

8-24-1973

Docket Entry 355 - Filed Deposition upon Oral Exam of Dr. Kenneth Henry

Follow this and additional works at: <https://digitalcommons.law.uw.edu/us-v-wash-70-9213>

Recommended Citation

Docket Entry 355 - Filed Deposition upon Oral Exam of Dr. Kenneth Henry (1973),
<https://digitalcommons.law.uw.edu/us-v-wash-70-9213/265>

This Deposition is brought to you for free and open access by the Federal District Court Filings at UW Law Digital Commons. It has been accepted for inclusion in 70-cv-9213, U.S. v. Washington by an authorized administrator of UW Law Digital Commons. For more information, please contact lawref@uw.edu.

FILED IN THE
UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

AUG 24 1973

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
ERIN SEFFEL, CLERK
Deputy

AT TACOMA

UNITED STATES OF AMERICA,)
et al,)
)
Plaintiffs,)
)
vs.)
)
STATE OF WASHINGTON, et al,)
)
Defendants.)

CIVIL NO.
9 2 1 3

DEPOSITION UPON ORAL EXAMINATION OF

DR. KENNETH HENRY

Seattle, Washington
July 9, 1973

DEAN MOBURG
& ASSOCIATES
COURT REPORTERS

333 Hoge Building &
30th floor Seattle First National Bank Building
Seattle, Washington 98104 206-622-3110
215 Realty Building
Everett, Washington 98201 206-568-4531

355

PLEASE MAKE ALL CHANGES OR CORRECTIONS ON THIS SHEET, SHOWING PAGE, LINE AND REASON, IF ANY, FOR NOTARY'S INSERTION INTO THE ORIGINAL DEPOSITION. SIGN THIS SHEET; SIGN DEPOSITION BEFORE NOTARY PUBLIC AT END ON LINE PROVIDED; AND RETURN THE ORIGINAL DEPOSITION TO THE ABOVE ADDRESS FOR FILING WITH THE CLERK OF THE COURT.

PAGE	LINE	CORRECTION AND REASON
3	17	Change "Alvin" to "Albin" ³
3	23	Change "Fisheries" to "Commerce"
4	15	Change "Commission" to "Commissioners"
4	16	Change "National" to "International"
5	13	Add "S" to "Application" and insert word "Management", between Salmon &
6	3	Insert Beaufort (missing)
7	11	Change Construction to Consideration
9	23	Insert after fish - "That are deemed"
9	25	Change "This fish" to "Chinook and Coho"
11	18	Move "Puget Sound" to in front of "Chinook"
12	7	Change "experience" to "experiments"
12	11	Change "distance" to "destination"
13	2	Change "problem" to "program".
26	12	Change "IT" to "Sampling"
27	1	Change "NIMPS" to "NIMFS" and "Canadian" to "Columbia"
27	10	Change "hatches" to "hatcheries"
27	17	Change "NIMPS" to "NIMFS"
35	8	Change "at Washington" to "Department"
52	18	Change "Canada" to "Commission"
54	17	Change "NIMPS" to "NIMFS"


(Signature here and on deposition)

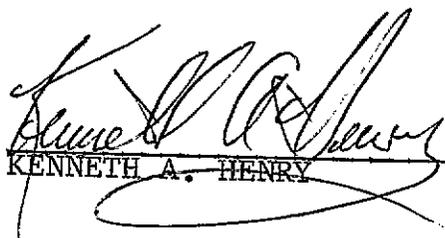
See: Wash. Reports 34A, Rule 30(e)
USCA 28, Rule 30(e)

USA v Staley Washington

CORRECTIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

- P. 19; L 18 Change 35% to 65%
- P. 24 L 22-23 Change "natural facility" to read "national fishery"
- P. 33 L 25 Change "apparent" to read "parent"
- P. 35 L 8 Should read "in the State Department?"
- P. 51 L 3 Change "were" to "where"


KENNETH A. HENRY

1 had, to-wit:

2
3 MR. MCGIMPSEY: Will the record show this
4 deposition is being taken pursuant to agreement
5 between Mr. Dysart and myself, I believe, and other
6 counsel and pursuant to Notice in accordance with
7 the Federal Rules for Civil procedure.

8
9 DR. KENNETH HENRY,

being first duly sworn by
the Notary Public to tell
the truth, the whole truth
and nothing but the truth,
deposed and said as follows:

12
13 EXAMINATION

14 BY MR. MCGIMPSEY:

15 Q Dr. Henry, would you state your full name and
16 spell your last name?

17 A Kenneth Alvin Henry, H-e-n-r-y.

18 Q And what is your address?

19 A 18564 Springdale Court Northwest, Seattle, Washing-
20 ton, 98177.

21 Q And where are you presently employed?

22 A I am employed by NOAA, National Marine Fisheries
23 Service, United States Department of ^{Commerce} ~~Fisheries~~,
24 Northwest Division, 2725 Mountlake Avenue East,
25 Seattle, 98112.

1 Q How long have you been employed there, Dr. Henry?
2 A At that specific location?
3 Q Yes, with the National Marine Fisheries Service.
4 A Since 1963.
5 Q How long at that specific location?
6 A Since August of 1969.
7 Q Could you describe what your duties are?
8 A I am a fisheries research biologist, fisheries
9 data and management division, primarily concerned
10 with the international program specifically between
11 the United States and Canada. Specific details?
12 Q Yes, please.
13 A I am advisor to the United States Commission, the
14 United States Halibut Commission and technical
15 advisor for the United States Commission ^{or} for the
16 *inter*National Salmon Commission, technical advisor for
17 the United States-Canadian salmon negotiations.
18 Q Could you give us a resume of your educational
19 background from the time you entered college?
20 A The different universities or just upon graduating?
21 Q The universities and the training you received
22 there.
23 A I attended the Missouri School of Mines and Metalur-
24 gy for about a year and that is in Raleigh, Missouri.
25 I attended the Linfield College in McMinnville,

1 Oregon for a year and a half. I attended the
2 University of Washington for two years, graduating
3 in 1949, Bachelor of Science in Fisheries, a
4 Master's Degree from Iowa State College in Statistics,
5 a Ph.D. from the University of Washington in 1961.

6 Q While at the University of Washington and under-
7 graduate school was that in the college of
8 fisheries?

9 A Yes.

10 Q And then your Ph.D. work, what area did you study?

11 A My thesis was on the "Racial Identification of
12 Frazer River Sockeye Salmon by Means of Scales
13 and Its Applications to Salmon *Management*

14 Q Did you also have some general courses in your
15 Ph. D. work, and in what areas would those have
16 been?

17 A Population dynamics, specifically statistics and
18 data.

19 Q Could you give us a resume of the positions you have
20 held since you have completed your academic train-
21 ing?

22 A I was with the Fish Commission in Oregon for
23 approximately seven years, in charge of coastal
24 investigation and in charge of Columbia River
25 investigation. I was with the International Pacific

1 Salmon Fisheries Commission for seven years as
2 chief biologist. I was laboratory director at
3 *Beaufort*, North Carolina; in the National Marine
4 Fisheries Service for six years and I have been with
5 the Mountlake Laboratory since 1969.

6 Q Now, you indicated that for the past year you have
7 been working as technical advisor to the United
8 States government in connection with Canada concern-
9 ing salmon fishing?

