

The original documents are located in Box 9, folder “Fishing Rights - Boldt Decision and Pacific Salmon Fishing (2)” of the Norman Ross Files, 1974-75 at the Gerald R. Ford Presidential Library.

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SUMMARY RECORD

Meeting of United States and Canadian Representatives on Problems
Posed by Special Treaty Fishing Rights of Certain U.S. Indian Tribes.

Washington, D.C. July 18, 1974.

United States and Canadian officials met in Washington on July 18, 1974, to review certain considerations related to (1) U.S. law, as set forth in U.S. v. Washington, which calls for steps to increase fishing opportunities for U.S. Indians, and (2) the implications of U.S. v. Washington for the fisheries management arrangements of the International Pacific Salmon Fisheries Commission.

The meeting was attended by: United States - Mr. Wallace, NOAA; Mr. Schoning, NMFS; Mr. Beasley, NMFS; Mr. Blow, Department of State; Mr. Sullivan, Department of State; Mr. Burton, Department of State; Mr. Johnson, NMFS; Mr. Powell, NOAA; Mr. Brennan, NOAA; Dr. Henry, NMFS; Dr. Smith, NOAA; Mr. MacKenzie, NMFS. Canada - Dr. Shepard, Department of the Environment; Mr. Hourston, Department of the Environment, IPSFC Commissioner; Mr. Nelson, IPSFC Commissioner; Mr. Todd, Department of the Environment; Mr. Applebaum, Department of External Affairs; Mr. Hunter, Department of the Environment. IPSFC - Mr. Roos

The conclusions reached at the meeting were as follows:



(1) For 1974, Canada will consider proposals by the United States for adjustments in Salmon Commission regulations which might be required as a result of changes in Washington State domestic regulations apportioning the U.S. share of Convention Area sockeye and pink salmon catches among Indians and non-Indians. Such U.S. proposals would be submitted simultaneously to the Canadian Government and Salmon Commission staff. Canadian authorities will examine U.S. proposals promptly upon their receipt and, if in their judgement the proposed alterations were likely to meet the criteria outlined below, the proposal would be referred promptly to the Salmon Commission for official review and decision. It was noted that, because the 1974 season is already underway and because there would be a limited period of time to generate background data for the evaluation of U.S. proposals, Canadian authorities would apply strict criteria to their decision on whether or not to approve the proposal for further study by the Commission.

(2) For 1975, the United States authorities will advise the Salmon Commission at an early date as to U.S. aspirations for its Indian fishermen, i.e. what domestic measures the United States intends to take to alter the balance of the United States catch between the different groups involved. The Commission staff will examine this information,

along with other information available to it, and will produce proposed regulations for 1975 taking the United States requirements into account as much as possible. These regulations will provide fishing time by gear and area in the usual way, i.e. not dealing with allocation between groups of fishermen fishing the same gear within each country.

This latter allocation will be accomplished by separate United States domestic regulation. Canadian IPSFC Commissioners will examine the proposals in the light of the criteria outlined below and, on the basis of their judgement on the suitability of the recommendations, take appropriate action within the Commission.

(3). Concerning the IPSFC Advisory Committee, the question of whether to make provisions for a United States observer representing Indian interests will be dealt with by the Commission at an early date.

CRITERIA

- (i) The changes would not reduce the regulatory options available to the Commission to meet the needs of Canadian fisheries (e.g. action on the United States side to accommodate the Indians would not require disadvantageous adjustments in Canadian fishing times and areas).
- (ii) The changes would not significantly decrease the ability of the Commission to achieve escapement goals for individual sockeye and pink races, and to maintain the Canadian share of the Convention Area catch of 50%.



(iii) The Changes would not require the Commission to recommend specific regulatory action for Indians alone. Division of catch among Indian and non-Indian fishermen in the United States should be achieved by supplementary regulations or other measures by the United States outside of, but consistent with, the Commission regulations.



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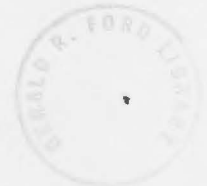
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RECORD OF DISCUSSION

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Commissioner Mr. Johnson, NMFS; Mr. Powell, NOAA; Mr. Brennan, NOAA; Dr. Henry, NMFS;
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Commissioner; Mr. Nelson, IPSFC Commissioner; Mr. Todd, Department of the
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Background:

On February 12, 1974, a decision by the U.S. District Court in United States v. Washington made certain interpretations of the meaning of the Indian fishing rights under treaties negotiated between the tribes and the U.S. Government in 1855. A key finding was the courts conclusion that the Indians must be permitted to share equally (with non-Indians) in opportunities to take the allowable harvest of fish.

This raised certain considerations regarding the conservation and management activities of the International Pacific Salmon Fisheries Commission (IPSFC), established under treaty (henceforth referred to as the Salmon Treaty) between the United States and Canada. The Salmon Treaty provides for equal sharing between the United States and Canada of the allowable harvest in designated waters off British Columbia and Washington of certain stocks of sockeye and pink salmon. Catches of these stocks are regulated by the IPSFC to achieve this objective as well as to satisfy escapement needs. The United States and Canada are each represented by three Commissioners on IPSFC and regulatory decisions must be taken with the concurrence of at least two Commissioners from each side. The Commission's scientific staff provides information on which regulatory decisions are made. (These points are reviewed in greater detail in Attachment A, "Issue Paper for Discussion with Salmon Commission.")

After analysis of the decision, the U.S. Commissioners on the IPSFC briefed the Canadian Commissioners on the new decision and introduced proposals to increase the Indian catch. These proposals were not adopted.

At a meeting at the White House on July 11, 1974, ^{omitted} [(See Attachment B)] it was agreed that the U.S. Commissioners on the IPSFC should be instructed to make certain proposals at a Special Meeting of the Commission on July 12, 1974, designed to carry out the U.S. v. Washington decision and allow American Indian fishermen a larger share of the overall proportion of the salmon catch allocated to U.S. fishermen by the IPSFC. Accordingly, U.S. Commissioners proposed at the July 12 meeting that 2 extra days fishing be provided the Lummi and Makah Indian Tribes, provided that the Lummi Indians would be restricted to the same fishing gear used in the previous year, plus three reef nets.

