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Anadromous Fish Law Memo

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DEVELOPMENTS IN PACIFIC NORTHWEST FISHERIES LAW

The first issue of the Anadromous Fish Law Memo appeared shortly before the United States Supreme Court's decision in Washington v. Fishing Vessel Ass'n, which substantially affirmed U.S. District Judge George Boldt's controversial 1974 ruling that apportioned the opportunity to harvest anadromous fish between Indian and non-Indian fishermen.

With this issue, the Memo begins its second year of publication. This appears to be an appropriate time to overview some of the more significant developments that have occurred over the past year and to suggest some of those that are likely to occur in the near future in the burgeoning field of Pacific Northwest fisheries law.

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The critical interrelationship between coastal and upland resources is perhaps no better illustrated than by the life cycle of anadromous fish -- i.e., fish such as salmon and steelhead trout that are hatched in fresh water, migrate to the ocean to mature, and then return upstream to spawn. Prized by commercial fishermen as a source of livelihood, by sport fishermen for their recreational value, and by tribal fishermen as a fulcrum of their culture, the vitality of the migratory fisheries of the Pacific Northwest is particularly dependent upon comprehensive management. This requires authority broad enough to take into account the many pressures confronting the fish during their life cycle -- ranging from destruction of spawning habitat in the upper reaches of river basins to the many threats to survival faced by the fish in the marine environment. The fact that the U.S. Fish and Wildlife Service and the National Marine Fisheries Service are considering certain upriver stocks of this most unique regional resource for possible designation as threatened or endangered[1] is stark testament that such comprehensive management does not, in 1980, exist.

As every student of natural resources knows, scarcity breeds conflicts among users. In recent years few resources have precipitated such numerous and diverse legal challenges as have Pacific salmon and steelhead trout. The United States Supreme Court alone has decided no fewer than six cases concerning the preservation and allocation of the region's anadromous fish in the past dozen years. Three cases decided in the last year (two by the U.S. Supreme Court) suggest that conflicts among competing fishermen are not on the wane:

1. **Indian vs. Non-Indian Fishermen** -- In June 1979, the U.S. Supreme Court in Washington v. Fishing Vessel Ass'n largely upheld the ruling of U.S. District Judge George Boldt that a series of mid-nineteenth century treaties guaranteed the signatory tribes the right to up to 50% of the "harvestable catch" of anadromous fish destined to pass through the tribes' usual and accustomed fishing grounds.[2]

2. **Ocean vs. Upriver Fishermen** -- In July 1979, the U.S. District Court for Oregon, in Confederated Tribes v. Kreps,[3] ruled that, before approving the Pacific Fishery Management Council's annual ocean salmon fishery plan, the Secretary of Commerce must document the consistency of the plan with Indian treaty fishing rights.

3. **Downriver vs. Upriver States** -- In January 1980, the U.S. Supreme Court in Idaho v. Oregon and Washington refused to dismiss Idaho's suit filed against its two lower river neighbors in which Idaho seeks an "equitable allocation" of the salmon and steelhead runs originating in Idaho (a decision on the merits of Idaho's claims is still pending).[4]

As these suits indicate, lawyers and the courts are heavily involved in the management of the region's fishery resources. Unfortunately, courts seldom have all of the interested parties and all of the fundamental issues presented to them in a particular case. Therefore, their ability to fashion a comprehensive solution is inhibited. Even if this ability existed there would remain serious questions as to whether the judiciary is the proper forum for what would appear to be allocation decisions of a legislative character.[5]

Moreover, since most of these cases have pitted one group of fishermen against another, the resulting decisions do not address the basic problem of protecting and restoring the aquatic habitat that is vital to the preservation of the resource itself. With the energies of competing fishermen devoted to the question of who has what rights to a dwindling number of fish, many of the activities that have contributed to the fisheries' decline, such as irrigation diversions, logging practices, and hydropower generation, have been largely unaddressed by the courts.

A number of recent developments, however, suggest that the era in which competing water uses could be accommodated with little or no regard to the anadromous fisheries and those who depend upon them may be coming to an end. It is perhaps significant that these developments are not exclusively confined to the narrow issues that courts may decide, but also involve legislative and administrative forums where a broader perspective is possible.

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1. See 43 Fed. Reg. 45,628 (Oct. 3, 1978).

2. 443 U.S. 658 (1979).