10 A Yes.

11 Q Could you explain briefly what those negotiations
12 concern?

13 A The principal problem in negotiations is -- well,
14 there are types of negotiations that have been going
15 on for the past two years.

16 One was a bilateral agreement with the Canada
17 Fisheries Service to give reciprocal fishing rights
18 between the two countries. This involved both
19 coasts and a variety of species, but one of the
20 conditions of the bilateral agreement was that we
21 would also meet and discuss mutual salmon problems
22 on the Pacific coast and that was signed in 1970 for
23 two years and renewed for one year in 1972 so it
24 came up again this year, and our discussions of the
25 bilateral agreement were also intermingled with

1 mutual salmon problems. They are separate, they
2 can be handled separately, but they are very closely
3 inter-related.

4 Q Could you describe the mutual salmon problems?

5 A Principally it is the interception. Canada has
6 taken the position that we should catch fish bound
7 for its country of origin so they felt that should
8 reduce the interception to a minimum, so when we
9 catch fish from Frazer River, they consider this
10 an intercept and when they catch fish bound for
11 Puget Sound, this is, under their ^{consideration} ~~construction~~, an
12 intercept, and the problem has been how to relate
13 the interception by the two countries in such a way
14 that it is acceptable to the two countries and we
15 have tried to reach an equitable agreement on this.

16 Q What has the United States' position been with re-
17 gard to the problem of interception? You have in-
18 dicated what the Canadian position is.

19 A When you get into the United States position, it
20 must be understood I am not speaking for the State
21 Department.

22 MR. DYSART: Before you answer, could I
23 have the last answer of Dr. Henry read back? I'm
24 not sure he stated it clearly, from what he said
25 later.

1 (Last preceding answer read back
2 by the Reporter.)

3 MR. DYSART: You should or should not
4 intercept them?

5 THE WITNESS: You should not intercept
6 them. If they originate in Canada, it is their
7 position that Canada should catch them and the
8 United States should not catch them.

9 To clarify that, the fish that originate from
10 a particular country should be caught by that coun-
11 try. This is what I mean by the country of origin.

12 MR. DYSART: That is not what I understood
13 you to say before.

14 THE WITNESS: I think that is the way I
15 said it before.

16 Q (By Mr. McGimpsey) Without committing the State
17 Department to what you say here, could you briefly
18 describe what America's position has been?

19 A Well, I think it is very common knowledge among the
20 delegation that there is a general agreement that
21 there is this problem of interception.

22 From the United States' standpoint it looks
23 like we have probably gotten a little the worse of
24 the intercept in recent years than Canada has, and
25 Canada, from their standpoint has said, "We feel

1 we are being done in a little in recent years," and
2 for two years now we have been juggling figures
3 to try to show that one country or the other is
4 getting the worst end of the deal and when we try
5 to assign values to that problem, we actually
6 generate values that are approximately \$6,000,000,
7 showing that Canada was gaining by about, a little
8 less than \$6,000,000 in the interception of fish.
9 This is the balance in interception, that they were
10 ahead between five and six million dollars and
11 then we generated figures based on a different
12 analysis, a different type approach that showed
13 it was almost that far the other way, that we were
14 actually being penalized by about \$6,000,000, and
15 so there was almost \$12,000,000 separating the
16 extent of the value from interception.

17 Since we intercept mainly pink and sockeye,
18 which are fish that are processed, Canada mainly
19 intercepts Chinook and coho, we took the X-vessel
20 prices and applied those values. Canada says,
21 "We are going to take the wholesale prices," and
22 if I were a Canadian, I would have done the same
23 thing because you take raw fish ^{that are canned} and put a wholesale
24 value on them and you increase the value about three
25 times, and ^{Chinook & Coho} ~~this fish~~ doesn't get much processing.

1 Its value does not change. By taking the wholesale
2 price, you exaggerate the difference between the
3 two types.

4 Q When you say you were 'juggling figures, you are
5 talking about the use of wholesale prices versus
6 X-vessel prices?

7 A That is one of the techniques. Another is the
8 reverse pricing technique.

9 Canada uses the direct price which is, if you
10 catch a fish then you say it is worth \$3.00, that
11 is what we will pay you in intercept.

12 If we use reverse pricing, that is, if Canada
13 catches a fish we will say that fish would have been
14 worth so much to us if you hadn't caught him. That
15 is called reverse pricing, so we apply a price on
16 it of what it would have been worth to the country
17 if it hadn't been intercepted, so these are the
18 basic differences, reverse and direct pricing and
19 X-vessel and wholesale and we came up with about
20 \$12,000,000 difference in value, and that has not
21 been resolved.

22 Q In preparing for these negotiations, did you pre-
23 pare material concerning salmon fishing which would
24 affect the State's salmon that originated in
25 Western Washington streams?

1 A. You mean did I prepare data on this interception?

2 Q. Yes, validating data and pricing.

3 A. Yes.

4 Q. Could you describe generally what is the effect of
5 this interception by Canada on stocks of salmon
6 originally in Puget Sound and the coastal rivers
7 of Western Washington?

8 A. Well, there isn't much disagreement between the
9 United States and Canada as far as the effect on
10 stocks of fish in Puget Sound waters and it is
11 agreed within a matter of relatively few percent.

12 For example, off the west coast of Vancouver
13 Island, the lower part, over 80 percent of the fish
14 they catch are United States fish and of the total
15 Puget Sound stock, the data, and these are based on
16 tagging and marking studies which are generally
17 accepted by both countries, approximately 65 percent
18 of the Puget Sound catch of Chinook is caught by
19 Canada.

20 Q. Is that Chinook?

21 A. Yes.

22 Q. Do you have any figure for cohos?

23 A. For cohos, as I recall the figures, it is approxi-
24 mately one-half of that catch or better than half
25 of the catch of Puget Sound cohos which is made by

Canada.

Q Could you tell us a little bit about how you go about determining that 65 percent or better than half of Puget Sound stock are being fished by Canadian fishermen?

A. There are several approaches. The most direct one of course is marking ^{experiments} ~~experience~~ in which large numbers of fish from hatcheries are marked and recovered at the various fisheries. Each provides a notation of where the fish were taken, the fishing grounds, and the ultimate ^{destination} ~~distance~~, determined other than by raw catch data, magnitude of the catch in various areas and escapement and this gives you an approximate idea of where the fish are going and what portion goes to different sections from the Puget Sound and the Columbia River.

Q. I take it, though, when you concluded that 65 percent of the Chinook, of Puget Sound Chinook are being intercepted in Canadian fisheries, you're basing that percentage on some calculations derived from raw data, tagging studies and marking?

A. Tagging and marking.

Q. Is there raw data which does not necessarily equate to 65 percent, where you have to compare it with the catch?

1 A. You have to do it by sampling, really. There was
2 a large marking ^{program} problem in the Columbia River,
3 for example, and these marks all involved the various
4 fish, and what proportion of the catch was sampled,
5 or the number of markings, but the sample is blown
6 up into total catch. It is definitely a calculation
7 based on the sampling of the fish.

8 Q. How did you prepare for these negotiations? From
9 whom did you get all of your data? Did the
10 National Marine Fisheries Service have it or did
11 you rely on other sources for it?

12 A. It was mainly -- the National Marine Fisheries
13 Service does not prepare detailed catch data. This
14 was supplied primarily by the State fisheries
15 agencies and the Canadian Department of Fisheries
16 and interchange between all agencies.

