

PACIFIC SALMON TREATY ACT OF 1985

[Public Law 99–5, Approved Mar. 15, 1985, 99 Stat. 7]

[As Amended Through P.L. 114–81, Enacted November 05, 2015]

AN ACT To give effect to the Treaty Between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That [16 U.S.C. 3631 note] this Act may be cited as the “Pacific Salmon Treaty Act of 1985”.

SEC. 2. [16 U.S.C. 3631] DEFINITIONS.

As used in this title, unless the context otherwise requires, the term—

(a) “Commission” means the Pacific Salmon Commission established by the Treaty;

(b) “enhancement” means manmade improvements to natural habitats, or the application of artificial fish culture technology, that will lead to the increase of salmon stocks;

(c) “Magnuson Act” means the Act entitled “the Magnuson Fishery Conservation and Management Act,”¹ as approved April 13, 1976, and as later amended (16 U.S.C. section 1801 et seq.);

(d) “Panel” means any of the Panels established by the Treaty;

(e) “person” means any individual (whether or not a citizen or national of the United States), any corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State);

¹So in law. Section 211 of the Department of Commerce and Related Agencies Appropriations Act, 1997 (as contained in section 101(a), title I of Division A of Public Law 104–208; 110 Stat. 3009–41) provides:

SEC. 211. (a) Effective 15 days after the enactment of the Sustainable Fisheries Act, section 1 of the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801) shall be amended to read as follows: “That this Act may be cited as the ‘Magnuson-Stevens Fishery Conservation and Management Act.’”

(b) Effective 15 days after the enactment of the Sustainable Fisheries Act, all references to the Magnuson Fishery Conservation and Management Act shall be redesignated as references to the Magnuson-Stevens Fishery Conservation and Management Act.

Since such section did not actually amend each occurrence of the short title in law, the former short title appears here.

(f) “salmon” means any anadromous species of the family Salmonidae and genus *Oncorhynchus*, commonly known as Pacific salmon, including but not limited to:

Popular names	Scientific name
Chinook or King Salmon	<i>Oncorhynchus tshawytscha</i>
Coho or Silver Salmon	<i>Oncorhynchus kisutch</i>
Pink or Humpback	<i>Oncorhynchus gorbuscha</i>
Chum or Dog Salmon	<i>Oncorhynchus keta</i>
Sockeye or Red Salmon	<i>Oncorhynchus nerka</i>

and shall also include Steelhead (*Salmo gairdneri*);

(g) “Secretary” means the Secretary of Commerce;

(h)² “Treaty” means the Treaty between the Government of the United States of America and the Government of Canada Concerning Pacific Salmon, signed at Ottawa, January 28, 1985;

(i)² “treaty Indian tribe” means any of the federally recognized Indian tribes of the Columbia River basin, Washington coast or Puget Sound areas having reserved fishing rights to salmon stocks subject to the Treaty under treaties with the United States Government; and

(j)² “United States Section” means the four United States Commissioners appointed by the President pursuant to this title.

SEC. 3. [16 U.S.C. 3632] UNITED STATES SECTION.

(a) COMMISSIONERS.—The United States shall be represented on the Commission by four United States Commissioners who are knowledgeable or experienced concerning Pacific salmon, to be appointed by and serve at the pleasure of the President. Of these, one shall be an official of the United States Government who shall be a nonvoting member of the United States Section; one shall be a resident of the State of Alaska and shall be appointed from a list of at least six qualified individuals nominated by the Governor of that State; one shall be a resident of the States of Oregon,³ or Washington and shall be appointed from a list of at least six qualified individuals nominated by the Governors of those States; and one shall be appointed from a list of at least six qualified individuals nominated by the treaty Indian tribes of the States of Idaho, Oregon or Washington. Two of the initial appointments shall be for two-year terms; all other appointments shall be for four-year terms. Each Commissioner is eligible for reappointment. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term.