3. Civ. No. 79-541 (D. Ore., Findings of Fact and Conclusions of Law, Sept. 10, 1979). The court held that the Supreme Court's decision in Washington v. Fishing Vessel Ass'n (note 2, above) "imposes an affirmative duty upon the Secretary of Commerce to police and regulate the taking of fish in the waters under her jurisdiction to assure compliance with the treaties with the [Columbia Basin] tribes."

4. Reported as Idaho ex rel. Evans v. Oregon, __U.S.__, 100 S.Ct. 616 (1980).

5. However, the courts do seem to be the correct arena for protecting the interests of one user group, the Indian tribes, who reserved their right

I. Judicial Developments

-- Two 1979 federal district court decisions, United States v. Anderson[6] and United States v. Adair,[7] have applied the doctrine of federal reserved water rights in holding that the creation of Indian reservations secures to Indian tribes the right to streamflows of sufficient quantity and quality to maintain their fishing rights.

-- In June of this year, in Federation of Independent Seafood Harvesters v. Oregon Fish and Wildlife Commission,[8] the Oregon Court of Appeals ruled that before the Commission may issue a permit for the operation of a private fish hatchery, it must have enough evidence in the administrative record to affirmatively determine that the facility will have no adverse effects on natural populations of anadromous fish or resident game fish.

-- Still pending in the federal district court for the Western District of Washington is "Phase II" of United States v. Washington,[9] where the issue is whether the same Indian treaties which guarantee the tribes up to 50% of the harvestable salmon and steelhead catch also give them the right to demand that the resource be protected from harmful environmental actions or inactions of the State of Washington.

II. Administrative Developments

-- In two settlement agreements recently approved by the Federal Energy Regulatory Commission, three public utility districts in Washington and the Idaho Power Company agreed to mitigate the effect of their dams on salmon and steelhead runs by providing for flows, spills, artificial propagation, and additional studies.[10]

-- On June 23, 1980, the State of Washington's Department of Ecology promulgated its "Columbia River Instream Resource Protection Program" which attempts to establish minimum instantaneous and minimum average daily flows for the main-stem Columbia and also imposes conservation and efficiency requirements on future water diversions in that state.[11]

-- Pending before the U.S. Forest Service are challenges by environmental and tribal organizations to forest management plans for portions of the Umatilla, Payette, and Boise National Forests, in which it is alleged, among other things, that logging called for in the plans will dramatically increase stream sedimentation, resulting in destruction of anadromous fish.[12]

III. Legislative Developments

-- Pending before the House Interior Committee is a salmon and steelhead enhancement bill (H.R. 6959), which passed the Senate on May 5, 1980 (as S. 2163) and would provide over $100 million in federal financial assistance for Pacific Northwest anadromous fisheries research, management, and enhancement and also contains a controversial provision that would "decommercialize" steelhead fisheries, thereby restricting considerably the tribal harvest.[13]

-- Also pending before the House Interior Committee is the much-discussed Pacific Northwest Electric Power Planning and Conservation Act (H.R. 6677), the most recent versions of which would require detailed consideration of the effects of regional hydroelectric energy production upon the fisheries with a view to ensuring "equitable treatment" of anadromous fish in the operation of Columbia Basin dam operations.[14]

Although the legal status of anadromous fish may be greatly affected by some of these forthcoming decisions, a number of general conclusions might be drawn from this ferment of activity. First, if the primary concern is maintaining the vitality of the resource itself, the protection and restoration of critical habitat (e.g., spawning grounds, streamflows, estuaries, and the like) should be viewed as a prerequisite to additional artificial propagation efforts. Otherwise, there is no assurance that the construction of additional hatcheries will

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5. (cont.) to fish (it is noteworthy that the non-Indians were granted such a right) in 125 year old treaties. In fact, it is arguable that, given political realities, no other branch of government is capable of adequately protecting tribal interests.

6. No. 3643 (E.D. Wash., July 23, 1979).

7. 478 F. Supp. 336 (1979). For an intriguing analysis of Anderson, Adair, and other Indian water rights cases, see Martin, "Who Owns the Rain: An Analysis of Recent Western Indian Water Rights Cases from an Aboriginal Rights Perspective" (discussion paper available from the Columbia River Inter-Tribal Fish Commission, 8383 N.E. Sandy Blvd., Suite 320, Portland, OR 97220).