17 Q. Did you consult with the Bureau of Sports Fishing
18 & Wildlife?

19 A. No.

20 Q. And why was that?

21 A. Why didn't we consult them? I don't specifically
22 recall that there was any real need to. I mean, I
23 don't know what they would contribute.

24 Q. As far as you know, they would have nothing?

25 A. They would have nothing that I know of that would

1 contribute to it.

2 Q What type information did you get from the State?

3 I take it you did get a contribution from the
4 Washington State Department of Fisheries?

5 A Yes.

6 Q What type information did you get from the Washington
7 State Department of Fisheries?

8 A Catch and effort data by species, by area, by time
9 of year, by gear.

10 Q Did you rely on any tagging or marking statistics
11 done by the Washington State Department of Fisheries
12 in determining those percentages?

13 A Yes, this is true for Canada. The Canadian office
14 uses the same data. They use the same data in
15 their calculations.

16 Q And did you say that the Canadian calculations based
17 upon that data turned out to be approximately what
18 your own calculations were?

19 A Yes. They were very close.

20 Q How close would you say they were?

21 A Well, for example, in the Puget Sound data if there
22 is a difference in percentage points, at most it is
23 maybe 5 percent, I would guess, without looking up
24 the actual percentage and when you are talking about
25 it -- there are over two hundred categories that they

break down that have different percentages, and this includes every type fishing gear from, say, the middle part of the State of Washington up to southeast Alaska. You have got trolling, purse seining, gill netting, reef netting in Puget Sound. Then there are all the different fishing areas in the State of Washington, British Columbia and southeast Alaska, so it comes to over two hundred categories that we have percentage estimates on, and our estimates -- we have Canadian estimates, too. I don't remember whether there are eight hundred or four hundred different percentages, but in most cases, particularly in the stream areas there is very close agreement between the United States and Canada and when you get to the Frazer River, it is almost 100 percent agreement.

Q Is there a wealth of information about this for Puget Sound fish?

A Yes. For example, in the Columbia River there has been one of the largest marking programs ever undertaken for four subsequent years on Chinook.

Q How about Puget Sound river fish?

A There has been a large amount of tagging expended for Puget Sound fish.

Q Coastal river fish?

1 A. Less so.

2 Q. Did you draw any conclusions from the studies which
3 you made which indicated this large interception as
4 to what effect that has on Washington fisheries or
5 on United States fishermen?

6 A. Not specifically, as part of the negotiations, no.

7 Q. The Canadian catch that we were talking about, where
8 does this take place, the Canadian harvest?

9 A. A large part of it takes place on the west coast,
10 Vancouver Island, and in the last three years there
11 has been a large catch off the coast of Washington
12 and in the straits of Juan De Fuca, what the Cana-
13 dians know as Area Number 20, for their commercial
14 fisheries.

15 Q. Now, when they fish off the coast, how far off the
16 coast are we talking about, this Canadian fleet
17 fishing?

18 A. Since 1970 when we signed the reciprocal fishing
19 agreement, the agreement was made to permit Canadian
20 troll fisheries to fish from three to twelve miles,
21 within the three to twelve mile limit, so since 1970
22 they have been allowed to fish within the three to
23 twelve mile limit down to just north of the Columbia
24 River.

25 Q. Do you know who has jurisdiction to regulate the

1 fishing in the area between three and twelve miles?

2 MR. PIERSON: I object to that question.

3 Q. (By Mr. McGimpsey) Do you know who regulates the
4 fishing within the three to twelve mile area?

5 A. Did I miss something here?

6 MR. PIERSON: I object. He is asking
7 whether you know who had jurisdiction to regulate
8 this and I think that's a legal conclusion. I don't
9 think you are competent to answer.

10 Q. (By Mr. McGimpsey) Do you know who regulates the
11 area from three to twelve miles?

12 A. I'm not sure, again. I am not legally competent.
13 I will have to agree with him. In other areas, and
14 this is one I forgot to mention, I'm also a member
15 of the scientific committee of the State and Federal
16 management program for Dungeness crab in which we
17 get into the problem of jurisdiction outside of the
18 three miles very specifically, and in my discussions
19 with other biologists I understand this is not
20 uniform with all of the states.

21 They have different interpretations of what
22 happens outside of three miles. Some feel that they
23 have jurisdiction over their citizens and others
24 I understand do not, so I don't think this is clear,
25 and as far as the State of Washington itself goes,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I just don't know what the legal answer is.

Q Do you know whether or not the State of Washington regulates the Canadian fleet outside of three miles in this three to twelve miles area?

A My understanding is that they do not.

Q Is it your understanding the Canadians are fishing there pursuant to this agreement that was negotiated, this bilateral agreement between the United States and Canada in 1970?

A Yes, definitely. This was very lucrative to them, too.

Q Are you familiar with the area in which the State of Washington does exercise jurisdiction to regulate fisheries?

A Yes.

Q And now, taking into account the large Canadian catch -- are there other fisheries other than those of the State of Washington that fish on Puget Sound Chinook and coho rounds?

A Well, when you get outside the three mile limit, it is open to all other states and to the fisheries of Alaska, Oregon, California. It is open to anybody outside the three mile limit, and boats of some other states do fish in this area besides Canada.

Q Besides Chinook and coho, are there any other species

1 of salmon that would be caught in the station area
2 you have described?

3 A. Yes, but these are the principal ones.

4 Q. What would be the other species?

5 A. They are all caught in some number.

6 Q. As far as the pink salmon are concerned, are they
7 caught in any significant numbers?

8 A. By the Canadians, yes, usually by us, but mainly
9 by Canadian troll fishers off the west coast of
10 Vancouver Island.

11 Q. You indicated that you were familiar with the State
12 regulations within its jurisdiction. What steps
13 are open to the State as to proper spawning escape-
14 ment? Do they in fact have in your opinion certain
15 options regarding fish which are outside of its
16 jurisdiction?

17 A. What options do we have in managing this?

18 Q. Yes, take the Chinook run where ⁶⁵~~35~~ percent of it or
19 more is caught outside of State jurisdiction. What
20 options would the State have in managing that run
21 to provide a spawning escapement?

22 A. It would depend on the magnitude of the run. Sixty-
23 five percent of six million is different than sixty-
24 five percent of one million.

25 Q. I appreciate that.

1 A. You have the main escapement figures and you have
2 the difference between what is caught and what is
3 in Puget Sound and this escapement could be an
4 allowable catch, depending on the magnitude of the
5 run.

6 Q. Basically, it would be a regulation of the harvest
7 within its jurisdiction, or could be?

8 A. Yes.

9 Q. And as far as you know, there would be nothing the
10 State could do which would affect the fish that are
11 harvested in the ocean waters beyond its jurisdiction?

12 A. The State itself wouldn't have any, but this is
13 part of the purpose of the international agreement.

14 Q. As far as the international agreement or the nego-
15 tiations in which you have been involved on behalf
16 of the United States, is that the United States
17 and Canada and not the State of Washington?

18 MR. PIERSON: I object to that. It
19 assumes a distinction between the State of Washington
20 and the United States that I don't think has been
21 established.

