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STATEMENT OF THE NORTHWEST INDIAN FISHERIES COMMISSION

Before a Joint Hearing of the
U.S. SENATE INTERIOR AND COMMERCE COMMITTEES
On the Confirmation of MR. LYNN A. GREENWALT'S Nomination
To become DIRECTOR of the U.S. FISH & WILDLIFE SERVICE

MR. CHAIRMAN AND MEMBERS OF THE SENATE COMMITTEES:

The Northwest Indian Fisheries Commission respectfully requests permission of the Committees and its Chairmen to offer for the record a background statement and working paper of the Fisheries Commission, which we have used this week to express some of the concerns and interests of Indian people in the Pacific Northwest. Its content directly concerns the responsibilities and obligations of the Fish & Wildlife Service's Director.

We do not oppose the confirmation of Mr. Greenwalt as Director.

We do question the direction of certain policies which seem to have gained force in the Interior Department regarding the Fish & Wildlife Service and its programs, which, if implemented, threaten the governmental rights and fish resources of our member Tribes with serious injury and harm.

In our judgement, it would be appropriate for the Senate Committees to question Mr. Greenwalt about these matters and his plans as Director before he is confirmed. It is appropriate for the Congress to inquire into the issues we shall spell out here, both because of its constitutional pre-eminence in the field of Indian Affairs; and because the conduct of its oversight responsi-

GERALD R. FORD

bilities in evaluating the operations and effectiveness of the executive agencies require it.

The Indian Tribes we represent are parties to treaties with the United States. When the treaties were made and ratified by the Congress in the 1850s, our tribes lived predominantly as fishing societies, possessed of vast fish resources, particularly salmon and steelhead among others. A justified qualification might be stated for the Makah Indians, who were recognized as being among the world's greatest sea hunters and travelers -- expert whalers up to the time of the Second World War.

Our fishing rights and resources were retained by our tribes in the treaty contracts. Immediately after their making, however, a growing non-Indian population sought to supplant us, to extinguish our rights, and to convert the various fish resources to the near exclusive benefit and economic gain of non-Indians. They enjoyed substantial success in such efforts.

In the history of the state of Washington, the fishing industries have regularly remained among the foremost of all its income-producing industries.

The same history has been marked by a constant conflict between Indian people and the States of Washington and Oregon, growing from their persistent, perennial endeavors to prohibit fishing by Indian people in the customary grounds, and to stop us from being a fishing people who might share in the benefit of bountiful resources.

In the latter part of the Johnson Administration, the United States undertook its most decisive action to bring about enforcement of the treaty rights and to effect the protections that the Nation guaranteed Indian people under the treaties. The U.S. sued both Washington and Oregon to aid Columbia River fishing Tribes in securing a 'fair share' of the harvestable fish supplies. Although Washington was dismissed as a party, another suit was brought in September 1970 against it in behalf of the United States and Indian Tribes under the Medicine Creek, Quinault, Point No Point, Makah, and Point Elliott treaties in western Washington state.

The United States and the Tribes won both cases, relying upon perhaps the most voluminous and exhaustive record ever developed in an Indian rights and resources management lawsuit.

The landmark BOLDT DECISION was issued in February of this year, after more than three years of preparation and trial proceedings. Its result and rulings afforded the Indian community with its best modern opportunity to resume control of our treaty-retained resources -- and for casting of an impoverished condition which had progressively worsened under the prior patterns of deprivation and deliberate denial of treaty Indian rights.

In filing the case of United States v. Washington, the Nixon Administration had, if not courageously, conscientiously resisted political efforts on behalf of Oregon and Washington to dismiss both federal cases, make an out-of-court settlement between

national and state governments, and contrive a political definition of the affected treaty rights in such manner as to substantially preserve the status quo for continuing deprivations. In discussing the strategy and effort, Oregon expressed its determination that more fish be allocated for Indian harvests as a guard against realizing its fear that the court decisions against the states might extend the tribes' management role and responsibilities beyond the Indian reservations' confines. Washington was requested to join that common strategy. /1.

The Boldt Decision did reaffirm that management role, and declared that the treaties had secured an equal share -- or half -- of all harvestable fish resources for the Indian people in customary fishing waters. U.S. Judge George H. Boldt also ruled that all the tribes possessed potential capacity to fulfill their management functions and to engage in self-regulation of their fish resources and fisherment, without State interferences -- if certain qualifications and obligations were met by Indian communities.

The central obligations focused upon the availability to the Tribes of biological expertise and technical services for assuming the increased management responsibilities, either under tribal employment or from other sources or agencies. The Bureau of Indian Affairs (BIA) had contracted with the U.S. Fish & Wildlife Service for the development of the F&WS Northwest Fisheries

Program to work on the federal case against the States' policies and practices, and to provide technical services to the Tribes. Its development of evidence, analytical information, and testimony had decisive effects in the lawsuit.

As crucial to its outcome, however, was the willingness of the Administration -- through both Justice and Interior Departments -- to make a post-trial commitment in federal services to the Tribes for meeting any requirements of a favorable decision, even prior to trial. Essentially, this merely required formulation of an inventory of existing management and personnel needs related to the extensive Indian fish resources, while avoiding duplication of service activities.

The federal departments and agencies, together with the Tribes, uniformly agreed that the Northwest Fisheries Program of the U.S.F&WS was the most appropriate service agency to accommodate the tribal needs, if adequate increased staffing was provided for -- until such time as the Indian community might be able to develop and support its own professional and technical staffs and management systems.

Immediately after the Boldt Decision was rendered, funding requests were made to the Congress by the Administration to fund tribal programs and the Northwest Fisheries Program in order to activate the post-trial commitment to help implement the decision.

For these purposes, the Office of Management & Budget (OMB)

cleared a presidential budget request for \$1.5 million for BIA and tribal programs, and \$690,000 for the increased and needed technical services of the F&WS Northwest Fisheries Program, including assistances to Columbia River Indian Tribes. Independently, the Washington Departments of Game and Fisheries entered comparable requests for federal funds with Members of Congress and Interior officials, who responded with offers of support.

This brings us to our concern with the actions which will be taken by the U.S. Fish & Wildlife Service under the the directorship of Mr. Greenwalt.

We have reasons to believe that the Interior Department at the secretarial, and several other, levels have reneged on the promised federal commitments to Indian fish management programs and its own agencies' assistance services. Documents and discussions with Interior officials indicate an attitude that has transformed from positive support into active hostility in the most critical decision-making positions.

The Congress, for its part, did appropriate the \$690,000 requested for technical assistances to the Tribes, and additionally provided more than a million dollars for State hatchery and propagation programs. (Although the requested BIA and tribal funds were effectually cut in half, the Congress also funded for the local level programming of separate Tribes in implementing the Boldt Decision.)

The Secretary of the Interior and the Fish & Wildlife Service, for its part, seems intent upon (1) diverting the \$690,000 away from direct continuing services for Tribes through its Northwest Fisheries Program in favor of (2) granting funds to the State fish and game agencies; (3) subverting the development of independent tribal or inter-tribal fish management and development programs; and (4) preventing the implementation of the Boldt Decision in order that it shall ultimately be overturned or defeated, and the gains or restored rights of Indian people be lost or not preserved for our benefit.

In the past week, Judge Boldt has found it necessary to take extraordinary actions against State courts and administrative agencies to prevent the total defeat of his decision -- and to try to assure Indian people even some small fraction of the entitlement to fish which he found to be an Indian right. Last year, Indian fishermen had harvested approximately 3% of the total commercial salmon catch -- and under the State and International regulations adopted this year after the Boldt Decision, the Indian catch was being reduced almost a full percentage with an even smaller total catch. /2.

However, if we look to a Memorandum Report sent to Mr. Greenwalt, relating the substance of a meeting between Secretary Morton and Washington State officials in Olympia on June 24, 1974, we find evidence that the Interior Secretary has joined forces with

the Indians' opposition -- at least in viewpoint and in condemnation of the Boldt Decision. /3.

In the meeting's statements attributed to the Interior Secretary, we are introduced to Mr. Lynn Greenwalt and of Secretary Morton's "great confidence in his ability". The Secretary qualifies his statement to express regret that 'his staff has not been able thus far to give him (Mr. Greenwalt) proper direction on where the Department should be going in each of the states.'

If the proper direction is set forth in the Secretary's policy statements in the course of the meeting, we find that point by point the Interior Secretary accedes to the positions and objections of the State officials. When the State Game Director objects to the assumption of management functions and responsibilities by the tribes or supporting federal service agencies, and to the construction of any additional federal Indian fish hatcheries, the top Interior official expresses his agreement. The Secretary's questioning of the "fairness" of the Boldt Decision corresponds to the public statements made by the State Fisheries Director, which became the basis for non-compliance with the federal court decision -- and which the U.S. Judge regarded as "bordering on contempt" in encouraging defiance of his decisions and orders.

Secretary Morton's positions, as attributed to him in that meeting and as backed up by a follow-up letter to the State Game Director, are doubtlessly in direct opposition to the known Indian positions and plans, and are contrary to the results of the

Boldt Decision. Immediately after the June 24 meeting and other secretarial statements, the efforts to divert the \$690,000 to the programming and plans of the State were accelerated. A July 2 Memorandum from Mr. Greenwalt discussing the requested funds, remarks that their agency is dealing with a "hot issue that will be closely watched". By whom is not stated. /4.

The Northwest Indian Fisheries Commission and the member Tribes can only view the proposed misallocation of the appropriated \$690,000 to the primary benefit and program objectives of the State as being as unlawful and unjustified as any of the "impoundment of funds" actions which were challenged and found unlawful in certain actions of the Nixon Administration.

Each the State Fisheries Department and the Game Department did enter requests with the Interior Department for program funds totalling about \$1.2 million. So far as we have been able to determine, neither the Administration (OMB) nor the congressional appropriations committees cleared those funds, while providing other matching funds and hatchery support monies. /5.

The Tribes and this Commission have repeatedly been asked to prepare funding request justifications for both our various needs and for programming efforts we consider necessary to be conducted by Interior agencies, including BIA and F&WS units. In the matter of the State agencies' request, the amounts were accepted and supported as stated -- without any requirement for demonstrating need or justification. The fund requests have not undergone any federal agency analysis that we are aware of.

In our meetings and discussions with the Regional Director of the Fish & Wildlife Service, Mr. R. Kahler Martinson, we gained clear impression that final decisions to divert these Boldt Implementation Funds to the State agencies has already been made, with only the final division of amounts to be decided. Mr. Martinson has told us that he anticipates no additional professional staff increases in the Northwest Fisheries Program offices for the required services to the Tribes.

In a proposed South Puget Sound federal Indian hatchery program, which the Fish & Wildlife Service had studied and worked on for almost two years, the information developed from the Indian program and tribal levels were excluded from a final study report issued in July which gave its strongest emphasis to the statements of opposition and objection entered by Washington Fisheries and Game. It was a clear waste of the F&WS work on the project over an extended period -- although it demonstrated that the Regional Director has accepted Secretary Morton's remarks at the State meeting as absolute direction and policy.

We have grave concern that the fish resources shall suffer tremendously by the maneuvering and manipulations we now see occurring within Interior Department circles and State bases of political power. We have secured other records showing the statements made in another meeting with the Director of Fisheries for the State, which cause us to question whether a blanket commitment for federal funding without scrutiny is justified. /7.

In an August 30, 1971, meeting with complaining non-Indian fishermen and Governor Daniel J. Evans, Director Thor Tollefson relates that a plan to overfish Puyallup River chinook resources was being undertaken in order that Puyallup Indian fishermen could be blamed for damaging the resources. The effect would be to bolster the State's 'case with the public, the press, and in the Courts'. When the non-Indians' lawyer objected that some other way besides damaging the resources should be tried, the Fisheries Director answered that his Department had no problem with the plan, claiming that they could restore the resource by flying in salmon eggs from another hatchery and stream. /7.

These are politics and misuses of governmental authority which the Northwest Indian Fisheries Commission strenuously objects to. In another area of abuse by the State Game Department, which the Fish & Wildlife Service seeks to fund without requirement of demonstrating need or detailing justification, considerable funds were spent in the past to investigate the private lives and business transactions of several entire Indian communities. What are the motives that now operate to grant them new sources of funds, without questioning the motives behind the demand for the monies. Given the documented statements and positions of the Interior Secretary, and the actions of the Regional Director in his relations with the State and Tribes, can we not wonder if any of the Boldt Implementation Funds appropriated by the Congress are going to be used to implement the seriously threatened Boldt Decision?

We believe that this Committee should properly ask Mr. Greenwalt what his directions from the Interior Secretary are, and what are the plans he intends to carry out. We also think he should be required to explain the degree of authority or autonomy granted to the Regional Director (TA) in directing the use of funds for purposes other than for which they were sought by the Administration, or other than for which Congress appropriated them.

Inasmuch as we are aware that Mr. Greenwalt is setting up a new high-level program office for Native Americans and Eskimos, to address Native concerns, problems and issues in resource protection, utilization and management, we cannot understand the present machinations going on in the Department at its highest level, as well as in the Portland Regional Office.

In the past few years, the Interior Solicitor's Office, units of the BIA, the Northwest Fisheries Program, and Justice Department attorneys have performed some of the best services for Indian people in the history of this Nation. In the case of U.S. v. Washington, they and the Court have served the Indian people of the Pacific Northwest in such manner. We know that most of these federal employees want to continue that service and to build upon that record of aiding our tribes in gaining a full measure of opportunity, community control and self-determination in gaining the benefit of our rights and resources for the Indian community's advancement.

Our Fisheries Commission and the member Tribes have not spurned any moves for cooperation and coordination with other people having interest in the fish resources with which we are concerned. But we can not accept a renewal of the total disregard of our own authorities, interests and established rights. Our rights and our assistance needs were not created by the Boldt Decision. That decision does provide some long sought answers and opportunities for everyone.

We recall another statement to a joint Congressional hearing in 1961, when former Governor Rosellini and Fisheries Director George Starlund informed the Congress:

"An immediate action plan to control the Indian fisheries in the State of Washington is imperative. That control is necessary is indisputable. The question to be answered involves how the Indian fisheries are to be controlled and by whom. Federal treaties with the various Indian tribes of the State of Washington protect their members against any attempt at control by State government. Consequently, the federal government must assume full responsibility for such control, or *** by the Indians themselves **.

The Boldt Decision decided this question in a practical manner. The Indian people have the right to control this responsibility, and should stand as co-managers of the fish resources with the State. Now that the question has been definitively answered by the courts in processing the complaint of the United States, we are distressed that the Interior Secretary would personally determine that there should be some other answer.

We sincerely appreciate the chance to raise these matters with you and to participate in this confirmation hearing. It is an important position in the federal government with major responsibilities. We hope that it will not be filled perfunctorily by the Senate action, but that the Congress will look toward the question of how these responsibilities shall be carried out.

Thank you.

Respectfully submitted,

FORREST KINLEY Chairman,
NORTHWEST INDIAN FISHERIES
COMMISSION



CATCH OF SOCKEYE SALMON IN AREAS 1 AND 2

	1971		1972		1973	
	Indian	Non-Indian	Indian	Non-Indian	Indian	Non-Indian
Point Roberts	3,184	1,063,370	3,622	489,956	5,562	940,110
Rosario	1,381	468,277	1,645	221,673	3,232	452,801
Salmon Banks	1,519	955,061	2,119	285,721	10,126	1,087,212
San Juans	0	24,351	0	4,599	0	12,537
Stuart Island	0	19,282	0	1,390	0	152,199
West Beach	21	50,685	22	60,669	0	20,879
Port Angeles	0	31,675	789	21,839	34	8,486
Clallam Bay	16	0	0	3,505	145	18,460
Cape Flattery	5,046	87,880	0	295	4,205	50,562
TOTALS	11,167	2,700,581	8,197	1,089,647	23,270	2,743,246



Dysart

Review of
United States v. Washington
(Civil No. 9213, W. D. Washington)
(Off-Reservation Indian Treaty Fishing Rights)

TABLE OF CONTENTS

	<u>Page</u>
Highlights of <u>U.S. v. Washington</u> Prepared by George D. Dysart Assistant Regional Solicitor	1
Implementation of <u>U.S. v. Washington</u> Prepared by Portland Area Office Bureau of Indian Affairs	
Membership Rolls, Organization and Identification	5
Fishing Regulations	5
Enforcement	7
Fishing Enterprises	7
Biological Assistance Prepared by Bureau of Sport Fisheries and Wildlife	9
<u>Appendix</u>	
Base map of the Case Area	
Portland Area Jurisdiction Map	



Prepared by George D. Dysart,
Assistant Regional Solicitor,
Portland Region, U. S. Department of the Interior,
March 25, 1974, for Departmental Briefing Sessions.

Highlights of
UNITED STATES v. WASHINGTON
(Civil No. 9213, W. D. Washington)
(Judge Boldt's Decision on off-reservation
Indian treaty fishing rights in Northwest Washington
2/12/74 and 3/22/74)

"More than a century of frequent and often violent controversy between Indians and non-Indians over treaty right fishing has resulted in deep distrust and animosity on both sides. * * *

" * * * root causes of treaty right dissension have been an almost total lack of meaningful communication on problems of treaty right fishing between state, commercial and sport fishing officials and non-Indian fishermen on one side and tribal representatives and members on the other side * * *. Some commendable improvement in both respects has developed in recent years but this court believes high priority should be given to further improvement in communication and * * * attitude * * *."

U. S. District Court Judge George H. Boldt
U. S. v. Washington

"The decision presents a tremendous opportunity and a tremendous challenge for responsible tribal self-government. If the tribes will accept and meet the qualifications and conditions which Judge Boldt has prescribed and if the state agencies will cooperate with those tribes in the spirit in which the decision is written, there is no reason why we should not see a more harmonious relationship between Indians and non-Indians and a more equitable accommodation of the rights of both to this resource."