8. See Fish Law Briefs.

9. Civ. No. 9213-II (W.D. Wash.).

10. Dockect Nos. E-9569 and E-9579.

11. W.A.C. Chap. 173-563.

12. For information contact: Vern O. Hamre, U.S. Forest Service, 324 25th St., Ogden, UT 84401

13. See Anadromous Fish Law Memo #8, p. 4.

14. See Fish Law Briefs.

not overtax stream or estuarine carrying capacities and actually contribute to the fisheries' decline.

Second, there is a notable lack of administrative mechanisms to establish and implement fisheries protection policies in a comprehensive fashion. No entity possesses jurisdictional authority broad enough to adequately regulate the resource and the activities affecting it while giving all interested parties an opportunity to participate. The only facially comprehensive decisionmaking body in the region, the Pacific Fishery Management Council, possesses minimal authority to control activities within the three-mile limit; yet its regulation of the ocean catch is heavily dependent upon upstream activities. For example, since the number of juvenile fish reaching the ocean each year is, for the most part, governed by the manner in which Columbia Basin dams are operated, comprehensive fisheries management should be closely tied to reional hydroelectric planning and production.

Third, the depressed state of the fisheries is largely a function of the inadequate legal protection that has been afforded them. The only persistent attempts to protect the resource have involved nineteenth century Indian treaties and federal land reservations, while the apparent mandates of the National Environmental Policy Act and the Fish and Wildlife Coordination Act -- namely, that (1) periodic and systematic analyses of actions affecting the fisheries be conducted and (2) that equal consideration be given to fish and wildlife values when undertaking such activities -- have, in large measure, gone unobserved and unenforced. Failure to enforce these laws has precipitated more drastic actions such as the ongoing Endangered Species Act proceeding.

Finally, the plight of the region's anadromous fish resources may demonstrate that the concept of multiple use, long a paradigm for public land managers, has been imperfectly applied in the water resources field. Since multiple use, in essence, means that not all competing user groups can be satisfied all of the time, there is considerable administrative discretion in determining which uses must defer to others, and at what times. Unfortunately, in the case of the management of the Columbia Basin's water resources, migratory fish and those who depend upon them have consistently been assigned the burden of deferring to other uses, particularly hydropower. If, however, administrative decisionmakers are consistently required to explain and defend their actions by supporting them with written findings and reasons which are subject to both widespread public input and the opportunity for judicial review, perhaps the multiple use ideal can still play an important role in the struggle to revive the region's depleted anadromous fish stocks.

The Natural Resources Law Institute would like to thank those readers who took the time to respond to the inquiry made in **Anadromous Fish Law Memo** #8 concerning this publication's utility. Your support for continuation of the **Memo** is appreciated.

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FISH LAW BRIEFS

APPEALS COURT INVALIDATES CROWN ZELLERBACH HATCHERY PERMITS

As noted in the last issue of the Memo, Oregon law requires that no private salmon hatchery permit may be issued that may tend to deplete natural populations of anadromous or resident game fish.[1] Additionally, no permit may issue if the proposed operation would be inconsistent with sound resource management.[2] On June 16, the Oregon Court of Appeals held that the state Fish and Wildlife Commission must affirmatively find that these statutory provisions will not be violated before a permit may issue.[3] In so holding, the court reversed the Fish and Wildlife Commission's decision to, in the court's words, "grant permits as a means to acquire the very information it needs to determine whether to issue the permits in the first place."[4]

The Commission had decided to issue the permits because it found that the impact of the proposed hatchery could not be determined without experimental releases of salmon smolts (coupled with sampling and monintoring throughout the area affected by the releases).[5] Conditions included in the permits required that releases of salmon smolts be discontinued if the releases were shown to have an adverse impact on the biological resources of the Tillamook estuary, near which the hatchery was to be located.[6] However, according to the court of appeals, the existence of such conditions and other remedies available to the Commission does not relieve the Commission of the responsibility of making the determinations required of it by statute.[7]

The Commission's decision had also been challenged on the ground that it violated Statewide Planning Goal No. 16.[8] Because of the conclusion that the Comission's action violated the statute noted above, the Oregon Court of Appeals found it unnecessary to decide the planning goal issue.