22 Q. (By Mr. McGimpsey) Is the State of Washington a
23 party to these negotiations?

24 A. A party? They have observers and technical advisors
25 at every meeting.

1 Q. But are they a party that will sign the agreement
2 when it is complete or will it be signed by the
3 United States?

4 A. The reciprocal fish agreement was signed by Ambassa-
5 dor McKernan.

6 Q. So that is an agreement between the United States
7 and Canada, is it not?

8 A. Yes, it is.

9 Q. And granting that the State of Washington has a
10 very major interest that is being --

11 A. Input.

12 Q. But the State of Washington itself has not negotiated
13 with Canada, has it?

14 A. I didn't think they could.

15 That is one of my duties I forgot to mention.
16 I am the United States member of the technical
17 committee for the formal Chinook and coho committee
18 between the United States and Canada and getting back
19 to your question, this was a position originally
20 held by two State employees, one from the State of
21 Washington and one from the State of Oregon. They
22 were the two technical members of this technical
23 working group, and at the request of Canada a
24 federal member was put on it because Canada for some
25 reason prefers to deal with the federal government

1 and avoid all the State hassles.

2 Q. Now, any difference that you had as far as the
3 calculations as to the percentages of fish originat-
4 ing in Puget Sound and coastal Washington rivers
5 that were harvested by Canada, any difference in that
6 percentage from Canada's own figures, would those
7 percentages have precluded proper management of
8 stocks? You indicated that the percentages could
9 have varied as much as 5 percent. Could you
10 manage with that much of an error?

11 A. I might just say that the percentage that we used
12 in our estimates are not creating management problems.
13 I can't see one being created by this difference at
14 all.

15 Q. Have the numbers of fish that are caught in the
16 commercial troll fisheries increased over the last
17 five or ten years?

18 A. Yes, there was an increasing trend up to -- I believe
19 the peak year was 1971, when they had the peak in-
20 terception from the standpoint of numbers of fish
21 and then since the negotiations have been under way
22 there was a tentative agreement in Vancouver that
23 they would try to hold the present level but that
24 was not formally agreed in writing.

25 Then it went down slightly in 1972 and I'm not

1 sure what the 1973 figures show. I hear that they
2 are catching large numbers out there but then again
3 the agreement has been changed this year, effective
4 the 15th of June, so that Canada no longer fishes
5 the same as they have in the past three years.

6 Q. During the past three years prior to the 15th of
7 June of this year, to whom would you attribute the
8 increase in the ocean off-shore fisheries?

9 A. The Canadian troll fisheries.

10 Q. Now, you indicated that you worked as chief biologist
11 for the International Pacific Salmon Fishery
12 Commission?

13 A. Yes.

14 Q. During what period of time did you work there?

15 A. 1956 to 1963.

16 Q. And what species of salmon of United States origin,
17 in other words, Puget Sound origin mainly are har-
18 vested in convention waters?

19 A. Puget Sound pink runs and some Lake Washington
20 sockeye, but very minor.

21 Q. Would there be Chinook or coho, Puget Sound Chinook
22 or coho?

23 A. The salmon commission by law is regulating only
24 pink and sockeyes.

25 Q. Would Chinook or coho be incidentally harvested

1 during the period the salmon commission exercise
2 control?

3 A. Could be, yes.

4 Q. Do you have any idea as to the extent of the harvest
5 of the Puget Sound origin fish during the period
6 that the commission was exercising its authority
7 over convention waters?

8 A. In some years it was substantial, in the straits
9 of Juan De Fuca, particularly coho during some of
10 the pink salmon years, but other than this, it would
11 not be great to my knowledge. I just don't know what
12 the extent would be of Chinook, for example.

13 MR. PIERSON: Are you talking about the
14 take by Canadian fishermen in the straits?

15 MR. MCGIMPSEY: I was just asking generally.

16 A. The take of Puget Sound fish went under the juris-
17 diction of the salmon commission regulations when
18 it was managed by the salmon commission?

19 Q. (By Mr. McGimpsey) That is my question.

20 MR. PIERSON: That would include Washington
21 State and Canadian fishermen?

22 Q. (By Mr. McGimpsey) Yes. Is there any ^{national fishery} ~~natural facil-~~
23 ~~ity~~ of Canada that would harvest also Chinook and
24 coho that are of Puget Sound origin?

25 A. Their jurisdiction would affect area 20, which is

1 a major fishery.

2 MR. MCGIMPSEY: That's all the questions
3 I have.

4 MR. PIERSON: Do you mind if we both ask
5 a few questions?

6
7 EXAMINATION

8 BY MR. DYSART:

9 Q Dr. Henry, I want to direct your attention back to
10 the tagging and marking studies we talked about.
11 What my questions are going to be directed to pri-
12 marily are about a better clarification or under-
13 standing of the difference between the data genera-
14 tion or the collection and interpretation of that
15 data. This is what I'm going to try to have you
16 explain a little bit.

17 Do I understand you correctly to say that the
18 actual tagging and marking is done by the Washington
19 Department of Fisheries? Was that your answer?

20 A. No, there has been tagging and marking done by the
21 Canadian Department of Fisheries, the Washington
22 Department of Fisheries, the National Marine Fisher-
23 ies Service and the State of Alaska. All of them
24 have done tagging and marking.

25 Q Now, with respect to fish originating in Washington

1 State, who does the marking of those?

2 A. In recent years, as I say, one of the largest scale
3 marking programs undertaken was undertaken by the
4 National Marine Fisheries Service on the Columbia
5 River, and that included fish from Oregon and Wash-
6 ington hatcheries.

7 Q. Directing my question more specifically to Puget
8 Sound and coastal, coastal being north of but
9 exclusive of the Columbia River.

10 A. Puget Sound, the markings, the experiments, the
11 markings would be done by the State of Washington.

12 *Sampling* It would be done by the fisheries and agencies along
13 the entire coast. It is a cooperative program.

14 Q. What specifically is the role of National Marine
15 Fisheries Service in this?

16 A. There is my role. How I have been interjected into
17 this is through the involvement of the Chinook and
18 coho committee to coordinate Canadian marking and
19 tagging experiments and recovery.

20 It was through this committee that we got the
21 Canadians to initiate a sports recovery program of
22 marking because there was a large number of Washing-
23 ton marks that would be available to sports fishermen
24 and through this committee we were able to get the
25 Canadians to do this.

1 ^{NMFS} ^{Columbia}
2 The ~~NIMPS~~, the ~~Canadian~~ river program actually
3 provided money to mark fish at a number of Columbia
4 River agencies as far up as Idaho. They have also
5 provided money for samples.

6 Q I am less concerned with the Columbia River. If you
7 feel the Columbia River is relevant to what we are
8 talking about, fine.

9 I am really concerned with Puget Sound. The
10 marking I understand is done as juveniles back in
11 the ~~hatches~~? *hatcheries*.

12 A Yes.

13 Q That would be done at Washington fisheries?

14 A Yes.

15 Q And the tagging is done on the high seas when the
16 fish are first encountered?

17 A Yes.

18 Q Does ^{NMFS.} ~~NIMPS~~ provide the actual tagging, though?

19 A No, the tagging for the basic study was done off the
20 coast of Alaska back in the early '50s and some has
21 been done very recently, in 1970 and 1971 by the
22 Canadian Department of Fisheries off the west coast
23 of Vancouver Island.