Assistant Regional Solicitor
George D. Dysart, Government
attorney in U. S. v. Washington
(Statement to the Press)

I. The court held:

1. The Supreme Court's holding in the two Puyallup cases--391 U.S. 392 (1968) and ____ U.S. ____ (1973)--compels this court to hold that the state has authority to regulate the

off-reservation exercise of the Indians' treaty fishing right if such regulation is necessary for preservation of the fish runs. However, such state regulation "is highly obnoxious to the Indians and in practical application adds greatly to already complicated and difficult problems and may stimulate continuing controversy and litigation * * * ." (Dec'n. pp. 26-27)

2. From the beginning Congress has recognized that Indian treaties "established self-government by treaty tribes" limited only as provided in the treaties, judicial interpretation thereof, or by Congress. (Dec'n. p. 29)
3. As a part of this self-government any of the treaty tribes "is entitled * * * [to regulate] the treaty fishing right of its members without any state regulation thereof; PROVIDED, however, the tribe has and maintains the qualifications and accepts and abides by the conditions stated below." (Dec. p. 30) Uncorrected failure to maintain and abide by them shall suspend such self-regulation. The court specified following qualifications:
 - a. Competent and responsible leadership.
 - b. Well organized tribal government competent to adopt and apply proper regulations;
 - c. Indian personnel trained and competent to enforce the regulations.
 - d. Readily available fisheries experts to advise on regulation.
 - e. An officially approved membership roll.
 - f. Membership certification and appropriate I.D. cards with photograph. (Existing BIA cards valid until June 1, 1974)

The conditions specified are:

- a. Adopt full and complete tribal fishing regulations, including reasonable and necessary conservation restrictions, after consultation with state agencies.
 - b. Permit state monitoring of off-reservation Indian fishing.
 - c. Provide on and off-reservation catch reports to state. (Dec'n. pp. 31-32)
4. Applicable provisions of the decision are to become applicable to treaty tribes not party to the case upon determination--by the state or the court--of their treaty status. (Injunction, par. 1(d))

5. State regulation--for nonself-regulating tribes--is strictly limited to specific measures which have first been found, to satisfaction of the affected tribes or the court, to be "reasonable and necessary to prevent demonstrable harm, to the actual * * * perpetuation of a particular run or species of fish." (Dec'n. p. 35)
6. The treaty right to fish "in common" with the settlers "means sharing equally the opportunity to take fish * * * ." Thus both treaty and nontreaty fishermen shall have the opportunity to take up to 50% of the harvestable number of fish taken outside Indian reservations. Harvestable number of fish means fish not needed for spawning escapement or for Indian direct subsistence or traditional tribal ceremonies. (Dec'n. pp. 36-38) State must restrict non-Indian fishing in marine or lower areas to assure that adequate numbers reach Indian fishing areas for above-mentioned entitlement. (Dec'n. p. 42)
7. Defendants must take all appropriate steps within their capabilities to promote equal sharing of all fish, including U.S. share of runs under regulatory control of International Pacific Salmon Fisheries Commission. (Dec'n., amended p. 40)
8. Protection of Indians' treaty-reserved rights must be an objective of state regulatory policy at least co-equal with conservation of fish runs for other users. (Dec'n. p. 44; Decree p. 8)
9. Treaty right extends equally to steelhead and salmon and both may be taken for commercial purposes. (Dec'n. pp. 38, 43; Concl.Law #21, 39.)
10. Court deferred consideration of whether artificially propagated steelhead should be allocated on the same formula. (Dec'n. p. 40)
11. The Lummi Tribe is entitled to fish with reef nets at some of the locations now occupied by non-Indian gear. (Concl.Law #45)
12. Previously seized fishing gear or its value must be returned to the Indians. (Concl.Law #43, 44)
13. Recognition of a tribe as a treaty party or political successor in interest to a treaty party is a federal political question. State authorities and federal courts must follow determinations of legislative or executive branch of Federal Government. Muckleshoot Tribe is so recognized. (Concl.Law #9, 10)



14. The three nonreservation plaintiff tribes--Sauk-Suiattle, Stillaguamish and Upper Skagit--are each a treaty tribe and may exercise the fishing right upon approval of their membership rolls and structures of organization by the Secretary of the Interior. (Concl.Law #15 as corrected; Decree pp. 4-5)
 15. The Quinault and Yakima Tribes are now qualified for self-regulating status. Several others are believed to be able to qualify shortly. (Dec'n. p. 34)
 16. The court retains continuing jurisdiction of the case. (Decree p. 9)
- II. An Injunction was issued on March 22 but portions of it were stayed to permit adoption of an Interim Plan of Implementation.
 - III. The Interim Plan, proposed by both sides and approved by the court on March 22, provides that effective June 1, 1974, all Indian off-reservation fishing places are closed unless specifically opened by tribal regulation. State will recognize provisions of tribal regulations (subject to its right to challenge them in court) and anyone fishing contrary to tribal regulation will be subject to state law applicable to non-Indians. State will make significant reductions in non-Indian fishing. State and tribes will monitor the fishery and exchange data.
 - IV. The court appointed a Master--U. S. Magistrate Robert Cooper-- and a Fisheries Technical Advisor--Dr. Richard R. Whitney of the University of Washington College of Fisheries.
 - V. Defendants are filing Notices of Appeal. Yakima Tribe may cross-appeal (claiming state has no jurisdiction over the treaty right).
 - VI. Court has ordered parties to submit within 30 days a pretrial discovery and procedure schedule for Phase II of the case--the claim of certain tribes that the state has obligation to prevent and redress harm to fishing, right caused by public or private activity causing adverse environmental impact. State has announced intent to attempt to make United States a defendant on this aspect.
 - VII. Columbia River tribes are expected to request application of principles of decision to that river system. We believe that Judge Belloni would essentially follow the decision if asked to do so under his retention of continuing jurisdiction in Sohappy v. Smith and United States v. Oregon.

Prepared by Portland Area
Office, Bureau of Indian
Affairs, U.S. Department
of the Interior, March 25,
1974, for Departmental
Briefing Sessions

Implementation of U.S. v. Washington

I. Membership Rolls, Organization and Identification:

Conclusions of Law Nos. 12 and 13 in Judge Boldt's decision provide the basis for court recognition of the Upper Skagit, Sauk-Suiattle and Stillaguamish Tribes for treaty fishing purposes. Conclusions No. 15 and No. 16 provide these tribes authorization for exercise of these rights upon approval of membership rolls and structures of organization by the Secretary of the Interior. The court injunction issued March 22 provided one year for the purpose of completing organizational structures and membership rolls for these three groups. The court also provided that other plaintiff tribes must have identification cards issued by June 1, 1974, with such cards to include a photograph of the holder. The order further requires the recognition of rights in the case area of any treaty tribe not a party upon agreement of the defendants or determination by the court as to treaty status. Literal interpretation of court instructions requires that membership rolls be completed for six reservation tribes and new identification cards be issued to all treaty fishermen in those tribes by June 1. We believe membership cards can be prepared and provided to all fishermen including photographs with the purchase of equipment at a total cost of \$1800, and supplies costing \$500, to meet this deadline. Rolls for these six groups cannot be completed by June 1. In addition to the three non-reservation groups mentioned above, we believe at least ten additional tribes will seek treaty recognition as follows: Nooksack, Samish, Lower Skagit, Kikiallus, Swinomish (aboriginal), Snohomish, Snoqualmie, Duwamish, Steilacoom, Jamestown Band of Clallam. The injunction also provides (1) agreement of the state or approval of treaty right status by the court, (2) development of organizational documents, i.e., constitution and bylaws, and (3) preparation of membership rolls.

II. Fishing Regulations:

Historically, limitations on the catch were controlled by: (1) limitations in the needs by the relatively small human population; (2) limitations on the efficiency of the Indians' fishery by natural phenomena, and (3) limitation by tribal custom and religious commandments. More recently, with the much reduced populations of salmon and steelhead returning to their fishing grounds, individual Indian tribes have established written regulations controlling the taking of fish by their members. Others have practiced limitations without formal written regulations.

The qualifications and conditions set forth in the court decision, which the tribes must meet in order to be self-regulating, place additional demands on the tribes at this time.

Among other qualifications, the court decision requires the tribes to have a well organized tribal government reasonably competent to promulgate and apply tribal off-reservation fishing regulations that, if strictly enforced, will not adversely affect conservation.

Among other conditions, the court decision requires the tribes to provide for full and complete tribal fishing regulations which, before adoption, have been discussed in their proposed final form with Fisheries and Game, and include therein any state regulation which has been established to the satisfaction of the tribe, or upon hearing by or under direction of this court, to be reasonable and necessary for conservation.

Assistance will be needed by the tribes in developing fishing regulations. Development of a "model" fishing ordinance is a first step and is an immediate need. Items to consider in such a fishing ordinance are:

1. Assertion of Tribal control.
2. Identification of Indian fishermen.
3. Identification of fishing gear.
4. Report of fish catch.
5. Enforcement.
6. Penalties.
7. Use of non-member helpers.
8. Fishing gear restrictions.
9. Tribal members subject to regulation of other tribes in other areas.
10. Tribal tax and license fees.
11. Control of site selections.
12. Seasonal regulations.
13. Emergency closures or openings.

III. Enforcement:

The interim plan provides that effective June 1, 1974, any one fishing contrary to tribal regulations will be subject to state law applicable to non-Indians. (Except in the case of the Quinault and Yakima Tribes which are now designated as self-regulating.)

Among other qualifications for self-regulation the court decision requires "that tribes shall have Indian personnel trained for and competent to provide effective enforcement for all fishing regulations".

Additional enforcement personnel, training in fishery enforcement work, equipment and supporting funds will be necessary.

Additional funding for courts will also be required.

There are several alternatives to enforcement:

A. Use existing tribal courts where established--Quinault, Lummi, Skokomish, Makah, Lower Elwha and Port Madison.

B. The agreement by smaller tribes to utilize existing courts.

C. Establishment of a court of Indian fishing offenses under CFR 256.6 at various locations or a combination of the above.

IV. Fishing Enterprises:

The salmon and steelhead fishery resources in the Western Washington area result in a multi-million dollar commercial fishing industry. Indian fishermen have landed only five to ten percent of this total in the recent past. The court decision making available to the Indian fishermen the opportunity to take 50% of the harvestable fish provides an increased economic opportunity to Indian fishermen in Washington. The application of the principles of this decision to the Columbia River would also provide considerable increased economic opportunity to Indian fishermen in Washington, Oregon and Idaho.

The tribes and Indian fishermen will face certain obstacles which must be overcome if they are to fully take advantage of this increased opportunity. Several factors are in favor of the tribes and Indian fishermen in overcoming these obstacles.

Additional assistance is expected to be needed by tribes and Indian fishermen in the areas of credit and finance (such as providing up-to-date information and help in available loan programs and other sources of credit and financial assistance). Other needs expected are development of processing, marketing, as well as development of fishing operations themselves.

Many Indian river fishermen will continue to operate small boats, but the fishing operations involving the larger gill net and seine boats in marine waters can be expected to expand. Currently only about 30 large gill net and seine boats are operated by Indian fishermen. Within the next three to five years, the Indian fishing activity could develop a tenfold increase. This may involve a capital investment in boats and fishing gear totalling in excess of 15 million dollars.



BRIEFING

U.S. vs. WASHINGTON, March 29, 1974

BIOLOGICAL ASSISTANCE

RESOURCE VALUES AND HARVEST INVESTMENT COSTS

In the case area an average of 6,500,000 salmon are landed commercially at a current value to the fishermen of \$32 million. Indians have commercially landed only 5 to 10% of this total in the recent past. In addition, the Indians have commercially taken a small portion of the harvestable supply of steelhead.

Indian fishermen have invested very little in fishing equipment and gear because of confinement to small geographical areas by State regulation and the low numbers of fish reaching these areas because of non-Indian fishing which intercepts the runs.

Except for a few Indian fishermen, most have operated river canoes or small boats and relatively inexpensive nets. With the increased opportunities for a greater harvest under the court decision, the Indian fishermen will be able to invest in more elaborate gear.

Many Indian river fishermen will continue to operate small boats, but some can be expected to invest in larger gill net and seine boats and other forms of fishing equipment and gear. Currently only about 30 large gill net and seine boats are operated by Indians. Within the next three to five years, Indian fishing activity could increase tenfold. This could involve a capital investment in boats and fishing gear totaling in excess of \$15 million.

IMPACT OF DECISION ON WASHINGTON STATE FISHERIES AND GAME DEPARTMENTS PROGRAMS

In reducing the non-Indian catch to increase numbers of fish available to Indians, the State must place further restrictions upon the ocean troll and inner marine gill net, seine, and reef net fisheries. Some decrease in the non-Indian sport fishery for salmon and steelhead also may result. This will require more precise management by the Washington Departments of Fisheries and Game than has previously been required. In the past, the bulk of the harvest has been in marine areas on mixed stocks of salmon. It will now be necessary to manage more on the basis of specific river runs. Precise knowledge of individual river stocks will now be emphasized in the State's management scheme. This should result in improved utilization and management of the resource.

The Washington Department of Fisheries has a considerable salmon data base on which it may rely to adjust the overall harvest scheme with some accuracy. The Department will need to bolster and refine information regarding fish population, size estimates, escapement goals, and identification of individual stocks in harvest areas. The Washington Department of Game has some useful information on the sport catch of steelhead but virtually none on population estimates or spawning escapement requirements. Management to provide an equal sharing opportunity and assurance of protecting the resource will require timely field investigations and initiation of a reliable data base for steelhead.

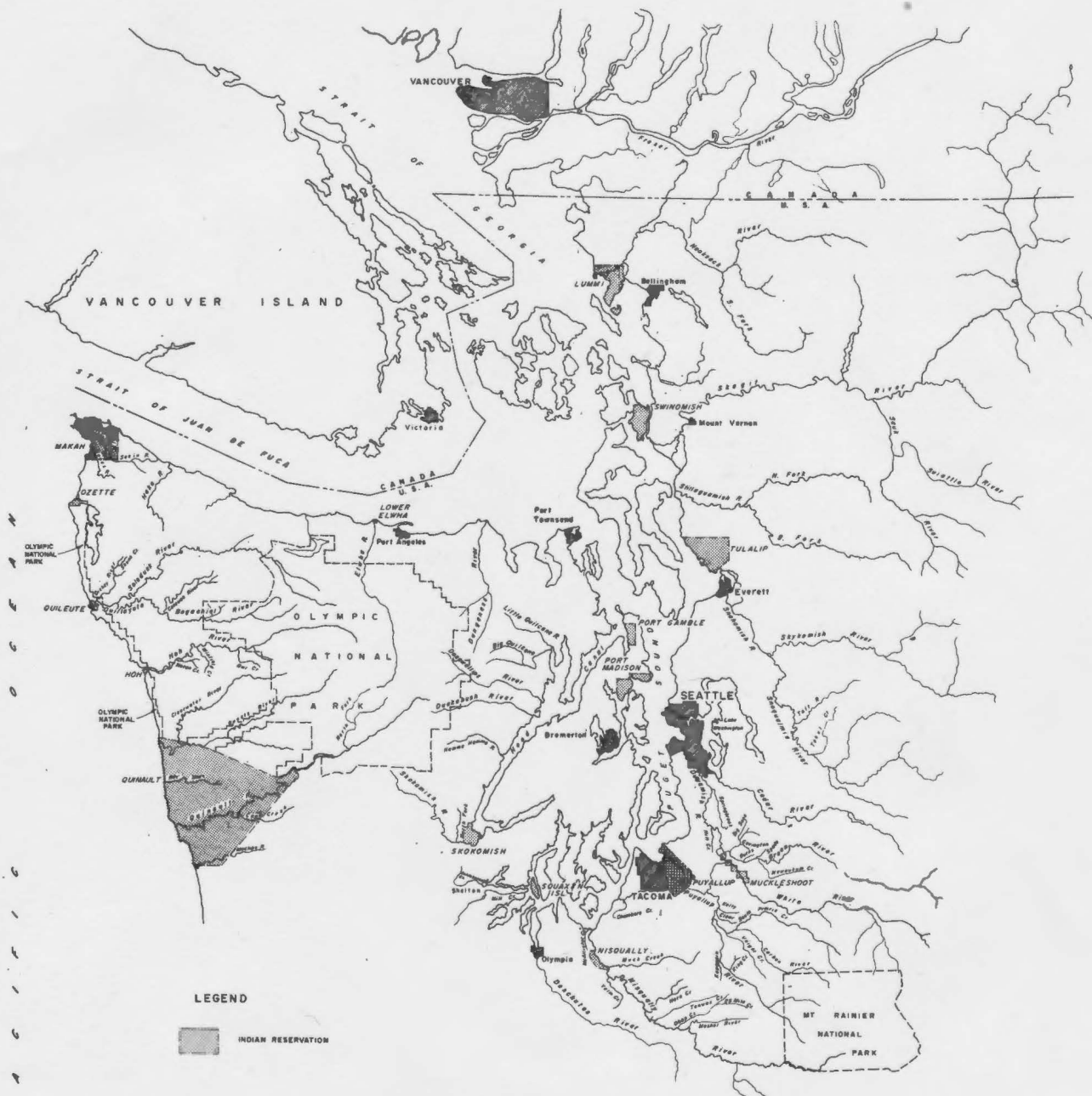
IMPACT UPON THE ACTIVITIES OF THE U.S. FISH AND WILDLIFE SERVICE

Among the qualifications for self-regulation, the court decision requires "well qualified experts in fishery science and management who are either on the Tribal staff or whose services are arranged for and readily available to the Tribe."

Only the Quinault Tribe is currently capable of providing technical expertise within its membership. The Tribes have jointly and independently requested the Bureau of Sport Fisheries and Wildlife's Northwest Fisheries Program to provide biological assistance. Among other assistance, the Tribes have specifically requested the BSF&W to provide a direct clearinghouse for Indian catch reports. They have also asked that BSF&W review and closely monitor the non-Indian fishery. Additional input from BSF&W is necessary to assist Tribes in formulating fishing regulations and fishery management programs. Input will be required in such areas as run size predictions and spawning escapement goals.

To meet the request of the Indians will require substantial increases in the current staffing level of the Northwest Fisheries Program. It is evident from preliminary discussions with representatives of the State agencies that increases in their biological staff will also be necessary. Meetings to develop cooperative investigations between the Tribes with the assistance of BSF&W and the Departments of Fisheries and Game are underway.

This will require an increased budget of \$550,000 and 15 additional positions for BSF&W.