² Effective upon the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, with authority to prescribe implementing regulations effective March 9, 1992, but with no such regulation to be effective until the date on which the Agreement enters into force for the United States, section 306(a) of the Flower Garden National Marine Sanctuary (P.L. 102–251; 106 Stat. 66) amends section 2 by redesignating subsections (h) through (j) as subsections (i) through (k) and inserts after subsection (g) the following new subsection:

“(h) ‘Special areas’ means the areas referred to as eastern special areas in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990; in particular, the term refers to those areas east of the maritime boundary, as defined in that Agreement, that lie within 200 nautical miles of the baselines from which the breadth of the territorial sea of Russia is measured but beyond 200 nautical miles of the baselines from which the breadth of the territorial sea of the United States is measured.”

³ So in original. Probably should read “State of Oregon or Washington”.

Unless otherwise agreed, the chairmanship of the United States Section shall rotate annually among all four members with the order of rotation determined by lot at the first meeting.

(b) **ALTERNATE COMMISSIONERS.**—The Secretary of State, in consultation with the Secretary and the Secretary of the Interior, shall designate an Alternate Commissioner for each Commissioner from the respective lists referred to in section 3(a), and may designate an Alternate Commissioner for the Federal Commissioner. In the absence of a Commissioner, the Alternate Commissioner may exercise all functions of such Commissioner at any meeting of the Commission or of the United States Section. Alternate Commissioners are eligible for reappointment and may attend all meetings of the United States Section.

(c) **SOUTHERN PANEL.**—The United States shall be represented on the southern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Oregon, with salmon fishery management responsibility and expertise;

(3) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(4) two shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise; and

(5) one shall be appointed from the commercial or recreational sector who is knowledgeable and experienced in the salmon fisheries for which the southern Panel is responsible.

(d) **NORTHERN PANEL.**—The United States shall be represented on the northern Panel by six Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

(3) four shall be individuals knowledgeable and experienced in the salmon fisheries for which the northern Panel is responsible.

(e) **FRASER RIVER PANEL.**—The United States shall be represented on the Fraser River Panel by four Panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Washington, with salmon fishery management responsibility and expertise;

(3) one shall be appointed from a list submitted by the treaty Indian tribes of individuals with salmon fishery management responsibility and expertise for the fisheries for which the Fraser River Panel is responsible; and

(4) one shall be appointed from the commercial sector of the salmon fishing industry concerned with fisheries for which the Fraser River Panel is responsible.

(f) The United States shall be represented on the Transboundary Panel by seven panel members, of whom—

(1) one shall be an official of the United States Government, with salmon fishery management responsibility and expertise;

(2) one shall be an official of the State of Alaska, with salmon fishery management responsibility and expertise; and

(3) five shall be individuals knowledgeable and experienced in the salmon fisheries for which the Transboundary Panel is responsible.

(g) **PANEL APPOINTMENTS.**—Panel members described in subsections (c)(2), (c)(3), (d)(2), and (e)(2) shall be appointed by the Governor of the applicable State. Panel members described in subsections (c)(4) and (e)(3) shall be appointed by the Secretary of the Interior from lists of nominations provided by the appropriate treaty Indian tribes. All other Panel members shall be appointed by the Secretary: *Provided*, That at least one member of the northern Panel shall be a voting member of the North Pacific Fishery Management Council, at least one member of the southern Panel shall be a voting member of the Pacific Fishery Management Council; and the Panel members described in subsections (c)(5), (d)(3), and (e)(4) shall be appointed from lists of nominations provided by the Governors of the applicable States. For the northern, southern, and Fraser River panels, the appointing authorities listed above may also designate an alternate Panel member, meeting the same qualifications and having the same term of office, to service in the absence of a Panel member appointed under this subsection. Panel members and alternate Panel members, other than the southern Panel member described in subsection (c)(5), shall serve four-year terms; except that the Secretary of State shall designate one-half of the initial appointments to each Panel as serving two-year terms. The southern Panel member described in subsection (c)(5) and the corresponding alternate shall each be appointed for one-year terms; the first such member shall be appointed from the commercial sector and an alternate shall be appointed from the recreational sector, with the alternate succeeding to the member position in the subsequent year; thereafter the member and alternate positions shall rotate between the commercial and recreational sectors on an annual basis. Any individual appointed to fill a vacancy occurring prior to the expiration of any term of office shall be appointed for the remainder of that term. Panel members and alternates shall be eligible for reappointment and may attend all meetings of the relevant United States Panel Section.

