under ESA.

I recommend that your Committee look deeply into the funding of this program. Where is the money coming from for NMFS to continue these exploratory experiments? Where in the BOR budget has the money come from to purchase water? To Rent Water? Where in the Endangered Species Act is authority given for NMFS to Require BOR to abrogate their bona fide contracts with reservoir space holders to acquire this 1,427,000 acre feet of water? We don't think they have that right or authority. The Fifth Circuit Court of Appeals has ruled that ESA cannot require another agency to do anything outside the authority specifically granted to that agency in carrying out their responsibility under the enabling legislation that created that agency. Here we have one agency, NMFS, requiring another agency, BOR, to evaluate the possibility of acquiring 1.427 million acre feet of water from reservoirs that

are totally subscribed to in bona fide contracts with water users. Is this right? Is this the intent of Congress to renege on previous commitments?

Idaho needs its agricultural base, and especially the potato industry that creates thousands of jobs, both in production and in the processing of the raw product. This industry, as we know, it could very well be lost. We need the local recreation industry that has flourished around the reservoirs that store our irrigation water. Efforts to save salmon under the present ESA could very well be the demise of our agricultural based economy as we now know it in Idaho.

The recovery of salmon under the direction of NMFS has been an abysmal failure. While they have had nearly unlimited resources and the best scientific knowledge available, salmon runs have continued to decline. Water District 1, has had none of these advantages, but has prepared a recovery plan that is guaranteed to show better results than the program NMFS has been following. Our plan requires no water out of Idaho, and will return more fish the first year than NMFS Programs have returned since the Snake River runs were listed. I have attached a summary of this plan for your review.

Thank you for the invitation to testify before your Committee. It has been a pleasure to be with you today.

A NEW PROPOSAL BY SNAKE RIVER WATER DISTRICT 1 FOR RECOVERING SNAKE RIVER SALMON

Currently there is no plan for recovering Snake River Salmon, although the Federal agencies would like us to believe they have a plan and know what they are doing. There is a biological opinion prepared by the Bureau of National Marine Fisheries (NMFS) that allows 80 percent of the migrating salmon to be "incidentally taken" by any number of factors including predators, dams and fishermen, yet prevents floaters from floating certain reaches of the river because there *may* be Redds that *may* be disturbed by such activities. The rate payers and Federal Government have expended billions of dollars on activities that were supposed to be directed at preserving and enhancing Snake River Runs. None of these activities have shown any signs of success. The fact is, the current salmon recovery efforts have wasted huge amounts of money and resources in the activities of, talking, meeting, tagging, studying, barging, paying for dead squaw fish, in addition to the general disruption to peoples lives. The millions of hours and billions of dollars expended have not, to date, saved a salmon. Perhaps it is time that some different approaches be considered. We are proposing an approach that is guaranteed to cost less money, and have better results than any of the approaches tried to date.

First it is time to at least consider that some of the listed species are not recoverable and that they *are* effectively extinct. We wish to use an analogy in offering a thesis that needs to be considered, even though such a consideration is not politically correct. (We also need to recognize that salmon recovery efforts have been driven more by than by science.)

Computer technology has changed rapidly during the past two decades. Consequently in the Water District office, we have some ancient 8 inch floppy disks, boxes of 5½ inch floppy disks containing software for obsolete computers. We have boxes of 3½ inch floppies from the next generation of computers and now we have stacks of CD's. It is easy to tell the different kinds of disks apart but, without the labels all of the 5½ inch disks appear to be identical, as do the 3½ inch and the CD's. However, everyone of these disks contain digital information designed to do something unique. When these disks are read and the information they contain is loaded into a computer each of these will enable the computer to perform the unique functions the program designer had in mind. From time to time we have had disks that did not properly transfer information to the computer and, as a result, the intended program did not do what it was expected to do. A small amount of lost information made the digital code on that disk worthless. Recently we had a computer crash. It would not do anything, even though every program loaded in the disk memory remained unchanged and intact. It was not until we had someone who knew how to replace a few specific strings of digital information come and replace the lost information that the computer would again function properly. There are some things we know about computer programs. First, they do not just happen. We can call a computer disk anything we want, but unless there was intelligent construction of the digital code, the label is meaningless. We can copy the digital code from one disk to another, but we can not ever expect windows 95 to show up on a blank disk, no matter how long we have it sitting on the shelf.

The genetic information contained in the cells of living organisms is not unlike the code on a computer disk. There are data available that not only support this

thesis but appear to reflect the long-term loss of genetic information in Snake River salmon. Figures 1 and 2 represent some of these data.

Given the lack of success that has been demonstrated by on-going salmon recovery activities, perhaps it is time to test some different hypotheses. We would propose the following hypothesis be tested as part of a plan to recover Snake River runs. *Hypothesis 1: The level of genetic sophistication, and the amount of genetic information contained in the Snake River Salmon gene pool was at a maximum in the past and must be restored to get fishable runs in Idaho.* Genetic information has been lost from this gene pool and currently there is inadequate genetic information available to recover salmon runs or to cause current salmon runs to perform predictably. This loss of genetic information was accelerated and exacerbated by commercial fishing pressure which started in the 1860's. The loss in genetic information can be expected to follow a typical geometric decay curve, if there are not intentional, intelligent actions to restore the lost information. While the data in Figures 1 and 2 may represent a general loss of genetic information in all Columbia River stocks, it is likely that the loss is exacerbated by distance fish must travel to reach spawning areas. Clearly loss of habitat is not proportional to the declines in Snake River salmon stocks.

If a sufficient amount of the genetic information originally programmed into the genes of Salmon that caused them to migrate up the Columbia and Snake Rivers to spawn and die in Idaho has been lost over the past century, all of the expensive and extraordinary measures we decide to finance will never recover these stocks. The prevailing thinking has led to the conclusion that the biggest impediment to salmon recovery is smolt mortality. There is a growing belief that if we remove dams and get back to a "normative" river, smolt mortality will be reduced and we will begin to see a resulting increase in the number of salmon returning to Idaho. The fact is, that if there is not the "desire" to return to Idaho runs will never recover.

Proposal to test Hypothesis 1. At the present time the majority of the salmon harvested in the world are raised in net-pens in the ocean. In order to test the propensity of Snake River salmon to return to Idaho, Idaho salmon need to be protected fish while they are in the Pacific Ocean. Since we know we can raise salmon in ocean pens it seems reasonable to incorporate this technology in the current salmon recovery efforts. Rather than barging smolts to the estuary and dumping them, we propose to collect smolts near Lower Granite and transport them to net pens in the ocean where they would be maintained for some time to protect them through the vulnerable juvenile stage before letting them escape to the ocean. While it is likely that there will be some increase in vulnerability because of this protection from predators and the artificial feeding, overall losses should be significantly reduced by protecting the juvenile fish through their period of highest vulnerability. If this effort should be successful and the number of adults returning to Idaho from this group increases it would provide valuable information about ocean losses and the genetic pool available for recovering these runs.

HYPOTHESIS 2: Pinnipeds in the estuary at the mouth of the Columbia river are responsible for approximately 50 percent of the mortality in returning adult salmon.

Current data indicate that nearly 50 percent of the adult salmon reaching Bonneville dam show injuries attributable to pinniped attacks. This does not include a similar number of salmon that are killed before reaching Bonneville dam. The fact is, if these losses are controlled the number of returning adult salmon reaching Bonneville dam should double.

Proposal to Test Hypothesis 2: Immediately reduce the number of pinnipeds in and near the Columbia River estuary by 90 percent.

HYPOTHESIS 3: Gill net and tribal fishing on the Columbia results in the loss of important Snake River brood stock.

The gill nets and other fishing by Indian tribes along the Columbia result in the continued loss of important genetic information necessary for the recovery of Snake River salmon and steelhead runs. The ESA has prohibitions against the taking of listed species.

Proposal to Test Hypothesis 3: Place a five-year moratorium on all tribal salmon fishing on the Columbia river.

HYPOTHESIS 4: The implementation of the ESA by the Federal agencies is, itself responsible for the continued declines in salmon.

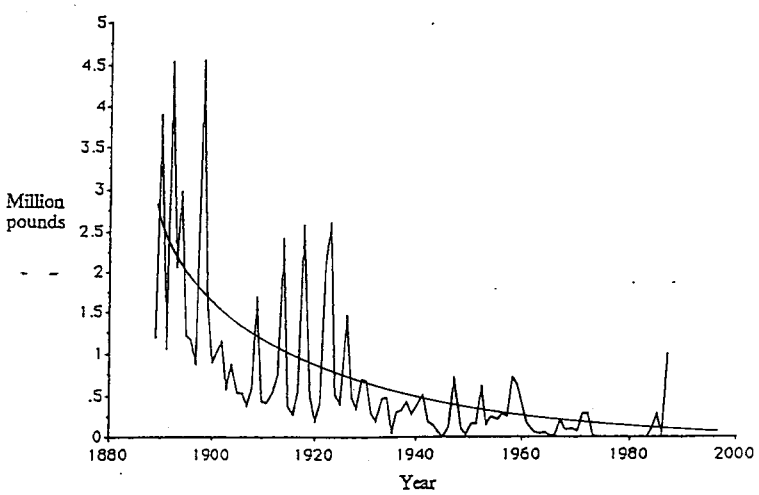
We believe it is clear that the number of agencies and the clouded authorities and lack of coordination has done nothing but waste money and resources.

Proposal to Test Hypothesis 4: Congress should immediately cut all funding for all ESA activities. Specific, non-ESA funding should be appropriated for appropriate agencies to implement the specific tests outlined in this plan. Barging, hatchery operations and other programs associated with salmon production that were in place

prior to the listing of Snake River runs should be funded by Congress and continued by the appropriate agencies.

We submit that this relatively simple and inexpensive recovery plan will accomplish more results, and will provide more information related to salmon recovery than all of the activities undertaken to date. We also believe that it will provide the basis for the enactment of a replacement for the Endangered Species Act, which has expired, that will not result in the obscene waste of resources we have seen, and may actually result in the recovery of an endangered species.

Columbia River Sockeye Salmon Landings*, 1866-1986

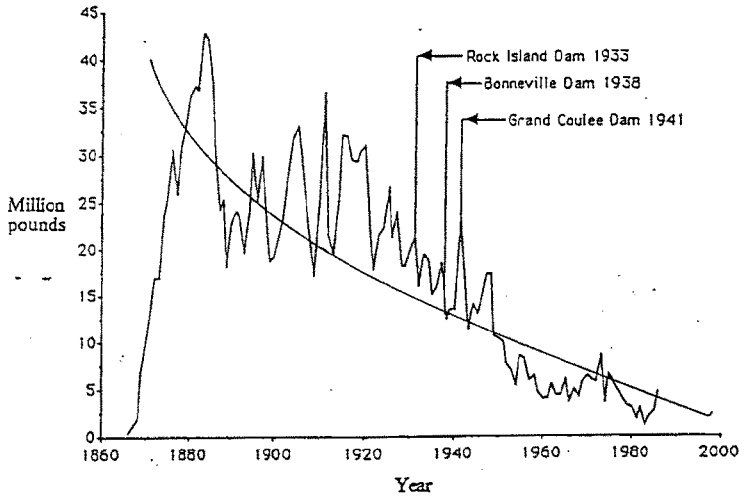


* Troll catches not included.

Sources: 1866-1977: Netboy, 1980; 1977-1986: Oregon Department of Fish and Wildlife and Washington Department of Fisheries, 1987.

FIGURE 1

Columbia River Chinook Salmon Landings*, 1866-1986



* Troll catches not included.

Sources: 1866-1977: Netboy, 1980; 1977-1986: Oregon Department of Fish and Wildlife and Washington Department of Fisheries, 1987.

FIGURE 2

STATEMENT OF SHAWN CANTRELL, NORTHWEST REGIONAL DIRECTOR, FRIENDS OF THE EARTH

Good morning Chairman Young and members of the Committee on Resources. My name is Shawn Cantrell, and I am Northwest Director for Friends of the Earth based in our regional office in Seattle, Washington. I appreciate the opportunity to testify today regarding implementation of the Endangered Species Act (ESA) and to share our views on H.R. 4335, a bill to transfer to the Secretary of the Interior the functions of the Secretary of Commerce and the National Marine Fisheries Service (NMFS) under the Endangered Species Act.

Friends of the Earth is a national environmental membership organization, including approximately 1,500 individual members in the three Pacific Northwest states. Our staff and volunteers have worked on ESA and salmon related issues in the Columbia and Snake River basins for over 20 years.

I would like to begin my testimony today by commenting on NMFS' activities in implementing the ESA, particularly regarding development and implementation of recovery measures for listed Snake River salmon and steelhead populations.

Snake River sockeye were listed under the ESA in 1991, followed by Snake River chinook in 1992 and Snake River steelhead in 1997. Seven years after the first of these listings, NMFS has failed to develop a recovery plan for restoring these threatened and endangered fish, despite requirements under ESA to do so. The only "plan" issued by NMFS to date has been a series of three biological opinions which detail what actions Federal agencies must take to insure that operations of Federal dams in the Columbia River basin don't create further jeopardy for the listed fish. Unfortunately the measures called for in these biological opinions are completely inadequate to protect the dwindling fish runs from being further decimated. Listed Snake River salmon and steelhead stocks continue to decline and in fact are in worse shape than when first "protected" under ESA.

Moreover, NMFS has not even enforced the inadequate measures which were included in its biological opinions. Among the major actions which NMFS has failed to require the Federal dam operators to implement include:

- meeting the established minimum water flows for the river during the annual juvenile migration seasons;
- providing water from upstream storage reservoirs as called for in the plans;
- meeting the established optimum river temperatures;
- meeting the standards for spilling juvenile fish safely over the dams spillways instead of through the turbines;
- keeping the water level of the reservoir behind John Day dam at its minimum operating pool.

It is in this context that we would like to offer our thoughts on H.R. 4335, the "Endangered Species Consolidation Act." While Friends of the Earth has been and continues to be extremely critical of NMFS' track record in implementing the ESA regarding endangered fish runs in the Northwest, we do not feel this bill would improve the results of fish restoration activities in the Snake River basin. We are concerned that H.R. 4335 would in fact *lessen* the effectiveness of Federal efforts to protect and restore endangered salmon and steelhead.

If H.R. 4335 were to be enacted, the likely outcome would be to further delay development and implementation of a sound salmon and steelhead recovery strategy. Recovery decisions and actions would be postponed as the Federal agencies undergo a bureaucratic reshuffling of responsibilities and staff. This bill would likely push back key decisions and actions as Interior Department staff "got up to speed" on the pending issues.

In addition, the Interior Department and USFWS have demonstrated similar shortcomings to NMFS' in implementing the ESA. Simply shifting responsibility from one troubled agency to another would do nothing to actually help restore endangered species. The failure by NMFS to adequately protect and restore endangered Snake River fish runs is indicative of the wider problems within the Clinton Administration on ESA. Transferring ESA functions of NMFS to USFWS is reminiscent of the adage regarding rearranging the chairs on the deck of the Titanic. Friends of the Earth believes that NMFS remains the Federal agency best equipped with the staff resources and expertise to oversee the major decisions on Snake River salmon runs scheduled for late 1999.

Friends of the Earth recognizes the concern of some individuals and businesses which may currently need to obtain permits for certain activities under ESA from both NMFS and the U.S. Fish and Wildlife Service (USFWS). There are, however, more effective straight-forward ways to address the issue of overlapping management authority than a meat ax approach as proposed in H.R. 4335. For instance, Washington state has streamlined many of its environmental permitting processes

by consolidating four separate agency reviews into one overall application. Known as JARPA, or Joint Aquatic Resources Permit Application, this combined application reducing the duplication of effort and unnecessary bureaucracy and red tape faced by individuals and businesses while maintaining the distinct authority and responsibility of the separate agencies.

How then can Congress improve implementation of the ESA and efforts to restore endangered Snake River salmon and steelhead runs? Friends of the Earth offers the Committee several suggestions.