1. OR. REV. STAT. 508.710(1). See Anadromous Fish Law Memo #8.

2. OR. REV. STAT. 508.710(4).

3. Federation of Independent Seafood Harvesters v. Oregon Fish and Wildlife Comm'n, 46 Or. App. 659 (1980).

4. Id.

5. Id. See Anadromous Fish Law Memo #8 at 2.

6. Id.

7. Id.

8. Id.

FISHERIES PROVISIONS IN NORTHWEST ENERGY BILL WEAKENED BY HOUSE SUBCOMMITTEE

The Pacific Northwest Electric Power Planning and Conservation Act (S. 885 / H.R. 6677) jumped another legislative hurdle on July 22, when the House Subcommittee on Water and Power Resources referred to the full House Interior Committee its version of the bill. As this issue goes to press, the Interior Committee had not yet decided whether to adopt the language agreed to by its subcommittee. Whatever language is reported by the Interior Committee, any differences between its version of the bill and that passed by the House Commerce Committee on March 19[9] must be resolved by the House Rules Committee. Of course, the version ultimately adopted by the House then must be reconciled with the weak fisheries language contained in the Senate's bill[10] by a joint House/Senate conference committee.

Despite these remaining obstacles, the latest version of the bill contains a provision which should be of considerable concern to Northwest fisheries interests, for it could be interpreted to modify obligations already imposed upon water managers by the Fish and Wildlife Coordination Act. Although the Subcommittee's version of the bill maintains as one of the fundamental purposes of the operation of the Federal Columbia River Power System (FCRPS) the protection, mitigation, and enhancement of the Columbia Basin's fish and wildlife, it defines "protect, mitigate, and enhance" to include "achiev[ing] sound biological objectives at minimum economic cost . . . and with minimum adverse impact on electric power production."[11] The Memo has previously

9. See Anadromous Fish Law Memo #7, pp. 6-7, for a summary of the House Commerce Committee's version of the bill.

10. See Anadromous Fish Law Memo #4 for a critique of the Senate's version of the bill.

11. Section 3(16)(C) (emphasis added). The full definition is as follows:

> "Protect, mitigate and enhance" fish and wildlife means maintaining, restoring, and rebuilding naturally produced and artificially propagated stocks of fish and wildlife, including the habitat of such stocks, and providing for improved survival of fish and wildlife through measures which, consistent with the other purposes of this Act, (A) complement the existing and future activities of the Federal, State, and Indian fish and wildlife agencies, and are consistent with the obligations under other applicable laws of Federal agencies responsible for the management and operation or regulation of the Federal Columbia River System hydroelectric projects and other

cautioned that conditioning fish and wildlife compensation to economic considerations is both inconsistent with the 1946 amendments to the Fish and Wildlife Coordination Act and unsound as a matter of public policy.[12] It should be added that such language also might be interpreted to assign anadromous fish a lower priority than power generation in the management of the FCRPS.[13]

The Subcommittee's adoption of this definition, which was sponsored by Congressman Manuel Lujan of New Mexico, may serve to cool enthusiasm of fisheries advocates for any power bill at all. As a Yakima Tribe lobbyist stated, the definition "acts to gut most of the substantial fish amendments."[14] Just as ominous are reports that whatever fisheries provisions are agreed to by the House "are a mere lubricant to get the bill through the House," and that tney will be later quashed by the joint House/Senate conference committee.[15]

This attempt to ensure that parity for fish and wildlife in water project operations -- long promised by the Fish and Wildlife Coordination Act -- is not realized in the Columbia Basin is the apparent[16] result of an intensive lobbying effort by power interests. As one power spokesman put it in a letter to House Interior Committee Chairman Morris Udall, "the fish and wildlife amendments . . . are unreasonably burdensome and go much too far . . . [since] as a practical matter, the protection and enhancement of anadromous fish becomes the decisive and controlling factor in the operation of the Columbia River Power System despite the region's many other economic needs."[17] He further alleged that the pending salmon enhancement bill would be sufficient to deal with the Pacific Northwest's fisheries needs, and that therefore the energy bill should be expunged of its fisheries provisions.[18]

Although the Subcommittee's definition of "protect, mitigate, and enhance" may prove to be the achilles heel of the bill, the latest version of the legislation does contain some notable new provisions from those which were included in the House Commerce Committee bill, as described in Anadromous Fish Law Memo #7:

(1) The scope of the directive to "protect, mitigate, and enhance fish and wildlife" has been extended to include "other rivers and tributaries" affected by the operation of FCRPS projects as well as the Columbia and its tributaries [§ 2(5)];