(h) **VOTING REQUIREMENTS.**—(1) Except as provided in paragraph (2), the United States Section shall operate with the objective of attaining consensus decisions in the development and exercise of its single vote within the Commission. A decision of the United States Section shall be taken when there is no dissenting vote.

(2) A decision of the United States Section with respect to any salmon fishery regime covered by chapter 1 or 2 (except paragraph 4 of chapter 2) of Annex IV to the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of the United States Commissioner appointed from the list submitted by the Governor of

Alaska pursuant to subsection (a). A decision of the United States Section with respect to any salmon fishery regime covered by chapter 4, 5 (except paragraph 2(b) of chapter 5), or 6 of the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of both the United States Commissioner appointed from the list submitted by the Governors of Washington and Oregon pursuant to subsection (a) and the United States Commissioner appointed from the list submitted by the treaty Indian tribes of the State of Idaho, Oregon, or Washington pursuant to subsection (a). Before a decision of the United States Section is made under this paragraph, the voting Commissioner or Commissioners shall consult with the Commissioner who is an official of the United States Government under subsection (a)⁴

(3) All decisions and recommendations of the United States Section of the northern, southern, and transboundary Panels shall require the concurring vote of a majority of the United States Panel members present and voting, except that decisions and recommendations of the southern Panel shall require the concurring vote of the members designated in subsections (c)(2) and (c)(3) and one of those members designated in subsection (c)(4).

(4) All decisions and recommendations of the United States Section of the Fraser River Panel shall require the concurring vote of all United States Panel members present and voting, except that orders referred to in article VI(6) of the Treaty may be agreed to on the basis of a majority, provided that the Panel members representing the State and Tribal fishery management authorities concur.

(5) All decisions and recommendations of any joint Panel shall require the concurring votes of each Panel under the voting rules specified in paragraphs (2) and (3).

(6) To assist in the resolution of disputes affecting decisions of the United States Section or of the United States Panel sections, a three-person Conciliation Board may be established. The members of the Conciliation Board shall be selected by the United States Section as follows: each non-Federal Commissioner shall submit a list of no fewer than three qualified nominees; one person shall be selected from each list by consensus decision of the Federal Commissioner and the other two non-Federal Commissioners. The Conciliation Board shall operate under such bylaws as may be established by the United States Section.

(7) In any matter where the Fraser River Panel is unable to act because the United States Fraser River Panel members have been unable to reach a decision in accordance with paragraph (3) of this subsection, and upon a determination by the Chairman of the United States Section that an action of the Panel is required, the United States Section shall act for the United States Panel members in the Fraser River Panel.

(8) In any matter where the Secretary of State determines that the United States is in jeopardy of not fulfilling its international obligations under the Treaty, the Secretary of State shall so certify to the United States Section. Such certification shall include the

⁴So in law. Paragraph (2), as amended by section 623(c) of H.R. 3421 as introduced in the 106th Congress and enacted into law by section 1000(a)(1) of P.L. 106-113, does not have a period at the end.

reasons for such determination and shall specify the date by which a decision by the United States Section is desired. If the United States Section has not reached a decision by the date specified, the Secretary of State, after consultation with the Secretary and the Secretary of the Interior, shall report on the matter to the President.

(i) CONSULTATION.—In carrying out their functions under the Treaty, the Commissioners and Panel members may consult with such other interested parties as they consider appropriate. The Federal Advisory Committee Act (5 U.S.C. App. 1 et seq.) shall not apply.

SEC. 4. [16 U.S.C. 3633] AUTHORITY AND RESPONSIBILITY.