First, it is vital that Congress ensure that politics not be substituted for sound science in developing and implementing a recovery strategy for these listed fish runs. The single biggest obstacle to restoring Snake River salmon and steelhead has been an unwillingness by the Administration and Congress to follow the recommendations of countless scientific panels and reviews which have called for phasing out technological solutions (such as transporting juvenile fish in barges and trucks) and restoring more natural river conditions for the fish. The Independent Science Advisory Board's report *Return to the River* is indicative of the emerging scientific consensus which should guide the Snake River recovery efforts.

Second, Congress should hold the Administration to its promised schedule to select long-term recovery measures by late 1999. Congress can assist by appropriating the full funding needed in Fiscal Year 1999 to complete the engineering, biological and economic analyses by the U.S. Army Corps of Engineers of proposed recovery actions. This will ensure that NMFS has the appropriate information needed for the 1999 decision.

In addition, as Congress considers how best to improve endangered species protection, both in the Columbia River basin and across the nation, Friends of the Earth believes an expanded use of tax incentives offers an excellent opportunity to make progress on protecting endangered species. By granting tax relief to property owners who find endangered species on their land, the Federal Government could encourage landowners to welcome the discovery of an endangered plant or animal on their property.

The benefits would go beyond individual animals and plants. With people willing to report the presence of endangered species, scientists would gain a much greater understanding of the true range of their habitat and movement patterns. Currently, very little is known about the conditions and status of many endangered species on private lands. Such knowledge would help improve species recovery plans—often expensive undertakings when a species is so close to extinction—or help keep other species from reaching such drastically low numbers. As a result, taxpayers would save significant money in avoided costs.

In summary, while we are deeply concerned with the Federal Government's lack of action to date to restore Snake River salmon and steelhead runs under the ESA, Friends of the Earth believes that the best way to improve the effectiveness of Federal agencies is to ensure that the 1999 decision on long term recovery measures is made on time and is based on sound science.

Thank you again for the opportunity to present our views, and I would be happy to respond to any questions the Committee may have.

STATEMENT OF JIM LITTLE, IDAHO CATTLE ASSOCIATION

Good Morning Mr. Chairman,

My name is Jim Little and I am representing the Idaho Cattle Association (ICA) and the National Cattlemens Beef Association (NCBA). I am an ICA Past President, former chairman of the NCBA Private Property and Environmental Management Committee and I recently completed a three year term as Idaho's obligatory member on the Pacific Fisheries Management Council. I am a forest grazing permittee with a cattle and horse grazing permit in Bear Valley in central Idaho where there are listed species that are administered by both the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS).

After glancing at the list of cosponsors for this legislation, I can tell it is an attempt to bring some much needed common sense into the bureaucratic administration of an overly repressive Federal law. It is worthwhile to consider whether or not one Federal agency could do the job that two are currently charged with. With that in mind, I want to share some of my personal examples and some hopefully constructive comments on the pending legislation.

In the late 1980's, the U.S. Forest Service (USFS) did an Environmental Assessment on my grazing allotment to address the concerns about the spawning grounds for the Snake River Spring Chinook Salmon. We cooperated in that assessment and came up with a mutually acceptable plan. In 1992, the spring chinook was listed

by NMFS as threatened and through the consultation process with the USFS it was decided that an extensive monitoring plan would be put into place to determine whether we were achieving the desired results. This was done with a strong commitment from the USFS that if it didn't work, then we would be removed from the allotment.

After five years of extensive and expensive monitoring and a comprehensive review by the National Riparian Service Team, it has been determined that our riparian areas are "functioning at risk" and in an improving trend. Based on these requirements, it is estimated that the Boise National Forest has spent in excess of $100,000 per year on the three Bear Valley allotments. To pay for this, the Boise Forest has been forced to use approximately 70 percent of its entire range betterment budget among other funding sources. Supposedly, range betterment funds are intended for use across the forest for improvements directly related to livestock usage with traditional projects like water troughs and fencing.

The bad news is that NMFS refuses to let the Forest Service off the hook for this costly monitoring and because the monitoring effort is such a deficit operation dollar wise, I feel that our future on that allotment is very limited.

This past spring, the USFWS listed the Bull Trout as an endangered species, and just over a month ago the forest service had a "collaborative team" meeting to look at habitat for both the spring chinook and the bull trout. This collaborative team consisted of Forest Service officials, grazing permitters, representatives from both NMFS and USFWS and the interested public. Some observations—the management scheme for our allotment is being cast in stone and inflexibly applied to a neighboring allotment with somewhat different conditions. Even though the bull trout habitat in the Bear Valley basin is in good to excellent condition overall, there are still some restrictive conditions that will be mandated, in my opinion only to satisfy an overarching court decision regarding consultation on any new listed species.

Another bit of information that I learned at this collaborative three day team meeting is that the USFWS has not been at the table throughout the Governor of Idaho's formation of a "Bull Trout Action Plan" that was designed to forego listing of the bull trout. The reason that they give is no money to fund participation in that extensive effort still going on by the State of Idaho.

Some thoughts and concerns that I have with the proposed bill H.R. 4335:

It is my opinion that some of the conflicts with people on the ground and the administering agencies are personality conflicts and arrogance by the administrators of the Endangered Species Act (ESA). In one area I hear people railing against NMFS and in another it is the high handedness of the USFWS. In preparing for this testimony, I contacted the presidents of two other northwest cattlemen's associations. And one thought this bill was a great idea and the other did not want to give Bruce Babbitt any more power of any kind. I tried to make the argument that Secretary Babbitt would not be with us forever, I made no headway in changing that strong opinion.

Idaho was given two seats on the Pacific Fisheries Management Council because of our anadromous fish habitat. At the present time all of our anadromous fish are listed as threatened or endangered so Idaho has virtually no impact through the council process in their management. This listing has done nothing to help the fish stocks yet and I am becoming more convinced that we need a change in the natural rearing conditions in the ocean before any appreciable improvements in returning fish numbers will take place. When and if that happens, everybody will take credit for the improving fish numbers. Another area that have some question about is whether USFWS has the people and expertise to deal with potential listing of ocean species? Pardon the pun but they may be like a fish out of water on this complex subject.

In summary, there are many problems that need to be solved in the authorizing language and in the administration of the Endangered Species Act. The forest service is whipsawed every which way by the ESA in general and they are very uneasy in challenging the edicts that come to them from NMFS or USFWS. Neither NMFS or the USFWS are authorities in livestock management, but they assume that role rather hastily at times. One thing for certain, the lowly forest user is the loser.

Thank you, Mr. Chairman.

STATEMENT OF MITCH SANCHOTENA, EXECUTIVE DIRECTOR, IDAHO STEELHEAD & SALMON UNLIMITED

My name is Mitch Sanchotena, I am the Executive Director for Idaho Steelhead and Salmon Unlimited.

Idaho Steelhead and Salmon Unlimited was formed in 1984 by a diverse group of businessmen, guides, conservationists, sports fishermen, and concerned citizens from throughout the Columbia River Basin. ISSU is a scientific, educational, charitable organization committed to the restoration, and protection of Idaho's anadromous resources. ISSU represents approximately 2,300 members.

Before I begin my testimony on the issue of whether The National Marine Fisheries Service or the U.S. Fish and Wildlife Service is better prepared to deal with endangered Snake River steelhead and salmon, I have a statement for Idaho's Congressional Members. Idaho sports fishermen are extremely concerned by the fact that we were totally ignored by our elected Representatives as witnesses for this hearing. Idaho sportsmen and especially Idaho anglers are primary stakeholders in this issue. To require that Idaho's fishermen be forced to go outside the State of Idaho to seek a seat from the Minority Party at this hearing begs the question, how concerned are either of you about the $90 million a year steelhead fishing industry that occurs in Idaho and a potentially equal salmon fishery? Idaho sportsman have been leaders in the Columbia and Snake River's steelhead and salmon issues since 1984. It's not like we just learned there is an anadromous fisheries problem. We hope both of you will provide ISSU with an explanation as to why you chose to ignore Idaho's sportsmen as stakeholders at this hearing.

If I understood correctly our purpose here today is to discuss the question, is the U.S. Fish and Wildlife Service better suited to deal with endangered anadromous salmonids in fresh water than is the National Marine Fisheries Service?

NMFS bashing in Idaho is preceded only by President Clinton. It's easy to say that NMFS is a bigger part of the problem than they are the solution. But the Fish and Wildlife Service's track record on endangered species actions isn't much better, if any. It would be informative to have a witness from the U.S. Fish and Wildlife Service share with this Committee, and the Region's stakeholders their views on how to better implement the ESA for salmon and steelhead. Presently there is such a hodge podge of ESA listings occurring ... some with recovery plans, most without ... that one hand doesn't know what the other is doing. Continuing a piece meal approach to ESA recovery ... even with a singular authority ... is doomed to fail for most species. Singular plans for salmon, steelhead, bull trout, sea lions, seals, terns, wolves, eagles, and so on, are expensive and poorly coordinated. Add to this problem continual intimidation and manipulation by politicos and you have a formula for economic destruction and species collapse.

Therefore it makes both scientific and economic sense to have a singular entity in authority. Also the time has come for multi-species recovery plans. A plan should balance man's and nature's needs. It should consider marine mammals in the estuary at one end of the Columbia Basin and fishing and ranching at the other end. Then make adjustments that provides balance to both.

The legislation you are considering giving authority to a single entity has value. It also has risks. Given Representative Chenoweth's past reputation on salmon and steelhead protection, ISSU questions why this legislation at this time? We hope Representative Chenoweth will erase our skepticism.

If transferring ESA authority for steelhead and salmon away from NMFS and giving it to the U.S. Fish and Wildlife Service is Congress' wish, then some explicit assurance must be accorded society that the transfer will result in resolution to the declining salmon and steelhead problem. A final version of legislation transferring authority away from NMFS should contain explicit language directing the new authority to adhere to the 1999 decision time line for a final salmon recovery plan. Any delay in this decision point is unacceptable. All FTE's and all appropriated funding for completion of the 1999 decision should be transferred as well. It seems to many of us it's easier for Congress to manipulate Interior's budget than Commerce's and NOAA's budget. Therefore there must be explicit assurances in any new legislation that recovery plan funding will be provided. If you get all that done, Congress then needs to step out of the way and let the managing authority do it's job.

I would like to wrap this up by simply pointing out there are already a multitude of laws passed by Congress to protect Snake River salmon and steelhead. In the past these fish provided economic fisheries from Alaska to Stanley, Idaho. They can quickly do so again by just adhering to past laws and promises. Obey the laws you have passed and fulfill the mitigation promises you have made and you will not have to keep burdening yourselves with new laws. Your track record of following existing law leaves us with little optimism another law on top of the multitude of salmon laws already in place will solve the problem for our fishery or for society.

Thank you, and I will try and answer any questions you may have.

STATEMENT OF DEWITT MOSS, ON BEHALF OF NORTHSIDE CANAL COMPANY, TWIN FALLS CANAL COMPANY, AND COMMITTEE OF NINE, WATER DISTRICT 1

My name is DeWitt Moss. I am a farmer from Jerome, Idaho. I currently serve as a member of the Board of Directors of the North Side Canal Company, a nonprofit irrigation water delivery company in South Central Idaho. The North Side Canal Company delivers storage and natural flow water from the Snake River to 165,000 acres of farm land in the Jerome, Idaho area. The Twin Falls Canal Company of Twin Falls, Idaho is also a nonprofit company delivering storage and natural flow water to 202,000 acres from the common diversion with the North Side Canal Company at Milner Dam. They have requested that I represent them on this issue. I, also, am a member of the Committee of Nine, the official advisory committee of Water District 01, a district encompassing 1.2 million irrigated farm acres above Milner Dam on the Snake River. The Chairman of the Committee of Nine, Mr. Del Raybould, is presenting testimony to you today and it is my intent that the following comments will support and supplement his testimony.

The Endangered Species Consolidation Act, H.R. 4335, proposes the "transfer of functions under the Endangered Species Act of 1973 from the Secretary of Commerce to Secretary of Interior."

Many of us who follow the Pacific Northwest's regional salmon and steelhead anadromous fish recovery effort are totally dissatisfied, disillusioned, dismayed and disappointed with the National Marine Fisheries Service (NMFS) administration of the regional recovery program. In the opinion of many, it is poorly managed, unduly expensive, unproductive and generally unsuccessful. It is unproductive and unsuccessful because the NMFS recovery program is focusing on system modifications and flow augmentation to produce minor incremental improvements of smolt-to-adult return ratios (SAR's) or at the other extreme, the removal of dams. It will be extremely difficult to, politically and societally, build a consensus to remove dams and thereby expose the region to extended and divisive conflict. Salmon recovery cannot be built only on minor SAR improvements and unproven experiments. Today's Snake River salmon and steelhead SAR's are in the 0.4 to 0.7 percent range. SAR's of 2 to 6 percent are needed for recovery. Therefore, an increase of SAR's of somewhere between 400 percent and 1200 percent are needed to recover the fish. Just to maintain survival (avoid extinction) the SAR's need to improve between 250 percent and 400 percent. None of NMFS's programs hold any promise of meeting the necessary SAR improvements.

This sorry state of affairs exists after 6-10 years of intensive focused recovery efforts. The region has spent close to $4.0 billion for research, system improvements and foregone power costs and the Snake River fish SAR's are continuing to decline towards extinction. The *annual* expenditures for Columbia River salmonids are in the $400-$450 million range. This compares with the total estimated expenditure of about $190 million for all other endangered species throughout the *entire nation*. Since 1984, we have increased Columbia River flow augmentation (which includes the Snake River contribution) from 3.75 million acre feet to 13-16 million acre feet. Yet, fish populations continue to decline. The recovery program is admittedly complex and difficult, but we conclude that we are not getting any "bang-for-our-buck". NMFS (the lead organization of the Northwest salmonid recovery program) and 5 other Federal agencies (COE, BOR, BPA, USFWS, and EPA); 5 states; 2 nations; 13 sovereign tribes and 60-80 special interest group are involved and/or effected.

No doubt, a daunting endeavor confronts NMFS to consider all the parties concerned. Unfortunately, other Federal agencies that are involved have not exhibited stellar talent or demonstrated experience that is required to successfully manage the Northwest's salmonid recovery program.

Any successful program and its administration will need to address and remedy recovery plan deficiencies which include the following, but are not necessarily totally inclusive: an accepted single recovery plan (there are 3 plans for the region; NMFS—1995 Biological Opinion, 1994 Northwest Power Planning Council and 1995 Spirit of the Salmon-Tribal); competent project management, cost schedule and results focused; excessive costs; program redundancy between the Federal Agencies, States and Tribes; too many committees; too many unproductive meetings; overlapping jurisdictions; diffuse responsibility; poorly defined program structure; ineffective program management structure; lack of an effective Quality Assurance program and Quality Control implementation; little or no accountability for program results or costs; poor program justifications; and no one in charge. The above deficiencies are all exacerbated by poor, untimely or non-existent, reporting requirements. It is impossible for Congress to meaningfully follow or oversee the recovery program plans, results and costs when there is no reporting system.