LEGEND

INDIAN RESERVATION

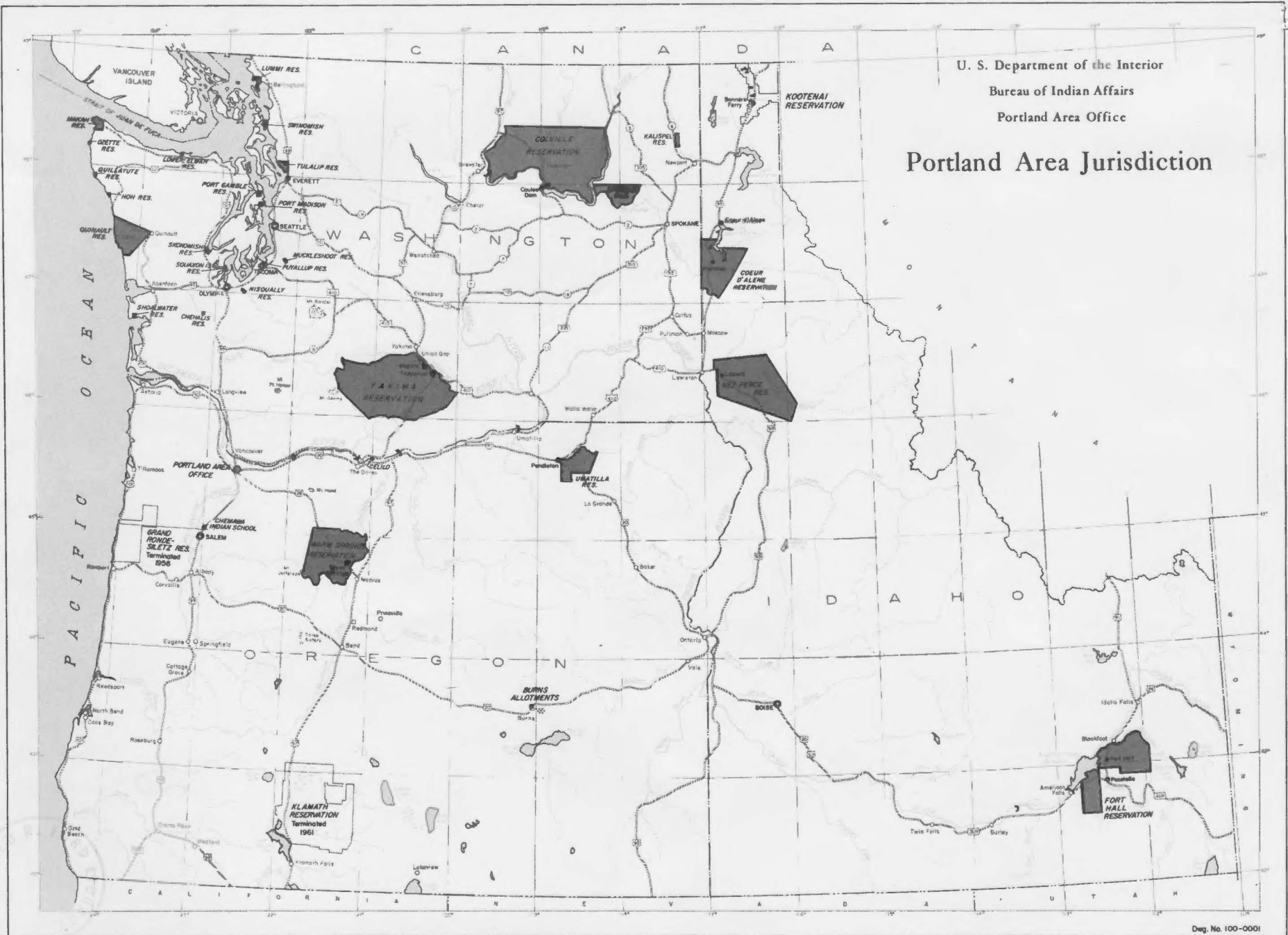
BASE MAP OF THE CASE AREA
U. S. VS. WASHINGTON (CIVIL NO. 9213 W. D. WASH)

*PUYALLUP RESERVATION BOUNDARIES AS ESTABLISHED THROUGH 1876. PRESENT LEGAL EXISTENCE AND/OR BOUNDARIES OF THIS RESERVATION IS CURRENTLY IN DISPUTE AND IS SUBJECT OF OTHER PENDING LITIGATION.



U. S. Department of the Interior
Bureau of Indian Affairs
Portland Area Office

Portland Area Jurisdiction



THE WHITE HOUSE

WASHINGTON

U.S. v WASHINGTON

Landmark fishing-rights case - decided by Judge Boldt (maybe his swan song) on 2/12/74

I intervened with the US Attorney to remind him of our Administration position to give full attention to Indian claims in our capacity as trustee. He agreed, amended his brief in a way which ~~XXXXXX~~ satisfied the Indian plaintiffs much more than before, and then they are delighted with the decision itself.

Area affected: all of the state of Washington north of the Columbia and west of the Cascades; all of Puget Sound watershed & Olympia Peninsula and off-shore waters there.

Issue presented: The meaning of the treaty language that the tribes reserved the right to off-reservation fishing "at all usual and accustomed grounds and stations" and the reconciliation of this treaty promise with the simultaneous agreement that "all citizens of the territory" might fish at the same places "in common with" tribal members (a privilege which the Indians cannot cancel but which the State can regulate) -- and whether the Indian off-reservation fishing is subject to State regulation and how much so.

The key part of the decision: "The State has police power to regulate off-reservation fishing only to the extent reasonable and necessary for conservation of the resource... State regulation must not discriminate against the Indians, and must meet appropriate due process standards."

Two tribes can and therefore may self-regulate this fishing by their members; others may do this when they have met certain managerial/organizational standards.

Nothing in those original treaties ever gave the non-Indian citizens of Washington, acting directly or through their State Government, to interfere with the exercise of those Indian rights.

But the Supreme Court has said (Puyallup I and II) that the State has this power, so "in spite of personal misgivings" Boldt must rule that the State has that power. (He intimated that the S.C. was usurping Congressional power.)

Boldt then ruled that any of the plaintiff tribes which has (a) "competent and responsible leadership (b) well-organized tribal government (c) trained personnel (d) experts in fishery science (e) an officially approved membership roll and (f) ID cards with photo identification for members can regulate its own members' off-reservation fishing - provided that the regulation have been "discussed in their proposed final form with" the State Fisheries and Game people and which include any State regulation agreed to by the Tribe or the Court if necessary which is reasonable and necessary for conservation. No State reg. for on-Reserv. fishing

If those conditions are not met, then the tribe cannot engage in self-regulation of its members' off-reservation fishing.

Court said that the Quinault and Yakima tribes ~~XXXXXX~~ meet such standards; other tribes "have the capacity for and are not far from" achievement of the same status."

All State officers are reminded that the State has no power to qualify treaty rights, the power to regulate the exercise of those rights "must be interpreted narrowly and sparingly" and every regulation "must be strictly limited to specific measures" agreed to by tribe or by the Court "to be reasonable and necessary to prevent demonstrable harm to the actual conservation of fish."

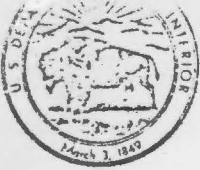
Burden of proof: on the State

Arrest of persons or seizure of property under any regulation not meeting the above standard is "unlawful and may be actionable against any official or private person authorizing or committing such unlawful arrest or seizure."

Harvestable fish are then allocated.

Court keeps jurisdiction.





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Duplicate

April 4, 1974

NOTE TO MORRIE THOMPSON

RE: Implementation Plan - U. S. v. Washington

Following last Friday's briefing with the Under Secretary, would you please take the lead in developing a coordinated action plan for timely and orderly implementation of the U. S. v. Washington decision. This should include, inter alia, a delineation of what steps need to be taken, assignments of responsibility, allocation targets for manpower and funds, public information needs, etc.

This is a landmark decision, as you know, and we need to do everything within our power to insure success. Please let me know what this office can do to help in reaching this objective.

W. W. Lyons
Deputy Under Secretary

cc: Under Secretary Whitaker
Lou Striegel, SOL
Frank Wiles, Budget
Vic Schmidt, BSW
George Dysart, SOL, Portland
Roy Sampsel, Portland



76

Let's Clean Up America For Our 200th Birthday



SFP:lf

United States Department of Justice

UNITED STATES ATTORNEY

WESTERN DISTRICT OF WASHINGTON
UNITED STATES COURT HOUSE
SEATTLE, WASHINGTON 98104

January 9, 1973

Mr. James L. Heckman
Associate Regional Supervisor
Division of Fishery Services
Department of the Interior
1500 N. E. Irving Street
P. O. Box 3737
Portland, Oregon 97208

Dear Jim:

I am responding to your letter of January 5, 1973, regarding what role the Bureau of Sport Fisheries and Wildlife should play in the practical realization of Western Washington Indian tribes' treaty fishing rights.

As you know, the case of United States v. Washington, No. 9213, W.D. Wash., was brought in September, 1970 to declare the rights of fourteen Puget Sound Indian tribes, based upon treaty provisions identical to those construed by the Supreme Court in Department of Game v. The Puyallup Tribe, 392 U.S. 391 (1968). In that case the Supreme Court established certain guidelines governing state regulation of Indian treaty fishing. As we interpret the opinion of the Court, it is now settled that a state may regulate fishing by Indians pursuant to their treaty right, only if:

1. The regulation is reasonable and necessary for conservation;
2. The regulation does not discriminate against the Indians' distinct, federal right; and
3. The regulation meets appropriate standards.

Our investigation reveals that current state regulations pervasively violate each of these guidelines, with the possible exception of some ad hoc agreements between some tribes and the Department of Fisheries. We have



Mr. James L. Heckman

accordingly also sought appropriate injunctions against such state regulations.

Our proof at trial will basically divide between two areas. First, we will make an affirmative showing through anthropological testimony of the identity of treating parties and the meaning of pertinent treaty terms. Second, we expect to show through biological testimony at least the following:

- (a) A description of the current methods and locations which are, or would be, utilized in harvesting the various anadromous fish by each of the fourteen plaintiff tribes;
- (b) A description of the alternative methods of harvest distribution available to the state which would maintain or enhance conservation while permitting each tribe to take a share of the fish by means feasible to them;
- (c) A critical evaluation of opinions currently offered by the state to justify its current regulation of Indian treaty fishing; and
- (d) A description of how available federal resources can be used to inform and to assist the tribes and the state concerning post-trial determinations of how best to utilize the resource in light of the Indians' right.

As is evident from the list above, your agency's active and dedicated assistance in the preparation and trial of this case is absolutely essential to a successful result. Without such assistance it would be impossible for the United States to prove the allegations necessary to fulfill the obligations we assumed when this case was filed. This matter is even more immediate since the Court has set a trial date for July 2, 1973.

~~More importantly for you is the requirement of a pretrial~~
conference set for March 16, 1973. This means that you should finish and forward to the state your revision of the remaining portions of the Joint Biological Statement by January 19, 1973.



Mr. James L. Heckman

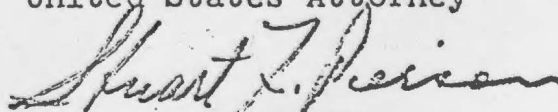
In addition to the demanding responsibilities which are imposed on your agency by this case, the currently very low level of the assets of most of the plaintiff tribes requires an extensive, continuing provision of technical services to the plaintiff tribes if we should obtain a successful result in United States v. Washington. Although I am not fully familiar with the technical needs, such services should include at least (a) your advice to each tribe, based on supporting facts and data, of a justifiable share of each run, in each season, which should be allocable to the tribe's fishermen, and (b) your availability as an expert to support such a share when the state agency considers regulations for the coming season.

Moreover, in addition to the Indians' post-trial needs for such assistance, the existence of a detailed, pretrial, federal commitment to provide such assistance after a favorable result will surely influence the Court's decision. In this respect, I am requesting that you draft for our office by February 25, 1973, your description of how best you could satisfy such post-trial assistance demands with your current manpower. I am sure I need not add that the commitment for such assistance should be scheduled to terminate only if a tribe is capable of obtaining such expert assistance from other sources.

Finally, may I add that, although July is seven months away, we have very much to do. The deadlines we set for ourselves should be considered firm, for now only we will suffer by delay. If we may be of any assistance, please do not hesitate to contact us immediately.

Sincerely,

STAN PITKIN
United States Attorney


STUART F. PIERSON
Assistant U. S. Attorney

Enclosures

cc: George D. Dysart, Esq. ✓





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

In Reply Refer To:
FSF/FS
SS - 14663

APR 26 1974

Dear Mr. Adams:

Secretary Morton has asked us to respond to the telegram from you, Ms. Bennett and Mr. Frank inquiring about the status of the fish hatchery feasibility study in the southern Puget Sound area. A similar letter is being sent to your colleagues.

The Bureau of Sport Fisheries and Wildlife is conducting this study and hopes to complete the final report in about 2 months. As a result of engineering evaluations, two sites are being considered. A definite site selection will be made before May 1. This will be followed by preparation of preliminary development plans and cost estimates. Mr. James Heckman of the Bureau met with all interested tribal leaders on April 12 and discussed this and other subjects.

The policy of this Department is to assist the tribes in any way possible in the management and harvest of tribal fish and wildlife resources. As a result of Judge Boldt's recent court decision, we are planning to expand our capability to assist the Puget Sound tribes in qualifying for self-regulation of anadromous fish harvest at off-reservation locations.

We suggest that you maintain close contact with Mr. Heckman and the Bureau's Regional Director in Portland, Oregon. They are fully knowledgeable of developing events.

If we can be of further assistance, please call on us.

Sincerely yours,

Curtis Bohlen

Deputy Assistant Secretary for Fish
and Wildlife and Parks

Mr. Hank Adams
Fisheries Management Coordinator
Puyallup Indian Tribe
2232 East 28th Street
Tacoma, Washington 98404





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JUL 12 1974

Dear Mr. Crouse:

As a result of your letter of July 3, 1974 and discussion with Kent Frizzell, I would like to take this opportunity to again articulate the philosophy of this Department in resolving the various issues you have raised concerning Judge Boldt's decision.

Initially, I wish to point out that the Under Secretary's letter was, in effect, a "legalistic" response to your original inquiry. The response was prepared in the Office of the Solicitor because of the pending litigation. That letter establishes the general legal parameters within which this Department must operate to effectuate the court's decision and order. However, that letter should not be interpreted by you as establishing the attitude (i.e., "tone") by which we intend to work with the State of Washington. The purpose of our meeting was for me to share with you some thoughts on the manner in which we, as a Department, will bring to bear our resources in a joint effort.

In order that we may move forward in attempting to resolve the issues raised in our discussion, I have again talked with Nat Reed, my Assistant Secretary for Fish and Wildlife and Parks. I have directed Nat to use his good offices as well as his experience in this area to try to work out as many of our differences as possible. I have no doubt that Nat will call upon the Fish and Wildlife Service for continued support. I hope that you will work closely with Nat on this matter. I expect both Nat and Kent Frizzell, my Solicitor, to keep me advised and to assist me in this matter.

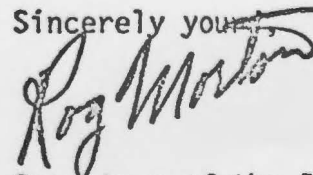
The final point I wish to make is this: we do not intend to "walk away" from the problems which are necessarily encountered by the State of Washington whenever Indian treaty fishing rights are adjudicated. We have a responsibility to assist the State in the effective implementation of the court's orders and decision. Specifically, we will make every effort to secure appropriated funds. I remain hopeful that we will be successful, but you should be aware that we may be working under serious budgetary constraints in fiscal 1975. In addition, the State also has a fiscal obligation to



implement the court's decision. It would, in my judgment, be unacceptable for the federal government to bear the full cost and burden. Secondly, we do not intend to preempt the responsibilities and obligations of the State of Washington to manage its fishery resources. Renewed rhetoric on the federal vs. state controversy over fish and wildlife management would only be counter productive. The goal is protection of the fishery resources.

Nat will be delivering this letter to you at the Western Association of State Game and Fish Commissioners, and will be able to explain further my views on the problem. I strongly urge, however, that we let the dust settle for a while. All the data is not in yet, and the full impact of the court's decision on the fishery resource cannot be fully predicted. Our primary goal this year should be to assure that we are approaching the problem with a systematic cooperative effort.

In carrying out my obligations to the American Indian and my responsibility to assist the various states in the preservation of the fishery resources, it may, at times, be impossible to find solutions which please all concerned parties. I wish to assure you, however, that we sincerely seek your cooperation in identifying solutions which properly balance the objectives and goals of the various constituencies.

Sincerely yours,


Secretary of the Interior

Mr. Carl N. Crouse
Director
Department of Game
600 North Capitol Way
Olympia, Washington 98504



Copies to:

**Office of the Governor
State of Washington**

**President, International Association
of Game, Fish and Conservation Commissioners**

**Mr. John Gottschalk, Executive Vice-
President, IAGFCC**

**Chairman, Washington State Game Commission
President, Western Association of
State Game and Fish Commissioners**





50
United States Department of the Interior

File

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

Mr. Carl N. Crouse
Director
Department of Game
600 North Capitol Way
Olympia, Washington 98504

JUN 19 1974

Dear Mr. Crouse:

This responds to your letter to Secretary Morton dated May 7, 1974, posing questions regarding United States v. Washington. You indicated that answers to the questions would be helpful in meeting obligations under court decisions and in cooperating with the Indian tribes in your state and with this Department.

We apologize for the series of unfortunate circumstances surrounding your efforts to meet with the Secretary on April 30, 1974. I understand, however, that an effort is presently being made to arrange a meeting between you and the Secretary in Seattle.

We appreciate the cooperative spirit indicated in the conclusion to your letter and welcome this opportunity to clarify any erroneous impressions which have been conveyed regarding this matter. Your letter infers that difficult problems have been created by Judge Boldt's decision as the result either of a recent administrative grant of fishing rights to the Indians or of an ill-advised decision by the Department to prosecute cases to protect such rights. Neither the right, nor the attendant problem of allocation, is of recent origin. As you are aware, the Indians' off-reservation fishing rights are founded on treaties this nation made with Indians over 100 years ago when their possessory rights to land areas were acquired.

It is, perhaps, understandable that there are misunderstandings regarding the rights defined by the court's decision. However, as you are aware, the courts have repeatedly reaffirmed Indian treaty fishing rights and limited the authority of states to restrict and regulate Indian fishing. The United States Supreme Court has dealt with Indian fishing rights in the State of Washington on a number of occasions, most recently in Puyallup Indian Tribe, et al, v. Department of Game, et al, 391 U.S. 392 (1968) and Department of Game v. Puyallup Tribe, 414 U.S. 44 (1973). This Department has initiated successful litigation both in Oregon and

Washington to enforce these fishing rights and provided for judicial review of state fish and game regulations as applied to Indians. See United States v. Oregon, 302 F. Supp. 899 (D. Ore. 1969). Such efforts by the Department are a part of our trust responsibility to enforce reasonable Indian claims to natural resources.