(a) The Secretary of State is authorized to—

(1) receive and transmit, on behalf of the United States, reports, requests, recommendations, proposals, and other communications of and to the Commission and Panels;

(2) in consultation with the Secretary and the Secretary of the Interior, approve, disapprove, object to, or withdraw objections to fishery regimes, including enhancement programs and Fraser River Panel regulations proposed in accordance with the Treaty, on the condition that the United States shall be obligated to carry out such regimes or regulations only to the extent that funds are made available for such purposes in appropriation Acts; and

(3) act upon, or refer to other appropriate authority, any communication referred to in paragraph (1) of this subsection other than a proposed fishery regime or Fraser River Panel regulation.

(b) Recommendations of the Commission on fishery regimes or Fraser River Panel regulations approved by the Secretary of State pursuant to subsection (a)(2) shall be forwarded immediately to the States of Alaska, Oregon, Washington, and Idaho and to the treaty Indian tribes, as appropriate. In the exercise of their general fishery management authority, the States and treaty Indian tribes may adopt corresponding laws, regulations, or orders within their respective jurisdictions.

(c) In cooperation with the appropriate Regional Fishery Management Councils, States and treaty Indian tribes, the Secretary shall prepare, as appropriate, all statements, reports, and information required by the Treaty and submit such documents to the Secretary of State, who shall transmit them to the Commission.

SEC. 5. [16 U.S.C. 3634] INTERAGENCY COOPERATION.

(a) In carrying out the provisions of the Treaty and this title, the Secretary, in consultation with the Secretary of the Interior, may arrange for cooperation with agencies of the United States, the States, treaty Indian tribes, private institutions and organizations, and may execute such memoranda as may be necessary to reflect such agreements.

(b) Agencies of the United States may cooperate in the conduct of scientific and other programs, and may furnish facilities and personnel, for the purposes of assisting the Commission and Panels in carrying out their responsibilities under the Treaty. Such agencies

may accept reimbursement from the Commission for providing such services, facilities, and personnel.

SEC. 6. [16 U.S.C. 3635] PREEMPTION.

If any State or treaty Indian tribe has taken any action, or omitted to take any action, the results of which place the United States in jeopardy of not fulfilling its international obligations under the Treaty, or any fishery regime or Fraser River Panel regulation adopted thereunder, the Secretary shall inform the State or tribe of the manner in which the action or inaction places the United States in jeopardy of not fulfilling its international obligations under the Treaty, of any remedial action which would relieve this concern, and of the intention to promulgate Federal regulations if such remedial actions are not undertaken within fifteen days unless an earlier action is required to avoid violation of United States Treaty obligations. Should United States action be required to meet Treaty obligations to Canada in respect to treaty Indian fisheries conducted in terminal areas subject to the continuing jurisdiction of a United States district court, such action shall be taken within the framework of such court jurisdiction. Otherwise, regulations may be promulgated by the Secretary pursuant to section 7(a) of this title which shall supersede any State or treaty Indian tribal law, regulation or order determined by the Secretary to place the United States in jeopardy of not fulfilling its international obligations under the Treaty. Timely notice of all such determinations shall be disseminated by electronic media and shall be published in local newspapers in the major fishing ports affected and in the Federal Register. In order to enable the United States to fulfill its obligations under article IV(7) of the Treaty, the States of Alaska, Idaho, Oregon and Washington and the treaty Indian tribes shall advise the Secretary of all pertinent laws or regulations pertaining to the harvest of Pacific salmon, together with such amendments thereto as may be adopted from time to time.

SEC. 7. [16 U.S.C. 3636] RULEMAKING.

(a) The Secretary, in consultation with the Secretary of the Interior, the Secretary of the Department in which the Coast Guard is operating and the appropriate Regional Fishery Management Council, shall promulgate such regulations as may be necessary to carry out the United States international obligations under the Treaty and this title, pursuant to section 6, as well as conforming amendatory regulations applicable to the United States Exclusive Economic Zone⁵. Any such regulation may be made applicable, as necessary, to all persons and all vessels subject to the jurisdiction of the United States, wherever located. Such regulations as are necessary and appropriate to carry out obligations of the United States under the Treaty involve a foreign affairs function, and as such shall not be subject to sections 4 through 8 of the Administra-

⁵ Effective upon the date on which the Agreement between the United States and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990, enters into force for the United States, section 306(b) of the Flower Garden National Marine Sanctuary (P.L. 102-251; 106 Stat. 66) amends subsection (a) by inserting "and special areas" after "Exclusive Economic Zone".

tive Procedure Act (5 U.S.C. 553–557), or the National Environmental Policy Act⁶ (42 U.S.C. 4321 et seq.).