There are several actions that we suggest this Committee can and should direct the selected management agency to implement in an attempt to improve the success of the salmonid recovery program; namely:

1. Begin an aggressive program to eliminate piscivorous (fish eating) predators in the Snake and Columbia River and Columbia River Estuary. The predators include Northern Squawfish, Walleye and Catfish. It is estimated that in excess of 2 million piscivorous fish of predation size exist and consume somewhere around 25 percent of salmonid juveniles.
2. Begin an aggressive program to eliminate avain predators (fish eating birds) in the river system. Caspian Terms (about 8,000 nesting pairs) on Rice Island are estimated to consume 6 to 20 million salmonid juveniles in the Columbia River Estuary. The Caspian Tern population of Rice Island, one of eight (8) major water fowl colonies in the Columbia River Estuary, has increased 641 percent over the past 12 years. A Double Crested Cormorant colony (6,000 nesting pairs) specializing in salmonid juvenile consumption, has increased in population by 168 percent over the past 5 years. In the Tri-Cities area, over 35,000 nesting pairs of seagulls were estimated in 1996. In 1986, gulls were estimated to have consumed 2 percent of the total spring migration of salmon at one dam, Wanapum. There exist over 20 major dams in the region.
3. Address the pinniped (Harbor Seals and Sea Lions) marine mammal predation. These mammals now reside in the Columbia River clear to the base of Bonneville Dam. The Snake River Salmon Recovery Team (SRSRT) in 1993 estimated the Columbia River population to exceed 3,500. The west coast pinniped population in 1994 was estimated between 161,000 and 181,000, increasing annually at a 5 to 7 percent rate. They eat, kill and injure the most valuable product of this multi hundred million per year program—*returning adults*. Some, including SRSRT, have expressed the concern that pinniped predation mortality may be equal to commercial and sport harvesting. The SRSRT in 1993 noted pinniped damage to adult salmonids at Lower Granite ranging from 2 percent to 70 percent.
4. Screen all diversions of the river systems that could entrap juvenile salmonids. 1997 data show that 28 percent of the diversions are unscreened and 37 percent inadequately screened. This simple mechanical fix should be remedied.
5. Harvesting of wild stocks must be curtailed and preferably stopped. Harvesting should be curtailed at the Columbia River mouth "region," in the Columbia River estuary and above Bonneville except on fish healthy tributaries and at terminal hatcheries until salmonid recovery is assured. Oregon State University estimates that 80 percent of the fall chinook Columbia River stocks are harvested, including incidental takes. A lesser harvest of other stocks probably exists, but these stocks are in significant, perilous decline. It appears difficult to effectively reduce commercial and recreational fishing when Oregon and Washington fish and game departments rely on fish licenses for funding and NMFS historically promotes and regulates commercial ocean fisheries.

Lastly, Idaho provides about 2 million acre feet of water annually from its rivers and reservoirs for flow augmentation in the Columbia and Snake Rivers. The region, at the request of NMFS, has begun the process of analyzing the impacts to the Upper Snake River Basin (above Brownlee Reservoir) of taking an additional 1.0 million acre feet for flow augmentation. The Bureau of Reclamation has been able to meet the current Bi-Op commitment of providing 427,000 acre feet annually, under a willing seller provision, primarily due to four consecutive good water years. However, the provision of an additional 1 MAF annually, will undoubtedly cause irrigated land to be removed from agricultural production; maybe as much as 500,000 acres, and, more, if back-to-back dry years occur. The estimated impacts to lost production and communities will be in the several hundreds of millions of dollars. It has recently been estimated that the total annual income generated by irrigated agriculture in Idaho exceeds $2 billion, or $400 per acre foot of water consumption. This additional water will benefit salmon recovery *minimally,* if at all. Some sanity must be restored to this program. Otherwise, we in the region may need Congress' assistance to terminate this devastating attempt at a major water "grab" under the ESA.

I conclude with the following:

A demonstrated, experienced program manager with a functional program structure, approved unanimously by the 4 State Governors, the Tribal Sovereigns and the Federal Agencies should considered. A detailed audit of the program should be considered to identify the deficiencies of the past 6-10 years. We also suggest that an evaluation and proposed program structure be solicited

from the best engineering-management consulting talent that exists in the United States. This would likely prevent us from continuing what many of us perceive as a failed program.

Before the region today, there exist some 6 different regional governance schemes and H.R. 4335 is one. Until some of the program inadequacies and deficiencies are addressed we cannot point to any one of them as outstanding or preferable. We only note that H.R. 4335 does nothing to remove or reduce the many concerns and program faults denoted above. A new and unproven management agency, structured like the existing agency, offers very little comfort to an Idaho irrigator who potentially could lose his water, income and livelihood.

STATEMENT OF DONNA DARM, REGIONAL ADMINISTRATOR FOR PROTECTED RESOURCES, NATIONAL MARINE FISHERIES SERVICE, NORTHWEST REGION

Mr. Chairman, thank you for the opportunity to appear before you today. Your letter of invitation suggests I focus my testimony on the National Marine Fisheries Service's (NMFS) implementation of the Endangered Species Act (ESA), whether NMFS' ESA program overlaps or is consistent with the Fish and Wildlife Service's ESA program, and whether our implementation of the ESA is cost-effective. Finally, you asked for my views on H.R. 4335, which proposes to transfer the Department of Commerce's responsibilities for conserving threatened and endangered marine and anadromous species to the Department of the Interior. In my testimony, I will address these issues from a regional perspective, since our salmon program in the Northwest is a significant part of NMFS' ESA program. I will also raise several additional national concerns relevant to the proposed transfer of responsibilities.

Since these hearings are being held in the Pacific Northwest, we have focused our comments on NMFS' efforts to protect and recover imperiled salmon throughout this region. Clearly, Pacific salmon listings have affected almost every watershed on the West Coast and the interior Columbia Basin. Without a doubt, these listings have a more far-reaching impact than previous ESA listings. Salmon listings, proposals to list, and associated actions affect almost every ecoregion of the West Coast north of Los Angeles. These salmon listings affect one of the most precious and precarious resources of the West: water. The salmon's life cycle is complex and its migration vast. Hundreds of human activities have destroyed salmon habitat and brought salmon populations to the brink of extinction: timber harvest, farming, mining, irrigation and water development, road-building, urbanization, damming, dredging, hydropower operations, fishing, fish culture . . . the list is quite long.

As you know, the ESA imposes a number of duties on the Secretaries of Commerce and the Interior. Whenever Federal agencies take actions that affect listed salmonids, they must consult with NMFS or the Fish and Wildlife Service, whose job it is to advise whether the Federal action will jeopardize the continued existence of the listed species. This determination is a complex and difficult one when it comes to salmon because the interacting effects of so many human activities threaten salmon's very existence.

In the Northwest Region; NMFS has established a large program to help Federal agencies meet this consultation requirement. NMFS has reviewed Federal actions as geographically broad as the Northwest Forest Plan and as local as a scientific permit for a very localized Forest Service activity. Since 1991, with the first salmon listings in Idaho, NMFS has completed review of several thousand activities. NMFS has taken steps to make the consultation process more efficient. For example, we encourage Federal agencies to conduct "programmatic" consultations. That is, we ask them to consult with us on broad programs and policies. In this sort of consultation, we can jointly develop general principles and procedures to apply to individual actions. When individual actions are consistent with those principles and procedures, we can move very quickly through them. This approach was recently upheld by the Federal district court in Western Washington in reviewing NMFS' consultations on Northwest Forest Plan actions. We entered into a Memorandum of Understanding to coordinate consultation on operation of the Federal Columbia River Power System that required the operating agencies to submit only one biological assessment from which both NMFS and Fish and Wildlife Service developed their respective biological opinions.

Simply gearing up to take all of the actions required by the ESA has been a tremendous challenge for NMFS. It takes many biologists a considerable amount of time to sort through and understand the status of individual populations of a species, how various actions affect them, and whether the fish populations can withstand the impacts and remain viable. To help us do our job, since 1991 Congress has increased the total NMFS budget for salmon by $16.5 million. This has allowed

us to increase the regional staff from some 50 employees in Portland and Seattle in 1991 to 150 employees spread throughout the region today. With the help of Congress, and to be more responsive to constituents throughout the region, we opened field offices in Boise, Olympia, and Roseburg.

Over the past twenty years, NMFS has developed a world class salmon science program covering a number of areas crucial to the Pacific Northwest. Our salmon science program consists of a major, nationally-renowned program on fish passage and survival research in the Federal Columbia River Power System that is absolutely vital to evaluating the effects of Federal dams on salmon recovery. That program has been in place since the mid 1970s and now consists of roughly sixty scientists. Our salmon science program also consists of a major conservation biology division which provides the risk assessments that support: (a) our listing and recovery programs; (b) habitat and chemical contaminations research programs that may be used in support of cleanup and restoration efforts for hazardous wastes sites by EPA and the Federal natural resource trustees; and (c) salmon rearing and fish disease research that is helping chart the path for improved hatchery practices in the Pacific Northwest. Finally, with funding from the Bonneville Power Administration, we have launched a major research effort into the ocean and estuarine survival of salmonids to better understand the role of ocean and estuarine conditions on salmon survival and recovery.

The success of our salmon science program also can be measured in terms of its ability to understand the factors that put salmon at risk. We have developed over the last twenty years of effort world class expertise to evaluate the impacts of differing human activities on the salmon life cycle (e.g., dam operations and fish passage; fishing activities; fish husbandry; and general pollution of the marine and estuarine environment). We are developing state-of-the-art techniques for examining the cumulative impacts of various types of activities and mitigation measures and indicating the degree to which these create a risk to a local salmon population. We can use the state-of-the-art science and technology to look at various types of impacts and mitigation measures and indicate the degree to which risk will be increased or lessened.

Probably the most difficult task in implementing the ESA for a species like salmon is trying to calculate how to allocate the conservation responsibility when there are many factors that have caused salmon to decline throughout the West. All of these factors must be addressed if we want to restore salmon. The status quo is literally driving salmon runs to extinction, and we must make basic changes in how we approach salmon and their habitat if our salmon are to remain part of the heritage of the Pacific Northwest.

To respond to your second request, I'd like to talk about coordination between the two Services to ensure consistency. Even before coastal salmon stocks were listed, NMFS began working with the U.S. Fish and Wildlife Service to ensure that Federal agencies, states, tribes and private citizens could count on the agencies to be efficient and consistent in their responses. For example, the Services worked together on the Federal technical team that developed the Northwest Forest Plan to ensure it was adequate for all aquatic species, including salmon. We also started working with the Fish and Wildlife Service after realizing that landowners in Oregon, Washington and California were developing habitat conservation plans for the threatened northern spotted owl and wanted assurance that any plan they developed for owls would address salmon as well. To provide landowners with "one-stop shopping," NMFS and the Fish and Wildlife Service established a joint office in Olympia, Washington, where biologists from both services collaborated on the development and review of habitat conservation plans. That office was instrumental in developing the Washington DNR and mid-Columbia PUD Habitat Conservation Plans.

The Services have taken other actions to be certain we implement the ESA consistently and efficiently for Federal agencies and private landowners. Some of the more obvious actions are our joint regulations and policies on consultations and habitat conservation plans. We are issuing a number of joint policies for private landowners, including the "no surprises," "candidate conservation agreement," and "safe harbors" policies that give landowners greater future certainty when entering into conservation agreements with the Services. To make certain our staffs adhere to consistent procedures when dealing with the public and other Federal agencies, we have issued joint policy and guidance documents, such as the Section 7 Consultation Handbook and Habitat Conservation Handbook. We have issued a number of other joint technical policies such as our artificial propagation policy. Whenever one of the Services takes a major action or faces a novel situation, we communicate with each other at the regional and national level to ensure our approaches to the ESA are consistent. We are currently working on future, joint policies, like one on can-

didate conservation agreements, that will ensure a consistent level of service between NMFS and the Fish and Wildlife Service.

Although NMFS and the Fish and Wildlife Service coordinate our activities to provide the same level and kind of service to other agencies and the public, each agency brings different strengths to the Federal ESA program. Our strengths—NMFS with extensive marine expertise and the Fish and Wildlife Service with extensive freshwater and terrestrial experience—are complementary in the ESA program. Both NMFS and the Fish and Wildlife Service implement the ESA on rivers and streams in the Pacific Northwest despite clearly divided responsibility for different listed species. To take care of listed Pacific salmon from their cradle to their graves, NMFS has had to add expertise on freshwater ecosystems to its existing marine expertise. Although this freshwater expertise and responsibility appears to "overlap" with the Fish and Wildlife Service, it is absolutely necessary to provide a coherent service for the people, communities, and industries that depend on salmon for their economic and social well being. There is no duplication of costs between our ESA programs; in fact, NMFS' ESA program is extremely cost-effective.

Finally, you asked for my views on H.R. 4335, which is your proposal to transfer NMFS' ESA responsibilities to the Fish and Wildlife Service. NMFS' largest ESA program is for salmon, which is where this proposal would have the greatest impact. The Administration opposes H.R. 4335 for the reasons discussed below.

The Pacific Northwest is in the midst of a major challenge to recover salmon runs that face extinction. Meeting this challenge will affect major facets of northwest life: power; water resources; fishing; forest and agricultural land management; and the like. This region is on the brink of some very important decisions on the Columbia River power system. We are also gearing up for major re-licensing efforts for many big hydropower projects, including some in Idaho.

The National Marine Fisheries Service is unquestionably dedicated to the recovery of salmon in the Pacific Northwest. Our leadership of and involvement in many of the key salmon efforts is substantial—from the Columbia River Power System to the Oregon Salmon Plan to the growing efforts of Washington communities to prepare for salmon listings in Puget Sound. The challenges associated with joint administration of the ESA in this region are significant but resolvable; the benefits of shifting salmon responsibilities would be fewer than anticipated, while the disruption, confusion, and delays associated with the transfer of ESA responsibilities would be very substantial.

That said, we must ask ourselves what problem this legislative proposal is intended to solve and is this proposal the best solution. Is there concern that other Federal agencies and private parties are "overloaded" trying to deal with two separate Services protecting at least two (but usually more) different species? If so, such a transfer might address that concern because there would be only a single ESA agency. There are other ways to address this concern such as steps the Services have already taken, that are not as disruptive. Earlier I provided examples of joint consultations, joint HCPs, and co-location of offices that has helped provide "one-stop" shopping services to Federal agencies and applicants. We are exploring other administrative ways of coordinating NMFS' and Fish and Wildlife Service's ESA programs like joint processing of Federal agency actions that affect threatened or endangered species, which has streamlined the Corps of Engineers' permitting program elsewhere in the country.

Is the main concern duplication of effort, that is, several biologists analyzing the same action? Right now, there is very little duplication of effort. The number of biologists working on a consultation depends on the geographic scope of the action, the number and diversity of species involved in the consultation, and the probable environmental significance of the action. Right now, if an action affected bull trout, chinook salmon, and grizzly bears, NMFS and Fish and Wildlife Service would have to assign both fishery and wildlife biologists to evaluate the action. With the proposed transfer of ESA responsibilities, the Fish and Wildlife Service would still require both fishery and wildlife biologists to evaluate the action so there probably would not be an appreciable reduction in the number of biologists required to implement the ESA.

Some will argue that the main problem is that NMFS is too protective of species in its application of the ESA, and the best solution is eliminating us from the program. Others would argue that we are not protective enough. We respect those views as part of the public dialogue associated with the difficult task of protecting salmon and clean, healthy water. The Administration has said many times, salmon throughout the West are in deep trouble, and it is the full range of human actions that have put them there. We cannot keep doing business in the Northwest the way we have been and expect salmon to survive in the wild. The Fish and Wildlife Serv-

ice, with its proud legacy of environmental stewardship, would give you the same answer.

Shifting NMFS' ESA responsibilities to the FWS would create confusion and delays that could last for years. I mentioned earlier what NMFS has done to prepare for the special challenge of managing salmon issues in the Pacific Northwest. It has taken us some years to get to a point where we can implement our salmon program efficiently. We have gathered a lot of expertise on salmon science and salmon management, and we have invested a lot of resources to develop working relationships with the hydropower industry (public and private) to address salmon issues. We now have a good staff organized and equipped to administer the ESA to conserve salmon species cost-effectively. Our organization is fairly simple, our numbers are lean, and our people are skilled at their jobs.

If NMFS' ESA responsibilities were transferred to the Fish and Wildlife Service, they would have to repeat what we did—organize to get the job done, locate and train new staff, find space, and request appropriations. In addition to preparing to handle salmon in freshwater ecosystems, the Fish and Wildlife Service would have to gear up for new marine responsibilities based on this proposed legislation. Based on our experience, we estimate that they would need a minimum of about 150 new FTEs and about $16.5 million in new money just to start handling the additional workload necessary to protect Pacific salmon. The confusion and delays associated with the transfer you propose would create major inconveniences and delays to private landowners, fishing communities, and timber interests—all whose lives are affected by listed salmon. It would, therefore, substantially disrupt ongoing efforts throughout the Pacific Northwest in salmon recovery at the worst possible time. If the transfer occurs without providing the Fish and Wildlife Service the personnel and funding to handle the new workload, the difficulties will become much larger.

Finally, I think we need to examine what the other consequences of transferring authority to the Fish and Wildlife Service might be. Right now, people engaged in marine fisheries only deal with one Federal management agency; transferring ESA responsibility will require them to deal with two agencies where listed species are involved. Hence, transferring ESA responsibility to the Fish and Wildlife Service solves a perceived problem for people on land, but creates new problems for people who make their living from the sea.