This U.S. proposal was not accepted by Canadian Commissioners.

The U.S. Commissioners also moved that both sides be allowed to add one participant on an ad hoc basis to the Advisory Committee authorized by the Salmon Treaty. The proposal, which would have allowed addition of an Indian to the U.S. Advisory Committee, was deferred to the next Commission meeting.

The United States also informally circulated to the Canadian Commissioners the following draft proposal, which is included in Attachment A:

Draft Proposal for IPSFC Regulation

"The Dominion of Canada and the United States of America are authorized to take such action as is necessary to comply with domestic law applicable to the fishing rights of their citizens; Provided, however, (1) that the Commission be notified at least 24 hours in advance of any such action that falls within the regulatory concern of the Commission,

(2) that such action must be taken within the season and gear limitations of the Commission's regulations, (3) that no such action may disturb the equal sharing of the harvestable catch as between the Dominion of Canada and the United States of America or adversely affect the spawning escapement, and (4) that the Commission may modify or rescind any such action by emergency order."

The Canadians asked that this proposal be deferred.

Consultations between U.S. and Canadian officials, July 18, 1974:

Dr. Shepard explained that Canada had asked for the meeting because Canadian Commissioners on IPSFC were uncertain of the implications of U.S. proposals to the Commission to satisfy needs other than traditional goals of adequate escapement and equal sharing between the U.S. and Canada. He noted that it would be helpful to have clarification of the U.S. legal situation, particularly an evaluation of whether the decision in U.S. v. Washington was likely to be changed during appellate review.

He also said there was need to evaluate the possible impact of recent U.S. proposals on:

- (1) the effectiveness of the IPSFC staff in providing guidance to allow the Commission to meet escapement needs, and country sharing requirements;
- (2) Canadian fishing opportunities.

At the request of Dr. Shepard, Mr. Powell, NOAA Staff Attorney, outlined the court decision.

He explained that U.S. v. Washington was an interpretation of the nature of Indian fishing rights under treaties negotiated between Northwest tribes and the United States Government in the mid-1850's. The Court held that because they had in these treaties reserved to themselves the right to take fish at all "usual and accustomed grounds and stations in common with all citizens of the territory," the Indians must be permitted the opportunity to take up to 50 percent of the allowable catch at their traditional fishing places. He noted that the decision was concerned with actions that must be taken by the State of Washington to insure that it did not interfere with the right of the Indians to take 50 percent of the allowable catch. Mr. Powell pointed out, however, that because the United States was a party to the suit, it is also required to implement the decision insofar as it may do so without violating other federal law or international treaty commitments, such as the Salmon Treaty. He concluded by stating that although the Court's decision had been appealed, it was not expected that the appellate process would change the United States' commitment to increase the Indian fisheries.

Mr. Roos of the IPSFC Staff then outlined some of the considerations involved in managing the salmon fisheries to achieve the traditional Salmon Treaty goals. He noted that lifting certain closures to allow more fishing could result in large catches because the salmon might have reschooled into large concentrations that would be particularly vulnerable to fishing pressure. Lack of knowledge concerning the potential effectiveness of the Indian fishery would make it very

difficult to predict compensatory adjustments in other aspects of the fishery. He noted that the Commission staff could probably determine the compensatory adjustments required. However, these could be disruptive of the overall commercial fishery, i.e. emergency closures and openings upsetting the normal sequence of fishing might be required. In addition, the compensatory adjustments might lead to under or over-escapement of the various salmon runs.

Dr. Shepard expressed concern over the difficulties expressed by Mr. Roos, making direct adjustments in IPSFC regulations to satisfy U.S. objectives concerning Indians. He also noted difficulty on the part of Canada in accepting IPSFC regulations that designate particular groups such as Indians or non-Indians for special treatment.

The possibility was then explored of the United States attempting unilaterally to achieve its internal allocation needs within the limits of Commission regulations. Both the United States and Canada agreed on a preliminary basis that such action would not appear to conflict with the Salmon Treaty, although its impact on Commission objectives and Canadian fishing opportunities would require examination by Canada and the Commission staff.

Dr. Shepard suggested it would be difficult to accommodate special U.S. Indian interests in 1974, unless the United States could do so under present IPSFC regulations, because 1974 regulations have already been formulated. He further suggested that the United States advise the Commission staff on proposed 1975 regulations which could then be developed subject to the condition that they apply to major gear units, not specific parties such as U.S. Indians. The State of Washington

could then implement the Commission regulations by such supplementary means as appropriate to favor U.S. Indians. Dr. Shepard further expressed the view that any steps taken should not cause a disadvantage to Canadian interests or pose barriers to effective conservation of the salmon runs. Dr. Shepard said that while Canada would not object to the submission of U.S. proposals for 1974, it would evaluate such proposals by very strict criteria, more strict criteria than would be applied against proposals for 1975, because the season is already underway and because there would be a limited amount of time to generate background data which would allow a thorough evaluation of the U.S. proposals.

Mr. Wallace asked how Canada would view actions by the United States which would reserve certain hours for gear used by Indians. Dr. Shepard expressed Canada's willingness to consider the acceptability of such actions, subject to the resolution of any attendant legal questions and only if such a step were taken as a United States domestic action rather than by the IPSFC.

The subject of a possible imbalance in U.S.-Canada catches resulting from actions taken by the United States was then raised by the United States. Mr. Brennan suggested that if the United States took any action which temporarily altered the U.S. share of the catch, there would be a need to redress the imbalance through emergency IPSFC regulations. Dr. Shepard responded that the Commission regulations are designed to provide opportunities for a balanced catch, and that Canada would reserve its position on the matter of redressing any imbalance caused by the failure of U.S. fishermen to exercise their prerogatives.

Mr. Wallace expressed the view that if some altered management schemes are not tested in 1974 there will be a reduced experience base for 1975 actions. He asked that Canada take a flexible position on the subject of accommodating U.S. Indian interests. Dr. Shepard said that Canada would not object to supplementary actions of the United States if they are not in conflict with Commission regulations or disruptive of catch patterns, but the Government of Canada would wish to review any U.S. proposal. Such a review would be accomplished in a short period of time.