(b) The Secretary, in cooperation with the Regional Fishery Management Councils, States, and treaty Indian tribes, may promulgate regulations applicable to nationals or vessels of the United States, or both, which are in addition to, and not in conflict with, fishery regimes and Fraser River Panel regulations adopted under the Treaty. Such regulations shall not discriminate between residents of different States.

(c) Regulations promulgated by the Secretary under this title shall be subject to judicial review by the district courts of the United States to the extent authorized by, and in accordance with, chapter 7 of title 5, United States Code; except that section 705 of such title is not applicable, and the appropriate court shall only set aside any such regulation on a ground specified in section 706(2) (A), (B), (C), or (D) of such title. A civil action filed pursuant to this section shall be assigned for hearing at the earliest possible date, shall take precedence over other matters pending on the docket of the United States district court at that time, and shall be expedited in every way by such court and any appellate court.

SEC. 8. [16 U.S.C. 3637] PROHIBITED ACTS AND PENALTIES.

(a) It is unlawful for any person or vessel subject to the jurisdiction of the United States—

(1) to violate any provision of this title, or of any regulation adopted hereunder, or of any Fraser River Panel regulation approved by the United States under the Treaty;

(2) to refuse to permit any officer authorized to enforce the provisions of this title to board a fishing vessel subject to such person's control for purposes of conducting any search, investigation, or inspection in connection with the enforcement of this Act;

(3) to forcibly assault, resist, oppose, impede, intimidate, or interfere with any such authorized officer in the conduct of any search, investigation, or inspection described in paragraph (2);

(4) to resist a lawful arrest for any act prohibited by this section;

(5) to ship, transport, offer for sale, sell, purchase, import, export, or have custody, control, or possession of, any fish taken or retained in violation of this Act;

(6) to interfere with, delay, or prevent, by any means, the apprehension or arrest of another person, knowing that such other person has committed any act prohibited by this section.

(b) **ADDITIONAL PROHIBITIONS AND ENFORCEMENT.**—For additional prohibitions relating to this Act and enforcement of this Act, see section 606 of the High Seas Driftnet Fishing Moratorium Protection Act (16 U.S.C. 1826g).

SEC. 9. [16 U.S.C. 3638] GENERAL STANDARD.

All actions taken under sections 3(g), 4, 6, and 7 shall—

(a) take into account the best scientific information available;

⁶So in law. Probably should refer to the National Environmental Policy Act of 1969.

(b) result in measures necessary and appropriate for the conservation, management, utilization and development of the Pacific salmon resource, with due consideration of social and economic concerns; and

(c) be consistent with United States obligations under the Treaty, domestic Indian treaties and other applicable law.

SEC. 10. [16 U.S.C. 3639] ADVISORY COMMITTEE.

(a) The United States Section shall appoint an advisory committee of not less than twelve but not more than twenty members who are knowledgeable and experienced with respect to fisheries subject to the Treaty. One-half the membership of the committee shall be residents of the State of Alaska and one member shall be a resident of the State of Idaho. Each member shall serve a term of two years and shall be eligible for reappointment.

(b) Members of the advisory committee may attend all public meetings of the Commission and Panels and all nonexecutive sessions of the United States Section and United States Panel sections. At nonexecutive meetings of the United States Section and United States Panel sections, members of the advisory committee shall be given the opportunity to examine and to be heard on any nonadministrative matter under consideration.

(c) The members of the advisory committee shall receive no compensation for their services as such members.

(d) The Chairman of the United States Section shall call a meeting of the advisory committee at least one time each year.