Would the benefits of this proposal outweigh the consequences? As I said, I think the main perceived benefit is to other Federal agencies and individuals who work on rivers and forests and now must deal with two Services. On the other hand, people who earn their living from the sea and now deal only with NMFS, would have to deal with NMFS and the Fish and Wildlife Service. There are trade-offs to either approach: who benefits, who loses? My agency and I look forward to engaging the Congress, and the region, on that question.

Although most of my testimony, up to this point, has involved the extensive efforts undertaken by NMFS to meet its responsibilities to protect endangered and threatened species of Pacific salmonids, H.R. 4335 would reach far beyond these troubled species.

Under the Endangered Species Act, in addition to listed salmonids, NMFS is responsible for many other marine species, including the Arctic bowhead whale, the Pacific and Atlantic humpback whales, the blue whale, the Steller sea lion, the Hawaiian monk seal, seven species of sea turtles. Even if NMFS' ESA responsibilities were transferred, NMFS and its parent agency, the National Oceanic and Atmospheric Administration (NOAA), would continue to have significant responsibilities to protect and recover these animals pursuant to the Marine Mammal Protection Act, the Magnuson-Stevens Fishery Conservation and Management Act, the Whaling Convention Act, the National Marine Sanctuaries Act, and statutes implementing a dozen international conservation agreements, in addition to our other authorizing legislation. With respect to whales, sea lions, sea turtles and ESA-listed species of marine fish, H.R. 4335 would increase, rather than decrease, the need for interagency coordination and would give rise to more, not less, duplication of effort and expertise.

Setting aside the issue of salmonids for the moment, NMFS and NOAA strongly object to transferring ESA authority to Interior since NMFS and NOAA would still have to address the relevant ESA concerns in managing marine fisheries, marine mammals, and aboriginal whaling that have the potential to adversely affect other marine species such as whales, dolphins, seals, sea lions and sea turtles.

To name just a few of the ongoing ESA issues that would be made more complicated by enactment of H.R. 4335, the management of the Alaskan groundfish fisheries, now handled by the Regional Fishery Management Councils and NMFS, must take into account the needs of the Steller sea lions. Management of the lobster fishery and the gillnet fisheries in New England must also take into account the

needs of the right and humpback whales. So too must management of the salmon gillnet fisheries in Alaska and recreational activities in the Hawaiian Humpback Whale National Marine Sanctuary must take into account the needs of the humpback whales that migrate from Alaska to Hawaii. Under H.R. 4335, Interior would be granted much greater control over these fisheries.

Even more significantly, NMFS' national and international responsibilities to protect sea turtles from incidental take in shrimp fisheries would not go away if responsibility for endangered species were transferred from NMFS to Interior, since sea turtles are considered "fish" under the definitions of the Magnuson-Stevens Act.

As should be obvious, the above issues concerning the interaction of marine fisheries and species protected under the Endangered Species Act, the Marine Mammal Protection Act and the National Marine Sanctuaries Act are all quite controversial. NMFS and NOAA have more than two and one-half decades of experience in coordinating conservation programs for living marine resources. NOAA is the Nation's oceans agency. The Department of the Interior could not easily acquire our expertise.

Even with respect to Pacific salmonids, NMFS and the other NOAA agencies would have to remain involved in ESA matters as a result of our broad ocean fishery resource management responsibilities, including the Federal Power Act, the Fish and Wildlife Coordination Act, the Coastal Zone Management Act, as well as the new requirements of the Sustainable Fishery Act that requires the Regional Fishery Management Councils, in cooperation with NMFS, designate essential fish habitat, which for salmonids at least, will cover much the same river basins as are now covered by our ESA programs. In short, even if NMFS' current ESA responsibilities were transferred to Interior only with respect to anadromous species, NOAA and NMFS would not be relieved of work and the public would not have fewer Federal agencies to deal with.

Mr. Chairman, thank you again for the opportunity to testify. I look forward to answering any questions you may have.

STATEMENT OF
OLIVIA FALCONER JAMES
OLIVIA EXPEDITIONS, INC.
dba THE RIVER COMPANY
President and Owner

TESTIMONY BEFORE THE
COMMITTEE ON RESOURCES

Concerning the Implementation of the
Endangered Species Act

September 3, 1998

TO THE CHAIR, AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to comment on the implementation of the Endangered Species Act.

I represent The River Company, one of four outfitters who offer one day raft trips on the upper main Salmon River, out of Stanley, Idaho. We four outfitters do approximately one million dollars of business annually altogether, and the town of Stanley, population 69, is totally dependent on tourism, based primarily on river activities. We are SMALL! Ever since the Snake River chinook salmon were listed as threatened under the Endangered Species Act in April 1992, the outfitters and the town of Stanley have been squeezed dry by increasingly restrictive regulations by the federal agencies--the National Marine Fisheries Service and the US Forest Service. We have been victims of abuse of power, mismanagement and over regulation by these federal agencies. As soon as chinook salmon are seen exhibiting spawning behavior anywhere in the thirty mile stretch of the Salmon River within the SNRA, or August 21, whichever occurs first, the normal eight mile whitewater trip is reduced to five and a half miles. Floatboaters must portage a half mile section past the area called Indian Riffles, traditional spawning territory, and take out two miles up river from the federally funded official takeout. These requirements resulted from the Environmental Impact Study and Record of Decision in 1996, which the outfitters appealed through Attorney Murray Feldman of Holland and Hart, Boise, at a cost in excess of $10,000. Further, the five year outfitter special use permits, which were issued as a result of that EIS, were written without a biological opinion and Incidental Take Statement from NMFS. The SNRA interprets this as meaning there can be NO TAKES, therefore we cannot float past any redds. In 1997 floatboats caused a fish to move off its redd twice, on September 7 and 8, both times for less than fifteen minutes, and the USFS used these two "disturbances" as justification for closing the river to outfitted floatboating on September 10th. The River Company alone had to refund over $10,000 for canceled trips and lost another $10,000 in business that should have occurred. Further, the USFS incorporated monitoring requirements in the new five year permits that the outfitters have to pay for, if we want to operate after salmon spawning begins. Before the 1998 rafting season, The River Company alone had paid approximately $25,000 in monitoring costs.

We four outfitters operate under special use permits administered by the US Forest Service, in the Sawtooth National Recreation Area, the largest national recreation area in the US. The SNRA was established in 1972 "in order to assure the preservation and protection of the natural, scenic, historic, pastoral, and fish and wildlife values and to provide for the enhancement of the recreational values associated therewith." The biggest problem for the outfitters after the chinook salmon were listed under the ESA, was that jurisdiction for our local salmon was abruptly transferred from local Forest Service managers, with whom we had spent years developing good working relationships, to a new set of managers in an unfamiliar agency, the NMFS. This happened when the NMFS requested a biological evaluation (February 5, 1992, before the fish were listed) "to determine if commercial floatboating on the upper Salmon River would adversely affect ...chinook salmon." On May 29 and June 3, Wally McClure, SNRA fisheries biologist, was contacted by Ed Murrell, NMFS biologist, to initiate informal consultation. On August 17, 1992 (letter from Rolland Schmitten, Regional Director, NMFS to Carl Pence, Area Ranger, SNRA) the NMFS rejected the SNRA biological analysis determination of "not likely to affect" and went on to formal consultation under the Endangered Species Act. The FS rationale for the "not likely to affect" determination was "based on the implementation of mitigation measures identified to minimize the direct, indirect, and cumulative potential for all floatboat traffic to displace and/or harass spawning chinook and/or physically impact incubating eggs in the gravel." (Biological Assessment, June 22, 1992, SNRA, p. 5)

Before the salmon were even listed, outfitters developed mitigation procedures to protect the few remaining fish, while still allowing floatboating to continue on the river. Before the start of

the 1991 season, these are the measures we developed, and incorporated into our operating plans a year later and became part of the '92 BA:

- all unnecessary activity in traditional spawning beds prohibited, including swimming, wading, water fights, excessive paddling

- used a system of buoys to mark a channel through the deepest water, where the salmon are least likely to spawn

- suggested language of new signs to be placed along river banks warning private floatboaters to avoid endangered salmon

- required guides to educate guests about problems salmon faced

- required guides to wear polarized sunglasses to enable better visibility of salmon in water

- reduced number of guests and hours of rafting significantly during spawning season

After formal consultation, NMFS wrote a biological opinion (September 25, 1992) in which the above mitigation procedures were accepted as likely "to reduce the adverse effects on threatened Snake River spring/summer chinook salmon due to commercial floatboats. Based on the available information, NMFS has determined that commercial floatboating on the upper Salmon River is not likely to jeopardize the continued existence of Snake River spring/summer chinook salmon..." This biological opinion contained an Incidental Take Statement specifying the impact of any incidental taking and provided reasonable and prudent measures that are necessary to minimize impacts. It also set forth terms and conditions with which the action agency (USFS) must comply in order to implement the reasonable and prudent measures.

According to the Endangered Species Consultation Handbook (November 1994), Figure 3-1 informal consultation process, when the action agency renders a "no effect" decision, that is the end of consultation. The interference of the NMFS in the August 17, 1992 letter to SNRA Area Ranger Carl Pence, not concurring with the USFS biological assessment finding of "not likely to adversely affect" is not in accord with the Endangered Species Act and the NMFS has exceeded its authority.

Further, Section 9 of the ESA proscribes the "taking" of any listed species. The statute defines "take" as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16USC§1532(19) The term "harm" in the definition of "take" is defined to mean: "An act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering." (50CFR§17.3) The term "harass" in the definition of "take" is defined to mean: "an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to breeding, feeding or sheltering." The ninth Circuit Court of Appeals has clarified recently the level of proof required to establish harm or a threat of harm that would result in a Section 9 Violation. Judicial decisions clearly establish the need for a link between actions alleged to harm, harass or take the species (ie. redd displacement or mechanical disruption from floatboating in this case) and actual impairment of species breeding or death or injury to the species (ie. decreased spawning success or decreased egg or juvenile salmon survival). The mere possibility that actions such as floatboating might cause harm to a listed species is insufficient to establish a section 9 taking. NMFS would have to show actual significant impairment of the chinook salmon species breeding

habits and prove that this interference prevents the recovery of the species in order to assert a need to prevent a Section 9 taking.

NMFS definition of "take" (1995 Biological Opinion) as three displacements of an individual, or eight total displacements, from a redd, at a distance of greater than or equal to ten feet for greater than or equal to twenty minutes as a result of floatboating activity is not rationally related to or supported by the applicable statutory and regulatory definitions of the Endangered Species Act term. There is no documented evidence that displacement of listed chinook from a redd for more than twenty minutes is related to diminished spawning success or a diminished reproductive rate, or survival rate, for the species. To the contrary, the available scientific evidence for other chinook salmon indicates that spawning salmon may leave their redds for up to eight hours a day with no adverse effects on spawning success as measured by egg retention in female spawners. (D W Chapman, et al., "Effects of River Flow on the Distribution of Chinook Salmon Redds," Trans. Am. Fisheries Society 537 [1986]). NMFS definition of take was never properly promulgated pursuant to a notice and comment rulemaking as required by the Federal Administrative Procedure Act, 5 U.S.C.§553(b),(c). "A rule which is subject to the APA's procedural requirements, but was adopted without them, is invalid." US v. Picciotto, 875F.2d345(DC Cir. 1989) Because it was adopted without notice and comment rulemaking, the NMFS "take" definition may only be applied as an interpretive rule that cannot bind a federal agency's application of that definition in every instance.

Before the NMFS and the SNRA restrict access to the river, the scientific facts should indicate that such restriction will actually increase the chances of recovery for threatened salmon. Otherwise, unnecessary federal resource management will only deny the public the opportunity to enjoy the Sawtooth National Recreation Area. Instead of coming forward with requisite "best scientific and commercial data available," however, the federal agencies relied on casual observations of redd displacement for varying lengths of time as justification for decisions to restrict, and even prohibit, the use of the river by floatboaters. The agencies never demonstrated the requisite linkage between salmon displacement from a redd and an appreciable reduction in the likelihood of both the survival and recovery of a listed species. Similarly, they fail to establish that any of the observed effects of floatboating activity, such as temporary displacement of salmon from a redd or spawning area, actually result in death or injury to wildlife. Also they fail to demonstrate that the observed temporary displacement of salmon amounts to a significant impairment of essential behavioral patterns. The Forest Service readily acknowledges these analytical shortcomings and admits that, in the absence of scientific literature on the floatboat and salmon issue, assumptions form the basis for its decision. (EIS at VI-8) Without any particularized scientific evidence that temporary displacement from a redd appreciably diminishes the likelihood of the survival of the salmon, the FS instead relies on speculation and casual observances as the basis for its decision to restrict floatboat use of the river, while at the same time acknowledging that the significance of floatboating to the survival of the fish population is "unknown". (EIS at IV-11) For example, the agency states: "If visual disturbance is a factor in spawning site selection and/or delayed timing, there may be a correlation between the timing and spawning site selection at Indian Riffles and the cover created by the Yankee Fork blowout...This may indicate a correlation between boat activities and the lack of spawning at Indian Riffles in 1994". (EIS at II -8) Such totem-pole supposition, where one unsupported assumption is layered on top of another ad infinitum, does not satisfy the requisite standards for scientific and supportable documentation for an agency's decision to impose resource closures based on ESA requirements. In the entire EIS and ROD analysis, 1996, the Forest Service failed to provide any meaningful analysis or reasoned basis supported by an objective consideration of scientific information that possible disturbance of chinook spawners by floatboat activities results in decreased reproductive success of the chinook salmon. (Appeal, p 19)

The only documented scientific evidence contained in the record for chinook salmon suggests that temporary displacement from an active redd for periods up to eight hours a day does

not have an adverse effect on spawning success. (D W Chapman et al., "Effects of River Flow on the Distribution of Chinook Salmon Redds", 115 Trans. Am Fisheries Soc'y 537 [1986]). In the face of this contrary record evidence, the NMFS cannot rely on FS supposition and speculation about potential adverse effects on spawning salmon when the statutory provisions of Section 9 require actual injury to listed species to trigger the Act's requirements.

For the floatboating activities to rise to the level of prohibited harassment under Section 9, the NMFS would have to demonstrate that this floatboating creates the "likelihood of injury" to listed fish "by annoying it to such an extent as to significantly disrupt normal behavioral patterns." (See 50 CFR§17.3) Since 1994, FS regulations governing floatboats on the upper main Salmon River have been based on two arbitrary assumptions: 1) that floatboats pose a threat to endangered chinook salmon; and 2) that the presence of floatboats in an area of the river will discourage salmon from spawning there. There is no scientific data to support either of these assumptions. Nevertheless, the FS, supported by NMFS, has ruled that floatboaters must portage around certain parts of the river in order to "protect" those areas for spawning salmon. In 1997 salmon spawned in ALL parts of the river, thereby indicating that the original assumptions are false. Instead of using this opportunity to measure effects of floatboating on salmon spawning, the FS instead elected to close the river to ALL floatboating; thereby guaranteeing continued ignorance about effects of floatboating on salmon spawning.

The unscientific basis for Forest Service regulation is shown further in the ideas of Sawtooth Forest Supervisor Bill LeVere--the author of the 1996 EIS Alternative E, which governs floatboating in the SNRA . These ideas were captured in a letter written by Attorney Murray Feldman, reporting on a discussion he had with Mr. LeVere on July 3, 1996.

> "LeVere then launched into a lengthy discussion of the reasons why his biologists suggest the fish are not spawning in the stretch of river used by floatboaters. In brief, LeVere presented a rather anthropomorphic view of fish behavior, suggesting that much like humans seek out a nice neighborhood and community in which to live, the fish are looking for a nice area in which to raise their families (he analogized the upper Salmon River to a "birthing room" for the salmon). According to LeVere, constant floatboating activity on the river basically degraded the quality of the neighborhood. He acknowledged that the premise of the FS analysis is that the removal of floatboating activity would encourage additional salmon spawning. He stated that the reason the fish are not spawning in the floatboating stretch is because of the boating activity that is occurring."