The United States and Canada agreed that while such Government-to-Government evaluation of proposals might be appropriate in the short run, it would not be an advisable long-term pattern in that it would hamper the ability of the Commission to effectively carry out its functions.

Mr. Blow then raised the possibility of an additional observer on the IPSFC Advisory Committee in order to give U.S. Indians a greater sense of participation. Canada suggested the United States consider replacing one Advisor rather than adding an observer. Mr. Johnson of the United States expressed the view that such a step might be difficult in that it could result in denying other interests their proper representation on the Committee. Dr. Shepard then indicated that Canada viewed the United States proposal favorably, but was concerned with the ramifications of approval and believed that the subject should be discussed by the Commission. Canada and the United States agreed that the Commission should take up the matter at its next meeting.

Dr. Shepard said that the meeting had been useful from an informational gathering standpoint, that Canada looked forward to the receipt of U.S. proposals for consideration, and that mutual cooperation through the Commission was desired in the search for mutually acceptable solutions to the issues discussed at this meeting. He expressed his appreciation for the advice of Mr. Roos and for the hospitality of the United States. Mr. Blow said the United States appreciated the opportunity to meet with the Canadian delegation and was confident of cooperation between the United States and Canada in view of the long history of the IPSFC. He said the United States would expedite the submission of its proposals for Canada's consideration.

The meeting was adjourned at 4:30 P.M.

Issue Paper for Discussion with Salmon Commission

United States v. Washington

The February 12, 1974, decision by the United States District Court in *United States v. Washington* constitutes an important interpretation of the nature of Indian fishing rights under treaties negotiated between the tribes and the United States government in 1855. Of immediate concern is assessment of the effect of Judge Boldt's ruling on implementation of the Convention for the Protection, Preservation, and Extension of the Sockeye and Pink Salmon Fishery of the Fraser River System between the Dominion of Canada and the United States of America.

The threshold question to be answered and acted upon prior to the June 23, 1974, assumption by the Salmon Commission of jurisdiction in U.S. waters is whether, in light of the Court's decision, the present practice of implementation in the United States of the Salmon Commission's regulations by the State of Washington's adopting and enforcing these regulations under State law can be continued, or whether some other procedure must promptly be initiated in order that the United States may meet its responsibilities under the Convention.

As noted in the attachments to Director Cooper's communication of April 9 to the Commissioners, two basic propositions of Judge Boldt's ruling must be reviewed:

A. *Extent of Indian fishing right.* In ceding most of their lands to the United States, the Indian tribes reserved to themselves in their 1855 treaties the right to take fish at all "usual and accustomed grounds and stations" off the reservation, "in common with all citizens of the territory." The basic issue in the case was the meaning of this phrase. The State of Washington maintained that "in common with" meant that off-reservation Indian fishing must be carried out "under the same restrictions as" the non-Indian fishery. Under this interpretation, the State would have been able to regulate off-reservation fishing to the same extent (but to no greater extent) that it regulated non-Indian fishing.

The Court rejected this interpretation, holding that "in common with" meant that the Indians must be permitted to share equally (with non-Indians) in the opportunity to take harvestable fish. In the words of the Court:

"...non-treaty fishermen shall have the opportunity, to take up to 50% of the harvestable number of fish that may be taken by all fishermen at usual and accustomed grounds and stations and treaty right fishermen shall have the opportunity to take up to the same percentage of harvestable fish...."



In calculating the number of "harvestable fish" to be shared equally, the decision requires subtraction from the total run not only the fish required for spawning escapement and all fish caught on the reservation, but also fish taken by Indians off-reservation for their subsistence and for traditional tribal ceremonies.

B. *Requirements for valid State regulation.* Previous decisions of the United States Supreme Court had established the rule that State regulation of Indian off-reservation fishing must be "reasonable and necessary for conservation of the resource." The precise circumstances under which a State might properly limit Indian fishing rights pursuant to this test was left for later determination. Judge Belloni's 1969 decision of the Oregon District Court in *Sohappy v. Smith* was the first to identify the actual process to be utilized by a State agency in fashioning its regulations. That decision required the State, prior to implementing a regulation, to justify that the proposed regulation was reasonable and necessary, and in order to carry its burden of proof as to "necessity", to show that the measure it proposes is "the least restrictive which can be imposed consistent with assuring the necessary escapement."

Judge Boldt further refined the burden upon the State:

"In order for this court to determine that a state statute or regulation is reasonable and necessary for conservation, defendants must demonstrate that:

- a. the specific statute or regulation is required to prevent demonstrable harm to the actual conservation of fish, i.e., it is essential to the perpetuation of a particular run or species of fish;
- b. the measure is appropriate to its purpose;
- c. existing tribal regulation or enforcement is inadequate to prevent demonstrable harm to the actual conservation of fish;
- d. the conservation required cannot be achieved to the full extent necessary, consistent with the principle of equal sharing between treaty and non-treaty fishermen or by other less restrictive alternative means or methods."

The forum in which the State is to demonstrate the conservation purpose of the statute or regulation it proposes to enforce against Indian fishermen is the Court itself, which has retained jurisdiction for this purpose. Court approval is not required if the State has obtained the consent of the tribe whose fishing would be limited by the regulation.



Possible Effect on Salmon Commission

The question of the effect of *United States v. Washington* on implementation of the salmon treaty may be viewed in three parts:

1. Does the District Court's ruling directly affect the ability of the State of Washington in 1974 to adopt and enforce Salmon Commission regulations, even if such regulations would limit treaty fishing in Convention waters considered to be "usual and accustomed grounds and stations" for certain tribes (such as the Makahs and the Lummi).

2. Even if the decision does not prevent Salmon Commission Regulations from being enforced in the usual manner, what effect would the failure to recognize a special allocation to treaty Indians of the Salmon Convention catch in U.S. waters have on the ability of the State to regulate its fisheries in general.

3. What responsibility do the United States Commissioners have under the ruling to attempt to have the Convention implemented in a manner that specifically recognizes a special treaty fishing right of certain citizens of the United States.