I turn now to your specific questions.

(1) Present short and long-range plans of the Department for Indian use of the Nation's wildlife resources.

The Department's policy remains unchanged. Simply stated, it is to secure to the Indian people the fishing and hunting rights granted to them by treaties with the U.S. Government. Administration of treaties negotiated with the various Indian tribes is a responsibility entrusted to this Department. In instances where treaty rights involve the renewable natural resources of our country, the Department will consider the need to protect long-term conservation needs in approving tribal fishing regulations. All court decisions, including Judge Boldt's, have recognized that the states retain some authority over Indian fishing to preserve the fish resource from diminution in quality and quantity. If this goal is to be achieved, we will need the cooperation of the states to solve many of our common problems.

(2) Will the Department pre-empt state authority over anadromous fish resources.

State authority over anadromous fish resources has, from the establishment of this Nation, been limited by the responsibilities conferred on the Federal Government by the United States Constitution. One of those responsibilities is protecting Indian treaty rights, which are entitled to preeminence over state law under the Supremacy Clause. The Department has consistently expressed a strong commitment to assist the states in the management of anadromous fish resources through the Fish and Wildlife Act of 1956, the Fish and Wildlife Coordination Act, the Federal Aid in Fish Restoration Act and the Anadromous Fish Conservation Act. All of these laws recognize the inherent responsibility of the various states to manage their fishery resources. The decision by Judge Boldt also recognized this responsibility subject to the Indian treaty rights. In addition, it must be recognized that the Department of Commerce also has statutory responsibilities for anadromous fish programs.

(3) Expansion of Boldt decision to resident wildlife resources.

The decision deals primarily with anadromous fish, and these are the fish principally relied upon by the Indians. To the extent that Indian treaty rights comprehend resident fish or wildlife, it is the responsibility of the United States to take such action as it deems necessary to protect those rights.

(4) Construction of New Steelhead Hatcheries.

The Department has not interpreted Judge Boldt's decision as a mandate that the Federal Government should construct additional facilities for the production of steelhead to cover the anticipated increased commercial catch of this species by Indian fishermen. We realize that your primary concern is the continued availability of returning steelhead for the sport fishermen of the State of Washington. We share your concern and would hope that our continued cooperation will result in a satisfactory solution. As I understand the situation, there is insufficient statistical information relating to the steelhead resources of the Puget Sound area to permit management of these operations as specified in the decision by Judge Boldt.

It would appear to be wise to develop cooperative State-Federal programs to gether as much information as is needed to construct a management plan for the steelhead fishery. Such a plan may indeed reflect a need for additional steelhead production facilities. Should we reach that point, the Department would consider the Federal responsibilities involved.

I am sure that you are aware that the new national fish hatchery under construction on the Makah Indian Reservation will produce 400,000 steelhead annually when in full operation. These, as well as the salmon produced, will be utilized to supplement natural populations in rivers on and off the reservation which are recognized as Indian fishing grounds.

(5) "Expanding" Indian Fishing Rights.

The Department does not view this decision as an expansion of treaty rights, but rather as an enforcement of existing treaties. The treaties with the tribes of Washington and Oregon are more explicit in their recognition of off-reservation fishing rights than is true with most other treaties. However, the Department's trust responsibility in this regard extends to treaty rights elsewhere.

(6) Creation of new reservations.

The Department of Interior does not have any immediate plans to establish any additional reservations. However, a petition has been submitted on behalf of members of the Stillaguamish Tribe requesting that Federal recognition be extended to them and that certain lands be taken in trust for them. Both requests are still pending.

(7) Present plans of Department to clarify Indian rights by Executive Order or Congressional Action.

The Department has no such plans.

(8) Guidelines for Indian rights.

This is really several questions. Neither Congress nor the Department has ever adopted an all-purpose definition of an Indian, and generally it is up to the tribes themselves to prescribe qualifications for membership. Also, in some instances the question of whether a particular group of present-day Indians are treaty Indians has not been authoritatively answered. The last two parts of this question are specifically answered by Judge Boldt so far as the parties to that case are concerned. For off-reservation fishing rights purposes a person cannot be a member of more than one tribe at a time. (Par. #17 of Exhibit A to Rulings on Post Decision Motions entered March 22, 1973.) A non-Indian does not acquire treaty off-reservation fishing rights through marriage but a treaty Indian may "be assisted by his or her spouse (whether or not possessing individual treaty rights), forebears, children, grandchildren and siblings." (Par. #20 of Exhibit A to Rulings on Post Decision Motions, supra.) However, some tribes prohibit the use of such non-member assistants.

Please be assured of the Secretary's continuing high regard for you and for the commitment you have to the people and resources of the State of Washington, and we will continue to work with you in behalf of the fish and wildlife resources of your State.

Sincerely yours,

John C. Whitaker

Under Secretary of the Interior

Copies to:

Senator Pete V. Domenici
Senator Henry M. Jackson
Senator Warren G. Magnuson
Senator Joseph M. Montoya
Representative Brock Adams
Representative Thomas Stephen Foley
Representative Julia Butler Hansen
Representative Floyd V. Hicks
Representative Manuel Lujan
Representative Lloyd Meeds
Representative Mike McCormack
Representative Joel Pritchard
Representative Harold Runnels

Honorable Daniel J. Evans
Governor of Washington

Honorable Bruce King
Governor of New Mexico

Mr. Ladd S. Gordon
President
Western Association of State
Game & Fish Commissioners
State Capitol
Santa Fe, New Mexico 87501

Mr. William R. Rollins, Jr.
President
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Office of Secretary
Post Office Box 569
Vancouver, Washington 98660

Mr. Hank Adams
Fisheries Management Coordinator
Puyallup Indian Tribe
2232 East 28th Street
Tacoma, Washington 98404

Mr. Chester F. Phelps
President, Commission
of Game and Inland Fisheries
Post Office Box 11104
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Mr. Ralph A. MacMullan
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Department of Natural Resources
Lansing, Michigan 48925

Director
Wisconsin Department of
Natural Resources
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Madison, Wisconsin 53701

New Mexico Department of
Game and Fish
State Capitol
Santa Fe, New Mexico 87501

Director / Carl N. Crouse
Assistant Directors / Ralph W. Larson
Ronald N. Andrews



Game Commission

Arthur S. Coffin, Yakima, Chairman
James R. Agen, LaCrosse
Elmer G. Gerken, Quincy
Claude Bekins, Seattle
Glenn Galbraith, Wellpinit
Frank L. Cassidy, Jr., Vancouver

INTERIOR DEPT.

DEPARTMENT OF GAME

600 North Capitol Way / Olympia, Washington 98504

APR 2 1974

8-14259
4183

March 26, 1974

SOLICITOR'S
DOCKET

Mr. R. Kahler Martinson, Director
Pacific Region, Bureau of
Sport Fisheries and Wildlife
U.S. Department of the Interior
1500 Plaza Building, N.E. Irving St.
Portland, Oregon 97208

Dear Kahler:

We have now received Judge Boldt's final restraining order and interim order concerning the Indian fisheries case brought by the United States government against the State of Washington. I am enclosing copies for your information.

As we discussed at our March 8th meeting, we have prepared a budget indicating the added expenses that will accrue to the Department of Game from a biological, enforcement and hatchery program for steelhead. They are as follows:

Cost of steelhead smolts	\$200,000
Manpower needs (includes travel expenses)	
21 Wildlife Agents (6 months = 10.5 man years)	179,000
10 biologists (10 man years)	156,000
1 Indian Affairs Coordinator	22,000
Helicopter & fixed wing aircraft (rentals)	20,000
	<u>\$577,000</u>
20% additional Operation and Administration costs	115,000
	<u>TOTAL \$692,000</u>

These costs do not include any additional hatchery production at this time, but are designed to pay for the steelhead presently being raised in state hatcheries that may be taken commercially by Indian fishermen under Judge Boldt's ruling. The additional Wildlife Agents' time will

11

Mr. R. Kahler Martinson
March 26, 1974
Page Two

be needed both for obtaining data on the Indian fisheries and for carrying out additional enforcement needs placed upon us by the Court during the Indian fishing season.

The biologists will be used on a year-round basis to determine sports take, spawning escapement, measure capabilities of the river to produce wild stocks, marking of hatchery fish and conducting other biological research that will be required.

One Indian Affairs Coordinator will be needed full time to meet with the various Tribes and to coordinate the overall program. The aircraft will be needed for spawning ground surveys and creel census work during the fishing season.

The above budget includes the original \$250,000 we had requested under the United States Supreme Court decision of November, 1973.

As we discussed in our meeting, I strongly feel that the Washington State Game Department must continue its role in direct management of the steelhead resource. If it is to be properly managed, responsibility should not be split between the various Indian Tribes and the Department of Game as it pertains to the production and planting of steelhead.

The present biological information of this Department indicates strongly that with artificial production of steelhead in a river there are definite limitations as to the number that can be planted to produce the most significant return. Additional plants add few fish to the fishery. The key to maximum survival is, of course, dependent upon the size and condition of the smolts, timing of the plant and conditions of the water when planted.

If more than one agency is attempting to carry out a hatchery program for steelhead on any river system, it could easily result in a serious drop of both hatchery and wild fish returning to the river. I know of no competent fish biologist who would disagree with this concept.

ST-2

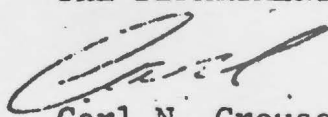
U.S. FISH & WILDLIFE SERVICE

Mr. R. Kahler Martinson
March 26, 1974
Page Three

We have taken eggs for our 1975 steelhead program and will be proceeding with hatchery production for that year. If funds are available from the federal government for us to maintain this level of productivity we will continue our program. However, it will be necessary to have these funds available for expenditure by not later than July 1, 1974 if the full program is to be continued.

Very truly yours,

THE DEPARTMENT OF GAME



Carl N. Crouse, Director

CNC:mm

Enclosure

cc: Washington Congressional
Delegation
Office of the Governor
Hon. Secretary Rogers C. B. Morton ✓
Mr. Lynn A. Greenwalt
Chairman and Members,
State Game Commission





Director / Carl N. Crouse

Assistant Directors / Ralph W. Larson
Ronald N. Andrews

Game Commission

Arthur S. Coffin, Yakima, Chairman
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Elmer G. Gerken, Quincy
Claude Beckins, Seattle
Glenn Galbraith, Wellpinit
Frank L. Cassidy, Jr., Vancouver

DEPARTMENT OF GAME

600 North Capitol Way / Olympia, Washington 98504

March 26, 1974

Honorable Warren G. Magnuson, USS
Senate Office Building
Washington, D. C. 20510

Dear Senator Magnuson:

Enclosed is a copy of a letter to the Department of the Interior concerning proposed funding to the Washington Department of Game for the production and management of steelhead. The total request for Fiscal 1975 is \$692,000 which does include the \$250,000 requested in my letter of January 16, 1974, following the United States Supreme Court decision.

Judge Boldt's decision has gone far beyond the United States Supreme Court decision on Indian commercial fishing and has put substantial additional burdens on this Department in the management of steelhead.

At the present time we are experiencing a drop in steelhead punch card and sports fishing license sales, which I feel can be attributed directly to the rather limited Indian commercial fishing this year. This drop was 10% from 1973 for the comparative months of January and February. Our present estimate for next year is that the loss of revenue to the Department for the management of steelhead will be in the range of 30% or more.

The present steelhead production facilities operated by this Department are probably the best in the nation and have primarily been constructed with steelhead fishermen's license monies. It will be necessary for this Department to make some serious reduction in its steelhead stocking program and other management capabilities if an additional source of funds is not available to continue hatchery production and other on-going work.



Senator Magnuson
March 26, 1974
Page Two

At the present time, I cannot overemphasize the intense feeling of steelhead fishermen in this state as it pertains to their license money being used to supplement a commercial Indian net season for steelhead. It is likewise my strong feeling that this should not properly be done and that this program and other additional expenses related to Judge Boldt's decision should be borne by the federal government as it was because of the commercialization of this natural and supplemental resource that the Indian people have superior rights to this type of fishery.

I do feel that if the federal government can respond immediately to this request for funds, it would not only allow our steelhead program to continue but it would do much to settle the considerable public emotion created by Judge Boldt's decision.

It would be my feeling that such a program should be set up immediately and funds should go to the Department of the Interior and be allocated to the Department of Game through the Fish and Wildlife Service. This could be handled as 100% funds under the same administrative procedures as the present anadromous fish funds and managed without additional administrative costs for this new program.

It is evident from Judge Boldt's injunction and other orders, enclosed for your information, that to carry out the obligations placed on this Department by the Court very substantial additional costs will occur. We will, by this decision, be working closely and individually with the fourteen plaintiff Tribes as well as several others within the case area.

I would be available to answer any questions you may have of myself or members of the Department and will be available to come to Washington, D. C. to testify on the need of this program, if desired.

Very truly yours,

THE DEPARTMENT OF GAME


Carl N. Crouse, Director

CNC:arb
Enclosures

cc: Washington Congressional Delegation
Office of the Governor
Hon. Rogers C. B. Morton
Mr. Lynn A. Greenwalt
Chairman and Members,
State Game Commission



United States Department of Justice

SP:lf

UNITED STATES ATTORNEY

WESTERN DISTRICT OF WASHINGTON
UNITED STATES COURT HOUSE
SEATTLE, WASHINGTON 98104

October 4, 1973

Mr. Kahler Martinson
Regional Director
Bureau of Sport Fisheries
and Wildlife
P. O. Box 3737
Portland, Oregon 97208

Dear Mr. Martinson:

I want to express to you my deep appreciation for the very fine and extensive work which James L. Heckman, Program Manager, Northwest Fisheries Program, Tumwater, Washington, has performed in connection with United States v. Washington, the major Indian fishing rights case which our office is currently handling before the U. S. District Court for the Western District of Washington. Both Stuart Pierson of my office and George Dysart of the Interior Solicitor's Office have repeatedly informed me of Mr. Heckman's work both in preparation for the trial and as a witness in the trial itself. They have also mentioned the fine support work of members of his staff.

Mr. Heckman played a major roll in the preparation of the extensive Joint Biological Statement which is one of the key exhibits in the case. He and his staff also prepared numerous other map and chart exhibits which were indispensable to the presentation of the Government's case. He furnished invaluable advice and assistance to the Government attorneys in the analysis of the State biologists' testimony and the preparation of cross-examination thereon and he offered vital testimony on behalf of the Government and the Indian tribes. He and his staff put in many hours of evening and weekend work in review and preparation of materials and in advising and conferring with the Government and tribal attorneys.

While final arguments have not yet been submitted to the court, the basic evidentiary submission is now complete.

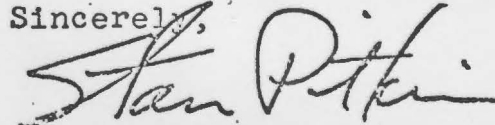
Mr. Kahler Martinson

I think you will be interested in the following remarks of the court made at the conclusion of the trial phase:

"It seems likely to me that no case dealing with Indian rights anywhere in the United States has ever been more thoroughly researched in depth by qualified people in every respect, from the anthropological point of view, the fisheries point of view, in short, in every area."

Our attorneys thoroughly concur in that statement and from the fisheries point of view, at least so far as the Plaintiffs' case is concerned, the credit for that goes to Mr. Heckman and his staff.

Sincerely,



STAN PITKIN
United States Attorney

Enclosure

cc: Director, Fish and
Wildlife Service
Washington, D. C.





United States Department of the Interior

OFFICE OF THE SOLICITOR
PORTLAND REGION, 1002 N. E. HOLLADAY ST.
P. O. Box 3621, Portland, Oregon 97208

JUN 27 1974

June 21, 1974

SOLICITOR'S
DOCKET

Memorandum

To: Solicitor

From: Office of the Regional Solicitor, Portland

Subject: Possible impairment of Indian treaty fishing rights
by United States Government

We have reached an impasse situation within the Executive Branch over the proper protection of the Indian treaty fishing rights as decreed by Judge Boldt in United States v. Washington. As a result the Indians may be deprived of some of the fruits of their victory in that case. This deprivation would come about because of the failure of the United States Commissioners on the International Pacific Salmon Fisheries Commission to apply the regulatory standard for restricting Indian treaty fishing which the United States successfully insisted must govern any state attempts to restrict such fishing. The matter comes up for a judicial decision by Judge Boldt on June 28. We need a clarification of federal position by that date.

Judge Boldt has held that the Indians' treaty-secured right to take fish may be restricted only to the extent necessary for preservation of the fish resource and that the Indians have a right to take up to 50 percent of the harvestable portion of each run. If necessary to achieve this result, the regulatory authorities may regulate the treaty Indian fishery less restrictively than they regulate the non-treaty fisheries.

These principles are equally applicable to regulation of Indians whether the regulation is by the federal or state authorities. The Indian treaties were with the United States and the obligations to the Indians under those treaties are the same whether this implementation is undertaken directly by the United States or by state governments acting in effect as agents of the United States. The United States Commissioners on International regulatory commissions are just as obligated to respect the Indian rights as are state regulatory bodies.

URGENT - POLICY DETERMINATION REQUIRED BY JUNE 28

Regulations of the International Pacific Salmon Fisheries Commission for the northern Puget Sound area become effective June 23 (Attachment 1). (These are implemented in U. S. waters by regulations of the Washington Department of Fisheries conforming to the International Commission's regulations.) These regulations are more stringent than those which U. S. biologists believe are "necessary for conservation" as required under the Boldt decision. They are designed to assure uniformity of fishing practices without regard to special Indian rights.

It has consistently been the position of the United States that the International fisheries treaties are not to be applied so as to restrict or impair the prior Indian treaty rights any more than is absolutely necessary to carry out our obligations under the latter treaties. Repeals or modifications of Indian treaties by later statutes or treaties with other parties are not to be implied except in case of irreconcilable conflict. Menominee Tribe v. United States, 391 U.S. 404, 413 (1968); United States v. Payne, 264 U.S. 446, 448 (1924); United States v. Lee Yen Tai, 185 U.S. 213, 221 (1902); Whitney v. Robertson, 124 U.S. 190, 194 (1888).

Commission
The International fisheries treaties with Canada (Attachments 2a and 2b) are concerned with (1) restoration and protection of the fish runs, (2) equal allocation of the harvestable portion of the runs between the two countries. Those treaties are not concerned with how or by whom either country's share of the resource is harvested. The means by which the treaty objectives are met are left open. Such means can be provided directly by the International Commission adopting detailed regulations, or by each country regulating its own fishery within more general limitations so as to meet those two treaty commitments. The Commission cannot adopt any regulation without the approval of the Commissioners from each country (Art. VI of Attachment 2a).