1997 conditions illustrated that when salmon are given a clear choice of areas in which to spawn (either areas "protected" from floatboats, or areas "shared" with floatboats) they will choose BOTH areas. The same situation is occurring in 1998. So salmon do NOT appear to consider floatboats a threat; they were NOT discouraged from spawning by the recurring presence of floatboats. This evidence suggests that federal agency regulations could be relaxed during spawning season. Instead the regulations have been made more unreasonable.

There is no evidence of baseline spawning chinook behavior to indicate if observed floater/fish interactions relied on by the NMFS and FS have any significant effect from baseline visual disturbances experienced by the chinook (including those from clouds, highway vehicle traffic, angling, hikers on shore and other similar stimuli). Before a federal agency can point to a decline in the spawning or reproduction of salmon as a result of floatboats, it must establish the baseline of normal spawning behavior, identifying the conditions that historically existed in the Salmon River for chinook spawners. This baseline should include the presence of floatboats, because these fish have been spawning for years in the presence of the rafts (at least since the early 70's).

In a point conveniently overlooked by the NMFS and the FS, it is the completion of the federal Columbia River power system and increased habitat degradation from logging, grazing, road building and other land management authorizations, and NOT THE CONSTANT PRESENCE OF THE FLOATBOATS, that have changed the environment in which these fish must spawn, leading to their precipitous decline. (See: Northwest Resource Information Center Inc. et al. v. NMFS et al., 35F.3d 1371, 1376 (Ninth Circuit, 1994)

From the first BO in 1992, until five year special use permits were issued in August 1996, outfitters on the upper main Salmon operated with an Incidental Take Statement. No biological opinion was written by the NMFS after the USFS biological analysis in 1996, even though that BA was written by former SNRA Fisheries Biologist Lucy Slominski (who retired on January 3, 1998) with the understanding that the 1995 Incidental Take Statement would be retained. Slominski says she did not realize until later that the BA might inadvertently cancel the Statement because it reached a finding that floatboating was "not likely to adversely affect" the species. Furthermore, she says that this unintended consequence of her "not likely to affect" finding was not discovered during the review process by the FS and NMFS, and only noticed by a member of the Level One Team after the BA had already been issued. Meanwhile the definition of "take" as written in the '95 BO was incorporated into the five year Special Use Permits and the '96 BA. This leads to the conclusion that the non issuance of an Incidental Take Statement in 1996 was not a carefully considered policy decision by the Forest Service, but was rather the result of a misunderstanding not discovered until too late for correction. SNRA officials have claimed publicly since 1996 that even the potential disturbance of spawning chinook salmon by floatboats will affect the survival of the species. Yet they continue to operate under a BA finding that floatboating is "not likely to adversely affect" the species. Clearly Forest Service policy needs to be revised to address this discrepancy. In informal consultation, NMFS concurred that 3 penalty points allowed per permit, and possible loss of privileges, were reasonable deterrents, without the need to issue an Incidental Take Statement. (NMFS letter of concurrence, June 21, 1996) An Incidental Take Statement provides the appropriate method for addressing possible, but unintended, effects to a listed species. Floatboating in the SNRA was covered by a Take Statement from NMFS from 1992 through July 1996. This Take Statement provided adequate protection for spawning chinook while allowing minimal flexibility to continue.

Steve Mealey, Director of Idaho Department of Fish and Game states (Testimony to the Subcommittee on Forest Land Management, February 16, 1998) that "in general, NMFS has taken a very conservative approach to the assignment of incidental take to habitat related projects. Little or no incidental take has been permissible for most federal habitat projects, including floating on the upper Salmon River, while up to 86% direct mortality of juvenile salmon is permissible in the hydropower system...NMFS incidental take policy is allowing the most generous take for the greatest killer of anadromous fish while allowing the most restrictive take for activities least limiting salmon. This approach is counter intuitive: aggressive regulatory measures are being taken against activities affecting habitat (least limiting fish) while relatively passive measures are being taken against the hydropower system (most limiting fish). It should come as no surprise that anadromous fish are continuing to decline. In this context IDFG views the extreme restrictions on floating resulting from SNRA consultation with NMFS, as biologically inappropriate and economically and socially unfair."

In order to establish take, when the presence of fish and redds is confirmed, there still would have to be a determination that the fish are being displaced by the boats and that this has the required effect (under the official definition of harass) of significantly disrupting behavioral patterns. If NMFS were to conclude that a take is actually occurring due to floatboat outfitting, it still would be obligated under the ESA to determine whether the take is "incidental" and therefore permissible. In the process of making this determination, the agency would be required to evaluate potential measures that could be taken to minimize such takes. [See, e.g.,50CFR§402.14(g)(7)and(i)]

In this connection, we note that NMFS has issued Incidental Take Permits to other agencies that allow the actual, if incidental, killing of listed spring/summer chinook. (Letter from Attorney Jeffrey Fereday of Givens, Pursley & Huntley, Boise, to Mr. Dale Bosworth, Regional Forester, 8/16/94)

NMFS and FS have failed to address why these agencies believe they have an obligation to protect against impacts that "could" occur, instead of applying the ESA standard of a reasonable certainty of significant impairment of chinook salmon's reproductive activities and success because of floatboating. The SNRA Environmental Analysis (May 1995, p. 8) states the assumptions upon which the analysis was based:

1. Floatboating may discourage adult spawners from initiating redd development.

2. Floatboating may harass spawning adult salmon on the redds.

Regulation of floatboaters under the ESA has been based on these assumptions and anecdotal evidence rather than sound science. (Appeal, p. 43f). The Mausolf vs. Babbbitt case (D. Minn '96) makes it clear that it must be proven by more than wholly anecdotal evidence that, using the best scientific and commercial data available, redd displacement significantly interferes with spawning or reproductive success. Without such evidence, NMFS is engaging in "overprotection" of a listed species and is exceeding the boundaries of permissible ESA regulation. To the contrary, PhD Fisheries Biologist, Tom Welsh maintains that his studies have shown that salmon can be driven from their redds for as long as 8 hours without hindering spawning. (See p. 3)

The Idaho Department of Fish and Game commented on the draft '96 EIS, and indicated in a reasoned analysis why the mitigation measures adopted in 1994 and 1995 are adequate protection for spawning chinook salmon in the Salmon River corridor. "We do not believe that occasional disturbances to chinook spawners significantly affect their reproductive success. Chinook in wilderness and non wilderness waters have shown similar rates of decline. Hatchery and wild populations have shown similar rates of decline. Rivers and streams that have been closed to general fishing and rivers and streams that have been open to general fishing have shown similar rates of decline." (EIS at VI-27) Mike Larkin, IDFG Biologist, stated: "In the big picture this is a tiny, tiny issue. We're not going to make or break a species here in the Stanley Basin, yet we're taking all this time and energy simply because there's a chance that a disturbance might occur." (Associated Press, August 9, 1994)

In Testimony to the Subcommittee on Forest Land Management by Stephen P. Mealey, Director IDFG, February 16, 1998 we read: "Defining proper roles for IDFG and SNRA managers is an important issue for resolution. The SNRA provides NMFS with biological assessments (BA's) of impacts of fishermen and floatboaters on adult salmon populations in the upper Salmon River. BA's have not consistently reflected IDFG data and interpretations of data. This has resulted in management restrictions on public activities in salmon spawning areas that IDFG has not supported and does not now support. We view the current restriction on use of floatboats in salmon spawning habitat as unnecessary, given the minimal or nonexistent effects of floating on salmon, that we have observed."

The NMFS and FS facile resort to the precept that floatboating disturbance leads to salmon mortality, if taken to its logical extreme, would allow the FS and NMFS to close the upper Salmon River and the entire Sawtooth National Recreation Area to recreational use altogether. Clearly, this was not Congress' intent when it established the SNRA to, among other things, "provide for the enhancement of recreational values associated therewith."(16U.S.C.§460aa(a)).

Terms of past BO's required intensive mitigation and monitoring for floating during staging and spawning periods. The SNRA staffed and funded the majority of associated expenses with

assistance from NMFS and IDFG field personnel. In the '96 BA (p. 17) the FS takes the position that "our ability to avoid take is based on our ability to monitor fish spawning activity and enforce mitigation measures as soon as redds are established." Alternative E of the '96 EIS imposes a substantial portion of the costs of mitigation measures on the permittees. Paying for monitoring by IDFG now is the responsibility of outfitters, at the rate of $1100 a week. In addition, outfitters must pay the total cost of fixed wing aircraft to fly along the 30 mile stretch of the Salmon River within the SNRA once a week from August 1 - 15, then twice a week starting August 16 until the end of the spawning season. Outfitters are responsible for recruiting volunteers and paying them to inform the public about portage requirements as well as redd monitoring on the river and reporting for two days per week. If outfitters are unwilling or unable to pay these costs, they are not permitted to float after salmon season begins. The 1994 Monitoring Report (p. 3) states: "The total estimated cost of implementing the terms and conditions of the Incidental Take Statement, and other protective measures within the canyon for 1994 was $33,000." One cannot help but wonder if this high cost of implementing the reasonable and prudent measures of the Incidental Take Statement is the reason the SNRA refused to ask the NMFS to issue a biological opinion and a Take Statement in '96. It is much easier and cheaper just to close the river--exactly what happened in 1997.

Federal agencies should be required to enforce the Endangered Species Act only if Congress specifically provides funds for that purpose. In addition Congress should establish clear rules under the ESA for determining when the cost of saving a species is no longer reasonable. In cases where a species has been driven to the brink of extinction by official federal policy, such as the construction of dams on a river system, there should be no enforcement of the ESA against minor threats to the species. In such cases the federal policy should either be amended to fully protect the species or Congress declare that maintaining the federal policy is more important to society than the survival of the species.

The ESA should be restricted to species only. Efforts to preserve a particular salmon run or some other wildlife that is growing scarce in a local area, though valid, don't require the invocation of the extraordinary powers of the Endangered Species Act. They are local issues, best left to states. Similarly, outfitters on rivers should be managed by state departments of Fish and Game, with oversight by the federal Fish and Wildlife Service.

Management of people and environment should be holistic. Management should treat people and their environment as one whole. A true solution must modify the process itself, not merely attack the symptom. Quality of life must include not only clean air and wildlife preservation, but also affordable homes, jobs, schools and hospitals.

LIST OF SOURCES

EIS - Final Environmental Impact Statement, Salmon River Corridor, Sawtooth National Recreation Area, USDA Forest Serice, Intermountain Region, Sawtooth National Forest. May 1, 1996.

ROD - Record of Decision on above EIS.

Special Use Permit from 8/9/96 - 12/31/2000, hard copy enclosed. Note: Exhibit A, Mitigation, Monitoring, and Operating Requirements during the Staging/Pre-Spawning, Spawning, and Post-Spawning Periods of Snake River Chinook Salmon.

Appeal to the Regional Forester USDA Forest Service, Intermountain Region In the Matter of the Decision of Sawtooth National Forest Supervisor William P. LeVere to Adopt the Record of Decision and Final Environmental Impact Statement for the Salmon River Corridor, Sawtooth National Recreation Area. Word Perfect Disk enclosed.

USDA Forest Service Intermountain Region, July 24, 1996 Appeal Decision. Hard copy enclosed.

Endangered Species Consultation Handbook--November 1994, Figure 3-1, Informal consultation process flowchart. Hard copy enclosed.

Olivia Falconer James, PO Box 3964, Ketchum, ID 83340, (208)788-9040

Summary of Comments:

1. As a result of 5 year special use permits issued after the '96 EIS and ROD, exorbitant costs have been imposed on the four upper main Salmon River outfitters in order to be able to float after endangered salmon appear anywhere in the thirty mile section of river within the Sawtooth National Recreation Area.

2. NMFS exceeded its authority under the ESA when it did not concur with the '92 USFS determination that floatboating had "no effect" on chinook salmon, and initiated Formal Consultation.

3. NMFS definition of "take" as 3 displacements of an individual or 8 total displacements, from a redd, at a distance of greater than or equal to 10 feet for greater than or equal to 20 minutes as a result of floatboating activity, is not rationally related to or supported by the applicable statutory and regulatory definitions of the ESA term.

4. There is no documented evidence that displacement of listed chinook salmon from a redd for more than twenty minutes is related to diminished spawning success or a diminished reproductive rate, or survival rate for the species. Without such evidence, NMFS and USFS are engaging in "over-protection" of a listed species and exceeding the boundaries of permissable ESA regulation.

5. Instead of relying on the best scientific and commercial data available, NMFS and USFS rely on assumptions and anecdotal evidence for rationale in regulating floatboaters in the name of ESA requirements.

6. No Biological Opinion or Incidental Take Statement was written in '96 by NMFS to accompany the 5 year special use permits, as had been done every year since the fish were listed. The result is no flexibility for the outfitters to float in waters where listed salmon are spawning. If a salmon moves off its redd as a result of a passing floatboat, the SNRA can justify closing the river so a "take" won't occur.

Recommendations:

1. Outfitters on rivers should be managed by Fish and Wildlife Service at the federal level and state departments of Fish and Game locally.

2. Holistic management - treating people and their environment as one whole and operating within Nature's laws. A true solution must modify the process itself, not merely attack the symptom.

3. Federal agencies should be required to enforce the ESA only if Congress specifically provides funds for that purpose.

4. Congress should establish clear rules under the ESA for determining when the cost of saving a species is no longer reasonable.

5. The ESA should be restricted to species only. Efforts to preserve a particular salmon run or some other wildlife that is growing scarce in a local area, though valid, don't require the invocation of the extraordinary powers of the Endangered Species Act. They are local issues, best left to states.

Testimony by Robert A. Maynard, Esq.

Mr. Chairman and members of the Committee, my name is Robert A. Maynard. I am an attorney in private practice here in Boise, Idaho. Thank you for inviting me to submit comments related to implementation of the Endangered Species Act (ESA) and H.R. 4335, a bill to transfer to the Secretary of the Interior the functions of the Secretary of Commerce and the National Marine Fisheries Service (NMFS) under the ESA. I am testifying as an individual with respect to the general subject matter of this hearing and H.R. 4335. However, a central theme of my remarks concerns an issue on which my firm, Perkins Coie LLP, coordinates a diverse ad-hoc coalition of non-fishing resource users, including many from the Pacific Northwest. This issue, the NMFS essential fish habitat (EFH) program, relates directly to ESA implementation and concerns addressed in H.R. 4335. With my statement, I am submitting some documents critical of the EFH program which reflect the views of the coalition, although it has taken no position on H.R. 4335 itself.

To summarize my relevant experience, I have practiced law in the environmental and natural resources arena for over eighteen years. Prior to entering private practice, I served for many years as chief agency field counsel for the U.S.D.A. Forest Service and a special Assistant U.S. Attorney in Alaska. I have dealt with Endangered Species Act issues numerous times in the course of my career. During my career, I have worked considerably with both NMFS and the U.S. Fish and Wildlife Service (FWS), the agency in the Department of the Interior with delegated responsibility for administering the ESA.

For the past year and a half much of my private practice has focused on habitat conservation agreements and "incidental take" permits negotiated between private landowners and the NMFS and FWS under Section 10 of the ESA. As indicated above, I have also recently been assisting a wide range of business entities with concerns about NMFS implementation of the "essential fish habitat" provisions of 1996 amendments to the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). NMFS responsibilities and actions under the MSFCMA are quite relevant to NMFS and FWS ESA responsibilities, and I will focus upon this connection in my testimony.

My understanding is that H.R. 4335 is directed at decreasing the complexity and potential for conflicts between agencies in implementation of the ESA. Currently, completion of ESA Section 7 consultations, agreements for habitat conservation under ESA section 10,and other ESA procedures can be quite time consuming and complicated. The complexity and time involved can be greater when both NMFS and FWS have ESA jurisdiction regarding a particular project or program. Conflicts between agencies and substantial delays in completing these processes can be very costly to the government, businesses, and citizens.

The responsibility of NMFS regarding listed stocks of salmon and FWS responsibility for such freshwater fish species as bull trout in the Snake River basin is a leading example of geographic overlap between NMFS and FWS ESA jurisdiction. Such overlap also occurs over other extensive areas in coastal California, Oregon, and Washington, where streams occupied by listed salmon stocks occur in watersheds of concern to FWS for ESA listed species such as the spotted owl and marbled murrelet. Another example of jurisdictional overlap is along the north coast of Alaska, where NMFS has responsibility for the bowhead whale and the FWS has responsibility for coastal bird species such as spectacled and Steller's eiders.