Issue 1. Ability of State to enforce Commission regulations. The Court recognized that it is the usual practice for Salmon Commission regulations to be enforced by the Washington Department of Fisheries as State regulations. However, the decision also recognized that

"the United States has both the authority and the obligation to enact the International Commission's recommendations as domestic federal regulation and directly enforce them if the State of Washington does not do so."

While he did not specifically decide the question whether the State of Washington could promulgate and enforce Salmon Commission regulations as it had in the past, Judge Boldt seems rather clearly to be saying that, should the equal sharing and burden of proof requirements of the Court prove incapable of being met by the State in the context of the Salmon Commission, the Federal Government should be prepared to enforce Salmon Commission regulations as Federal regulations.

An option to this method of enforcement has been suggested by the State. The Washington Attorney General's office believes that Judge Boldt would require tribal regulations to conform to Salmon Commission regulations and, if tribal enforcement of these regulations could be shown to be



inadequate, the Court would further require that the regulations be enforced by the State of Washington instead of by the tribes themselves. Although the procedure proposed might well be adopted by the Court, discussion may not end here for at least two reasons. First, in the complex procedure of obtaining Court approval and determining whether tribal enforcement is adequate, the assurance of full implementation of Commission regulations might suffer. Secondly, it is not clear that the method could have long range effect because of the expected increase of Indian fishing effort in Convention waters and the conflict that will result with non-Indian fishermen. It must be expected that the tribes will not long be satisfied with equal treatment that does not assure them a greater share of the U.S. catch.

Looking only to 1974, Commission regulation may well receive full assurance of being enforced by Mr. Tollefson's unofficially affording extra fishing days on a small scale to the Makah tribe, as has been done in past years, and accommodating in some manner the desires of the Lummi tribe to fish in Convention waters.

Issue 2. Effect on State fisheries management of failure to allocate share of Convention catch to Indians. If neither the Commission's regulations nor United States implementation of them recognizes a special treaty fishing right on the part of Washington Indians, the question must be asked whether the overall fisheries management program of the State would be adversely impacted. The issue arises because the District Court held that the State not only must allocate to treaty tribes an equal share of those fish within the regulatory jurisdiction of the State which would be available for harvest by the tribes, but that the State must also make

"[a]n additional equitable adjustment, determined from time to time as circumstances may require, to compensate treaty tribes for the substantially disproportionate numbers of fish, many of which might otherwise be available to treaty right fishermen for harvest, caught by non-treaty fishermen in marine areas closely adjacent to but beyond the territorial waters of the State, or outside the jurisdiction of the State, although within Washington waters."

In other words, the State must make up in other fish for those fish that do not become available to treaty Indian fishermen at their usual and accustomed stations for reasons beyond the control of the State.

It is not clear how far the State must go in making this equitable adjustment, but in view of the magnitude of the salmon catch in Convention waters (part of which are "within Washington waters" but "outside

the jurisdiction of the State"), it would appear that the State would have a difficult time compensating treaty Indian fishermen for fish that would otherwise be available to them at their usual and accustomed grounds and stations had they been allowed to fish freely in Salmon Convention waters without limitation of Salmon Convention regulations applicable to other U.S. citizens. If this is the case, it behooves us to attempt a solution of the problem that will not make even more difficult the State's new burden of fisheries management.

On the other hand, we must also recognize the somewhat conflicting fact that the State would prefer to continue enforcement of Salmon Convention regulations under State law, if this is possible within the framework of the Court's decision. We cannot expect, in other words, that the State will request the United States to enforce Salmon Convention regulations as Federal regulations, even if this procedure contemplated designating State officers as Federal law enforcement agents for this purpose, unless such a method was clearly meant only to serve as a fall-back position in the event no other satisfactory enforcement scheme was possible.

Issue 3. Responsibilities of the United States Commissioners under the decision. This particular subject may well be the most sensitive and complicated of the three parts to this question because of the dual role played by two of the U.S. Commissioners. As a U.S. Commissioner and Regional Director of the Northwest Region, Mr. Johnson is responsible not only for carrying out the responsibilities of a Commissioner with respect to the treaty, but is also the National Marine Fisheries Service official most directly involved with the actual implementation of the Salmon Commission's regulations. Of much greater import is the role played by Mr. Tollefson, who is both Director of the Washington Department of Fisheries and a U.S. Commissioner and, therefore, has direct responsibility to respond to the decision of the District Court and to his duties as a Commissioner under the salmon treaty.

Judge Boldt made specific reference to Mr. Tollefson's dual role in the following words:

"As a U.S. Commissioner on the Commission, the Director of the Fisheries Department has attempted unsuccessfully to obtain Canadian agreement to a greater number of fishing days for the Makah Indians on the Fraser River sockeye and pink salmon runs. The Director has taken unilateral action to provide more fishing days for the Makahs."

The decision makes further reference to the role of the Washington Department of Fisheries and its Director in the following language:



"A considerable number of fish taken within the territorial waters of Washington are under the regulatory authority of the International Pacific Salmon Fisheries Commission, an international body established by treaty between the United States and Canada. While the defendants cannot determine or control the activities of that Commission, *the Washington Department of Fisheries does have some input into development of the harvest program which is prescribed or permitted by that Commission, particularly as it pertains to harvest within Washington waters....* Consequently, while it must be recognized that these large harvests by non-treaty fishermen cannot be regulated with any certainty or precision by the state defendants, *it is incumbent upon such defendants to take all appropriate steps within their actual abilities to assure as nearly as possible an equal sharing of the opportunity for treaty and non-treaty fishermen to harvest every species of fish to which the treaty tribes had access at their usual and accustomed fishing places at treaty times.* Some additional adjustments in the harvesting scheme under state jurisdiction may be necessary to approach more nearly an equal allocation of the opportunity to harvest fish at usual and accustomed grounds and stations." (emphasis supplied)

It is believed that the State considers the mandate of the Court in this respect to extend to the presentation by Mr. Tollefson, in his role as Director of the Washington Department of Fisheries, to the Salmon Commission of a request for specific recognition of treaty fishing rights.

The Court's ruling does not speak directly of a role on the part of the United States Commissioners, acting in that capacity, in carrying out any part of the ruling. Judge Boldt did find, however, that:

"The 1937 [salmon] Convention does not explicitly or implicitly modify the Stevens' treaties. However, this Court believes that treaty right tribes fishing in waters under the jurisdiction of the International Pacific Salmon Fisheries Commission must comply with regulations of the Commission."