(2) The Council is directed, "to the greatest extent practicable," to solicit engineering, economic, social, environmental, and other technical studies from entities with particular expertise in these areas, and it may also establish voluntary scientific, statistical and other advisory committees to assist it in the development, collection and evaluation of statistical, biological, economic, social, environmental, and other information relevant to carrying out its functions [§§ 4(a)(10), (b) and (2)];

(3) Among the elements that must be contained in the Council's regional conservation and electric power plan are an energy conservation plan; a methodology for determining quantifiable environmental costs and bene-

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11. (cont.)

electric power facilities within the region; (B) are based on and supported by the best available scientific knowledge; (C) achieve sound biological objectives at minimum economic cost for each objective, and with minimum adverse impact on electric power production; (D) require electric power consumers to bear the expense of fish and wildlife impacts attributable to the management and operation of the Federal Columbia River Power System only; and, in the case of anadromous fish, (E) provide for improved survival of such fish at hydroelectric facilities located on the Columbia River System; and (F) provide flows of sufficient quality and quantity between such facilities to improve production, mitigation, and survival of such fish as necessary to meet sound biological objectives.

12. See Anadromous Fish Law Memo #8, p. 6 n. 6.

13. For example, under section 4(E)(1) of the Subcommittee bill, the Northwest Electric Power and Conservation Council must give priority to electric generating and conservation measures which are "cost effective." The "minimum economic cost" language of section 3(16) might be interpreted to require more of fish and wildlife measures than they be cost effective, as defined by section 3(4).

14. See The Oregonian, July 23, 1980 at B-7 [quoting Karl Funke].

15. See id., July 22, 1980, at B-5 [quoting allegations made by Rep. Bob Carr of Michigan].

16. See, e.g., Rural Electric Newsletter, No. No. 942 (July 25, 1980) [claiming that the Lujan amendment was designed to make the bill acceptable to Pacific Northwest preference customers and National Rural Electric Coop. Ass'n members].

17. Letter of Robert D. Partride, Executive Vice President and General Manager, National Rural Electric Cooperative Ass'n (NRECA) to Morris K. Udall (June 23, 1980).

18. Id. See also a similar letter of July 25, 1980 [asserting that NRECA could not support the bill approved by the Water and Power Resources Subcommittee because of the "fish amendment" and alleging that the Senate-passed fisheries language "is very adequate to preserve and enhance Columbia River fish runs and did not create anywhere near as much apprehension among our membership as that now contained in the House bill."]

fits; and a twenty-year demand forecast that is to be developed with public consultation and must take into account the effect of fisheries requirements on the availability of power resources [§4(e)(3)];

(4) The recommendations of federal and state fish and wildlife agencies and Indian tribes regarding fish and wildlife measures and research are to be adopted by the Council unless it determines that the recommendations are "inconsistent with the purposes of the Act" [§4(h)(1)];[19]

(5) Federal water managers must not only exercise their authorities in a manner that provides "equitable treatment" to fish and wildlife, but also must conduct their activities, "to the fullest extent practicable," in a manner consistent with the fisheries recommendations adopted by the Council [§4(h)(3)(A)].[20]

Although many of these provisions provide helpful clarifications to the structure established by the House Commerce Committee, the Lujan amendment appears to be capable of frustrating attempts to ensure co-equal treatment of hydropower generation and fisheries preservation in the operation of the FCRPS. Those wishing to comment on the pending legislation may wish to contact potential conference committee members, such as Senators Mark Hatfield, Frank Church, and Henry Jackson (U.S. Senate, Washington, D.C. 20510), and Congressmen Jim Weaver, Al Swift, John Dingell, and Abraham Kazen (U.S. House of Representatives, Washington, D.C. 20515).

CORPS' TOUTLE RIVER DAMS UNDER CONSTRUCTION

Construction of two huge rock dams on the north and south forks of the Toutle River is proceeding without any provisions for fish collection and transportation, even though fisheries officials believe that salmon and steelhead will be returning to the river down which enormous flows of mud and debris poured after the May 18 eruption of Mt. St. Helens. According to a recent article in Willamette Week, the Corps has assigned the Washington Department of Fisheries the responsibility of "justifying" fish collection facilities at the dams.[21] The article quotes a Corps official as promising to "go in and get the authority" to incorporate facilities for migratory fish into the dams if the fisheries agencies are able to "justify" them.

In light of the long-term uncompensated losses that this kind of attitude toward fish and wildlife mitigation produced on the lower Snake,[22] it is unsettling to see the Corps treat the Washington fisheries agency's request for fish collection facilities in such a manner. Perhaps even more disconcerting is the Corps' apparent adherence to the easily discreditable position that it lacks independent authority to make adequate provision for fish and wildlife in water projects.