Consolidating ESA administrative responsibilities in a single Department could simplify ESA implementation and increase its cost-effectiveness. On the other hand, we should not take an overly simplistic view of what such consolidation would accomplish, or assume that involvement by the Department of Commerce in salmon or other fish and wildlife issues would be eliminated by H.R. 4335. For example, the Department of Commerce and NMFS would continue to have substantial responsibilities with respect to salmon and other marine fishery species under the MSFCMA, as amended. 16 U.S.C. § 1801 et seq. By virtue of MSFCMA jurisdiction or fisheries expertise, NMFS could be expected to remain a consulting or cooperating agency in NEPA and other procedures carried out by other federal agencies for authorizing or funding various actions with potential to impact habitat of species such as salmon.

On this point, the "essential fish habitat" provisions of 1996 amendments to the MSFCMA and NMFS efforts to implement them are of particular importance. The MSFCA primarily concerns management of commercial marine fisheries in waters offshore from the United States. Eight regional fishery management councils in conjunction with the Department of Commerce and NMFS oversee this management through fishery management plans. The "EFH" amendments to the statute provide for the councils to identify, with the assistance of NMFS, essential fish habitat for fish species included in council fishery management plans. Federal agencies are thereafter required to consult with NMFS regarding federally authorized or funded activities which may adversely affect identified EFH. For federal or state agency authorized or funded activities which the Secretary of Commerce determines would adversely affect identified EFH, NMFS is authorized to recommend measures that can be taken by the involved federal or state agency to conserve such habitat. Council managed fish species include Pacific salmon and other anadromous and coastal species.

NMFS has issued interim final regulations premised on the 1996 amendments. 62 FR 66531 (December 19, 1997). NMFS has also issued draft recommendations to fishery management councils for amending fishery management plans to incorporate

EFH provisions. These regulations and recommendations take an extremely broad approach to identification of EFH and activities with the potential to adversely affect EFH. Thus far, it appears that virtually all habitat is being proposed for identification as "essential." For example, draft recommendations to the Pacific Fishery Management Council define EFH for Pacific coast salmon to include all freshwater habitat currently or historically accessible to salmon in Washington, Oregon, Idaho, and California, as well as coastal waters extending from Puget Sound south to Point Conception. The mapping of watersheds encompassing salmon EFH in these recommendations takes in a huge area in each of these four states. A copy of this map is attached. The draft recommendations include an encyclopedic catalog of coastal and upland activities presumed to have the potential to adversely affect EFH, ranging from agriculture to urban real estate development. "Draft Proposed Recommendations for Amendment 14 to the Pacific Coast Salmon Plan for Essential Fish Habitat" (NMFS, March 26, 1998).

The NMFS regulations state that EFH will always be greater than or equal to aquatic areas that have been identified as ESA critical habitat for any council managed fish species listed as threatened or endangered under the ESA. 50 C.F.R. § 600.815(a)(2)(ii)(C), 62 FR at 66552. The regulations furthermore set out an elaborate comment and consultation process which can be compared to the ESA section 7 consultation process. 50 C.F.R. Part 600, Subpart K. Attached is a copy of NMFS flow charts depicting this process, which illustrate its cumbersome nature.

Thus, in the event that NMFS ESA jurisdiction over salmon species is removed, NMFS could still be administering a consultation process as cumbersome as the section 7 process over a geographic area as broad or broader than the reach of the ESA. The process is likely to be quite redundant and inefficient with respect to activities to which the ESA applies.

A wide range of affected industries and businesses have strongly criticized NMFS for taking an unnecessarily broad, costly, and counterproductive approach to implementation of MSFCMA EFH provisions. Attached is a copy of a July 6, 1998 letter submitted to the Vice-President on behalf of a wide range of agriculture, forestry, home-building, mining, real estate, resource development, and water user entities expressing these concerns. There is concern in the Congress also. In the Senate Appropriations Committee report to accompany the Fiscal Year 1999 appropriations bill for the Department of Commerce, the committee stated its concern that NMFS has exceeded the scope of congressional intent in implementing the EFH provisions of the 1996 statute. The committee report directs NMFS to reexamine the scope of the EFH regulations and guidelines, and directs GAO to report on the

agency's implementation of the EFH requirements of the Act. S. Rep. 105-235, 105th Cong., 2d Sess. (July 2, 1998) at 97-98.

An effort to consolidate ESA functions in the Department of the Interior and increase cost-effectiveness of ESA implementation should include consideration of NMFS jurisdiction and actions under the authority of the EFH provisions of the MSFCMA. If problems that are arising with EFH implementation are not dealt with, the potential cost savings and other efficiencies of ESA consolidation may be substantially reduced. To further assist the Committee in evaluating these problems, attached is a copy of an August 3, 1998 paper which includes a summary of EFH provisions prepared by NMFS in a question and answer format, and an evaluation of the NMFS summary. This paper has recently been provided to NMFS and to the Pacific Fishery Management Council for their review and consideration.

Thank you again for the opportunity to testify. I would be pleased to answer any questions you may have at this time.

IMPLEMENTATION OF THE ENDANGERED SPECIES ACT

Testimony by Robert A. Maynard, Esq.

before the

COMMITTEE ON RESOURCES

U.S. House of Representatives

September 3, 1998

Boise, Idaho

ATTACHMENTS

1. **Excerpts, "Draft Proposed Recommendations for Amendment 14 to the Pacific Coast Salmon Plan for Essential Fish Habitat" (NMFS, March 26, 1998)**
2. **NMFS Flow Diagrams, Essential Fish Habitat Consultation Process**
3. **July 6, 1998 Letter to Vice-President Regarding Essential Fish Habitat**
4. **August 3, 1998 Paper, "Comments on NMFS 'Frequently Asked Questions about Essential Fish Habitat'"**

DRAFT

PROPOSED RECOMMENDATIONS

FOR

AMENDMENT 14 TO THE

PACIFIC COAST SALMON PLAN

FOR

ESSENTIAL FISH HABITAT

National Marine Fisheries Service

March 26, 1998

I. DEFINITION OF ESSENTIAL FISH HABITAT FOR THE SALMON FISHERY

Based on the descriptions of essential habitat for coho, chinook, pink, and sockeye salmon in Section II, the proposed definition of EFH for the salmon fishery is:

EFH is the aquatic habitat necessary to allow for salmon production needed to support a long-term sustainable salmon fishery and salmon contributions to a healthy ecosystem. The salmon fishery EFH includes all those streams, lakes, ponds, wetlands, and other water bodies currently or historically accessible to salmon in Washington, Oregon, Idaho and California. In the estuarine and marine areas, salmon EFH extends from the nearshore and tidal submerged environments to 60 km offshore of Washington, Oregon and California north of Point Conception. Foreign waters (i.e., off Canada) are not included in salmon EFH because they are outside U.S. jurisdiction. The Pacific coast salmon fishery EFH also includes the marine areas off Alaska designated as salmon EFH by the North Pacific Fishery Management Council. The geographic extent of freshwater EFH is specifically defined as all waters currently or historically accessible to salmon within the United States Geological Survey (USGS) hydrologic units identified in Table I-1. Salmon EFH excludes areas upstream of longstanding naturally impassible barriers (i.e., natural waterfalls in existence for several hundred years). Salmon EFH includes aquatic areas above all artificial barriers except those listed in Table I-2. In the future, should salmon access or reintroduction above any of the dams listed in Table I-2 become technologically and economically feasible, these areas would be designated as salmon EFH.

The geographic range of the proposed salmon fishery EFH is shown in Figure I-1.

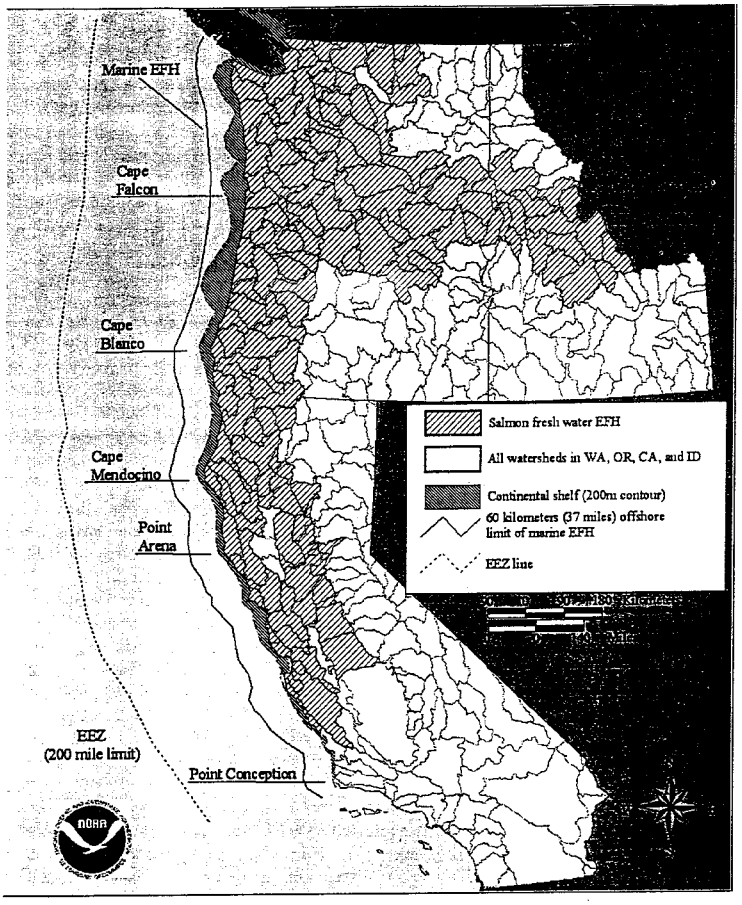


Figure I-1. Pacific salmon freshwater and marine Essential Fish Habitat (EFH)

Diagram A. Generalized flow diagram of EFH Consultation Process.

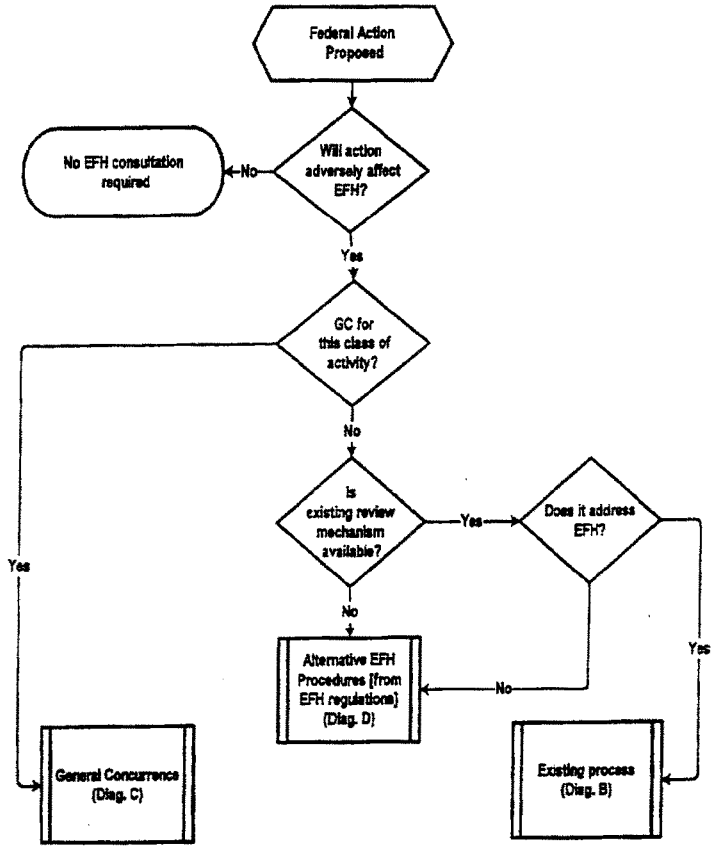


Diagram B. Generalized flow diagram summarizing the use of existing environmental review procedure to satisfy EFH consultation requirements.

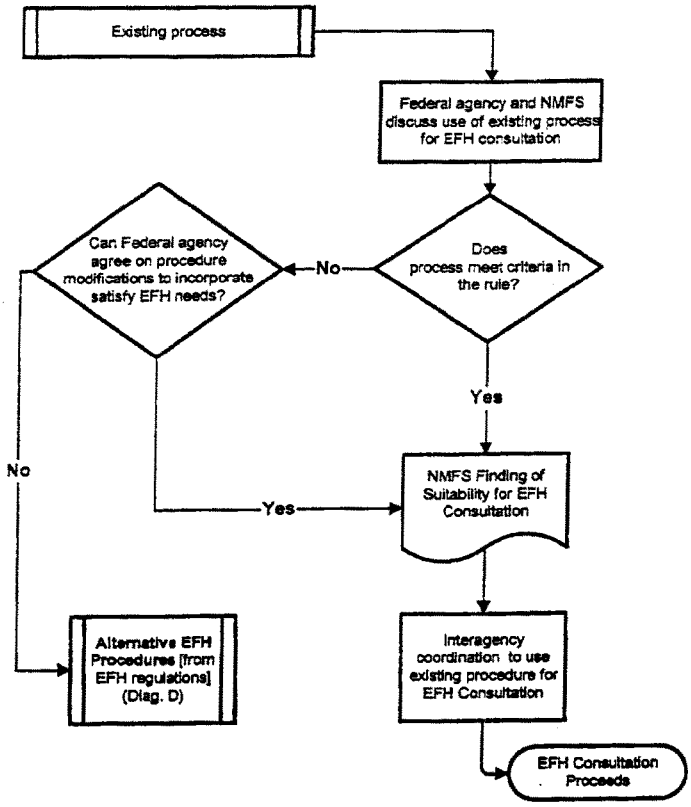


Diagram C. Generalized flow diagram summarizing EFH General Concurrence procedures.

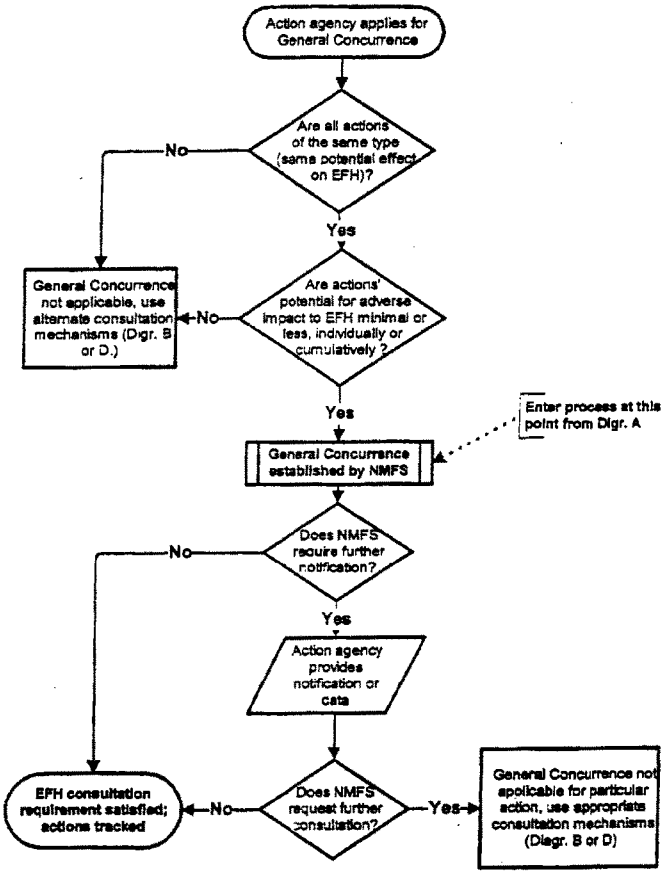
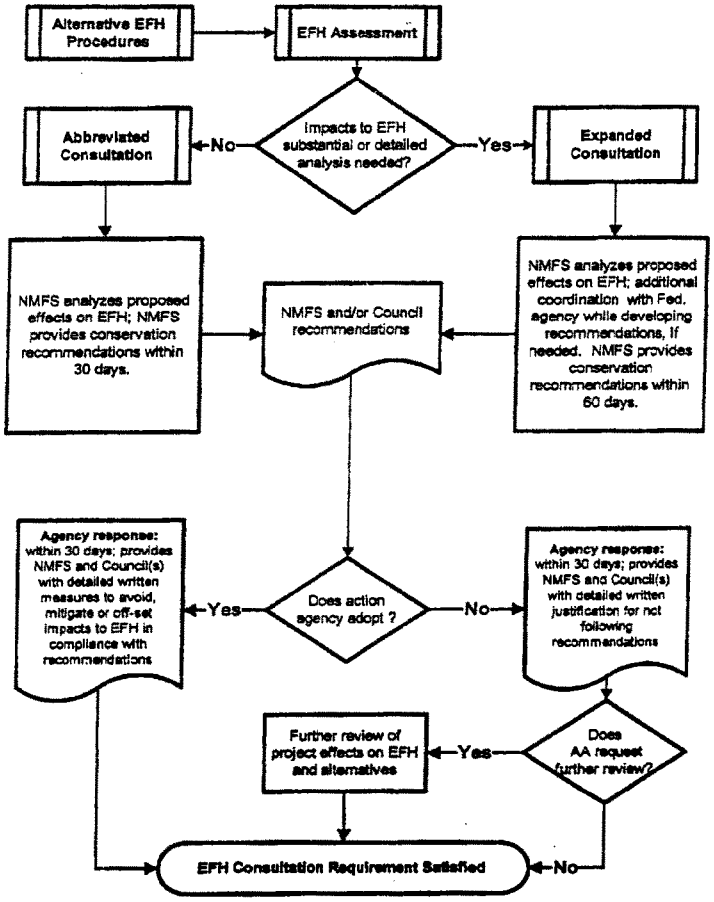


Diagram D. Generalized flow diagram summarizing the use of alternative procedures, when there are no appropriate pre-existing reviews.