We are told that the Canadian Commissioners have objected to any Commission recognition of special U. S. Indian rights because of the possible effect upon Canada's dealings with its own Indians.^{1/} The position of the Interior and Justice Departments has been that this is Canada's problem and is no excuse for the United States Commissioners not insisting upon protection of U. S. Indian rights--either directly by regulations of the International Commission or by that Commission allowing the United States to enact domestic regulations consistent with the International determination of each country's

^{1/} The Canadian Indians have no treaties, however; in fact Canada does make special provisions for Canadian Indians, but that fishery occurs after the fish have passed out of Convention waters so the International Commission does not attempt to control the time or manner of such fishing.

harvestable quota and protection of specific runs.^{2/} However, the United States Commissioners do not favor this approach and neither they nor their supervisory agencies (Department of State and Department of Commerce) have insisted upon it.

On November 29, 1972, Ambassador McKernan, who was then Special Assistant to the Secretary of State for fisheries matters, acting as a result of inter-agency discussions initiated by this Department, approved a statement of principles to govern the relationship between the United States Commissioners' obligations under the International treaty and their obligations under the Indian treaties (see Attachment 3). These principles are as follows:

1. Where fishing by Indians of the United States is affected by regulations approved by the United States as a participant on the Commission, the applicability and implementation of those regulations to persons or areas under the jurisdiction of the United States should be based upon a recognition of the special interest and treaty rights of the affected Indians.
2. The exercise of the rights of the Makah Indian Tribe to take fish at all of its usual and accustomed fishing places recognized and secured by the Neah Bay Treaty of January 31, 1855, 12 Stat. 539, should not be restricted or regulated by or with the approval of the Commissioners beyond the extent that the Commission finds necessary for conservation of the fish resource under its jurisdiction or for any equitable division of such resource with Canada that is required by international treaty.
3. The Commissioners in their dealings with Canada in matters affecting the rights secured to the Makah Tribe by said Treaty of 1855 should recognize and protect those rights. The U. S. Commissioners should fully support the

^{2/} At the present time the Makah Tribe has a gill net fleet of nine boats--with usually less than that number in actual operation. The Lummi and Swinomish Tribes have somewhat larger fleets. All three constitute only an insignificant portion of the total U. S. fishing fleet in Convention waters. Prior to Judge Boldt's decision the Washington Director of Fisheries--without objection from the International Commission--provided by regulation for additional Makah fishing time beyond that allowed under the International Commission regulations. This year, however, the Director, with the active encouragement of the National Marine Fisheries Service, has refused to follow this past practice, contending it would be in violation of our international obligation.

position of the U. S. Government with respect to Indian treaty fishing rights, and to seek regulations which will accord Indians the opportunity to take fish at their usual and accustomed places, by reasonable means feasible to them, a fair and equitable share of all the fish which the regulatory authorities permit to be taken.

Conversations which we and others have had with NOAA and State Department officials leave us with the disturbing impression that those agencies do not fully agree with the position the Executive Branch has taken and Judge Boldt has affirmed with respect to Indian treaty rights. They view it as essentially a position espoused by a few zealous Interior Department Indian advocates--one that hasn't yet been sustained by an appellate court, and one which NOAA or the U. S. Commissioners should not become too wedded to until compelled by a court to follow it.

But the position is the official position of the Executive Branch, developed jointly by the Departments charged with management of Indian affairs (Interior) and with determining positions on legal matters (Justice), and by representatives of the Executive Office of the President having the responsibilities in this field.

Clearly, unless the U. S. Commissioners on the International Commissions are given explicit directions that they are to insist upon the full protection of Indian treaty rights, those rights are not going to be protected. The U. S. Commissioners have clearly not insisted upon alternative forms of regulation that will enable the Indians to take their court-affirmed share of the U. S. allocation under the International treaty. They have yielded to Canadian desires rather than insisting upon protection of U. S. Indian rights.

At present Judge Boldt does not feel he can--in the present case--compel the State of Washington to refrain from enforcing the International Commission's regulations. But he has also indicated that he is not passing judgment upon how he would rule if the Indians were to bring suit against the United States officials for violating the Indian rights. The moral and political consequences to the Federal Government of provoking such a suit would be enormous and tragic.

The International treaty provides for an Advisory Committee to advise the Commissioners with respect to regulations. The composition of that Committee is not prescribed in the treaty but the Committee presently consists of representatives of various user interests in each country. The interests represented on the Committee differ between the two countries (see Attachments 4a-4d).

In 1970 the Indians and Interior requested that treaty Indians be represented on at least the United States section of the Advisory Committee. This was opposed, however, by the State Department and the matter was not pressed further at that time. Consequently, Indians with special treaty fishing rights lack even the formal and advisory voice that gill netters, purse seiners, trollers and other nontreaty user groups presently have. However, an official advisory role would mean little unless the U. S. Commissioners are committed to implementing the Indians treaty right as that right has been construed by the Federal Court.

The attached memorandum to the United States Attorney (Attachment 5) discusses some of the basic fallacies in the NOAA officials' views (Attachment 6) as to federal officers' obligations under the Indian treaties.

Both the National Marine Fisheries Service and the Coast Guard have sought to have the United States Attorney agree to a policy of direct federal arrest and prosecution of U. S. treaty Indians fishing under BIA-approved tribal regulations when contrary to the provisions of the International Commission regulation. To date the United States Attorney has declined to agree.

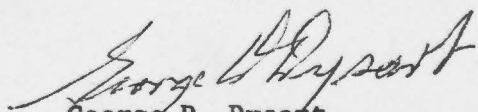
The State of Washington has raised the issue with Judge Boldt and a hearing on the matter is now set for June 28. (Attachments 7a-7d). At present the United States position on the state's request for an injunction or determination is not clearly developed (see Attachment 8). On the one hand we feel obligated not to oppose judicial confirmation of International Commission regulations which the United States representatives voted for and which the State Department has officially accepted on behalf of the United States.

On the other hand, it is our belief that the regulations do not give adequate recognition to the Indian treaty rights and that the U. S. Commissioners acted contrary to their obligations under the Indian treaties in assenting to making such regulations applicable to the treaty Indian fishery.

We need instructions prior to June 28 on what position the United States should take in the federal court proceeding of that date. A position in support of the International regulations (and hence in opposition to the Indian tribes) will obviously be more palatable if we can simultaneously assure the Indians that the United States Commissioners have been given clear instructions to insist upon full compliance with Judge Boldt's interpretation of the Indian treaty

right in any International regulations to which the Commissioners
give their assent.

For the Regional Solicitor



George D. Dysart
Assistant Regional Solicitor

Attachments

503-292-5709

cc:
Associate Solicitor, Indian Affairs
Roy Sampsel, Special Assistant to
the Secretary, Portland
United States Attorney, Seattle



52

Duphali [7/8/74]

CONSTITUTION AND BYLAWS
of the
INDIAN FISHERIES COMMISSION

PREAMBLE

We, the Indians of the Pacific Northwest, recognize that our fisheries are a basic and important natural resource and of vital concern to the Indians of this state and that the conservation of this resource is dependent upon effective and progressive management. We further believe that by unity of action we can best accomplish these things, not only for the benefit of our own people but for all of the people of the Pacific Northwest.

ARTICLE I - NAME

The name of this organization shall be the Indian Fisheries Commission.

ARTICLE II - MEMBERSHIP

Sec. 1. Membership shall be open to an Indian tribe in Washington who:

- a. Is recognized as a tribe by Federal Treaty, statute, agreement or regulation, and who
- b. Is organized and operating under a constitution and bylaws, and who
- c. Submits to the Commission a duly authorized Ordinance regulating the tribal fishery, and who
- d. Ratifies this Constitution and Bylaws by appropriate tribal resolution.

Sec. 2. Each member tribe may revise at any time the Ordinance submitted under Sec. 1. c. of this Article.

ARTICLE III - GOVERNING BODY

Sec. 1. The governing body shall be the Commission. The Commission shall consist of 5 members elected from each of the 5 treaty areas in Western Washington, i.e., Makah, Quinault, Medicine Creek, Point No Point and Point Elliot.

- Sec. 2. a. The member tribes in the treaty area shall organize into a Treaty Council. The Treaty Council members in each treaty area, who shall be qualified by resolution to act on behalf of their tribes, shall meet prior to the regular annual meeting of the Commission and elect the members to represent such treaty areas on the Commission. Such elections shall be held in accordance with rules and regulations prescribed by the Treaty Council members in each treaty area.
- b. The treaty area will present a resolution to the Commission notifying them of their duly elected and authorized representatives of said treaty area.
- MAKAH, FOR...

Sec. 3. The term of office of each Commissioner shall be three years. The first elected Commissioners shall have terms as follows: First Commissioner for each treaty area - three years; Second Commissioner for each treaty area - two years; Third Commissioner for each treaty area - one year. Each year thereafter one Commissioner for each treaty area will be elected for a term of three years.

Sec. 4. For the purpose of determining Treaty Council membership for the treaty area elections, only those tribes who meet Sec. 1. a., b. and d., Article III, and who are presently operating under tribal fishing regulations shall be deemed qualified to vote.

- Sec. 5. a. The Commission shall call at least annually a general meeting of all treaty areas of the Treaty Council to report in writing on the business transacted by the Commission.
- b. A special meeting of the Commission can be called by the Chairman at the request of the Commission member of any treaty area.

ARTICLE IV - OFFICERS

Sec. 1. The officers of the Commission shall be Chairman, Vice-Chairman, and shall be elected by the members of the Commission.

Sec. 2. The term of office of each officer shall be for one year and shall commence with the regular meeting, except the first elected officers shall serve until the first regular election.

ARTICLE V - VACANCIES and REMOVAL

Sec. 1. If a Commissioner or official shall die, resign, permanently leave the state or area which he represents, or shall be found guilty of a crime or misdemeanor involving dishonesty by any court, the Treaty Council shall declare the position vacant and shall elect a replacement for the balance of the unexpired term.

Sec. 2. Any Treaty Council may by a majority affirmative vote replace their Commission member for cause. Before any vote for replacement is taken on the matter, such member shall be given an opportunity to answer any and all charges at a designated Treaty Council meeting; the decision of the Treaty Council shall be final.

ARTICLE VI - DUTIES OF OFFICERS

Sec. 1. The chairman shall preside over all meetings of the Commission, shall perform all duties of a Chairman and exercise any authority delegated to him by the Commission, or Regional Board. He shall vote in all matters.

Sec. 2. The Vice-Chairman shall assist the Chairman when called upon to do so and in the absence of the Chairman he shall preside. When presiding he shall have all the rights, privileges, and duties as well as the responsibilities of the Chairman.

Sec. 3. The duties of the officers and any appointive committees or officers may be further defined by appropriate resolution of the Commission.

ARTICLE VII - MEETINGS

- Sec. 1. a. The conduct and procedure of the meetings may be further defined by appropriate resolution of the Commission.
- b. A quorum shall consist of 3 or more Commissioners.

ARTICLE VIII - POWERS OF THE COMMISSION

Sec. 1. The Commission shall have the following powers:

- a. Formulate a broad general fisheries program designed to promote and coordinate the conservation practices of the members.
- b. Request technical advice and/or assistance from any source whatever for the purpose of assisting Indian fisheries and to consult with any and all individuals, organizations, institutions, and governments (tribal, local, state, federal and international) on matters pertaining to fisheries.
- c. To render any assistance within the authority of the Commission to any tribe, requesting such assistance.
- d. To levy dues on the member tribes, subject to the unanimous approval of the full membership of the Treaty Council.
- e. To accept funds from state, federal, private foundations or other sources for operations, when not in conflict with funding efforts of individual tribes.
- f. To provide public information.

Sec. 2. Any and all rights and powers vested in the member tribes shall not be abridged by this Constitution.

ARTICLE IX - AMENDMENTS

This Constitution and Bylaws may be amended by majority vote of the member tribes.

ARTICLE X - RATIFICATION

This Constitution and Bylaws shall be in full force and effect when ratified by all member tribes. Passed this 8 day of July 1974, at the regular council meeting held on July 8, 1974.

Signed: Larry G. Kirley



Jim - see you at 2:30 pm

MAM -
10:00 am
6-11-74

MASON D. MORISSET
ATTORNEY AT LAW

ZIONTZ, PIRTLE, MORISSET & ERNSTOFF
3101 SEATTLE-FIRST NATIONAL BANK BLDG.
SEATTLE, WASHINGTON 98154

623-1255

ALVIN J. ZIONTZ
ROBERT L. PIRTLE
MASON D. MORISSET
BARRY D. ERNSTOFF
STEVEN H. CHESTNUT
RUSSELL W. BUSCH

ZIONTZ, PIRTLE, MORISSET & ERNSTOFF
ATTORNEYS AT LAW
3101 SEATTLE-FIRST NATIONAL BANK BUILDING
SEATTLE, WASHINGTON 98154

July 11, 1974

Jim Spaeth

Duplicate

AREA CODE 206
623-1255

Mr. Leonard Garment
Mr. Brad Patterson
Advisors to The President
The White House
Washington, D.C.

Gentlemen:

This letter is written at the request of the Makah Indian Tribe and the Lummi Indian Tribe concerning the critical status of fishing rights of Western Washington Indians under their treaties with the United States Government. It is intended as a petition and request for action from the White House in reconciling opposing views of different departments of the Executive Branch.

As you are undoubtedly aware, in the mid-1850's, the United States Government signed treaties with Western Washington Indian tribes in which the Indians reserved the right to fish "in common with citizens of the territory at usual and accustomed places and stations."

It has been the consistent position of the Indian tribes that these treaties are binding and accord them special rights with regard to fishing not enjoyed by citizens generally. There has been, until recently, general concurrence in this view by agencies of the United States Government as will be more thoroughly outlined below.

The Indian position was recently upheld by the Federal Court for the Western District of Washington in United States vs. Washington, (Cause No. 9213). There it was held, on February 12, 1974, that the Indian treaties were still binding law and that the language quoted above guaranteed the Indians' right to 50 per cent of all fish harvested at usual and accustomed places. In that litigation, brought by the United States on behalf of the Indian tribes, the government's position was supportive of Indian treaty rights.

Current events, however, indicate that not all departments and agencies of the United States Government are meeting the obligations imposed by the Indian treaties. In fact, it appears that the court's decision in the United States vs. Washington is being effectively negated by the actions of Departments other than Interior.

As you also are undoubtedly aware, fishing in major portions of waters adjoining the State of Washington is governed during critical



Mr. Leonard Garment
Mr. Brad Patterson
July 11, 1974
Page 2

times of the year by regulations either promulgated or suggested by the International Pacific Salmon Fisheries Commission pursuant to the Sockeye Convention of 1930. Although the court's decision in the United States vs. Washington makes it clear what the obligation of the United States Government is as to Indian fishing rights, the regulations promulgated by the State of Washington pursuant to a directive from the International Commission contain no recognition of Indian treaty fishing rights and allow no special seasons or privileges for Western Washington tribes. The regulations thus fail to insure a proper share of the harvest pursuant to the court's decision. Our information indicates that this result is due to the failure of the United States Government, specifically the Department of State and the Department of Commerce, to properly instruct the United States Commissioners to the International Salmon Commission as to their duties under the treaties with the Indians and the decision in the United States vs. Washington.

A short chronological narrative will serve to indicate more fully the nature of the problem.

1. On January 28, 1971, in response to problems encountered by the Makah Tribe, the Under Secretary of the Interior, Fred J. Russell, wrote to the Secretary of State stating the position of the Department of the Interior with regard to Indian fishing rights as follows:(Ex. 1)

"We do not believe that proper recognition of the Indian treaty rights by the International Commission is in any way in conflict with the objectives of the international conventions or with the obligations of the United States thereunder. So long as the overall conservation objectives are not imperiled and the proper allocation of the resource between the respective countries is maintained, the international conventions are not concerned with what particular group of citizens gets what particular share of a country's entitlement to the common fish resource or generally speaking, what particular type of gear is used to effect the harvest. These are matters primarily for determination by the country involved."

2. On March 30, 1971, United States Department of Interior Solicitor, Mitchell Melich, wrote to Senator Jackson concerning the outcome of meetings held between the Department of Interior, the Department of State and Makah Tribe concerning the position of the United States Commissioners. (Ex. 2) That communication noted that differences had been worked out and that guidelines would be developed for the guidance of the United States Commissioners.

3. On May 10, 1971, Mr. Donald L. McKernan, Special Assistant to the Secretary of State for Fisheries and Wildlife, responded to Under Secretary Russell's letter of January 28, 1971, and stated in part:(Ex. 3)



Mr. Leonard Garment
Mr. Brad Patterson
July 11, 1974
Page 3

"The Department of State concurs with the Department of the Interior's reading of the applicable law pertaining to the fishing rights of Indians in the United States. We agree that the United States can properly uphold its treaty obligations under international agreements establishing the Commissions while at the same time recognizing the treaty rights of the Makahs and any other affected Indian tribes. Accordingly, the State Department supports the position that where Indian fishing is affected by regulations approved by the United States as a participant in an International Fishery Commission, those regulations or their implementation shall be based upon a recognition of the special interests and treaty rights of the affected Indians."

4. Subsequent to the above exchange of letters, guidelines and procedures for defining the relationship between the Makah Indian Tribe and the United States section of the International Pacific Salmon Fisheries Commission were worked out. (Ex. 4) Those guidelines and governing principles indicated that the special rights of Indian tribes must be recognized by the Federal Government. A letter from the Department of State indicating acceptance of these guidelines and procedures is attached as Exhibit 5.

5. On February 12, 1974, the court announced its decision in United States vs. Washington recognizing the superior right of Western Washington Indian tribes to fish at usual and accustomed places. Many of these places are waters in the Straits of Juan de Fuca and Straits of Georgia which are "convention waters" under the 1930 Salmon Convention and therefore subject to the "recommendations" of the International Commission.

6. On February 21, 1974, the International Pacific Salmon Fisheries Commission recommended to the United States Government that it adopt certain regulations governing waters which include many of the usual and accustomed places of the Makah and Lummi Tribes. (Ex. 6) These regulations did not recognize nor provide for Makah or Lummi treaty rights.