24 Q That is done entirely by official agencies? They are
25 not asking the fishermen to tag, are they?

 A No, these are biological studies, scientific studies.

1 Q But then fishermen are asked to report fish that they
2 catch that have evidence of either marking or tagging,
3 is that correct?

4 A In some programs, yes.

5 Q How is the catch data compiled and by whom?

6 A Basically it is compiled by the sampling program.
7 It is landed at various commercial landing ports.
8 The fish are sampled systematically for marks and
9 you have your ratio of marked fish to unmarked fish
10 that you can extrapolate.

11 Q Who does that with respect to land in the State of
12 Washington?

13 A It is done on Washington land by Washington biolo-
14 gists and on Oregon land by Oregon biologists, and
15 on Canadian land by Canadian biologists and on
16 Alaska land it is done by the Alaska Department of
17 Game & Fish.

18 Q And the National Marine Fisheries --

19 A They do not sample per se.

20 Q Now, you have mentioned the fact that there was
21 extensive tagging from the Columbia River, that there
22 was -- I am trying to get your words -- there was
23 much less in the coastal streams?

24 A Let's take comparable. I would say less of the
25 comparable data than from other areas. I don't think

1 there is any other place in the world where they
2 have had markings like they had on the Columbia
3 River.

4 Q Can you make any comparison of the reliability of
5 the Columbia River data as compared to the Puget
6 Sound data?

7 A Reliability?

8 Q To enable you to ascertain the percentage of fish
9 by river of origin?

10 A I would answer that in my personal opinion I would
11 observe that the Columbia River data was the most
12 extensive I have ever seen. That doesn't mean the
13 other data are not adequate for answering the ques-
14 tions we are trying to resolve, and I think they have
15 certainly all been reliable.

16 Q How about the coastal streams? You said that was
17 much less.

18 A I didn't say much less. I said relatively less.

19 Q How reliable do you feel the data is with respect
20 to determining the stream of origin for fish that
21 originate in Washington coastal streams other than
22 the Columbia?

23 A That's a real tough question. I'm not sure I could
24 give you relative values of the Columbia River to
25 the coastal rivers without seeing the actual

1 percentage of recovery. This is all you would have
2 to evaluate, the percentage, the sampling of the
3 catch relative to the two experiments, things like
4 this.

5 Q Do you know how long the marking and tagging data
6 for Puget Sound streams has been in the program,
7 over how many years?

8 A At least ten years, I would say. I think I can
9 recall the 1961 brood, the 1962 and 1963 brood fish
10 being recovered in the fisheries.

11 Q Is this broken down into the actual river of origin
12 or is it just the value itself or some segment
13 thereof?

14 A It varies with the type of experiment. In experiments
15 trying to find out how many fish stay in the Puget
16 Sound relative to what goes out, or if you are just
17 trying to find the contribution for the Puget Sound
18 sports fisheries, you would have samples for that
19 type of experiment. If you put out a hundred fish
20 from two hatcheries and catch fifty from one hatcher-
21 y and none from the other, this is going to con-
22 tribute more to the Puget Sound sports fisheries,
23 regardless of where the rest of them go, so it de-
24 pends on your objective or what have you for the
25 particular experiment, but I have no basis for

1 feeling that you could draw the conclusion that the
2 fisheries are not adequately sampled for their marked
3 recovery. There's just too much money and time and
4 scientific desire to get that information not to
5 follow it up with adequate sampling.

6 Q. With respect to the data collected, who -- I don't
7 necessarily mean the specific individual. I am
8 talking about the agency which analyzes this data
9 and interprets it and draws the conclusions?

10 A. The primary analysis, of course, is done by the
11 agencies that undertake the study. The data is
12 freely exchanged between other agencies and between
13 the United States and Canada. All of their tagging
14 data is given to us and raw data and recovery data.

15 Q. Does the National Marine Fisheries Service take raw
16 data and from that analyze or interpret or draw
17 a conclusion with respect to percentages attributable
18 to specific rivers of origin?

19 A. In some cases, yes. In general, no.

20 Q. In some cases, yes. What type cases?

21 A. In cases where there might be some question between
22 the interpretation of the United States and Canada's
23 scientists, for example, a fairly large discrepancy,
24 why is this difference? Canada will look at it,
25 the State of Washington will look at it, then we will

1 look at it and try to see if we can offer a reason
2 for the different interpretations.

3 Q So it is only if the two other agencies have a
4 direct conflict of interpretation that your agency
5 gets into it?

6 A In general. We look at all of them in general, but
7 we just don't look at them all in detail and we would
8 look at them in detail only if the need arose.

9 Q With respect to those that you have looked at, have
10 you generally agreed or disagreed with the conclu-
11 sions of the Washington Department of Fisheries?

12 A We have generally agreed.

13 Q That's all I have on that subject. When you
14 mentioned that the International Pacific Salmon
15 Commission by law is regulating only pink and sock-
16 eye, do they have regulatory jurisdiction over cer-
17 tain waters that -- let me put it this way. When
18 pick and sockeye are in International Commission
19 jurisdiction waters, are there other species of
20 salmon also in those waters?

21 A Yes.

22 Q Does the regulatory part of the International
23 Commission extend to prescribed limitations that
24 would affect those other species?

25 A I'm not sure I understand that.

1 Q Suppose a person came along and said, "I don't want
2 to fish for sockeye, I want to fish for Chinook."
3 Could the International Commission then prescribe
4 a regulation to limit the miles in which he fishes
5 even if he says he is fishing for Chinook?
6 A They could.
7 Q Do they?
8 A They have mesh size regulations that they employ that
9 control specific areas.
10 Q In other words, they regulate by the type of gear
11 or the time, is that correct?
12 A Basically by the time and they also regulate the
13 gear.
14 Q When you said mesh size, that is what I meant.
15 A Yes, and they also have purse seine which is differ-
16 ent than the mess size, so they limit the gear. But
17 I think the times of day in certain areas are the
18 main regulation.
19 Q Regardless of what gear is used?
20 A Yes.
21 MR. DYSART: That's all.
22
23 EXAMINATION
24 BY MR. PIERSON:
25 Q Just so I understand it, your ~~app~~arent agency is the

1 National Oceanographic & Atmospheric Administration,
2 is that right?

3 A Yes, and I presume I am here not as a representative
4 of the National Oceanographic & Atmospheric
5 Administration.

6 Q Your deposition was noticed by the defendant. What-
7 ever you brought out as to your qualifications is
8 the reason you are here.

9 Now, with respect to the duties you now have
10 with the National Marine Fisheries Service, do you
11 have any responsibility for making policy of the
12 United States with reference to its dealings with
13 Canada?

14 A Do I have responsibility for making policy? No.

15 Q From whom do you take your instructions as to the
16 policy as to the United States policy?

17 A In what aspect? With the United States-Canada
18 negotiations, for example?

19 Q Yes.

20 A I am a scientific technical advisor to Ambassador
21 McKernan.

22 Q And if there is any question that comes up about what
23 the United States policy is, to whom do you go to
24 determine what the policy is?

25 A I have never really run into that problem and I'm not

1 sure. You mean if I were in the negotiations and
2 I wondered what the United States policy would be?