AMERICAN FOREST & PAPER ASSOCIATION * ALASKA FOREST ASSOCIATION
CALIFORNIA FARM BUREAU * NATIONAL CATTLEMEN'S BEEF ASSOCIATION
NATIONAL WATER RESOURCES ASSOCIATION
RESOURCE DEVELOPMENT COUNCIL OF ALASKA * SEALASKA CORPORATION
CALIFORNIA CHAMBER OF COMMERCE * NATIONAL REALTY COMMITTEE
ASSOCIATION OF CALIFORNIA WATER AGENCIES
NATIONAL ASSOCIATION OF HOME BUILDERS
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
BAY-DELTA URBAN COALITION STEERING COMMITTEE
NATIONAL MINING ASSOCIATION * WEYERHAEUSER COMPANY
FOREST LANDOWNERS OF CALIFORNIA * NORTHWEST FORESTRY ASSOCIATION
NORTHWEST MINING ASSOCIATION * ALASKA MINERS ASSOCIATION
INTERMOUNTAIN FORESTRY INDUSTRIES ASSOCIATION
INTERMOUNTAIN ECONOMIC DEVELOPMENT CORPORATION
CALIFORNIA FORESTRY ASSOCIATION
IDAHO MINING ASSOCIATION * CALIFORNIA MINING ASSOCIATION
SIMPSON INVESTMENT COMPANY * BURNEY FOREST PRODUCTS
MINERALS EXPLORATION COALITION (MONTANA) * INDIAN HILL, LLC

July 6, 1998

The Honorable Albert Gore, Jr.
Vice President of the United States
Old Executive Office Building
Washington, D.C. 20501

Re: Essential Fish Habitat

Dear Vice President Gore:

By letter of March 13, 1998, counsel for an informal coalition of nonfishing entities wrote to you to express their concern about the new regulatory program under development by the National Marine Fisheries Service (NMFS) to implement the "essential fish habitat" (EFH) requirements of the Magnuson-Stevens Fishery Conservation and Management Act (FCMA). In that letter, the nonfishing community expressed support for the statutory goal of improved conservation of offshore fisheries and the habitat essential to those fisheries, but emphasized its serious concerns over the emerging EFH program, as it is being implemented.

The March 13 letter explained that the implementation of EFH had been expanded dramatically beyond the intent of Congress. As envisioned by NMFS, EFH covers all marine, coastal, and estuarine waters of the United States, and very extensive inland habitat

for anadromous species, including upland terrestrial areas. Such an all encompassing definition, the letter pointed out, had rendered the term "essential" meaningless. The EFH program has no limitation; it simply applies everywhere.

In the letter, the coalition of nonfishing interests also expressed strong concern over the complexity of the consultation program being developed by NMFS. Rather than take advantage of existing consultation and decisionmaking procedures, NMFS is seeking to create a redundant and burdensome new federal procedure that will result in the inefficient use of agency resources and significant delay in decisionmaking. Such a result is clearly at odds with the intent of Congress to develop an efficient process for gathering information about EFH. The NMFS approach also undermines the regulatory reform initiatives for "reinventing government" that you have advanced so effectively on behalf of the Clinton Administration.

Finally, the nonfishing community objected to the use of the proposed EFH program to subject the activities of diverse onshore resource sectors, including land development, agriculture, water supply, forestry, and mining, to the jurisdiction of the Fishery Management Councils under FCMA. Those Councils have been established specifically and exclusively for the purpose of regulating fishing. They have no expertise in nonfishing activities, do not seek or provide significant representation of nonfishing interests, and do not have any accountability to nonfishing interests.

The following undersigned organizations are writing you to reaffirm the message conveyed in the earlier letter. We also are writing to comment on a letter to you from a number of groups who identify themselves as "conservation, fishing and science organizations." As you review their letter, dated June 10, 1998, we believe it is important for you to also consider the following points.

In the June 10 letter, concern is expressed over a recent letter sent by NMFS Director Schmitten to the Fishery Management Councils, in which he makes a number of recommendations for improving the EFH process. We can see no reason why Mr. Schmitten's letter should raise such concerns. The comments the groups attribute to Mr. Schmitten make sense and simply reflect an apparent effort at the policy level of NMFS to make the EFH program work better.

The groups also allege that the NMFS Office of Habitat Conservation is "under pressure to significantly weaken key standards in the EFH regulation," and that EFH standards "have been long fought by the nonfishing industry sector," which is discounted as "vested interests." Any modifications of the EFH program are characterized as impairing

the economic future of the U.S. fishing industry. That such rhetorical charges are made reveals the absence of substantive responses to the concerns about the program that have been advanced by the nonfishing community. We would simply observe that there is no monopoly on virtue, sensitivity to environmental concerns, the public interest, good government, or indeed, self-interest.

These statements in the June 10 letter are, at the minimum, vastly exaggerated, implying somehow that it is improper for nonfishing interests to participate in the established public review process or to carry on a dialogue with NMFS. The nonfishing community has submitted rulemaking comments and engaged in discussions with NMFS staff and policy officials expressing concerns over the program, which is precisely the way the regulatory process is supposed to work. It is clear that the organizations who sent the letter to you have engaged in the same dialogue. Because we conclude that the EFH program cannot work the way it is currently constructed in the NMFS regulations, but agree that the concept has value, we must advocate fundamental changes if the program is to proceed at all. It is not "pressure," as alleged, but rather participation in the established public process which is occurring.

It is important to emphasize the history of the EFH concept. Until just over one year ago, the nonfishing community had no knowledge of this program. During the lengthy period EFH apparently was under consideration for inclusion in the 1996 amendments to the FCMA, no Administration official, no member of Congress, no committee staff, no fishing industry group, and no environmental organization, engaged representatives of the nonfishing community in the issue. Considering the scope and magnitude of this program as it is now envisioned by NMFS, certainly it would be expected that all affected parties would be asked to comment on a legislative proposal under which they would be the principal focus of regulation.

The fact that there was no dialogue on this issue during the FCMA reauthorization process therefore leads us to the conclusion that neither Congress nor the Clinton Administration intended to develop a program which would have sweeping application to the nonfishing community. The environmental and fisheries entities who wrote you apparently worked closely with the congressional committees responsible for the FCMA and with the Clinton Administration on EFH authorization. Nonfishing interests did not. It has been our experience that when our interests are likely to be directly and significantly affected by pending legislation or proposed administrative policy, our views are solicited and participation requested. Hence, if the EFH provisions included in the 1996 FCMA amendments had been truly intended by Congress or the Administration to have such far-

reaching and demanding application to the nonfishing sector, we believe we would have been contacted and involved.

Only in recent months, once proposed regulations were published to implement the program and the EFH proposal became visible and open to comment from us, have we expressed our concerns and raised objections. Had we been aware of the EFH proposal as it was moving through the legislative process, we would have participated fully, and urged specific provisions for a more limited, balanced and efficient program. We are confident Congress would not have sanctioned, and did not intend, the kind of program now advanced.

The failure of NMFS to respond to the many concerns raised during the public comment period has led to the current conflict, and to increased concerns by members of Congress that the implementation has gone beyond their intent. The nonfishing sector is seeking to work with the Clinton Administration to develop an EFH program that can function without imposing new and redundant burdens on resource utilization activities. If these concerns continue to go unaddressed, then we believe the conflict will expand to include legislative and legal alternatives, including challenges to the overall program, as opposed to current efforts which support the program and seek to make it work fairly and efficiently.

As the Clinton Administration continues to address the problems associated with EFH implementation, we can only urge you to take a hard look at the merits of the specific arguments presented. If this analysis is undertaken, we feel certain you will agree that the EFH program must be dramatically reformed to be consistent with the basic intent of the law, with the standards for reinventing government you have established, and with requirements for basic fairness and representation.

The nonfishing community stands ready to work with the Clinton Administration and members of Congress to reform the EFH program so that it will provide a common sense and balanced approach to protecting fish habitat without unduly impeding agency decisionmaking or resource utilization activities.

Because of the rapidly approaching October deadline by which the EFH program must be implemented, we encourage you to support focused efforts by NMFS to work with us expeditiously to develop an EFH program that is consistent with Congressional intent. We believe a sound place to start is by achieving a Congressional extension of the statutory deadline for implementation of the EFH program, so that adequate public input can be

solicited and the necessary changes made. Little will be gained by doing the wrong things quickly.

We look forward to working constructively with the Clinton Administration on this issue. Responses or questions about the views expressed in this letter may be directed to Guy R. Martin at (202) 434-1650. Thank you for your attention to this matter.

Sincerely,

American Forest & Paper Association
Alaska Forest Association
California Farm Bureau
National Cattlemen's Beef Association
National Water Resources Association
Resource Development Council of Alaska
Sealaska Corporation
California Chamber of Commerce
National Realty Committee
Forest Landowners of California
Northwest Forestry Association
Northwest Mining Association
Intermountain Forestry Industries Association
Intermountain Economic Development Corporation
Association of California Water Agencies
National Association of Home Builders
Metropolitan Water District of Southern California
Alaska Miners Association
Bay-Delta Urban Coalition Steering Committee
Weyerhaeuser Company
National Mining Association
California Forestry Association
Idaho Mining Association
California Mining Association
Simpson Investment Company
Minerals Exploration Coalition (Montana)
Burney Forest Products
Indian Hill, LLC

cc: The Honorable Terry D. Garcia
The Honorable Rolland A. Schmitten

PERKINS COIE LLP

August 3, 1998

National Marine Fisheries Service "Essential Fish Habitat" Rulemaking; Comments on NMFS "Frequently Asked Questions About Essential Fish Habitat"

The National Marine Fisheries Service (NMFS) has recently issued "Frequently Asked Questions About Essential Fish Habitat," a question and answer format summary of Magnuson-Stevens Act "essential fish habitat" (EFH) requirements under the NMFS interim final regulations. This summary appears in the June 1998 issue of the Pacific Fisheries Management Council newsletter, "Council News."

The NMFS "answers" to questions about EFH in this summary are misleading and warrant further comment, which is provided below.

1. How is Essential Fish Habitat authorized?

NMFS answer: The Magnuson-Stevens Fishery Conservation and Management Act, as amended by the Sustainable Fisheries Act of 1996 (Public Law 104-267), established a new requirement to describe and identify "EFH" in each fishery management plan.

Comment: The requirement referenced in the statute does not, however, authorize the unreasonably expansive definition of EFH which NMFS has provided as direction to each fishery management council (Council) for describing and identifying EFH. Nor did it authorize the extremely broad and unnecessarily bureaucratic and cumbersome consultation process set out by NMFS for activities which may affect EFH.

2. What is the definition of Essential Fish Habitat?

NMFS answer: EFH is defined as "those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity." *Waters* include aquatic areas and their associated physical, chemical, and biological properties. *Substrate* includes sediment underlying the waters. *Necessary* means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem.

Spawning, breeding, feeding, or growth to maturity covers all habitat types utilized by a species throughout its life cycle.

Comment: The quoted language is the relatively straightforward definition of EFH contained in the Magnuson-Stevens Act, which clearly limits the concept to habitat necessary for various specified life stages of Council managed fish species. The remainder of the "definition" provided by NMFS is an administrative expansion of the statutory concept, contained in the agency's "interim final" regulations. 62 Fed. Reg. 66531, 66551 (December 19, 1997), 50 C.F.R. § 600.10. The regulations and other guidance provided to the Councils by NMFS vastly exceed the statutory definition by creating a broad "ecosystem" approach to EFH, and incorporating other direction to Councils to follow an all-inclusive strategy in identifying and describing EFH. The result has been that Councils are proposing to identify nearly all habitat currently or historically accessible to species like salmon as "essential." The NMFS definition, in other words, creates no meaningful distinction between habitat in general, and "essential" habitat.

3. What fish species are covered under EFH?

NMFS answer: Only species managed under a Federal fishery management plan are covered.

Comment: Unfortunately, under the all-inclusive approach to EFH and activities presumed to have adverse effects on EFH followed by NMFS, this is a fairly meaningless limitation.

4. Who must undertake EFH consultation?

NMFS answer: The Magnuson-Stevens Act requires all Federal agencies to consult with NMFS on all actions, or proposed actions, permitted, funded, or undertaken by the agency, that may adversely affect EFH.

Comment: The Act actually requires that, for the consultation requirement to apply, the EFH must be identified in a Council fishery management plan (FMP). It is the sweeping NMFS definition of EFH, not the statute, which makes consultation virtually universal. If instead NMFS and the Councils would follow a reasonable, pragmatic approach to identifying habitat that is truly "essential" to managed fish species, consistent with the limited marine fisheries jurisdiction and expertise of the Councils, consultation requirements could be focused on activities with a real potential to harm managed fisheries. The Act does not require this consultation to be lengthy, formal, or even in writing.

5. What is meant by "adversely affect?

NMFS answer: Adversely affect means any impact which reduces the quality and/or quantity of EFH. Adverse affects may include direct (e.g. contamination; physical disruption), indirect (e.g. loss of prey), site-specific or habitat-wide impacts, including individual, cumulative or synergistic consequences of actions.

Comment: The above definition is not in the statute. When combined with an overly broad approach to identifying EFH which basically encompasses all habitat, then this definition equates any reduction in quantity or quality of any habitat no matter how small with adverse effect, whether or not there is any likely harm to managed fish species from the impact. NMFS has not included any sense of scale, or meaningful, substantive threshold of concern in its definition of adverse effect.

6. Do all activities proposed in an EFH area require consultation?

NMFS answer: Activities proposed to occur in EFH areas do not automatically require consultation. Consultations are triggered only when the proposed action may adversely affect EFH, and then, only Federal actions require consultation.

Comment: The broad approach taken by NMFS to identifying EFH and adverse effects on EFH means that virtually any activity within a watershed or other general area of EFH can be construed to potentially "adversely affect" EFH. "Federal actions" include any action in which a federal agency permit or other authorization is required, or federal funding is involved. So, for instance, a mine, farm, roadbuilding, or other activity requiring a Clean Water Act section 404 permit from the Army Corps of Engineers based on fill of wetlands, far inland from any marine fish habitat, would be subject to EFH consultation. So would a private housing or other project for which a federal loan or loan guarantee is being provided, based on stormwater runoff or other potential downhill/downstream impacts. Again, there is no meaningful, substantive limitation on required consultations.