7. On June 12, 1974, the Washington State Department of Fisheries transmitted regulations enacting as state law the recommendations of the International Commission. No provisions for Indian treaty fishing rights were made. (Ex. 7)

Thus, although the Federal Court's decision reaffirms superior fishing rights in Western Washington Indian tribes pursuant to their treaties with the United States Government, in fact, no such rights are being recognized at the present time. Although the United States Department of Interior appears to be fully supportive of Indian rights, it

Mr. Leonard Garment
Mr. Brad Patterson
July 11, 1974
Page 4

appears that this position is being undermined by other agents and agencies of the United States Government, possibly the United States Commissioners to the International Salmon Commission and Agencies of the Department of Commerce.

The United States is entitled to three commissioners on the International Salmon Commission. Mr. Thor Tollefson, Director of the Washington State Department of Fisheries, is one member. Mr. Tollefson, of course, was a major defendant in the United States vs. Washington and thus in an adversary position to Northwest Indian tribes. It is our position that unless specifically directed by the United States Government as to his course of action with regard to Indian treaty fishing rights it will be difficult for him to take a position supportive of those rights.

A second member on the Commission is Mr. Don Johnson, regional director of the Seattle area National Marine Fisheries Service which is within NOAA and the Department of Commerce. It is our information that neither Mr. Johnson, NOAA nor the Department of Commerce are sympathetic to Indian rights and that, in fact, the position of those agencies is one of nonrecognition of the binding nature of the court's decision in United States vs. Washington. Given this situation, it is little wonder that the international regulation recommendations fail to recognize the Indian treaty rights.

For over three-and-a-half years Western Washington Indian tribes have waited patiently while the legal process in the United States vs. Washington took place. They have abstained from any acts which might violate state or international regulations in reliance on the government's assurances that their rights and position were being actively asserted in a court of law and that they should wait for the resolution of any problems in that court. Now that the court has reaffirmed their rights, they are understandably intolerant of continued blockage of the exercise of these rights. If international incidents or a confrontation between the tribes and their own government are to be avoided our government's position in support of its Indian treaties must be clarified and reaffirmed.

We therefore request as follows:

1. The United States Commissioners be instructed to request an immediate emergency meeting of the International Pacific Salmon Fisheries Commission.
2. At that meeting the United States Commissioners convey to the Commission as a whole that the current regulations violate United States domestic law with regard to Indian treaty rights and must be altered and amended.
3. The United States Commissioners present an alternate regulatory plan to the Commission which fully recognizes Indian rights as guaranteed



Mr. Leonard Garment
Mr. Brad Patterson
July 11, 1974
Page 5

by their treaties with the government as expounded by the recent decision of the Federal Court in United States vs. Washington.

We see no reason why this course of action cannot be taken successfully. There is no bar either legal or practical to the United States reducing the fishing times, areas or gear allowances of non-Indian fishermen to allow for any special rights of the Indian tribes. Our request in no way requires that any particular run or species of fish be endangered or that the United States' total share of the catch be increased.

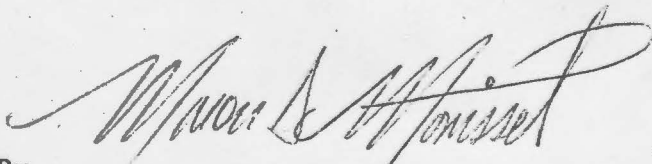
The current fishing season is now under way and every day's delay means lost fishing rights and revenue to the Indian tribes. Thus, immediate action is imperative.

Although this request and petition is made in behalf of the Makah Indian Tribe and Lummi Indian Tribe only, we are also informed that all Western Washington Indian tribes are vitally concerned in this problem and supportive of the position taken herein.

Thank you for your immediate consideration of this problem.

ZIONTZ, PIRTLE, MORISSET & ERNSTOFF

By


Mason D. Morisset
General Counsel for Makah Indian Tribe
and Lummi Indian Tribe

MDM/CT

cc: Senator Henry M. Jackson
Senator Warren G. Magnuson
Congressman Lloyd Meeds
Congressman Joel Pritchard





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

2. Asst. Dir. (E.D.)
3. J. J. [Signature]

JAN 28 1971

Dear Mr. Secretary:
XXXXXXXXXXXXXXXXXXXX

The Makah Indian Tribe, approximately 300 members, is located on a reservation at Neah Bay, Washington. This reservation was established pursuant to a treaty between the United States and the Makahs, January 31, 1855, 12 Stat. 939. The Makah Treaty was one of several made with Northwest Indians by Governor Isaac Stevens about that time. Each of the treaties had a provision which secured to said Indians, in common with all citizens of the United States, "the right of taking fish at all usual and accustomed grounds and stations * * *."

The Department of the Interior supports the Makahs' claim that their usual and accustomed fishing places exist on the Strait of Juan de Fuca and include waters now under the regulatory jurisdiction of the International Pacific Salmon Fisheries Commission established pursuant to a subsequent treaty and protocol with Canada. Historically the members of the Makah Indian Tribe were seafaring people who fished wide areas of the high seas and nearby inland salt waters. Fishing still constitutes a substantial part of the livelihood of the Indians on this geographically isolated reservation. In 1963 members of the tribe received loans from the Small Business Administration for the purchase of ten commercial fishing boats to enable them to more effectively participate in salt water commercial fishing activities.

Since at least the latter part of 1969 the tribe has been endeavoring to obtain greater recognition of its treaty fishing rights in the establishment of regulations by the International Pacific Salmon Fisheries Commission and by the State of Washington in waters under those entities respective jurisdictions. The Commission regulations are applicable to many of the tribal fishing grounds during certain portions of the year. State regulations are applicable during the remaining part of the year.

It is the position of the Department of the Interior that the International Fishing Conventions with Canada under which the

EXHIBIT 1



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International Pacific Salmon Fisheries Commission operates did not abrogate or impair the rights secured to the Makah and other Indian tribes by their earlier treaties with the United States, nor did the Sockeye Salmon Fishery Act of 1947 affect those rights. We recognize that to the extent there may be any irreconcilable conflict between the two groups of treaties, the International treaties being the more recent enactment would control. However, the Supreme Court of the United States has frequently said with respect to Indian treaties that "the intention to abrogate or modify a treaty is not to be lightly imputed to the Congress." Manzanilla Tribe v. United States, 391 U.S. 404, 413 (1968). Repeals by implication are not favored and a purpose "by statute to abrogate a treaty * * * must appear clearly and distinctly from the words used in the statute * * *." United States v. Lee Yen Tai, 135 U.S. 213, 221 (1902). Construction of a later statute to restrict the terms of an Indian treaty "is to be avoided, if possible." United States v. Payne, 264 U.S. 446, 449 (1924). When two statutes or treaties "relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either; but if the two are inconsistent, the one last in date will control the other, provided always that the stipulation of the treaty on the subject is self-executing." Whitney v. Robertson, 124 U.S. 190, 194 (1888). These principles would also be applicable to repeal or modification of a treaty with one party by a later treaty with a different party.

We do not believe that proper recognition of the Indian treaty rights by the International Commission is in any way in conflict with the objectives of the International Conventions or with the obligations of the United States thereunder. So long as the over-all conservation objectives are not imperiled and the proper allocation of the resource between the respective countries is maintained, the International Conventions are not concerned with what particular group of citizens gets what particular share of a country's entitlement to the common fish resource or generally speaking, what particular type of gear is used to effect that harvest. These are matters primarily for determination by the country involved.

The United States Government, acting through the Attorney General at the request of the Secretary of the Interior, recently submitted to a Federal District Court a list of principles and standards which

the United States believes must be applied to regulations affecting the treaty-secured fishing rights of United States Indian tribes. Those principles, as slightly reworded and adopted by the court, are set out as paragraph number one on pages two and three of the enclosed copy of the Judgment Decree in Schappy v. Smith and United States v. Oregon, 302 F. Supp. 899 (D.C. Ore. 1969). Accordingly, we believe that United States Commissioners to International Fisheries Commissions should be instructed that as a matter of the domestic law of the United States the treaty rights of United States Indian tribes must be protected when international regulations requiring the consent of the United States are promulgated. We do not believe that such an instruction would pose any problem with respect to the obligations of the United States under the International Conventions.

Because the interests of the Indian treaty fishery are separate and distinct from the interests of other commercial and sport fishermen, we also believe that the Indian interests should be separately represented on the Advisory Committee established pursuant to the International Conventions.

Our proposal concerns the procedure for assuring recognition of the Indian treaty right by the International Commission and not the actual regulations that should be adopted. The latter can be determined only after consideration by the United States Commissioners of all of the conservation and other data relevant to the drafting of specific regulations. Specifically we propose:

1. Separate representation of the Indian treaty fishery interest through membership on the Advisory Committees to the International Commissions in order that the affected Indian tribes may participate meaningfully in the rule making process.
2. Establishment of some sort of hearing or consultative procedure by which the treaty tribes can meet in the Pacific Northwest with both the staff advisors to the United States Commissioners and later with the Commissioners themselves to discuss their views on regulations that should apply to the Indian treaty fishery.
3. Assurance that the United States Commissioners are instructed that regulations applicable to the Indian treaty fishery conform to the principles declared by the court in Schappy v. Smith and United States v. Oregon, *supra*. This may be done either by having the United States Commissioners insist that any International Commission regulations to which the United States assents conform to these standards or by having the International Commission leave to

the United States (either directly or through the Washington State Department of Fisheries) the regulation of Indian treaty fishing so long as the total limitations of the Carroll fishery and the allocation as between the United States and Canada are maintained within the Commission's limits.

Sincerely yours,

(sgd) Fred J. Russell

Under Secretary of the Interior

Honorable William F. Rogers
Secretary of State
Washington, D.C. 20520

Enclosure

cc: Regional Solicitor, Portland (2)
Commissioner of Indian Affairs (2)





United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20510

MAR 30 1971

Honorable Henry M. Jackson
United States Senate
Washington, D. C. 20510

Dear Senator Jackson:

Your March 16, 1971, letter to Secretary Morton enclosed for consideration and report a March 9, 1971, letter which you had received from Mr. Mason D. Morisset of the Seattle law firm of Zions, Pirtle and Fuller. Mr. Morisset expressed concern about the involvement of the treaty fishing rights of the Makah Indian Tribe in the administration of certain conventions between the United States and Canada pertaining to the Pacific salmon and halibut fisheries.

On March 17, 1971, Deputy Solicitor Coulter held a conference on this subject and we are pleased to report the resolution of many of the differences that were believed to exist between the position of this Department and that of the Department of State. Mr. Morisset attended the conference, in company with Mr. Gene Parker of the Makah Tribe. Also participating were Assistant Regional Solicitor Dysart of our Portland office, the Assistant Solicitor for Indian Legal Activities, Messrs. Shawwell and Salisbury from the Office of Legal Adviser and Mr. Blow of the Office of the Special Assistant for Fisheries, Department of State. The Deputy Assistant Secretary for Public Land Management and a Staff Assistant to the Secretary of this Department, and two members of the staff of Representative Meads, were also present.

Representatives of the Department of State assured us of an early and generally favorable reply to Under Secretary Russell's letter of January 28, 1971, a copy of which was attached to Mr. Morisset's letter to you. We anticipate that a joint Interior-State Department position will be developed for the guidance of the United States Commissioners and their staff in carrying out their functions under the two conventions. The matter of representation of treaty Indians on the salmon fisheries convention advisory committee is under consideration in the Department of State, but

EXHIBIT 2



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we do not expect an immediate resolution of that question. We understand that a study of the mechanics as well as the advisability of enlarging the committee will be undertaken.

The meeting to be held on March 30, 1971, mentioned by Mr. Morisset, is not a meeting under either the salmon or halibut conventions, but involves reciprocal international rights under another agreement. However, we were assured that Ambassador McKeethan, the Special Assistant to the Secretary of State for Fisheries and Wildlife, would meet with representatives of the Makah Tribe in advance of the meeting with Canada.

We were generally encouraged by the March 17 meeting and we believe that Mr. Morisset and the Makahs shared our feeling.

Mr. Morisset's letter is herewith returned.

/S/ Mitchell Melish

Solicitor

Enclosure



DEPARTMENT OF STATE

Washington, D.C. 20520

(100-10177)

The Honorable
Rogers C.B. Morton
Secretary of the Interior
Department of the Interior
Washington, D.C. 20240

Dear Mr. Secretary:

The Secretary of State has asked me to respond to the letter dated January 28, 1971 from former Under Secretary of the Interior Fred J. Russell concerning protection of the interests of the Makah Indian Tribe. Specifically, the letter addressed itself to the effects of official actions of the International Pacific Salmon Fisheries Commission on these interests, and makes three proposals aimed at insuring that the rights of the Makah Indians under their treaty with the United States of January 21, 1855 (12 Stat. 939) are adequately protected.

The Department of State concurs with the Department of the Interior's reading of the applicable law pertaining to the fishing rights of Indians in the United States. We agree that the United States can properly uphold its treaty obligations under international agreements establishing the Commissions while at the same time recognizing the treaty rights of the Makahs and any other affected Indian tribes. Accordingly, the State Department supports the position that where Indian fishing is affected by regulations approved by the United States as a participant in an international fishery commission, those regulations or their implementation should be based upon a recognition of the special interests and treaty rights of the affected Indians. In this connection, it appears to the Department that the same principles would apply to United States participation in the International Pacific Halibut Commission.

The United States Supreme Court has held that where rights of Indian tribes to fish in their "usual and accustomed places" are protected by treaty, such as the 1855 treaty with the Makahs (12 Stat. 939), these rights may not be taken away through state action (United States v. Winans, 198 U.S. 371 (1904)). However, the Court has clearly stated that:



"...[T]he manner of fishing, the size of the take, the restriction of commercial fishing, and the like may be regulated by the State in the interest of conservation, provided the regulation meets appropriate standards and does not discriminate against the Indians." Puvallup Tribe v. Department of Game, 391 U.S. 392, 398 (1967).

The Supreme Court has not to date, however, precisely defined what constitutes "appropriate standards." It has stated generally that the state has the power to impose "restrictions of a purely regulatory nature concerning the time and manner of fishing outside the reservation as are necessary for the conservation of fish." (Tullee v. State of Washington, 315 U.S. 681 (1942)). In the recent Puvallup case, cited above, the Court remanded to the Supreme Court of Washington the issue of whether a prohibition on the use of set nets in fresh water streams was a reasonable and necessary conservation measure.

The United States District Court for the District of Oregon in the case of United States v. Oregon, 302 F. Supp. 699 (D.C. Oregon 1969), took steps to establish specific criteria for the application of the "reasonable and necessary" standard. While the State Department makes no judgment on the validity of these criteria, it should be pointed out that this decision was handed down at the trial level and has not been passed upon either by the United States Court of Appeals or by the Supreme Court. Thus, it is not a binding precedent on other courts within the federal jurisprudential system and cannot be said to represent domestic law on the issue of protection of Indian treaty fishing rights.

Concerning proposal number 3 in Mr. Russell's letter, then, it is our view that it would be premature for the United States Government to instruct its Commissioners in the specific principles established in that decision. However, the Department of State supports the basic concept of instructing the U.S. Commissioners to take into consideration the special treaty fishing rights of affected Indian tribes in deciding what action to take on proposals for recommendations of the international



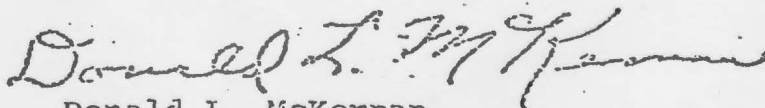
commissions. In accordance with this position, the Department invites the Department of the Interior to join with it in drafting guidelines for the Commissioners' use, consistent with prevailing law.

Concerning Mr. Russell's second proposal, we believe that this idea can and should be implemented as soon as possible. This recommendation refers to the development of a hearing or consultative procedure involving the Makah Tribe and the United States Commissioners. The State Department recommends that the leaders of the Makah Tribe be allowed to meet with the United States Commissioners at a set time, annually or more frequently, before the Commissioners are required to take action on proposed recommendations. In this way, they may make known to the Commissioners their specific concerns and how they believe these concerns may best be dealt with.

With respect to recommendation 1, we believe that as long as the United States Commissioners are properly instructed, along the lines indicated above, to recognize the special interests of Indian fishermen, in the context of protecting the interests of all U.S. fishermen, it is not necessary to recommend that a special seat be provided for the Makah Tribe, or any other Indian tribe, on the Advisory Committee. Proper application of the guidelines devised for the use of the Commissioners should be sufficient to accomplish the end sought.

The Department is appreciative of the interest and study which you have given to this matter, and if we can be of further assistance please do not hesitate to call on us.

Sincerely,



Donald L. McKernan
Coordinator for Ocean Affairs
and Special Assistant to the
Secretary for Fisheries and
Wildlife



GUIDELINES AND PROCEDURES FOR DEFINING THE RELATIONSHIP
BETWEEN THE MAKAH INDIAN TRIBE AND THE UNITED STATES
SECTION OF THE INTERNATIONAL PACIFIC SALMON FISHERIES
COMMISSION WITH RESPECT TO REGULATIONS AFFECTING THE
MAKAH TREATY RIGHTS IN THE SALT WATER SALMON FISHERY

RECEIVED
JUN 27 1972

70012, PIERCE, FENNER & SMITH

INTRODUCTION

The following guidelines and procedures are intended to facilitate coordination between the Makah Tribe and the United States Section (hereinafter called "Commissioners") of the International Pacific Salmon Fisheries Commission (hereinafter called "the Commission") with respect to the conduct of the Makah salt water salmon fishery, in IPSFC convention waters and at times when the Commission is exercising jurisdiction therein. The objective is to provide an orderly procedure for protecting the fishing rights secured to the Makah Tribe by their treaty of 1855 with the United States Government, while carrying out the obligations of the United States to Canada under the Sockeye Salmon Convention and Pink Salmon Protocol.

A. GOVERNING PRINCIPLES

1. Where fishing by Indians of the United States is affected by regulations approved by the United States as a participant on the Commission, the applicability and implementation of those regulations to persons or areas under the jurisdiction of the United States should be based upon a recognition of the special interests and treaty rights of the affected Indians.



2. The exercise of the rights of the Makah Indian Tribe to take fish at all of its usual and accustomed fishing places recognized and secured by the Neah Bay Treaty of January 31, 1855, 12 Stat. 539, should not be restricted or regulated by or with the approval of the Commissioners beyond the extent that the Commission finds necessary for conservation of the fish resource under its jurisdiction or for any equitable division of such resource with Canada that is required by international treaty.
3. The Commissioners in their dealings with Canada in matters affecting the rights secured to the Makah Tribe by said Treaty of 1855 should recognize and protect those rights. The U.S. Commissioners should fully support the position of the U.S. Government with respect to Indian treaty fishing rights, and to seek regulations which will accord Indians the opportunity to take fish at their usual and accustomed places, by reasonable means feasible to them, a fair and equitable share of all the fish which the regulatory authorities permit to be taken.