Thus, although the decision does not speak directly to the question of the manner in which the Salmon Treaty is to be implemented in the United States, the implication emerges that the State of Washington might no longer be

(1) capable of limiting Indian treaty fishing in Convention waters under State law and regulation. (The responsibility for enforcement may have to come either from the Federal government in its role as the party ultimately responsible for seeing to the enforcement of the Convention or from the Salmon Commission itself in recognizing a special allocation to treaty fishermen. Federal enforcement could be accomplished under authority of the Sockeye and Pink Salmon Fishing Act of 1947, 16 U.S.C. 775.)

This approach would not by itself appear to satisfy the responsibility the United States Commissioners have to apply domestic law, including *United States v. Washington*, within the framework of the Salmon Convention. Judge Boldt stated above that the Salmon Convention did not modify the Indian treaties. The statement appears accurate insofar as the Indian treaties might require the allocation to certain of the citizens of the United States of a greater share of fish than might otherwise be available to them in the absence of a treaty fishing right. (There is some question whether the Salmon Convention might well have worked a limitation to the Indian treaties in other respects, such as the seasons during which an Indian might fish and the type of gear he might use.)

In other words, while the complexion of the Commission's regulatory process might be required to undergo substantial change, (the Salmon Convention itself would not prevent the Commission either from setting aside certain days for treaty Indian fishing or from permitting, on the record or otherwise, the United States catch to be allocated in some way among U.S. fishermen, so long as the overall goal of equal sharing between the United States and Canada were not disturbed. For discussion purposes, the following language is offered:

Draft Proposal for IPSFC Regulation

"The Dominion of Canada and the United States of America are authorized to take such action as is necessary to comply with domestic law applicable to the fishing rights of their citizens; *Provided, however,* (1) that the Commission be notified at least 24 hours in advance of any such action that falls within the regulatory concern of the Commission, (2) that such action must be taken within the season and gear limitations of the Commission's regulations, (3) that no such action may disturb the equal sharing of the harvestable catch as between the Dominion of Canada and the United States of America or adversely affect the spawning escapement, and (4) that the Commission may modify or rescind any such action by emergency order."



(1)

8

Pursuant to such a regulation the Director of the Washington Department of Fisheries, acting under his own authority (if approval of the Court or tribes concerned is secured) or pursuant to that of the Federal Government, might set aside certain open season days exclusively for treaty Indian fishing in (U.S.) Convention waters. No action at all would be required on the part of Canada. The question is whether the Commission's present regulatory structure could accommodate itself to the activities contemplated by the regulation suggested.

April 18, 1974



MEMORANDUM: July 22, 1974.

TO: The White House;
Members of Congress;
Office of Management & Budget;
Department of the Interior;
Other Federal Agencies.

FROM: Indian Fisheries Commission of Western Washington
Interim Chairman: Forrest Kinley (Lummi)
Interim Members: Guy R. McMinds (Quinault)
Charlie Peterson (Makah)
Leo LaClair (Muckleshoot)
Hank Adams (Assiniboine)

SUBJECT: Urgent Need for Fiscal Year 1975 Funding of Federal and Tribal Plans
for Implementing Indian Treaty Rights Fishing Programs in Washington

* * * * *

General Background: On February 12, 1974, U.S. Judge George H. Boldt issued a final decision in the case of United States v. Washington, which sought to end "more than a century of frequent and often violent controversy between Indians and non-Indians over treaty right fishing" in the Pacific Northwest. "The ultimate objective of this decision", he declared, "is to finally settle, either in this decision or on appeal thereof, as many as possible of the divisive problems of treaty right fishing which for so long have plagued all of the citizens of this area, and still do."

The Court concluded in essence that there had been an oppressive denial and erosion of fishing rights secured to treaty Indian Tribes by unlawful State legislative and administrative actions. The effect had been to wrongfully convert the Indian rights and interests in fish resources, having a value approaching \$50 million per year for fishermen alone, to the primary and near-exclusive benefit of non-Indians. (The current salmon value to fishermen, apart from processing and secondary industries, is figured at \$32 million on recent annual average.) Judge Boldt ruled that the treaties had contemplated and intended an equal sharing between the Tribes and the State of these valuable fish resources.

Importantly, Judge Boldt determined that the purported protective and beneficent policy of the United States toward Indian Tribes and people should be transformed dramatically from a nice fiction into a demonstrable fact. In this regard, he ruled that these traditional Indian fishing societies had reserved their governmental rights to regulate the fishing activities of their members, and had retained the solemn obligations and responsibilities for managing fish resources to which they were historically related.

A brief analysis of the 206-page Boldt Decision, prepared by the Library of Congress, is attached for your information. The following excerpts from the decision are also instructive:

" * * * it is unfortunate, to say the least, that state police power regulation of off reservation fishing should be authorized or invoked on a legal basis never specifically stated or explained. This is particularly true because state regulation of off reservation treaty right fishing 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 long into the future.

Having the judicial duty to independently research, consider and fairly appraise the tribes' contentions concerning state regulation of off reservation treaty right fishing, this court has intended and attempted to do that as conscientiously and thoroughly as possible ***.(p. 26)".

"Ever since the first Indian treaties were confirmed by the Senate, Congress has recognized that those treaties established self-government by treaty tribes * * *. * * * in the last decade Congressional legislation has definitely been ** encouraging the exercise of tribal autonomy ** and make plain the intent and philosophy of Congress to increase rather than diminish or limit the exercise of tribal self-government." (p. 29).

"The right to fish for all species available in the waters from which, for so many ages, their ancestors derived most of their subsistence is the single most highly cherished interest and concern of the present members of plaintiff tribes ***. The right to fish, as reserved in the treaties of plaintiff tribes, certainly is the treaty provision most frequently in controversy and litigation involving all of the tribes and numerous of their individual members for many years past.

The philosophy of Congress referred to above and the evidence in this case as a whole clearly indicate to this court that the time has now arrived, and this case presents an appropriate opportunity, to take a step toward applying congressional philosophy to Indian treaty right fishing in a way that will *** provide ample security for the interest and purposes of conservation..