3 Q Let's take that situation.

4 A I would ask either Ambassador McKernan or Mr. Stuart
5 Blow.

6 Q Who is he?

7 A He is the assistant coordinator for ocean affairs.

8 Q In the State ^{Department} of Washington?

9 A Yes.

10 Q I believe you testified earlier that the general
11 approach in the bilateral agreement is to effect an
12 equitable distribution among, between the two nations,
13 Canada and ourselves?

14 A No. As I say, this gets sort of confused with the
15 mutual problems, mutual problems concerning just the
16 basic salmon interception. The bilateral agreement
17 covers fisheries other than salmon and it is basical-
18 ly designed to cover the historic fisheries, this
19 type element. For example, on the Atlantic coast
20 the bilateral agreement would cover herring, lobster,
21 tuna and ground fish.

22 On the west coast, the bilateral agreement
23 permits fishing by Canada within the three to twelve
24 mile zone off the United States coast of Washington
25 for salmon, also the coast of Alaska. Certain areas

1 have halibut, so the bilateral agreement is a
2 reciprocal fishing agreement and if anything in-
3 creases interception. It does not resolve the
4 intercept problem. Then for purely the salmon, you
5 have the interception of salmon between one country
6 to the other.

7 Q Let's take the bilateral agreement between the three
8 mile and the twelve mile lines. What species of
9 fish are the Canadians, by this lateral agreement,
10 entitled to take?

11 A Ground fish, halibut, black cod, salmon, and these
12 are within certain perimeters on the east coast.

13 Q As to the zone between the three mile and the
14 twelve miles, is the agreement clear that the intent
15 of the bilateral agreement is to effect an equitable
16 distribution as between Canada and the United States?

17 A No.

18 Q Maybe you could tell me or explain a little bit
19 more about what it is you are attempting to gain from
20 this equitable arrangement?

21 A Again, looking at salmon, if you can just pretend
22 there is no bilateral on the west coast, we have got
23 the problem of interception of salmon from other
24 countries. Actually, this bilateral agreement
25 actually increases the intercept by permitting Canada

1 to fish within the three to twelve mile limit off
2 the west coast.

3 Here the State of Washington hoped and it was
4 actually proposed in the negotiations that we elimin-
5 ate salmon from the bilateral. When you get in a
6 position where Canada in these three years these
7 bilaterals have been in effect have intercepted al-
8 most a million salmon bound for the State of Washing-
9 ton, whereas under the bilateral agreement the Wash-
10 ington fishermen have taken about twenty thousand
11 fish bound for Canada, you can see why the State of
12 Washington decided that it was an inequitable arrange-
13 ment, and wanted salmon removed from the bilateral,
14 but Canada regards this as part of the overall
15 intercept picture. They obviously figure why should
16 they give up a million fish they have intercepted
17 when we are intercepting a million bound for Frazer
18 River. This they really feel is an imbalance, and
19 this is where you get tied into these two, but it is
20 the equitable distribution of the interception for
21 purely salmon that is really not directly related
22 to the bilateral but it is part of the bilateral.

23 Q And what you are telling us about the relationship
24 between Canada and the State of Washington and salmon
25 and the bilateral agreement is from your observation

1 while involved as a technical expert?

2 A. Yes.

3 Q. And you don't have any capacity or responsibility
4 for establishing policy?

5 A. No.

6 Q. From whom do you get the statements about whether
7 there should or should not be equitable distribution?

8 A. These come out from the records of agreement, the
9 official meetings between the United States and
10 Canada.

11 Q. I take it that the State of Washington does not
12 attempt to regulate fishing between the three mile
13 and the twelve mile limit --

14 A. That's right.

15 Q. -- off its coast?

16 A. Yes.

17 Q. And from your observation, are other State citizens
18 fishing in this area?

19 A. The State of Oregon, possibly California. That would
20 be all.

21 Q. How about Alaska?

22 A. I just don't know if Alaska boats get down there or
23 not.

24 Q. I take it there are Canadian fishermen out there?

25 A. Yes.

1 Q. And they are there under the auspices of the bilater-
2 al agreement?

3 A. Yes.

4 Q. Do any other countries outside of the United States
5 and Canada fish in this area?

6 A. For salmon?

7 Q. Yes.

8 A. No.

9 Q. Do you have any information about the taking of
10 salmon outside of the twelve mile limit?

11 A. Most of it and again I don't have the exact per-
12 centages, most of it is taken within the twelve
13 mile limit.

14 Q. How do you know that?

15 A. You have log book records of the various fishing
16 vessels as to where the catch was made.

17 Q. But you don't have information of how much of the
18 catch was found outside the twelve mile limit?

19 A. It is estimated, based on log book records that
20 approximately 90 percent of the Canadian take is
21 made within the three mile to twelve mile limit.

22 Q. I'm not talking just about Canada.

23 A. This is based on Washington fishermen's log books.

24 Q. The log books were taken from Canadian fishermen?

25 A. From Washington fishermen.

1 Q Do you have any knowledge of the take by anyone from
2 any country, Canada or anyplace else, outside of the
3 twelve mile limit?

4 A If you are going to take 90 percent inside, you are
5 going to take 10 percent outside.

6 Q And this figure, the 90 percent figure that you have
7 come up with, this 90 percent figure --

8 A I'm taking that off the top of my head. It may be
9 93 percent, it may be 91 percent or it may be 94
10 percent. I'm not giving it to you exactly, but it
11 is in the neighborhood of approximately 90 percent
12 of the total catch that is made within the twelve
13 mile limit.

14 Q I will tell you what I'm after. You have the figure
15 of the take of salmon inside the territorial bound-
16 aries of the State of Washington.

17 A Yes.

18 Q And you have information of the take of salmon off
19 the coast of Washington but within the three to
20 twelve mile zone?

21 A Yes.

22 Q You also have information on the take by Canadians
23 within the three to twelve mile zone?

24 A Yes.

25 Q You also have information of the take by Canadians

1 and Alaskans north of the United States boundaries
2 off the Canadian shores?

3 A Yes.

4 Q Do you have any information on the take by anyone
5 outside of the twelve mile limit and those areas
6 that I just talked about, any raw data?

7 A Well, apparently we are not communicating here.

8 If you have data based on these log books that show
9 that X percent of the catch is made in this area,
10 then the other percentage has to be made in this
11 area. It is just a simple subtraction. A hundred
12 percent of your catch comes off the coast of Washing-
13 ton. The log books just give you the percent that
14 you took inside the twelve mile limit and it follows
15 that the rest of the percentage came from outside
16 of the twelve mile limit, so this is the catch off
17 the coast of Washington. So it is known inside
18 and outside, based on the log books.

19 Q Let's take the year 1973. Assuming that 90 percent
20 of the fish are taken within the limits --

21 A Yes.

22 Q And that involves a million fish. In order for you
23 to determine how many fish were taken outside the
24 twelve mile limits, you would just take 10 percent
25 of that raw number of total fish?