7. Are States required to consult with NMFS?

NMFS answer: No, States are not required to consult. However, if NMFS receives information on a State action that may adversely affect EFH, NMFS is required to provide EFH conservation recommendations to the State agency. States are not required to initiate consultation nor respond to its recommendations.

Comment: Burdens on States and their citizens are likely to be much greater than the above answer suggests. If federal funding or other participation is involved in the

State action (e.g. a highway project receiving federal funding), consultation may be required, and the State will be burdened with the consultation, even though the federal agency involved will have lead responsibility for carrying it out. Under the NMFS regulations and according to other NMFS statements, the agency will also be advocating that States agree to "coordination" procedures that will be quite similar to the consultation process directly applicable to activities with federal agency participation. Once NMFS submits EFH recommendations to a State regarding a project, the State and any private entity participants can decline to respond to those recommendations only at the peril of being attacked, legally or politically, for ignoring the advice of federal experts on fisheries. As indicated in the NMFS answer in #20, the NMFS recommendations could make the project vulnerable to legal challenge by environmental groups or others opposed to the project, who may use the NMFS recommendations to bolster claims of noncompliance with any applicable state or federal environmental laws.

8. Are private landowners required to undertake an EFH consultation for projects on private land?

NMFS answer: Private landowners have no new responsibilities to consult with NMFS on private land activities. Only if the project is permitted, funded, or authorized by a Federal agency and the project may adversely affect EFH is consultation with NMFS required. Most activities will be covered under another existing regulatory regime such as Endangered Species Act (ESA) or National Environmental Policy Act (NEPA).

Comment: Actually, substantial additional burdens on private landowners are likely. As indicated above, even minimal federal agency involvement, combined with potential for impact on fish habitat, can trigger consultation for a broad range of private landowner activities. Under a "coordination" agreement with a State or as a result of NMFS comment on private land activity involving a State authorization or funding, a private landowner may also be subjected to the equivalent of the cumbersome consultation procedure. The EFH consultation procedure adds specific requirements (e.g. a written "EFH Assessment") that are not included in ESA, NEPA, or other existing processes that may be applicable.

9. When will EFH consultation begin?

NMFS answer: They cannot begin until EFH amendments have been approved by the Secretary. The Council amendments are expected to be effective in early 1999.

Comment: The statute does not require the Secretary to approve Council FMP amendments identifying EFH, or for consultations to otherwise begin, in early 1999 or by any particular date thereafter. Given the widespread criticism and concern over the unnecessary breadth and burden of the EFH approach introduced by NMFS, the agency and Councils should conduct a serious reevaluation and reform of NMFS guidelines and current agency and Council proposals regarding EFH amendments to FMPs, rather than rush to complete amendments by early 1999. Proceeding to implement any EFH program according to the current NMFS approach will only engender further conflict and will be counterproductive to conserving essential habitat for Council managed fisheries.

10. Are there different procedures to use for consultation?

NMFS answer: Yes there are, but NMFS will use existing review processes when possible. If unable, then NMFS may use a programmatic consultation or general concurrence. If none of these options are appropriate, NMFS will conduct an individual consultation in which the Federal agency must provide a written assessment of the effect of that action on EFH. This assessment is known as an EFH Assessment.

Comment: Under the NMFS regulations, existing review processes such as NEPA and ESA will only suffice if they meet the requirements for EFH consultation specified in the regulations, such as preparation of an EFH Assessment. See #12. An EFH Assessment can be similar to a NEPA environmental assessment or environmental impact statement or an ESA biological assessment, but requires that impacts on EFH be specifically addressed in some detail. See #11. Thus, substantial modification of documents prepared and procedures followed for compliance with other laws will likely be required to serve EFH consultation purposes. For activities previously not subject to existing procedures such as the ESA or NEPA, the NMFS regulations will introduce an entirely new and cumbersome process. The programmatic and general concurrence referenced in the NMFS answer are themselves quite involved and replete with exceptions authorizing or requiring individual project consultation under the NMFS regulations. 62 Fed. Reg. at 66556-57, 50 C.F.R. § § 600.920(a)(2), (f) The programmatic and general permit procedures in Clean Water Act and other regulatory programs after which these EFH consultation mechanisms are modeled are known for their complexity and for the number of individual reviews which remain required under the process.

11. What are the contents of an EFH Assessment?

NMFS answer: EFH Assessments have mandatory contents that are nearly identical to the environmental assessments required under other Federal statutes. They include: 1) a description of the proposed action; 2) an analysis of the effects (including cumulative effects) of the proposed action on EFH, the managed fish species and major prey species; and 3) the Federal agency's views regarding the effects of the action on EFH and proposed mitigation, if applicable.

Comment: The above mandatory content requirements are specific to EFH and are not "nearly identical" to the more general requirements for preparation of an environmental assessment under NEPA or the separate requirements for preparation of a biological assessment, evaluation, or opinion for ESA compliance. Moreover, in addition to the above requirements, the NMFS regulations provide: "If appropriate, the assessment should also include" the following additional information:.

> *(i) The results of an on-site inspection to evaluate the habitat and the site-specific effects of the project.*
>
> *(ii) The views of recognized experts on the habitat or species that may be affected.*
>
> *(iii) A review of pertinent literature and related information.*
>
> *(iv) An analysis of alternatives to the proposed action. Such analysis should include alternatives that could avoid or minimize adverse effects on EFH, particularly when an action is non-water dependent.*
>
> *(v) Other relevant information.*

62 Fed. Reg. at 66557, 50 C.F.R. § 600.920(g)(3). There is also no requirement in the regulations that an EFH Assessment be concise and brief, as there is for NEPA environmental assessments. As described in the NMFS regulations, an EFH Assessment could easily involve the expense and delay associated with preparation of a detailed environmental impact statement under NEPA.

The Magnuson-Stevens Act does not require the preparation of an EFH Assessment or any of the detailed content requirements contained in the NMFS regulations. These requirements are being imposed by NMFS on other federal agencies without legal authority to do so or appropriation of funds to complete these obligations. Federal agencies are likely to pass on the costs of completing EFH Assessments to private or

state or local government applicants for federal agency authorizations which trigger EFH consultation requirements.

12. Can EFH Assessments be combined with other Federal consultations or environmental review processes?

NMFS answer: Yes, NMFS strongly encourages such efforts to streamline the consultation process. EFH consultation should be consolidated, where appropriate, with interagency consultation, coordination and environmental review procedures required by other statutes such as NEPA, Fish and Wildlife Coordination Act, Clean Water Act, ESA, and Federal Power Act. EFH requirements can be satisfied using existing review procedures if they provide NMFS timely notification of actions that may adversely affect EFH and the notification meets requirements for EFH Assessments.

Comment: In plain terms, the NMFS EFH regulations require all other processes to conform to new EFH requirements, rather than seeking to avoid new and burdensome procedures. Existing consultation and review procedures will not meet the requirements of the NMFS regulations without alteration to meet specific criteria in the NMFS regulations. See 62 Fed. Reg. at 66556, 50 C.F.R. § 600.920(e). For example, the NMFS regulations allow an EFH Assessment to be incorporated into an ESA Biological Assessment, NEPA environmental assessment or other document only if the document includes all of the particular information required for an EFH Assessment in the NMFS regulations and is clearly identified as an "EFH Assessment." Id.; 62 Fed. Reg. at 66557, 50 C.F.R. § 600.920(g). This amounts to allowing a complete EFH Assessment to be included as a lengthy volume, chapter, or appendix in some combination with other consultation or environmental review documents, but does not "streamline" content or preparation requirements at all. If NMFS is truly interested in a "streamlined" process, they would not be pushing a bureaucratic and formalized consultation process which requires over three full pages of small columnar print in the Federal Register to describe. 62 Fed. Reg. at 66555-59.

13. After a Federal agency consults, what must NMFS do?

NMFS answer: Once consultation is completed, NMFS must provide conservation recommendations in writing within 30 days for an Abbreviated Consultation and 60 days for an Expanded Consultation or other time frames relevant to an existing review process.

Comment: This is misleading, as it greatly understates the expected length and complexity of the EFH process. The NMFS regulations allow NMFS to request "Expanded Consultation" when an agency proposing an action initiates "Abbreviated Consultation." Under "Expanded Consultation," the 60 day time period for NMFS to provide recommendations may be extended by agreement between NMFS and the federal action agency. 62 Fed. Reg. at 66558, 50 C.F.R. § § 600.920(h)(4), (i)(4). Thus the time limits referenced by NMFS are illusory--NMFS may obtain agreement by an action agency to engage in additional consultation and extend time limits. NMFS may pressure an agency to agree by threatening to submit adverse comments or recommendations on the project based on alleged lack of information, or by other means. Under even "Abbreviated" consultation procedures, NMFS obligates the action agency to submit a complete written "EFH Assessment" before the timeline for NMFS to provide recommendations begins to run. Id., 50 C.F.R. § 600.920(h)(3)-(5).

14. What is required of the Federal action agency once it has received EFH conservation and enhancement recommendations from NMFS?

NMFS answer: Within 30 days after receiving a conservation recommendation from NMFS, the Federal agency is required to provide a detailed written response to NMFS and the Council. This response shall include a description of measures proposed for avoiding, mitigating, or offsetting the impact of the activity on EFH. The response may be included in that prepared for other regulatory activities (see #12).

Comment: The Magnuson-Stevens Act requires an action agency to submit a detailed response in writing only after receipt of a recommendation from the Secretary of Commerce concerning <u>an action by the agency that the Secretary determines would adversely affect EFH identified in a FMP</u>. 16 U.S.C. § 1855(b)(4)(A),(B). NMFS has broadly expanded this requirement to apply to any EFH recommendation provided by NMFS, whether or not the proposed action is determined to have adverse effects.

15. Are Federal agencies required to accept the NMFS conservation recommendation?

NMFS answer: No. EFH recommendations are advisory and nonbinding to the Federal action agency. However, in the case of a response from a Federal agency that is inconsistent with the NMFS recommendations, the Federal agency must explain in writing its reasons for not following the recommendations. Under the circumstances, the NMFS Assistant Administrator may request a meeting with the head of the Federal action agency, as well as any other agencies involved, to discuss the proposed action

and opportunities for resolving any disagreements. Participation in such a meeting is voluntary.

Comment: Again, this answer greatly understates the impact of recommendations, and the need which is created to respond. As indicated in #14, requiring a written response to NMFS recommendations for any action subject to EFH consultation goes beyond the requirements of the statute. Although recommendations are technically nonbinding, a federal or state agency could ignore even irresponsible recommendations at the peril of legal challenge by opponents of the project based on the recommendations, as indicated in #7 and #20. Thus an action agency will be compelled to respond in writing to any NMFS recommendations, which will add to the potential project delay from the EFH consultation and coordination process. Any "voluntary" higher level meetings requested by NMFS to resolve alleged inconsistencies can further delay a project.

16. Is consultation required for projects already approved by the Federal action agency?

NMFS answer: No. Consultation is not required for completed actions (e.g., issued permits). However, consultation is required for renewals or substantial revisions of actions.

Comment: The NMFS regulations are not as clear or as limited as the NMFS answer suggests. The NMFS regulations require consultation to occur for "review" of actions and also for any Federal "funding" of actions, without clearly excluding already permitted actions. 62 Fed. Reg. at 66556, 50 C.F.R. § 600.920(a)(1). The regulations also require an action agency to "reinitiate" consultation "if new information becomes available that affects the basis for NMFS' EFH conservation recommendations" as well as for substantial revision of plans for an action. 62 Fed. Reg. at 66558-59, 50 C.F.R. § 600.920(k). As such, the EFH process is a permanent burden.

17. Are consultations required for actions that occur outside a designated EFH area?

NMFS answer: The Magnuson-Stevens Act requires consultation for all actions that may adversely affect EFH without distinguishing between actions in or out of EFH areas. Federal activities occurring outside EFH which have an impact on EFH waters and substrate will need to be considered in the consultation process. The

environmental assessment already required for most Federal activities will in most cases satisfy the EFH consultation.

Comment: The Magnuson-Stevens Act provides for NMFS to issue guidelines to assist Councils in identifying and describing EFH and to conserve and enhance EFH. NMFS could have considered the clear focus of the Magnuson-Stevens Act on marine fisheries and provided guidelines with geographic proximity and other practical thresholds for identifying activities with real potential for likely adverse effects on EFH, as well as realistic limits on identifying EFH, to maintain a workable and meaningful scope to consultation requirements. Instead, NMFS has so expanded the scope of potential EFH areas and activities presumed to have the potential to adversely affect EFH that the consultation process may apply to almost any activity, anywhere.

NMFS has not provided any basis for its assertion that an environmental assessment is already required for most federal activities that will be subject to the EFH consultation process. This assertion ignores the multitude of actions which are at present categorically excluded from preparation of an environmental assessment under Council on Environmental Quality (CEQ) and implementing agency NEPA regulations, but which are not excluded from EFH consultation under the NMFS approach. As indicated in #11, a NEPA or other environmental assessment will not meet EFH Assessment requirements specified in the NMFS regulations without supplementation or other modification.

18. Will EFH be consistent with the agreements established in the Administration's "No Surprises Policy" under the Endangered Species Act?

NMFS answer: Yes. NMFS may adapt the existing Habitat Conservation Plans to accommodate the consultative requirements of the Magnuson-Stevens Act. Processes such as these will streamline the consultative requirements and avoid conflicts with established interagency agreements.

Comment: This answer is both misleading and incomplete. In the first place, the Magnuson-Stevens Act does not require already approved Habitat Conservation Plan (HCP) agreements and related incidental take permits to be subjected to EFH consultation or other requirements. NMFS acknowledges this in #16. Yet NMFS appears to suggest in this answer that existing HCPs are subject to NMFS changes to incorporate EFH consultation requirements in some manner. It is not at all apparent how reopening already completed agreements to add cumbersome NMFS consultation procedures will "streamline" anything.

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19. If EFH overlaps with critical habitat under ESA, do two individual consultations have to be considered?

NMFS answer: No. Both ESA and EFH considerations can be handled under one unified consultation. Though EFH Assessments have their own information requirements, Federal agencies are encouraged to incorporate an EFH Assessment into documents prepared for other purposes such as an ESA Biological Assessment or NEPA documents and public notices.

Comment: Under the NMFS regulations, the EFH consultation will remain a substantial additional burden even under a "unified" or coordinated approach. As indicated in #s 11 and 12, the EFH Assessment and other formal consultation requirements set out in the NMFS regulations are largely distinct and in addition to ESA and other consultation procedures. The regulations specify that EFH will always be greater than or equal to aquatic areas that have been identified as "critical habitat" for any Council managed species listed as threatened or endangered under the ESA. 62 Fed. Reg. at 66552, 50 C.F.R. § 600.815(a)(2)(ii)(C). In general, NMFS is requiring the ESA and other processes conform to EFH, rather than vice versa, if they are to be unified.

20. Are there penalties for Federal agencies that do not consult with NMFS?

NMFS answer: No. NMFS has no regulatory authority to enforce EFH compliance. However, private citizens still have the option of legal action to ensure adequate compliance with environmental laws.

Comment: NMFS is acknowledging the large risk of litigation which its overly broad and bureaucratic approach to EFH creates. A wide range of businesses and citizens will ultimately be penalized by the increased delay and expense such litigation will impose on needed projects with little or no potential for real harm to Magnuson-Stevens Act managed fisheries.

21. Who will be able to review EFH maps?

NMFS answer: Anyone. NMFS, working with fishery management councils and technical review teams, is preparing EFH maps. These maps will be available to Federal agencies as well as the general public to determine if a Federal action occurs within an EFH area.

Comment: To date, most of the technical review team material has not been made easily available. Maps of proposed EFH which have been made available have

generally identified huge areas offshore, on the coast, and far inland as EFH, including most areas currently or historically accessible to salmon in Alaska and the rest of the western United States. In other words, nearly all current or historical habitat of Council managed species is being identified as "essential." This approach renders the statutory limits on the scope of EFH requirements meaningless, and works against focusing on realistic EFH conservation efforts.

These comments have been prepared by Perkins Coie in consultation with a broad alliance of non-fishing interests concerned about the implementation of the proposed essential fish habitat program. For additional information contact:

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