In all the circumstances shown by the evidence, including those briefly sketched above, this court hereby finds and holds that any one of plaintiff tribes is entitled to exercise its governmental powers by regulating the treaty right fishing 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." (p. 30).

Supplemental Funds Requested: Both the Treaty Indian Tribes and concerned federal agencies recognized the genuine opportunity afforded by the Boldt Decision, not only to apply stated policies of both the Congress and the Nixon Administration to the Indian communities, but also to eradicate many of the economic and other problems of deprivation and poverty in more than a score of reservation tribal communities. We were presented with a perfect opportunity to prove the validity of the declared federal policies by achieving some major success, while being primarily reliant upon rights and resources secured to Indian people. However, qualifications and conditions imposed upon the several Tribes in the exercise of their rights by the court decision represented major obligations, both in the assumption of responsibility and in the assumption of immediate governmental costs. The Administration's Budget Message on departmental program requests was already before the Congress -- and virtually every Tribe confronted their best modern opportunity without the essential funds or revenue to effectively capitalize upon it.

Early in the year, various Tribes began identifying their program and budget needs for meeting their management responsibilities and the Court's requirements. Through a March 29 Departmental Briefing of Interior officials, and justifications presented in April, the regional and field offices of the Bureau of Indian Affairs (BIA), Interior Solicitor, and the U.S. Fish & Wildlife Service, entered requests for Supplemental Appropriations for Fiscal Year 1975 for their agencies and for a number of the Indian Tribes.

Summary of Requests for F.Y.-1975: The BIA's Portland Area Office on April 23 submitted a finalized request for a total \$1,889,618.00 in supplemental funding, for both its own directly-administered programs and for others which would be administered by the Tribes (\$924,118.00) under contracts with them. Regional offices had jointly supported an additional request for \$550,000.00 in supplemental appropriations for the Northwest Fisheries Program of the Fish & Wildlife Service to help meet the requirements for availability and assistance of "well qualified experts in fishery science and management" to aid most Tribes.

Under the requested funding, employment in 32 permanent positions and 15 temporary positions was contemplated for the BIA and recipient or contract Tribes. (BIA's Portland Area Office consequently would require an increase of 47 positions in its authorized personnel ceiling allocation.) The Fish & Wildlife Service funding request provided for 15 new positions.

Categories of program funding requested in summary include:

- A. Tribal Operations & Enrollment: \$124,500.00 (15 Temporary Positions).
- B. Law Enforcement & Tribal Courts: \$1,522,167.00 (30 Permanent Positions)
- C. Rights Protection & Planning: \$242,951.00 (2 Permanent Positions).

Tribal Contract funding requested in summary include:

- 1. Quinault: Law Enforcement, \$71,961.00; Rights Protection, \$85,451.00.
- 2. Makah: Law Enforcement, \$251,500.00.
- 3. Lummi: Law Enforcement, \$80,500.00; Rights Protection, \$31,100.00.
- 4. Muckleshoot: Enforcement, \$105,000.00; Rights Protection, \$20,000.00.
- 5. Squaxin: Law Enforcement, \$111,716.00; Rights Protection, \$26,400.00.
- 6. Hoh River: Law Enforcement, \$33,230.00.
- 7. Nisqually: Law Enforcement, \$87,260.00; Rights Protection, \$20,000.00.

Law Enforcement & Courts for Inter-Tribal Services in summary include:

- 8. Columbia River treaty tribes in multiple use fishing areas: \$366,100.00.
(a) Enforcement & support positions, 8; Fishing Offenses Court, 6 positions
(b) Tribes: Yakima, Warm Springs, Umatilla, & Nez Perce.
- 9. Western Washington: Common Court & Federal Enforcement Agents, \$414,900.00

Status of Funding Requests: There has been an apparent failure within some units of the Federal Government to recognize the importance of acting upon these supplemental funding requests and the immediacy of tribal needs. Contradictory reports have issued from different levels of the Interior Department on the actual support or opposition of departmental officials for funding. The position of the White House and of OMB has been anything but clear or reassuring. Congressional reluctance to take initiatives in securing these funds seems evident. The uncertainty which prevails over the status of support and appropriations actions is wholly inconsistent with the general trend of congressional and Administration actions, policies, and public statements of recent years in favor of Indian people and tribal endeavors.

A brief review of several policy statements and actions gives basis for present confusion. A failure to fund would represent a major departure from declared policies. It would constitute a substantial, tragic defeat of the purposes and provisions of the Boldt Decision and have devastating impact upon the otherwise promising opportunity afforded Indian people by it. Consider:

1. On April 12, 1974, the "Indian Financing Act" was enacted, with the following 'Declaration of Policy':

"It is hereby declared to be the policy of Congress *** to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."

2. That Act may be the most significant of the national legislative measures advanced by the Administration under its 'self-determination' policy. We submit that the principle of self-management adopted by Judge Boldt favors the forgotten substance of the President's 1970 Indian Message by embracing both Administration and Congressional strategies for bringing about economic self-sufficiency: (1) not only by strengthening tribal self-government and institutions; but (2) also by utilizing renewable Indian resources to develop an ultimate self-sustaining "economic infrastructure" to generate an enhanced, viable economic life in the Indian communities.

3. On April 26, 1974, the Assistant Secretary for Fish & Wildlife & Parks' deputy Curtis Bohlen wrote for Secretary Morton:

"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 decision, we are planning to expand our capability to assist the Puget Sound tribes in qualifying for self-regulation of anadromous fish harvests at off-reservation locations."

4. Previously, Deputy Under Secretary W.W. Lyons had written to Indian Commissioner Morris Thompson on April 4:

"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."