B. RESPONSIBILITIES OF INTERESTED PARTIES

1. Responsibilities of the Makah Tribe

- a. The Tribe shall designate in writing a consulting team of not to exceed three members to represent the Tribe in consultations with the Commissioners and others involved in fishery regulations affecting the Makah Tribe.



- b. The Tribe may submit to the Commissioners recommendations relative to activities of the Tribe and its members for the year's fishing season.
- c. Tribal regulations - Any regulations adopted by the Makah Tribe relating to the salt water treaty fishing activity of its members shall be consistent with conservation needs. Such regulations may involve such essential points as the time and place of fishing, the net and mesh sizes per run of fish, identification of enrolled tribal members entitled to exercise treaty rights, provisions permitting rapid changes in the regulations when necessitated by timing and characteristics of specific runs, penalty provisions for violations, and a procedure for notification to appropriate authorities of the regulations and any changes therein.
- d. Before enacting any tribal regulations pertaining to the off-reservation exercise of tribal fishing rights the Makah Tribe will first consult with and obtain the views of a Fisheries Advisory Group consisting of biologists from such state or federal fisheries management agencies as agree to participate thereon together with designated tribal and Bureau of Indian Affairs representatives. The Bureau of Indian Affairs representative shall act as coordinator of the Group and provide administrative support for it.

e. The Tribe shall not submit any such regulation pertaining to a fishery that is subject to the jurisdiction of the Commission to BIA for review or approval pursuant to Article VI of the Constitution and Bylaws of the Makah Tribe without first having sought and considered the views of the Commissioners on those aspects of the regulations which affect the Commissioners' responsibilities under the international treaty. The Tribe shall transmit a copy of any such regulations to the Commissioners prior or simultaneously to submitting them to the Superintendent, Western Washington Agency, for review or approval.

2. Responsibilities of the United States Commissioners

- a. The Commissioners will confer annually with the tribal representatives concerning the Commission's proposed fishing regulations and Makah proposed Regulations after the Commission publishes its preliminary proposed regulatory recommendations and before the Commission finalizes its regulatory recommendations for the ensuing season.
- b. The Commissioners will consider recommendations of the Makah Tribe to the maximum extent consistent with their national obligations.
- c. The Commissioners will take into consideration the special treaty fishing rights of the affected Indian tribes in deciding what action to take on proposals or recommendations of the Commission and will use their best efforts to see actions of the Commission do not adversely restrict



the authority of regulatory agencies in the United States to recognize the treaty rights of Indian tribes in accordance with these guidelines. The Commissioners shall operate on the premise that the United States will assure the Commission that exercise of Indian treaty fishing rights in the United States will be so regulated as not to violate the overall divisions of fish between the United States and Canada pursuant to the International Convention and Protocol or the obligations of the United States thereunder. If, following discussions between the Tribe and the Commissioners, the two parties are unable to agree on restrictions applicable to the Makah fishermen, the Commissioners shall advise the Portland Area Director, Bureau of Indian Affairs, in writing of the restrictions which they determine must be applicable to such fishermen and of the conservation reasons that necessitate such restrictions.

- d. During the fishing season the Commissioners shall endeavor to keep the Tribe informed, through the Fisheries Advisory Group, of changing conditions that warrant adjustments in regulations affecting the Makah fishery. In giving their assent to any such adjustments the Commissioners shall act in conformity with the foregoing principles and procedures to the extent feasible.

3. Responsibilities of the Washington Department of Fisheries

The Washington Department of Fisheries shall, consistent with any obligations imposed upon it by the United States pursuant to the International Convention and Protocol, adopt appropriate regulations to carry out the governing principles prescribed herein.

Enclosure I



February 29, 1972

MEMORANDUM REGARDING ESTABLISHMENT OF FISHERIES ADVISORY
GROUP TO THE MAKAH INDIAN TRIBE

The purpose of this memorandum is to develop a standing procedure designed to supply technical advice of a biological nature to aid the Makah Indian Tribe in developing seasonal fishing regulations and to provide a means of evaluating Makah regulations and relating them to those developed by the International Pacific Salmon Fisheries Commission and the Washington State Department of Fisheries.

1. A Fisheries Advisory Group is hereby established to carry out the activities described below. The Group shall consist of a biologist from each of the Bureau of Sport Fisheries and Wildlife, the National Marine Fisheries Services, and the Washington State Department of Fisheries, as designated by their respective Directors or Regional Directors, and a representative of the Area Director, Bureau of Indian Affairs who shall act as coordinator of the Group. Administrative services for the Advisory Group will be furnished by the Area Office, Bureau of Indian Affairs.

2. Activities of the Fisheries Advisory Group:

(a) To meet with members of the Makah Fishing Committee upon the invitation of the Coordinator to discuss proposed fishing regulations.

The Group will review conditions affecting the Makah salt water salmon fishery and advise the Makah Tribal Council with respect to the conditions affecting the fishery and the conservation considerations applicable to proposed tribal, IPSFC, and state fishing



regulations prior to the adoption of such regulations. In the case of the annual regulations recommended by the IPSFC, the group shall review the preliminary proposals and shall meet with the members of the Makah Fishing Committee within ten days after the proposals are published.

(b) To assist the Makah Tribe in presenting proposals for seasonal fishing regulations to the United States Commissioners of the International Pacific Salmon Fisheries Committee between the time that the Commission announces its preliminary seasonal proposals and the time they adopt the final seasonal proposals.

(c) To assist the Tribe in presenting proposals for fishing regulations to the Washington Department of Fisheries during such times as the state has jurisdiction over waters in which the Tribe has treaty fishing rights.

(d) To advise the Makah Tribe on proposed seasonal and other changes in regulations during fishing seasons.

Makah Tribal Chairman

Area Director, Bureau of
Indian Affairs

Director, Washington, Department
of Fisheries

Regional Director, National
Marine Fishery Services

Regional Director, Bureau of
Sport Fishery & Wildlife

Enclosure 2

NOTE: This memorandum was approved by the Makah Tribe May 3, 1972, and is being circulated to other parties for signatures.

NOV 30 1972
ASSISTANT SECRETARY

DEPARTMENT OF STATE
Washington, D.C. 20520

1. *Georgetown (E.A.)*
November 29, 1972
2. *Land Services*

The Honorable
Harrison Loesch
Assistant Secretary for Public
Land Management
Department of the Interior
Washington, D.C. 20240

RECEIVED
JUN 27 1974

BUREAU OF INDIAN AFFAIRS
RECEIVED
DEC 4 1972
PORTLAND

Dear Mr. Loesch:

ZIONIZ, PIRPLE, MONROE & ERNSTOFF

I refer to Acting Assistant Secretary Rogers' letter of July 24, 1972 which requested approval of the Department of State of proposed Guidelines and Procedures for defining the relationship between the Makah Indian Tribe and the United States Commissioners on the International Pacific Salmon Fisheries Commission with respect to regulations which affect the tribe's treaty fishing rights. Approval of a separate memorandum establishing a Fisheries Advisory Group to the Makah Tribe as an adjunct to the consultative procedure was also requested.

With one exception the proposed Guidelines and Procedures have the approval of the Department of State. That exception relates to inclusion in the document of paragraph B(3) which has to do with responsibilities of the Washington Department of Fisheries. A question has been raised as to the propriety of including in this document, which relates primarily to responsibilities of the Makah Tribe and of United States Commissioners, this directive to the Washington Department of Fisheries. We believe this objection is well taken and accordingly propose the deletion of paragraph B(3) from the Guidelines and Procedures.

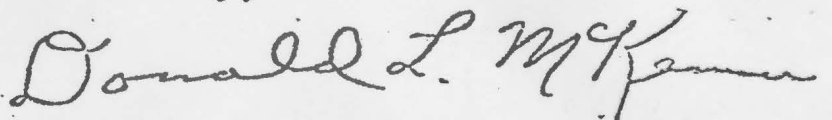
We have no objection to the memorandum regarding the establishing of a Fisheries Advisory Group to the Makah Tribe and indeed consider that the establishment of such a group would be helpful. On the other hand it appears that arrangements in this regard would be primarily for the decision of other agencies involved.

EXHIBIT 5

By copy of this letter the United States Commissioners on the International Pacific Salmon Fisheries Commission are being informed in order that they may take proper cognizance of the Guidelines and Procedures in the performance of their duties.

I regret the delay in forwarding this reply, which has been occasioned by the necessity to resolve certain new questions which have arisen over the past several months.

Sincerely,



Donald L. McKernan
Coordinator of Ocean Affairs
and Special Assistant
to the Secretary

cc: United States Commissioners IPSFC
Messrs: Tollefson
Gilbert
Johnson



THOR TOLLEFSON, CHAIRMAN
R.F. GENERAL ADMINISTRATION BUILDING
OLYMPIA, WASHINGTON

W. R. HOURSTON, VICE-CHAIRMAN
DEPARTMENT OF THE ENVIRONMENT
VANCOUVER, B.C.

RICHARD NELSON
BOX 2204
VANCOUVER, B.C.

DONALD R. JOHNSON
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
SEATTLE, WASHINGTON

RODERICK HAIG-BROWN
2150 CAMPBELL RIVER ROAD
CAMPBELL RIVER, B.C.

DE WITT GILBERT
2852-44TH AVENUE WEST
SEATTLE, WASHINGTON

INTERNATIONAL PACIFIC SALMON FISHERIES COMMISSION

ESTABLISHED BY CONVENTION
BETWEEN CANADA
AND THE UNITED STATES
FOR THE PROTECTION
PRESERVATION AND EXTENSION OF
SOCKEYE AND PINK SALMON FISHERIES
OF THE FRASER RIVER SYSTEM

A.C. COOPER
DIRECTOR

OFFICE AND LABORATORY

P.O. BOX 30
NEW WESTMINSTER, B.C.

TELEPHONE
521-3771

February 21, 1974

Mr. Burdick H. Brittin
Acting Coordinator of Ocean Affairs and
Special Assistant to the Secretary of State
Department of State
Washington, D.C. 20520

Dear Mr. Brittin:

The International Pacific Salmon Fisheries Commission appointed pursuant to the Convention between Canada and the United States of America for the protection, preservation and extension of the Sockeye Salmon Fisheries of the Fraser River System, signed at Washington on the 26th day of May, 1930, as amended by the Pink Salmon Protocol signed at Ottawa on the 28th day of December, 1956, hereby recommends to the United States Government that regulations to the following effect, in the interests of such fisheries, be adopted for the year 1974, and that an approved copy of said regulations be forwarded to the Director of Fisheries of the State of Washington for implementation by virtue of authority in him vested by Section 6 of Chapter 112 of the Laws of the State of Washington of 1949, namely:

1. No person shall fish for sockeye or pink salmon by means of nets in the Convention waters of the United States of America from the 23rd day of June, 1974 to the 13th day of July, 1974, both dates inclusive.

2. (1) No person shall fish for sockeye or pink salmon in the Convention waters of the United States of America lying westerly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia with purse seines:

(a) From the 14th day of July, 1974 to the 20th day of July, 1974, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday and Tuesday; and

(b) From the 21st day of July, 1974 to the 10th day of August, 1974, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday, Tuesday and Wednesday of each week; and

EXHIBIT 6

(c) From the 11th day of August, 1974 to the 7th day of September, 1974, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday, Tuesday and Wednesday of each week.

(2) No person shall fish for sockeye or pink salmon in the waters described in subsection (1) of this section with gill nets:

(a) From the 14th day of July, 1974 to the 20th day of July, 1974, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday and from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday; and

(b) From the 21st day of July, 1974 to the 27th day of July, 1974, and from the 4th day of August, 1974 to the 10th day of August, 1974, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday, from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday and from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(c) From the 28th day of July, 1974 to the 3rd day of August, 1974, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday, from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday and from seven o'clock in the afternoon of Wednesday to half past nine o'clock in the forenoon of Thursday; and

(d) From the 11th day of August, 1974 to the 17th day of August, 1974, and from the 25th day of August, 1974 to the 31st day of August, 1974, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday, from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday of each week; and

(e) From the 18th day of August, 1974 to the 24th day of August, 1974, and from the 1st day of September, 1974 to the 7th day of September, 1974, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday, from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday and from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday of each week.

3. (1) No person shall fish for sockeye or pink salmon in the Convention waters of the United States of America lying easterly of a straight line drawn from Angeles Point in the State of Washington across Race Rocks to William Head in the Province of British Columbia with purse seines:



(a) From the 14th day of July, 1974 to the 20th day of July, 1974, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday and Tuesday; and

(b) From the 21st day of July, 1974 to the 30th day of August, 1974, both dates inclusive, except from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday, Tuesday and Wednesday of each week; and

(c) From the 11th day of August, 1974 to the 7th day of September, 1974, both dates inclusive, except from five o'clock in the forenoon to nine o'clock in the afternoon of Monday, Tuesday and Wednesday of each week.

(2) No person shall fish for sockeye or pink salmon in the waters described in subsection (1) of this section with reef nets:

(a) From the 14th day of July, 1974 to the 20th day of July, 1974, both dates inclusive, except from half past ten o'clock in the forenoon to half past nine o'clock in the afternoon of Monday, from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday and from five o'clock in the forenoon to half past ten o'clock in the forenoon of Wednesday; and

(b) From the 21st day of July, 1974 to the 27th day of July, 1974, and from the 4th day of August, 1974 to the 10th day of August, 1974, all dates inclusive, except from half past ten o'clock in the forenoon to half past nine o'clock in the afternoon of Sunday, from five o'clock in the forenoon to half past nine o'clock in the afternoon of Monday and Tuesday and from five o'clock in the forenoon to half past ten o'clock in the forenoon of Wednesday of each week; and

(c) From the 28th day of July, 1974 to the 3rd day of August, 1974, both dates inclusive, except from half past ten o'clock in the forenoon to half past nine o'clock in the afternoon of Monday, from five o'clock in the forenoon to half past nine o'clock in the afternoon of Tuesday and Wednesday and from five o'clock in the forenoon to half past ten o'clock in the forenoon of Thursday; and

(d) From the 11th day of August, 1974 to the 17th day of August, 1974, and from the 25th day of August, 1974 to the 31st day of August, 1974, all dates inclusive, except from half past ten o'clock in the forenoon to nine o'clock in the afternoon of Monday, from five o'clock in the forenoon to nine o'clock in the afternoon of Tuesday and Wednesday and from five o'clock in the forenoon to half past ten o'clock in the forenoon of Thursday of each week; and

(e) From the 18th day of August, 1974 to the 24th day of August, 1974, and from the 1st day of September, 1974 to the 7th day of September, 1974, all dates inclusive, except from half past ten o'clock in the forenoon to nine o'clock in the afternoon of Sunday, from five o'clock in the forenoon to nine o'clock in the afternoon of Monday and Tuesday and from five o'clock in the forenoon to half past ten o'clock in the forenoon of Wednesday of each week.

4

(3) No person shall fish for sockeye or pink salmon in the waters described in subsection (1) of this section with gill nets:

(a) From the 14th day of July, 1974 to the 20th day of July, 1974, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday and from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday; and

(b) From the 21st day of July, 1974 to the 27th day of July, 1974, and from the 4th day of August, 1974 to the 10th day of August, 1974, all dates inclusive, except from seven o'clock in the afternoon of Sunday to half past nine o'clock in the forenoon of Monday, from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday and from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday of each week; and

(c) From the 28th day of July, 1974 to the 3rd day of August, 1974, both dates inclusive, except from seven o'clock in the afternoon of Monday to half past nine o'clock in the forenoon of Tuesday, from seven o'clock in the afternoon of Tuesday to half past nine o'clock in the forenoon of Wednesday and from seven o'clock in the afternoon of Wednesday to half past nine o'clock in the forenoon of Thursday; and

(d) From the 11th day of August, 1974 to the 17th day of August, 1974, and from the 25th day of August, 1974 to the 31st day of August, 1974, all dates inclusive, except from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday, from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday and from six o'clock in the afternoon of Wednesday to nine o'clock in the forenoon of Thursday of each week; and

(e) From the 18th day of August, 1974 to the 24th day of August, 1974, and from the 1st day of September, 1974 to the 7th day of September, 1974, all dates inclusive, except from six o'clock in the afternoon of Sunday to nine o'clock in the forenoon of Monday, from six o'clock in the afternoon of Monday to nine o'clock in the forenoon of Tuesday and from six o'clock in the afternoon of Tuesday to nine o'clock in the forenoon of Wednesday of each week.

4. (1) No person shall fish for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 3 lying westerly of a straight line drawn true south from the southeast tip of Point Roberts in the State of Washington (otherwise known as Lily Point) to the International Boundary with nets from the 8th day of September, 1974 to the 21st day of September, 1974, both dates inclusive.



(2) No person shall fish for sockeye or pink salmon in that portion of the waters described in subsection (1) of section 3 lying northerly and westerly of a straight line drawn from Iverson's Dock on Point Roberts in the State of Washington to Georgina Point Light at the entrance to Active Pass in the Province of British Columbia with nets from the 22nd day of September, 1974 to the 28th day of September, 1974, both dates inclusive.

5. (1) The foregoing recommended regulations shall not apply to the following United States Convention waters:

(a) State Fishing Area No. 7 including all Convention waters known as Bellingham Bay lying inside of a line extending from Point Frances through the Post Point Bell Buoy to the mainland, and

(b) That portion of State Fishing Area No. 3 lying easterly and inside of a line projected from Carter Point on Lummi Island to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island including the waters of Samish Bay, and

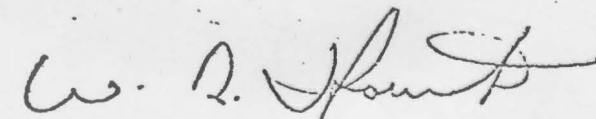
(c) State Fishing Area No. 4, and

(d) Preserves previously established by the Director of Fisheries of the State of Washington for the protection of other species of food fish.

All times hereinbefore mentioned shall be Pacific Daylight Saving Time.