- 1 A. Well, actually --
- 2 Q. Just answer yes or no. Is that how you would
3 get it, outside of the twelve mile zone?
- 4 A. You would take the percentage you estimate you took
5 inside and subtract it from the total catch off shore
6 of Washington and that is what would be caught out-
7 side.
- 8 Q. Is it accurate to say that nobody is reporting to
9 you the take that they make outside of the twelve
10 mile zone?
- 11 A. Not today, this is correct.
- 12 Q. Outside of this percentage extrapolation you have,
13 do you have any raw data of who takes how many salmon
14 outside of the twelve mile zone?
- 15 A. I don't have it, but I'm sure there is data available
16 that gives estimates of catches inside and outside
17 the twelve mile zone, because this is a very critical
18 area in fishing and it is important to both Canada
19 and the Washington Fisheries Department, and I would
20 say that if you asked either the State of Washington
21 or the Canadian Department of Fisheries to give you
22 an estimate of the 1973 catch that was made inside
23 and outside the twelve mile limits, the scientific
24 staff could do this.
- 25 Q. If you as an expert advisor to the State Department

1 wanted to contact them with respect to data as to the
2 percentage of fish taken outside of the twelve mile
3 limit, who would you go to?

4 A. I personally, my contact as far as Chinook and coho
5 are concerned, I would go to Mr. Wendler of the
6 Department of Fisheries. This is the man that I
7 would contact.

8 Q. In your experience with the National Marine Fisheries
9 Service, have you acquired any knowledge about the
10 ocean take of steelhead?

11 A. No, none of any substance.

12 Q. In your experience with the International Pacific
13 Salmon Commission, did you acquire any knowledge
14 about the ocean take of steelhead?

15 A. No.

16 Q. With the Commission did you acquire any knowledge
17 about the take of steelhead within the jurisdictional
18 area covered by the Commission?

19 A. No.

20 Q. Let me ask one catchall question. In your experience
21 since you left school, have you acquired any
22 knowledge about the ocean take of steelhead?

23 A. Specifically, no; in general it is minor compared to
24 the other species and compared to the take of
25 Chinook, coho, sockeye and pinks and even chums, it

1 is very minor in number, and as far as the Canadian-
2 United States negotiations are concerned, they
3 haven't even entered into this area of steelhead.

4 It is not a salmon, and it would not enter into
5 the mutual salmon problems because it is not salmon.

6 Q. When you say that the numbers are minor, let's talk
7 about the percentage of total take of the resources.
8 Do you know whether that percentage of the take of
9 steelhead --

10 A. You are referring to trout now and you are into the
11 Department of Game, because it is a game fish in the
12 State of Washington. I am not -- you will have to
13 stick to salmon. When you get to trout and game fish
14 I don't have the data or knowledge of it.

15 Q. Have you done any studies that have included any
16 information on steelhead?

17 A. In Puget Sound, no.

18 Q. Anywhere?

19 A. Well, I would have to think back of what I did on
20 the coast of Oregon 25 years ago, and I am sure we
21 have steelhead. We mentioned everything that came
22 into the area and I'm sure steelhead was one of
23 them.

24 Q. Now, when you say that steelhead is a trout, are you
25 talking as a biologist or from your knowledge or what?

1 A. It is not a salmon. It would not have come under
2 the mutual salmon problems.

3 Q. Why do you say it is not a salmon?

4 A. Genetically it is not a salmon.

5 Q. What is there about it that makes it a trout instead
6 of a salmon?

7 A. The major difference is that a large percentage, not
8 a large percentage but they can survive after spawn-
9 ing which salmon do not.

10 Q. In your experience with the National Marine Fisheries
11 Service, have you have any official contact relative
12 to your duties with the Washington State Department
13 of Game?

14 A. Official contact?

15 Q. Yes, anything relative to the carrying out of your
16 duties?

17 A. Well, I have attended, for example, I attended the
18 Pacific Marine Fisheries Commission salmon and
19 steelhead committee meetings at which the Department
20 of Game usually has a representative and I am in
21 contact in this manner.

22 Q. Is it accurate to say that you are aware of the
23 feelings of the Washington State Department of
24 Fisheries relative to the carrying out of your duties,
25 that is, you know that they think there is an

1 inequitable share of salmon being taken by the
2 Canadians? You are aware of those views of the
3 Washington State Department of Fisheries?

4 A. As an official view of the State of Washington that
5 there is an inequitable balance, I would say yes,
6 I would say possibly yes.

7 Q. Are there any views or anything like that that you
8 have attained or received directly from the Washing-
9 ton State Department of Game?

10 A. On salmon?

11 Q. Regarding any fish.

12 A. Well, again, as I say, we are only dealing with salmon
13 as far as I'm concerned in these negotiations and
14 I am not sure what concern the State Department of
15 Game has with salmon in the State of Washington.
16 They are not expressed to the Washington Department
17 of Fisheries.

18 Q. Are there any times you were aware of in the life,
19 the migratory life of the salmon that whatever
20 happens to a salmon may also affect what happens to
21 a steelhead?

22 A. What happens to a salmon -- there could be a rela-
23 tionship between a salmon and a steelhead in the
24 stream.

25 Q. And I take it you have had no discussions about

1 steelhead with the Washington State Department of
2 Fisheries?

3 A. Only regarding salmon.

4 Q. I'm not sure I fully understood your answer when
5 we were talking about what problems there might be
6 because of the statistical varying of approximately
7 5 percent between takes or agreements on certain
8 estimates of the taking of salmon. Do you know
9 what I'm talking about? Maybe you can tell me what
10 you said as to the management problem.

11 A. It was asked whether this difference in percentage
12 between the two countries in itself created a manage-
13 ment problem, as I understood the question and I
14 said in my opinion no, that whether it was 89 percent
15 to 93 percent that they intercepted, that did not
16 create a major management problem.

17 Q. When you talk about management, you're talking about
18 management by whom?

19 A. Management of the resources of a particular stock.
20 If a country is taking 65 percent as opposed to 67
21 percent or even 70 percent, I don't think that
22 creates a management problem, that 65 or 70 percent.

23 Q. Would it be accurate to say that if there were a
24 variation of as much as 5 percent that that would not
25 create a problem for the State of Washington in

1 managing the resources, once it came into its own
2 exclusive jurisdiction?

3 A. Yes. I also pointed out that percentage gets tricky
4 when you get into small numbers. If you only have
5 a hundred fish coming out, sixty-five are a lot,
6 but if you have a hundred million coming out, and
7 whether it is sixty-five or seventy-five million,
8 it becomes sort of academic from a management stand-
9 point, so it depends on the size of the run.

10 MR. PIERSON: That's all I have.

11 MR. MCGIMPSEY: I have no questions.

12
13 EXAMINATION

14 BY MR. HOVIS:

15 Q. What years were the biological studies run, what
16 year of origin?

17 A. It was 1961 to 1964 for the brood years of Chinook
18 and I think 1964 to 1966, the brood years of coho.
19 There were four consecutive brood years of Chinook.

20 Q. Has that data been published?

21 A. Yes, many times.

22 Q. And what would be those publications, what are the
23 basic publications?

24 A. Well, I have got a report of it in the Fish Commis-
25 sion of Oregon and another report in a bulletin of

1 the National Marine Fisheries Service and that is
2 two, and there is another one I know in a fisheries
3 bulletin.

4 Q The Department of Washington Fisheries bulletin?

5 A It is the Fisheries Commission of Oregon.

6 Q In the National Marine Service?

7 A A fisheries bulletin.

8 MR. HOVIS: That's all.

9
10 EXAMINATION

11 BY MR. MCGIMPSEY:

12 Q You indicated that much of the recovery of tagged
13 and marked fish occurs in fisheries up and down the
14 coast. From your experience, is there cooperation
15 between the different managers of fish up and down
16 the coast, different states and provinces that
17 manage fish?