5. In latter February, major Indian organizations and tribal representatives had addressed both the Interior Secretary and the Indian Commissioner, as follows:

"Independent of the court decision, rational management of tribal resources imposes as its own requirement some of the conditions set down by the court. The ability of the separate tribes to responsibly carry out their own obligations for their people and for these valued fish resources should no longer rely solely upon the measure of political clout any one Tribe may assert of of the bureaucratic favoritism that has allowed too many Tribes and Indian communities to suffer neglect and near-total lack of help. * * * your office (should) consider acting at once to ensure that the forward position of Indian people on treaty rights fishing, as sustained or validated by the decision, can be maintained and strengthened by appropriate administrative and budgetary support." (February 19, 1974.)

and: " * * To qualify for self-regulation of the off-reservation treaty right fishing as provided by the court each Tribe must meet certain qualifications, one being to have qualified experts in fishery science and management, either on the Tribal staff or whose services are readily available to the Tribe, and ** most Tribes in the case area have not had the financial capabilities to establish the necessary independent expertise to evaluate the resource and conduct investigations necessary in the formulation of regulations * *. RESOLVED that the Northwest Affiliated Tribes request that in his trust responsibility, the Secretary of Interior support and obtain the necessary funds for the enlargement of the Northwest Fisheries Program to conduct the needed work and assist the Tribes in meeting the qualifications set down by the court." (February 23.)

6. A full year before the Boldt Decision -- in fact before trial of the case -- Assistant U.S. Attorney Stuart Pierson, who effectively represented the U.S. in final construction of issues and arguments, stressed the importance of the post-trial commitment of the Federal Government in securing a successful result. In a January 9, 1973, letter to Mr. James Heckman, then in the Regional Office of the Fish & Wildlife Service, Mr. Pierson emphasized:

"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. * * *

In addition to the demanding responsibilities which are imposed on your agency by this case, the currently low level of the assets of most of the plaintiff tribes requires an extensive, continuing provision of tech-

nical 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. * * * 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."

After conclusion of the trial, U.S. Attorney Stan Pitkin wrote to Mr. Kahler Martinson, advising him that the agency's restructured and enlarged Northwest Fisheries Program, to which Mr. Heckman had transferred as Program Manager, had carried out the pre-trial objectives commendably and had substantially affected the case, and merited the lavish praise addressed it by Judge Boldt.

7. After the decision, U.S. counsel Mr. Pierson left government service. In a letter of April 25, 1974, he felt compelled to write the Interior Department to express concern that Federal officials were renegeing on commitments and obligations to the Indian Tribes. In part, he wrote:

"The United States should not dodge the issues by non-participation. Beyond whatever obligation interested men in the Government may feel, there is an ethical obligation that, having begun this litigation, the Government must continue its participation in every portion of the case affecting the essential rights of the treaty tribes. * * * There are additional reasons why we should squarely and honestly face up to the difficult factual and legal issues presented **. Most Importantly, as you have often reminded me, the trust obligation of the United States to Indians is one that should be sincerely pursued, not the least because it has been so often ignored. * * *

Stated simply, my fear is that the Government, merely out of petty or myopic self interest, will refuse to continue ** the commitment which has given us such a successful and fair result **."

8. The Boldt Decision did activate an intense anger and opposition among some elements of the non-Indian population, particularly among the small segment of the Washington citizenry who had been acquiring the greatest benefit financially from the fish resources, plus vocal elements among sportfishermen -- who would actually be affected by the decision in minor and minimal ways. Additionally, it led to an active strategy within the State Departments of Fisheries and Game to strongly open up competition with the Tribes and federal agencies for funding from federal sources -- and for political support to defeat the promising effects of the Boldt Decision. The design was clearly to assert a priority claim upon any available funding resources and program efforts, and to deny additional support for tribal and federal program efforts or to prevent their development.

9. Oddly, the political efforts among State-level elected officials seemed uniformly to fail. The Washington Legislature refused to adopt even a memorial to the Congress and Administration to extinguish Indian Treaty Rights, renegotiate the treaties, and funnel new funds into the State programs. In the past month, both the Republican and Democrat state conventions refused to adopt any anti-Indian positions or platform planks offered them or to take any position oppositional to the tribal exercise of their treaty rights to fish and regulate themselves under their own systems of self-government.

10. The State agencies seemed to gain greater responsiveness from various federal officials. The federal responsiveness to the Tribes' funding requests and the budget requests of local federal agencies accordingly seemed to diminish at decisive governmental levels:

A. On June 19, Under Secretary John C. Whitaker wrote the Washington Department of Game, indicating that the federal position and Administration support for the Indian tribal needs remain unchanged, stating:

"Your letter infers that difficult problems have been created by Judge Boldt's decision as the result either of 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. * * * the courts have repeatedly reaffirmed Indian treaty fishing rights and limited the authority of states to restrict and regulate Indian fishing. * * * 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 county, the Department will consider the need to protect long-term conservation needs in approving tribal fishing regulations. * * * 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. * * *"

B. In late June, Interior Secretary Morton met with Washington officials on the State's complaints and own funding requests. News reports of the meeting indicated that the Secretary strongly committed himself toward meeting the funding goals and requests of the Game and Fisheries Departments, totalling \$1.2 million for FY-1975. In a July 12, 1974, in a letter signed by "Rog Morton", the Secretary informed the Washington Game Director that he should not be offended by the June 19 Whitaker letter, terming it "a 'legalistic' response", not to be "interpreted by you as establishing the attitude" of the Interior Department. He added:

"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."

C. While the BIA, F&WS, and Tribes' requests for supplemental funding have reportedly been assigned a low priority, federal officials should examine what the State itself views its priority to be in requesting \$629 000

The amounts sought by Washington Game would provide for:

- (a) 21 Wildlife Enforcement Agents;
- (b) 10 biologists;
- (c) 1 Indian Affairs Coordinator;
- (d) Helicopter & fixed wing aircraft (rentals);
- (e) 20% of requested funding for Administration Costs.
- (f) 30% of requested funding for steelhead smolts for planting.

D. The Regional Office of the Fish & Wildlife Service, under Director Kahler Martinson, similarly has seemed to be more sympathetic to the State programs and requests than to the long recognized needs of Indian Tribes in the Pacific Northwest. Several requests for studies and information which have been requested by Tribes through the Congressional Delegation and Administration officials -- and promised to tribal governments to be forthcoming month after month, extending into years -- we have recently discovered, have been forwarded to the State Fisheries and Game Departments for review, recommendations, and a direct role in constructing the responses and results to be returned to or imposed upon the affected Tribes.