SEC. 11. [16 U.S.C. 3640] ADMINISTRATIVE MATTERS.

(a) Commissioners and Alternate Commissioners who are not State or Federal employees shall receive compensation at the daily rate of GS-18 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(b) Panel Members and Alternate Panel Members who are not State or Federal employees shall receive compensation at the daily rate of GS-16 of the General Schedule when engaged in the actual performance of duties for the United States Section or for the Commission.

(c) Travel and other necessary expenses shall be paid for all United States Commissioners, Alternate Commissioners, Panel Members, Alternate Panel Members, members of the Joint Technical Committee, and members of the Advisory Committee when engaged in the actual performance of duties for the United States Section or for the Commission.

(d) Except for officials of the United States Government, such individuals shall not be considered to be Federal employees while engaged in the actual performance of duties for the United States Section or for the Commission, except for the purposes of injury compensation or tort claims liability as provided in chapter 81 of title 5, United States Code, and chapter 71¹⁰ of title 28, United States Code.

¹⁰So in law. Probably should be "chapter 171".

SEC. 12. [16 U.S.C. 3641] AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated from time to time such sums as may be necessary for carrying out the purposes and provisions of the Treaty and this title¹¹ including—

(a) necessary travel expenses of the Commissioners, Panel members, alternate Commissioners, alternate Panel members, United States members of joint technical committees established under article IV of the Treaty, and advisory committee members in accordance with the Federal Travel Regulations and sections 5701, 5702, 5704 through 5708, and 5731 of title 5, United States Code;

(b) the United States share of the joint expenses of the Commission: *Provided*, That the United States Commissioners and Panel members and alternates shall not, with respect to commitments concerning the United States share of the joint expenses of the Organization, be subject to section 262b of title 22, United States Code, insofar as it limits the authority of United States representatives to international organizations with respect to such commitments;

(c) amounts for research, enhancement, and other activities necessary to carry out the purposes of the Treaty and this title¹¹; and

(d) such amounts as may be due to settle accounts upon termination of the International Pacific Salmon Fisheries Commission.

SEC. 13. [16 U.S.C. 3642] REPEALER.

The Sockeye Salmon or Pink Salmon Fishing Act of July 29, 1947 (16 U.S.C. 776–776f), as amended by the Act of July 11, 1957, sections 1–3, is repealed, effective December 31, 1985. The Secretary of State shall dispose of any United States property held by the International Pacific Salmon Fisheries Commission on the date of its termination in a manner which would further the purposes of this title¹¹.

SEC. 14. [16 U.S.C. 3643] SAVINGS.

This title¹¹ shall not be interpreted or applied so as to affect or modify rights established in existing Indian treaties and other existing Federal laws, including the Order entered in *Confederated Tribes and Bands of the Yakima Indian Nation v. Baldrige*, Civil No. 80–342 (WD WASH.). This section shall not be interpreted or applied so as to affect or modify any rights or obligations of the United States pursuant to the Treaty.

SEC. 15. [16 U.S.C. 3644] RESTRICTION ON SPENDING AUTHORITY.

New spending authority or authority to enter into contracts provided in this Act shall be effective only to such extent, or in such amounts, as are provided in advance in appropriation Acts.

SEC. 16. NORTHERN AND SOUTHERN FUNDS; TREATY IMPLEMENTATION; ADDITIONAL AUTHORIZATION OF APPROPRIATIONS.

(a) NORTHERN FUND AND SOUTHERN FUND.—

(1) As provided in the June 30, 1999, Agreement of the United States and Canada on the Treaty Between the Govern-

¹¹ See footnote in section 8(a)(2).