18 A Yes, this was one of the major purposes of this
19 Canadian-United States informal Chinook and coho
20 committee, to generate this cooperation and it is
21 coast-wide.

22 Q So that if, for example, a marking or tagging study
23 had been instituted by the Washington Department of
24 Fisheries and these fish were being recovered and
25 landed and counted in Canada, would information from

1 those tags or markings be available to the Washington
2 Department of Fisheries?

3 A. Yes.

4 Q. And also you indicated that the National Marine
5 Fisheries Service does not itself go out and collect
6 raw data per se but relies on various other agencies
7 for the raw data that you rely on and get from
8 different agencies. To your knowledge, is that
9 available to all agencies on the west coast that
10 manage salmon?

11 A. Yes, we exchange data between all State agencies
12 and the Canadian Department of Fisheries. We all
13 exchange information.

14 Q. Are you aware of a tagging study as distinguished
15 from a marking study that might have been done in
16 rivers? I believe before we were talking about a
17 tagging study and you mentioned that had been done
18 on the high seas. Are you aware of any that has been
19 done in rivers?

20 A. You mean specifically in Puget Sound rivers?

21 Q. Specifically in Puget Sound rivers.

22 A. I would not have the data available.

23 Q. Now, there was some discussion earlier about the
24 fact that if 90 percent of fish were caught within
25 the three mile to twelve mile limit by Canada, you

1 would determine then that the additional 10 percent
2 were caught outside of the twelve mile limit. What
3 calculations would you go through to determine were
4 they particular fishery's catch, a particular per-
5 centage of the harvest? Are these the same type calcu-
6 lations that were used when you were on the Inter-
7 national Pacific Salmon Commission?

8 A. No, this type information would have to come from
9 local persons, the data for the actual area of the
10 catch. They are not talking about whether it is
11 inside or outside the twelve mile limit. They have
12 the 48th and 49th parallels, and they extend clear
13 across --

14 Q. Are you familiar with the catch studies of the
15 Washington State Department of Fisheries?

16 A. The catch statistics, yes.

17 Q. Do they indicate the areas locally where the fish
18 are caught?

19 A. Yes.

20 Q. So that would be in a sense similar to the National
21 Pacific Salmon Fisheries Commission, is that correct?

22 A. Yes.

23 Q. Is there a division of the catch between the United
24 States and Canada?

25 A. Yes.

1 Q What is that division?

2 A It is 50 percent of the catch in convention waters.
3 It is divided equally. Each country gets 50 percent.

4 Q Of the catch?

5 A Of pinks and sockeye, all pinks and sockeye caught
6 within the convention waters which includes a large
7 number of Puget Sound pinks.

8 Q Can you tell us just a little bit more how it is
9 managed so that you divide it into 50 percent each?
10 What kind of calculations as a biologist do you go
11 through?

12 A You might approach it on the magnitude of the run,
13 and then before a season commences, from previous
14 experience based on a given fleet size, or possibly
15 you could do it this way: given your catch in Area
16 20 and given the same size of the Puget Sound fleet
17 with a given number of boats, if they are falling
18 behind 50 percent, ^{Canada} ~~Canada~~ will extend U.S. fishing
19 by one or two days or eliminate fishing in the
20 Frazer River or if Canada is falling behind, there
21 will be an extra day's fishing allowed out here.
22 There are a number of ways of arriving at this.

23 Q The calculations which would indicate to you whether
24 or not Canada or the United States was falling behind
25 their fair percentage, would those be based on your

1 analysis of such information?

2 A. Daily catch information data and that is obtained
3 from the various plants, usually by telephone.

4 Q. And are these techniques and calculations that you
5 go through, are they fairly well accepted among the
6 various managers on the west coast?

7 A. Yes.

8 MR. MCGIMPSEY: That's all I have.

9
10 EXAMINATION

11 BY MR. PIERSON:

12 Q. In your experience with the International Pacific
13 Salmon Fisheries Commission, when it appears that
14 the Canadians are taking so much more such as to
15 put the distribution out of balance, is it normal
16 to give the United States fishermen options to take?

17 A. The first option if we do this is given to the United
18 States. You might go to a five day week and then it
19 is made up. By going to the Frazer River fishery,
20 you get the accumulated escapement so you have a
21 double fishery in Canada with the United States
22 inbetween, so you can start making up on the Canadian
23 side but it reduces the Frazer River fishery, just
24 eliminates it. If the United States got so far
25 behind that in their efforts to catch up they were

1 going to hurt escapement, you would eliminate the
2 Frazer River.

3 Q And the Frazer River fishery is entirely Canadian?

4 A Yes.

5 Q Do you know who operates the federal agency that
6 contributes salmon to the ocean fisheries?

7 A Who operates them?

8 Q Yes, what agency of our government operates that?

9 A You mean the Columbia River agency?

10 Q The federal agency in the Columbia River area.

11 A When I want catch and related data from the federal
12 agency I wrote the regional director of the Bureau
13 of Sports Fisheries and Wildlife, but in recent years
14 I'm not sure, because that bureau is undergoing
15 change. The large Columbia River program is put on
16 by an agency on the Columbia River which is under

17 ~~NMFS~~
~~NMFS~~

18 MR. PIERSON: That's all I have.

19 (Whereupon, examination concluded
20 at 3:15 o'clock a.m.)

21 (Please sign deposition on the
22 following page before a Notary
23 Public.)
24
25

C E R T I F I C A T E

1
2 STATE OF WASHINGTON)
3 COUNTY OF KING) ss.

4 I, the undersigned Notary Public in and for the
5 State of Washington, do hereby certify:

6 That the annexed and foregoing deposition of each
7 witness named herein was taken stenographically before me and
8 reduced to typewriting under my direction;

9 I further certify that each said witness examined,
10 read and signed his deposition after the same was transcribed,
11 unless indicated in the record that the parties and each
12 witness waive the signing;

13 I further certify that all objections made at the
14 time of said examination to my qualifications or the manner of
15 taking each deposition, or to the conduct of any party, have
16 been noted by me upon each said deposition;

17 I further certify that I am not a relative or
18 employee or attorney or counsel of any of the parties to said
19 action, or a relative or employee of any such attorney or
20 counsel, and that I am not financially interested in the said
21 action or the outcome thereof;

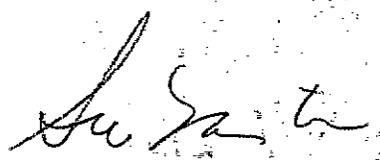
22 I further certify that each witness before examina-
23 tion was by me duly sworn to testify the truth, the whole
24 truth and nothing but the truth;

25 I further certify that the deposition, as transcribed,

1 is a full, true and correct transcript of the testimony,
2 including questions and answers, and all objections, motions
3 and exceptions of counsel made and taken at the time of the
4 foregoing examination;

5 I further certify that I am sealing the deposition in
6 an envelope with the title of the above cause thereon, and
7 marked "Deposition" with the name of each witness, and promptly
8 delivering the same to the Clerk of the above entitled Court;

9 IN WITNESS WHEREOF, I have hereunto set my hand and
10 affixed my official seal this 14 day of August,
11 1973.



12
13
14 Notary Public in and for the State
15 of Washington, residing at Mercer
16 Island.
17
18
19
20
21
22
23
24
25