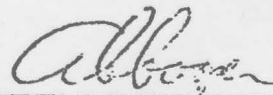
Yours very truly,

INTERNATIONAL PACIFIC SALMON
FISHERIES COMMISSION



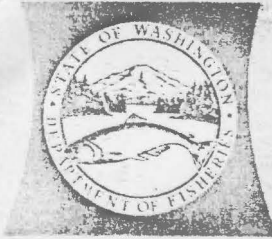
W.R. Hourston
Chairman

I hereby certify that this is a true copy of the regulations recommended by the Commission for adoption by the United States for 1974.



A. C. Cooper, Director
INTERNATIONAL PACIFIC SALMON
FISHERIES COMMISSION





WASHINGTON

Department of FISHERIES

DANIEL J. EVANS
GOVERNOR

ROOM 115, GENERAL ADMINISTRATION BUILDING • PHONE 753-6600
OLYMPIA, WASHINGTON 98504

THOR C. TOLLEFSON
DIRECTOR

June 12, 1974

Dear Sir:

The enclosed Puget Sound net fishing regulations pertain to fisheries for sockeye salmon under management control of the International Pacific Salmon Fisheries Commission. I emphasize that these regulations cover only the time period June 23-September 7 in U. S. Convention waters.

Forecasts of Puget Sound chinook, coho, and chum runs, and regulation proposals for commercial fisheries on these runs will be mailed to all 1974 license holders near the end of June. At that time we will also announce a time and place for a public hearing to review such proposals.

Sincerely,

Thor C. Tollefson

Thor C. Tollefson
Director

Enclosure

EXHIBIT 7





WASHINGTON

Department of

FISHERIES

1974

REGULATION SUMMARY

PUGET SOUND NE. FISHERIES

CONVENTION WATERS' SOCKEYE FISHERIES ONLY

GILL NET

PURSE SEINE

REEF NET





WASHINGTON Department of FISHERIES

SUMMARY OF REGULATIONS PERTAINING ONLY TO PUGET SOUND CONVENTION WATERS' SOCKEYE FISHERIES

STATE OF WASHINGTON DEPARTMENT OF FISHERIES

1. All regulations shown on these summary sheets are subject to emergency change on short notice, and should be used with care. In addition to the usual news releases by newspapers and radio and television stations, notices of emergency regulation changes will be broadcast over KOW, Seattle marine operator. Regulation changes will be broadcast over KOW as soon as received and will be repeated following the 9:00 PM and the 9:00 AM weather reports. Department of Fisheries patrol officers provide current regulation information. They may be contacted when aboard their vessels on marine band frequency 2182. Patrol boat call signs are as follows: Patrol Boat #1: WB 2610; #2: WE 3768; #3: WZV 2420; #4: WD 4209.
 2. The minimum legal sizes (total length) for salmon in the Puget Sound net fisheries are as follows: sockeye, pink, and chum - no minimum size; coho - 16 inches; chinook - 26 inches. Any sublegal size chinook or coho captured in the gear must be immediately returned to the water with the least possible injury. It is unlawful to allow under-size salmon to pass through a power block or onto a power drum or reel.
 3. Any crabs captured in the gear must be immediately returned to the water with the least possible injury. It is unlawful for any vessel geared or equipped with commercial gear other than lawful crab fishing gear to have any crabs aboard.
 4. Area 4 closure. State fishing Area 4 will remain closed throughout IPSFC control of Convention waters.
 5. Special lines to be used during the 1974 Convention waters' sockeye season.
 - a. Point Roberts closure: All waters lying westerly of a line projected true south from the most easterly point of the Point Roberts Peninsula, locally known as Lily Point, to the intersection with the International Boundary Line.
- Closed September 8-September 21
- b. Point Roberts closure: All waters lying westerly and northerly of a straight line projected from Iwersen's Dock on Point Roberts to Georgina Light at Active Pass.

Closed September 22-September 28



- c. Areas 3 and 8 (western portions) (same as 1973). Due to a difference between the boundaries marking Areas 3 and 8 and the boundary of the IPSFC treaty line, portions of Areas 3 and 8 will be managed under IPSFC control from June 23-September 7 as described below.
- a. All waters of Area 3 lying westerly of a line from Carter Point on Lummi Island to the most northerly tip of Vendovi Island, thence to Clark Point on Guemes Island: Same as Area 1.
- b. All waters of Area 8 (Deception Pass) lying westerly of a line from West Point on Whidbey Island to Reservation Head on Fidalgo Island: Same as Area 1.
- d. Initiative 77 line: Although Area 1 includes waters along West Beach inside or easterly of the Initiative 77 line, these waters are not open to purse seines prior to the second Monday in September.

The Initiative 77 line in this area is marked on the south where it touches the northernmost runway pylons on Whidbey Island and at the north by a white line painted on the bluff where the line intersects Fidalgo Island northwest of Bowman's Bay. This line is marked in black by the number "77".

6. Lawful salmon gear:

- a. Purse Seine: Lawful purse seine salmon nets in Puget Sound shall not exceed 1,800 feet in length along the cork line while wet, and purse seine and lead combined shall not exceed 2,200 feet. Neither shall contain meshes of a size less than 4 inches, nor shall the meshes of the seine and lead be lashed together to form one continuous piece of webbed gear longer than 1,800 feet. It shall be unlawful to take or fish for salmon in Puget Sound with purse seine gear which contains mesh webbing constructed of a twine size smaller than 210d/30 nylon, 12 thread cotton or the equivalent diameter in any other material. It shall be lawful as part of the purse seine to have a bunt 10 fathoms long and 200 meshes deep which may contain mesh of a size not less than 3-1/2 inches. It shall be unlawful to carry aboard a purse seine vessel an extra lead or portion thereof unless stowed below decks during the fishing operation, nor may an extra lead or portion thereof be carried aboard its skiff.
- b. Reef Net: Lawful reef net salmon nets in Puget Sound shall not exceed 300 meshes on any side nor contain meshes of a size less than 3-1/2 inches nor utilize more than two leads. Each of said leads shall not exceed 200 feet in length measured from the bows of the reef net boats to the nearest end of the head buoys. The use of any false, detached, or auxiliary lead shall be unlawful.
- c. Gill Net: Lawful gill net salmon nets in Puget Sound shall not exceed 1,800 feet in length. Circle setting with a gill net or setting a gill net other than substantially in a straight line shall be unlawful.

* Note: "Gill net" or "drift net" gear shall be defined as a gill net of single web construction, not anchored, tied, staked, placed, or weighted in such a manner that it cannot drift.

"Set net" shall be defined as a gill net which is anchored, tied, staked, laid in part on shore, or whose lead line is so heavily weighted that it cannot drift.

Monofilament gill net web is not lawful for taking salmon (RCW 75.12.280).

Gill net minimum mesh regulations

Areas 1, 2, and the western
portions of 3 and 8:

5 inches - July 14-September 7

7. Mesh measurements: The size of a mesh of any net shall be defined as the distance between the inside of one knot to the outside of the opposite vertical knot of one mesh when the mesh is stretched vertically, while wet, by using a tension of ten (10) pounds on any three (3) consecutive meshes, then measuring the middle mesh of the three while under tension.
8. Daily open hours - All times are Pacific Daylight Saving Time.

Purse seines

Areas 1 and 2

- July 14-August 10 - 5:00 AM to 9:30 PM
- August 11-September 7 - 5:00 AM to 9:00 PM

Reef nets

First open day each week

- July 14-August 10 - 10:30 AM to 9:30 PM
- August 11-September 7 - 10:30 AM to 9:00 PM

Last open day each week

- July 14-September 7 - 5:00 AM to 10:30 AM

Remaining open days
each week

- July 14-August 10 - 5:00 AM to 9:30 PM
- August 11-September 7 - 5:00 AM to 9:00 PM

Gill nets

Areas 1, 2, and the western
portions of 3 and 8:

- July 14-August 10 - 7:00 PM to 9:30 AM
- August 11-September 7 - 6:00 PM to 9:00 AM

9. Alternate Starts

Purse seines

- Purse seines start each week's fishing on Monday.

Gill nets

- During 1974, gill nets in Convention waters will alternate weekly starting times between Monday and Sunday nights starting July 15 (see table of fishing periods).

Reef nets

- During 1974, weekly starting days for reef nets will be same as gill nets, alternating between Monday and Sunday each week beginning July 15.

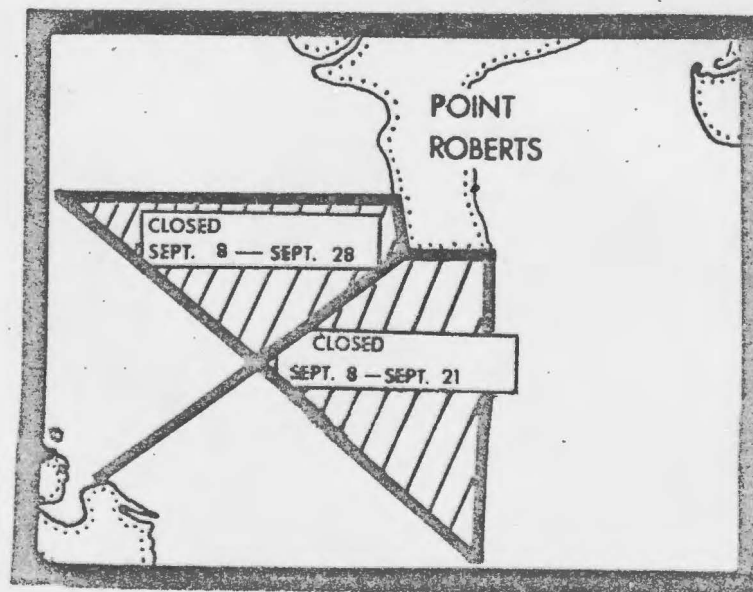


1974 GILL NET, PURSE SEINE AND REEF NET FISHING PERIODS
FOR CONVENTION WATERS' SOCKEYE FISHERIES^{a/}
(Western portions of Areas 3 and 8 same regulations
as Area 1 during IPSFC control)

Week	Gill net				Purse seine				Reef net	
	Area 1		Area 2		Area 1		Area 2		Area 1	
	Open nights	No. of nights	Open nights	No. of nights	Open days	No. of days	Open days	No. of days	Open days	No. of days
June 23-June 29	Closed		Closed		Closed		Closed		Closed	
June 30-July 6	Closed		Closed		Closed		Closed		Closed	
July 7-13	Closed		Closed		Closed		Closed		Closed	
July 14-20	Mon-Tue	2	Mon-Tue	2	Mon-Tue	2	Mon-Tue	2	Mon-Wed	2 ^{b/}
July 21-27	Sun-Tue	3	Sun-Tue	3	Mon-Wed	3	Mon-Wed	3	Sun-Wed	3 ^{b/}
July 28-Aug 3	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Thu	3 ^{b/}
Aug 4-10	Sun-Tue	3	Sun-Tue	3	Mon-Wed	3	Mon-Wed	3	Sun-Wed	3 ^{b/}
Aug 11-17	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Thu	3 ^{b/}
Aug 18-24	Sun-Tue	3	Sun-Tue	3	Mon-Wed	3	Mon-Wed	3	Sun-Wed	3 ^{b/}
Aug 25-31	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Wed	3	Mon-Thu	3 ^{b/}
Sept 1-7	Sun-Tue	3	Sun-Tue	3	Mon-Wed	3	Mon-Wed	3	Sun-Wed	3 ^{b/}
Total		23		23		23		23		23

a/ Although Area 4 is part of Convention waters, it will be closed throughout IPSFC control and is therefore not included in this table.

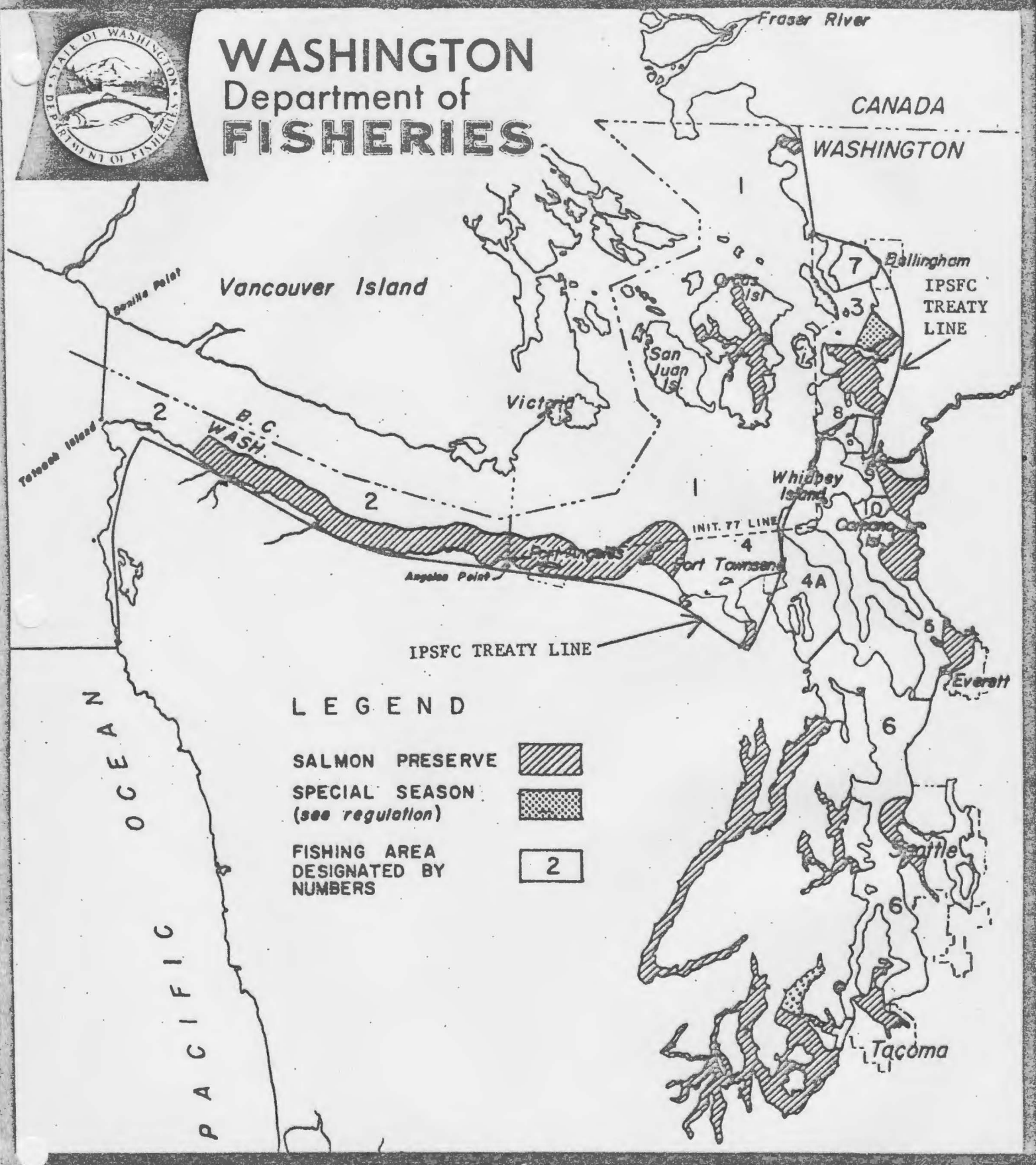
b/ Reef nets open 10:30 AM first day each week and close 10:30 AM last day each week.



IPSFC POINT ROBERTS CLOSURES



WASHINGTON Department of FISHERIES



PUGET SOUND COMMERCIAL SALMON FISHING AREAS AND PRESERVES.

THE WHITE HOUSE

WASHINGTON

July 15, 1974

RECORD OF ACTION AT THE MEETING ON INDIAN FISHING
RIGHTS: Held at the White House on July 11, 1974

PARTICIPANTS:

White House:

• Bradley H. Patterson, Jr.
Jim Spaith

State Department:

• Stewart Blow
William Sullivan
Mrs. West

• Mr. Feldman

Interior Department:

• Kent Frizzell
Larry Aschenbrenner

Commerce Department

• Robert Schoning

James Brennan

Dr. Robert Hutton

Justice Department:

• Harry Sachse

Indian Representatives:

• Mason Morisset, attorney

• Charlie Peterson

• Gene Parker

Forrest Kinley

ACTIONS AGREED UPON

1. General

It was agreed that the defense and protection of Indian treaty fishing rights in the instant circumstances and as defined by Judge Boldt are a part of the trust responsibilities which the United States Government bears.

2. Interim Measures

It was agreed that the representatives of the Departments of State and Commerce would orally instruct the U.S. Members of the International Pacific Salmon Fisheries Commission (IPSFC) to raise again, at the July 12 meeting of the Commission, the proposal earlier made on behalf of American Indian fisherman and denied by the Commission, i.e. that the Commission authorize two extra days of fishing per week during the current season to Indian fisherman in their usual and accustomed places in order to permit compliance



with the U.S. v Washington decision. It was further agreed that these instructions would include reference to the White House meeting and to the possibility, if necessary, that this matter might have to be raised at a government to government level between Washington and Ottawa.

3. Longer-Term Measure

The draft proposed IPSFC Regulation attached hereto as Annex A is to be examined first by Mr. Morisset and his Indian colleagues and then, with their comments if any, by the U.S. government officers attending the meeting with the intent that the U.S. Members of the Commission may be instructed to submit it to the plenary Commission as a supplement to standing Commission regulations.

3. Consultation with Indian Representatives

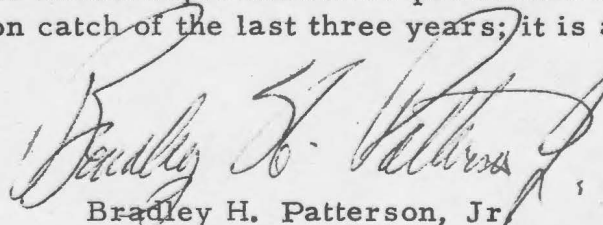
In view of the policy principle about full Indian participation set forth in the President's Message of July 8, 1970:

A. It was agreed that State and Commerce would raise with the U.S. Members of the Commission the question of naming an Indian as a U.S. member of the Advisory Council to the Commission.

B. In the interim before the above step becomes a reality, it was agreed that the U.S. Members of the Commission would be asked to establish an informal consultative relationship between those Members and appropriate representatives of the newly-formed Indian Fisheries Commission (the text of Constitution and By-Laws of the new Indian Fisheries Commission is attached as Annex B).

4. Indian Share of Sockeye Salmon Harvest

As an information item, the Indian representatives provided a table showing the Sockeye Salmon catch of the last three years; it is attached here as Annex C.


Bradley H. Patterson, Jr.