ment of the United States and the Government of Canada Concerning Pacific Salmon, 1985 (hereafter referred to as the "1999 Pacific Salmon Treaty Agreement") there are hereby established a Northern Boundary and Transboundary Rivers Restoration and Enhancement Fund (hereafter referred to as the "Northern Fund") and a Southern Boundary Restoration and Enhancement Fund (hereafter referred to as the "Southern Fund") to be held by the Pacific Salmon Commission. The Northern Fund and Southern Fund shall be invested in interest bearing accounts, bonds, securities, or other investments in order to achieve the highest annual yield consistent with protecting the principal of each Fund. Income from investments made pursuant to this paragraph shall be available until expended, without appropriation or fiscal year limitation, for programs and activities relating to salmon restoration and enhancement, salmon research, the conservation of salmon habitat, and implementation of the Pacific Salmon Treaty and related agreements. Amounts provided by grants under this subsection may be held in interest bearing accounts prior to the disbursement of such funds for program purposes, and any interest earned may be retained for program purposes without further appropriation. The Northern Fund and Southern Fund are subject to the laws governing Federal appropriations and funds and to unrestricted circulars of the Office of Management and Budget. Recipients of amounts from either Fund shall keep separate accounts and such records as are reasonably necessary to disclose the use of the funds as well as to facilitate effective audits.

(2) FUND MANAGEMENT.—

(A) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Northern Fund pursuant to paragraph (1) shall be administered by a Northern Fund Committee, which shall be comprised of three representatives of the Government of Canada, and three representatives of the United States. The three United States representatives shall be the United States Commissioner and Alternate Commissioner appointed (or designated) from a list submitted by the Governor of Alaska for appointment to the Pacific Salmon Commission and the Regional Administrator of the National Marine Fisheries Service for the Alaska Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area from Cape Caution, Canada to Cape Suckling, Alaska may be approved for funding by the Northern Fund Committee.

(B) As provided in the 1999 Pacific Salmon Treaty Agreement, amounts made available from the Southern Fund pursuant to paragraph (1) shall be administered by a Southern Fund Committee, which shall be comprised of three representatives of Canada and three representatives of the United States. The United States representatives shall be appointed by the Secretary of Commerce: one shall be selected from a list of three qualified individuals submitted by the Governors of the States of Washington and

Oregon; one shall be selected from a list of three qualified individuals submitted by the treaty Indian tribes (as defined by the Secretary of Commerce); and one shall be the Regional Administrator of the National Marine Fisheries Service for the Northwest Region. Only programs and activities consistent with the purposes in paragraph (1) which affect the geographic area south of Cape Caution, Canada may be approved for funding by the Southern Fund Committee.

(b) PACIFIC SALMON TREATY IMPLEMENTATION.—(1) None of the funds authorized by this section for implementation of the 1999 Pacific Salmon Treaty Agreement shall be made available until each of the following conditions to the 1999 Pacific Salmon Treaty Agreement has been fulfilled—

(A) stipulations are revised and court orders requested as set forth in the letter of understanding of the United States negotiators dated June 22, 1999. If such orders are not requested by December 31, 1999, this condition shall be considered unfulfilled; and

(B) a determination is made that—

(i) the entry by the United States into the 1999 Pacific Salmon Treaty Agreement;

(ii) the conduct of the Alaskan fisheries pursuant to the 1999 Pacific Salmon Treaty Agreement, without further clarification or modification of the management regimes contained therein; and

(iii) the decision by the North Pacific Fisheries Management Council to continue to defer its management authority over salmon to the State of Alaska are not likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93–205, as amended, in any fishery subject to the Pacific Salmon Treaty.

(2) If the requests for orders in subparagraph (1)(A) are withdrawn after December 31, 1999, or if such orders are not entered by March 1, 2000, amounts in the Northern Fund and the Southern Fund shall be transferred to the general fund of the United States Treasury.

(3) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce shall determine whether Southern United States fisheries are likely to cause jeopardy to, or adversely modify designated critical habitat of, any salmonid species listed under Public Law 93–205, as amended, before the Secretary of Commerce may initiate or reinstate consultation on Alaska fisheries under such Act.

