AGENDA E-1
September 1981

M E M O R A N D U M

TO: Council, SSC, and AP Members

FROM: Jim Branson
Executive Director

DATE: September 21, 1981

SUBJECT: Salmon

ACTION REQUIRED

1. *The Plan Maintenance Team may have an oral report.*
2. *Council guidance requested on public hearings.*
3. *Possible discussion of Indian lawsuit.*
4. *Update on salmon model workshop.*

BACKGROUND

E-1(a) At the Kodiak Council/Board meeting the Council discussed the Indian lawsuit (Confederated Tribes v. Baldrige) and how the Council will be involved. The Council may wish to discuss this further at this time. The technical review group will meet October 1-2 in Seattle--this will not involve Council members.

The salmon PMT has reviewed the little data available at this time and has no regulatory proposals for the 1982 season. This may complicate or at least change the usual structure of the scheduled public hearings. Public hearings should probably be oriented toward soliciting proposals and advice rather than commenting on Council proposals. We would advise extending the proposal period through the January Council/Board meeting.

The workshop on the WDF/National Bureau of Standards salmon model will be held October 20-21 at the Northwest and Alaska Fisheries Center in Seattle. All Council family and public may observe this workshop but participation will be limited to those involved in the technical review of the model.

SEPT/L

REPORT ON WEST COAST SALMON SITUATION

(Taken from Draft Minutes of September 10-11 Joint Meeting)

Mike Stanley, NOAA General Counsel, gave his interpretation of the Court's August 4 decision in the case Confederated Tribes vs. Baldrige. In that decision Judge Craig ordered a 90-day period for reconsideration (ending November 6, 1981) in which the parties involved were instructed to try to find some way to get more fish back into the Columbia River. The Court questioned the adequacy of the last several years' cutbacks on the Alaska troll fishery, but denied closure of the ocean fisheries because he felt it would not accomplish anything major this year. The order of priority stated in the Decision was treaty obligations first, then conservation of the resource, and then socioeconomic impacts on non-treaty fishermen. Mike Stanley, however, felt that the Judge may have mis-stated the priorities and actually meant to say conservation first, treaty obligations second, and socioeconomic impacts on non-treaty fishermen third.

Mr. Stanley said that because there is no way that 1981 troll fishery data can be available by the November 6 deadline, an extension of time will be sought. In the meantime, Bert Larkins of NMFS-Northwest Region and Bob McVey, Alaska Region, are preparing a response to the Court on behalf of the Secretary Baldrige.

On August 24 the Confederated Tribes filed a Complaint with the Court alleging that Washington and Oregon had made no provision for a Columbia River treaty fishery this year. In response to that Complaint, Judge Craig essentially removed management authority from Washington and Oregon by letting the Indians' biologists set the season and optimum yield. Bob Mace explained that the Washington Department of Fisheries decided to limit the Columbia River Indian fishery for conservation reasons. Oregon, on the other hand, felt that the treaty obligated them to let the Indians fish in the three major pools. Because the question was unresolved, it went to the hands of the Court.

Questions arose on the Council's obligation to the treaty. Mike Stanley said that the treaty obligations may, in fact, be binding on all citizens of the United States. Canada's role in curtailing harvests of upper Columbia River bright stocks was also discussed. Mr. Stanley suggested that the Council may want to attempt to quantify the effects of transfer through Canada to show the futility of taking extreme measures in the Alaska troll fishery.

Bob McVey said that he and Bert Larkins are not yet able to offer management alternatives to the Court, and have solicited technical assistance from the agencies involved. ADF&G has designated Mel Seibel as technical representative and George Utermohle as the Department's liaison. McVey and Larkins have also met with representatives of Alaska Trollers Association to discuss the situation. An informal group has been established to examine the Washington Department of Fisheries computer model to attempt to understand exactly how it works and learn its limitations and sensitivities.

Mr. McVey suggested that time/area closures may be the most feasible way to selectively save Columbia River brights. Such closures would transfer fishing effort to other stocks. The trollers understand the importance of offering constructive alternatives to the Judge and are willing to consider time/area closures.

Gene DiDonato said that WDF is concerned about the timing for the Board of Fisheries' consideration of troll fishery regulations. He urged the Board and Council to delay action on final regulations until complete assessment of the 1981 fishery can be made.

Mike Stanley said that as a result of the pending Court decision the Council may have no real control of the 1982 troll fishery except for measures which do not affect fish from southern states.

Public Testimony

Lewis Schnaper, consultant representing Alaska Trollers Legal Trust, testified in support of challenging, rather than complying with, Judge Craig's directive in the August 4 Order. He said that giving up just one fish above the level required for conservation purposes would give Judge Craig the right to tell the Secretary of Commerce what to do concerning the fishery off Alaska. Mr. Schnaper said that if Alaska does not challenge the case, the troll fishery will be snuffed out anyway, little by little. And if Alaska does challenge the case and loses it all, at least we can say we gave it our best shot.

Council Action

Bob McVey asked the Council to appoint a small workgroup to help coordinate Council input for the response to the Court.

The North Pacific members of the existing Inter-Council Salmon Coordinating Committee were assigned to work with Mr. McVey and Mr. Larkins on the response to the Court.

Don Collinsworth moved that the following statement be adopted as the Council's position on its obligation to the Court in the Confederated Tribes vs. Baldrige; seconded by Don Bevan.

The North Pacific Fishery Management Council affirms its interest in participating to the extent appropriate in responding to Judge Craig's August 4 Order that management of the ocean fishery off Southeast Alaska be reexamined to find ways to increase escapement of western North American chinook stocks for conservation purposes; further, the Council requests a reasonable extension of time for final compliance with that Order so the data from the 1981 season can be fully evaluated as the basis for equitable and effective management decisions. The Council is working closely with the Alaska Board of Fisheries to this end and will meet with them the first week of January, 1982, at which time the necessary data will be available from the Alaska Department of Fish and Game to complete evaluation of this question.

The motion was adopted without objection.