Meanwhile, work crews are struggling to finish the two massive dams by October 1. (The dam on the north fork of the Toutle will be over a mile long and 38 feet high, while the south fork dam will be 500 feet long and 20 feet high.) The tight construction schedule has been characterized by the Corps as permitting "no sitting around time."[23]

CORPS IDENTIFIES 394 NEW DAM SITES IN COLUMBIA BASIN

According to a report issued by the U.S. Army Corps of Engineers in July, there exist 394 undeveloped sites in the Basin at which hydropower projects would be both economically feasible and "acceptable for development."[24] These sites have been preliminarily singled out for "detailed study" by the Corps.[25] The Corps had initially identified 610 sites in the Basin at which hydropower projects would be economically feasible,[26] but dropped 216 of the sites because it considered them "unacceptable for development." The Corps considered a site unacceptable if the potential project (1) would result in "major adverse environmental and social (major relocations of towns, transportation systems, etc.) impacts"; (2) would violate land use restrictions; or (3) was known to be opposed by the state in which it would be located or by "significant portions of the public."[27]

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19. The House Commerce Committee's version of the bill required the Council to find that fisheries recommendations were "not inconsistent" with the purposes of the Act. See Anadromous Fish Law Memo #7, p. 7.

20. This requirement may not, however, be judicially enforceable since it is not expressly included among those actions subjected to judicial review by section 9(d).

21. August 4, 1980, p. 4, col. 3.

22. See issues 1 and 6 of the Anadromous Fish Law Memo.

23. The Oregonian, August 12, 1980.

24. U.S. Army Corps of Engineers, "National Hydroelectric Power Study Fact Sheet" (1980).

25. Id. at 5.

26. The Corps increased the estimated cost of each potential project by an arbitrary 25% to account for fish and wildlife mitigation costs.

27. See note 24 at Table 3.

Of the undeveloped sites currently judged worthy of detailed study, 81 are located in Idaho, 144 are in Oregon, and 129 are in Washington.[28] Given the vague standards taken into account by the Corps in determining whether a particular site would be "unacceptable for development," it is difficult to estimate the magnitude of the fish and wildlife impacts that would be associated with development of the sites. The Corps will, of course, be required to conduct its usual pre-construction analysis and consideration of fish and wildlife impacts associated with any projects authorized by Congress as a result of the forthcoming detailed studies.

CHALLENGE BY CALIFORNIA TROLLERS TO OCEAN SALMON REGULATIONS FAILS

For the third time since enactment of the Fishery Conservation and Management Act of 1976, regulations implementing the Pacific Fishery Management Council's salmon management plan have survived a suit brought by ocean trollers. In Pacific Coast Federation of Fishermen's Ass'ns v. Secretary of Commerce,[29] a California organization of commercial salmon fishermen and certain individuals attempted to invalidate and enjoin enforcement of regulations restricting the troll fishery off California. By refusing to disturb the regulations, the Pacific Coast Federation court joined Nevaril v. Kreps [30] and Washington Trollers Ass'n v. Kreps,[31] in which similar challenges to ocean salmon regulations were rejected.

The plaintiffs in Pacific Coast Federation challenged the regulations on the grounds that (1) the Secretary of Commerce had wrongfully used the authority given by the FCMA to invoke regulations on an emergency basis, thereby avoiding the public comment period that would otherwise be required to precede the effective date of the regulations; (2) the PFMC's salmon plan was not based on the best scientific information available, as required by the FCMA; (3) the salmon plan failed to address the economic consequences of various regulatory alternatives; and (4) the plan was designed to result in a harvest based on maximum sustainable yield, rather than on optimum yield, as required by the FCMA. While these arguments did not result in any judicial action against the Commerce Secretary, they represent significant issues associated with the administration of the FCMA. The next issue of the **Memo** will address in depth the PFMC's administration of the Act and the effect of that administration on the salmon resource and those who depend upon it.

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28. See note 1 at 5.

29. Civ. No. 80-1856 (N.D. Cal.).

30. Civ. No. 77-3585 (W.D. Wash. 1977).

31. 466 F. Supp. 309 (W.D. Wash. 1979). An appeal of this decision is pending before the U.S. Court of Appeals for the Ninth Circuit.

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