(4) During the term of the 1999 Pacific Salmon Treaty Agreement, the Secretary of Commerce may not initiate or reinstate consultation on Alaska fisheries under section 7 of Public Law 93–205, as amended, until—

(A) the Pacific Salmon Commission has had a reasonable opportunity to implement the provisions of the 1999 Pacific Salmon Treaty Agreement, including the harvest responses pursuant to paragraph 9, chapter 3 of Annex IV to the Pacific Salmon Treaty; and

(B) he determines, in consultation with the United States Section of the Pacific Salmon Commission, that implementation actions under the 1999 Agreement will not return escapements as expeditiously as possible to maximum sustainable yield or other biologically-based escapement objectives agreed to by the Pacific Salmon Commission.

(5) The Secretary of Commerce shall notify the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Resources of the House of Representatives of his intent to initiate or reinstate consultation on Alaska fisheries.

(6)(A) For purposes of this section, "Alaska fisheries" means all directed Pacific salmon fisheries off the coast of Alaska that are subject to the Pacific Salmon Treaty.

(B) For purposes of this section, "Southern United States fisheries" means all directed Pacific salmon fisheries in Washington, Oregon, and the Snake River basin of Idaho that are subject to the Pacific Salmon Treaty.

(c) IMPROVED SALMON MANAGEMENT.—Section 3(g) of Public Law 99-5, as amended, is amended—

(1) in paragraph (1) by striking "The" and inserting "Except as provided in paragraph (2), the";

(2) by inserting after paragraph (1) the following new paragraph:

"(2) A decision of the United States Section with respect to any salmon fishery regime covered by chapter 1 or 2 (except paragraph 4 of chapter 2) of Annex IV to the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of the United States Commissioner appointed from the list submitted by the Governor of Alaska pursuant to subsection (a). A decision of the United States Section with respect to any salmon fishery regime covered by chapter 4, 5 (except paragraph 2(b) of chapter 5), or 6 of the Pacific Salmon Treaty of 1985 shall be taken upon the affirmative vote of both the United States Commissioner appointed from the list submitted by the Governors of Washington and Oregon pursuant to subsection (a) and the United States Commissioner appointed from the list submitted by the treaty Indian tribes of the State of Idaho, Oregon, or Washington pursuant to subsection (a). Before a decision of the United States Section is made under this paragraph, the voting Commissioner or Commissioners shall consult with the Commissioner who is an official of the United States Government under subsection (a)"; and

(3) by renumbering the existing paragraphs.

(d)(1) PACIFIC SALMON TREATY.—

(A) For capitalizing the Northern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$75,000,000.

(B) For capitalizing the Southern Fund there is authorized to be appropriated in fiscal years 2000, 2001, 2002, and 2003 a total of \$65,000,000.

(C) To provide economic adjustment assistance to fishermen pursuant to the 1999 Pacific Salmon Treaty Agreement, there is authorized to be appropriated in fiscal years 2000, 2001, and 2002 a total of \$30,000,000.

(2) PACIFIC COASTAL SALMON RECOVERY.—

(A) For salmon habitat restoration, salmon stock enhancement, sustainable salmon fisheries, and salmon research, including the construction of salmon research and related facilities, there is authorized to be appropriated for each of fiscal years 2000, 2001, 2002, and 2003, 2005, 2006, 2007, 2008, and 2009, \$90,000,000 to the States of Alaska, Washington, Oregon, Idaho, Nevada,¹² and California. Amounts appropriated pursuant to this subparagraph shall be made available as direct payments. The State of Alaska may allocate a portion of any funds it receives under this subsection to eligible activities outside Alaska.

(B) For salmon habitat restoration, salmon stock enhancement, salmon research, and supplementation activities, there is authorized to be appropriated in each of fiscal years 2000, 2001, 2002, and 2003, \$10,000,000 to be divided between the Pacific Coastal tribes (as defined by the Secretary of Commerce) and the Columbia River tribes (as defined by the Secretary of Commerce).

¹²Section 110 of the Department of Commerce Appropriations Act, 2009 (division B of Public Law 111-8) provides that “[s]ection (d)(2)(A) of title 16 U.S.C. 3645 is amended by inserting ‘Nevada,’ after ‘Idaho.’”. Such amendment probably should have been made to section 16(d)(2)(A) of the Pacific Salmon Treaty Act of 1985 but was executed to reflect the probable intent of Congress.