CONCLUSIONS:

This presentation is formulated partly to demonstrate that both the need and the justifications for the supplemental appropriations requests have been known for some time to federal and state agencies. The Boldt Decision did not create the needs, but did permit the Tribes to act upon longstanding resources management and community economic problems. Significantly, the positions of the federal attorneys and witnesses, and partly the decision itself was premised upon an indication that a definite federal commitment existed for aiding the Tribes and that such a commitment would be carried out in the event of a ruling that recognized the Indians' possession of both resources and rights.

Time is a crucial factor in management of anadromous fish resources which return in cycles and for which the management of the parent generations have decisive effects upon the status or abundance of the progeny cycles. Even though the budget request is keyed strongly toward "law enforcement" categories, these tribal employees play an important part in monitoring the resources and reaching management decisions, compiling reports, and assuring adherence to necessary regulations by both tribal members and other persons. Its program variance from general "criminal law enforcement" is reflected in the ineligibility for 'wildlife agents' under the Law Enforcement Assistance Administration (LEAA). There is major need, because a vacuum has existed in this program area in the past.

There are some deficiencies in the budget request and its character, but the Indian Fisheries Commission plans to assist the various tribal members, or Treaty Tribes, in developing a more comprehensive and satisfactory budget outline and justification for serving the needs of all affected Tribes in the coming Fiscal Year.

Respectfully submitted,

KALAMA July 23, 1975

AMENDMENT TO 1975 BIA BUDGET REQUEST FOR INDIAN FISHING
TREATY RIGHTS -- BOLDT DECISION

TOTAL REQUEST		<u>\$1,500,000</u>
Tribal Operations and Enrollment		125,000
Law Enforcement		1,032,000
Portland Area Office	\$304,500	
10 new position, 6 vehicles, 5 boats, operating costs and cost of judicial system		
Contracts with Tribes	727,500	
Hoh	\$30,230	
Quinault	81,960	
Makah	238,000	
Squaxin Island	108,550	
Nisqually	75,260	
Muckleshoot	105,000	
Lummi	88,500	
Trust Responsibilities - Rights Protection		343,000
Portland Area Office - Fishing Commission	31,000	
Western Washington Agency - 2 positions and related costs	29,000	
Contracts with Tribes	283,000	
Quinault	\$85,500	
Squaxin Island	26,400	
Lummi	31,100	
Muckleshoot	20,000	
Nisqually	20,000	
Quileute	100,000	

To: Stuart Blow

From: Donald R. Johnson

Date: July 26, 1974

Subject: United States v. Washington
Meeting in Olympia, July 22, 1974

Duphault

FOR THE RECORD

This meeting was called as a follow-up to recent meetings held in Washington, D.C. Present were Mr. Tollefson, Director of the Washington State Department of Fisheries; Charlie Peterson, Oliver Ward, and Hubert Markishtum; all Makah Indians; Mason Morissett, attorney for the Lummi, Quillayette, and Makah Indian tribes; Bob Wares, FWS (Interior); Forrest Kinley, a Lummi Indian; Jim Heckman, FWS (Interior); Don Johnson, Ken Henry, and Jack Dunnigan, all of NOAA; and Bob Robison, Don Kauffman, Hank Wendler, Grant Fiscus, all of the Washington State Department of Fisheries.

Mr. Johnson began the meeting with a summary of what has happened to date, including the last two Commission meetings, and the two meetings in Washington. He noted particularly that at the most recent Commission meeting, the Canadian Commissioners voted down the proposal to add extra days to the Indian fishery, but were willing to give further consideration at the next Commission meeting to the possibility of adding an additional member to the Advisory Committee, an Indian on the United States side on an ad hoc basis. Mr. Johnson then discussed the reaction of the Canadian Commissioners at the latest Washington meeting generally describing it as cautious. The Canadians were afraid that there was a large gap in existing information concerning the changes that would occur in the fishery by changing existing regulations to allow for preferential Indian treaty fishing rights, and thus that they were more interested in taking steps for the 1975 season, when there would be more opportunity for planning, than for 1974. He noted that there were three conditions the Canadians set forth for any regulation under which the United States could recognize preferential Indian fisheries: (1) that the integrity of the regulatory scheme not be impeded by allowing too many fish to reach the Canadian fisheries in the Fraser River system, i.e., that it not be disruptive to Canadian fisheries; (2) the Canadians reserved judgement on making up for imbalances in the disparities between Canadian and American catches which were caused by such recognition of preferential fisheries; (3) that the change would have to be done by the United States within its domestic law, as constrained by the existing pattern of Commission regulations.



Charlie Peterson and Forrest Kinley inquired as to why the United States was not in a bargaining position to gain Commission support for its preferential Indian fisheries, whereas the Canadians were getting Commission support for subsistence fisheries in the northern Fraser River system. Mr. Tollefson responded that this was because United States Commissioners, a number of years ago, had acceded to such considerations without understanding the implications for American Indians. Mr. Johnson noted that the Fraser fishery by Canadian Indians is, indeed, bound by Commission regulations. Mr. Peterson also asked about Canadian trolling permitted in the three-to-twelve mile zone off the northern Washington coast and explored the process of give-and-take within international negotiations particularly the recent bilateral between the United States and Canada. Mr. Tollefson responded that, in a negotiating setting, you end up with a package and that it is impossible to delineate just what has been traded for what other item of return. He also noted that in relation to the agreement being referred to, a number of significant Atlantic fisheries were involved. Mr. Johnson also pointed out that the earlier negotiations were not undertaken by the Salmon Commission, but rather by the two governments at their respective federal levels.

The discussion then turned to the particular problem at hand, Mr. Henry cautioned against any proposal which would involve closing the U.S. fishery to non-Indian fishermen for any significant periods. That would unduly disrupt the overall regulatory scheme of the Salmon Commission, since United States fishermen would not be taking their allotted catch and since there was no way that the Indians could make up for the large displacement which would occur in the non-Indian fishery. He then put forth a suggestion which had been briefly considered by a number of technical experts on all sides of the case, viz., to exclude non-Indian fishermen from certain areas of fishing, or on certain days, or a combination of days and areas. The theory behind the proposal was that by excluding competition, the Indian take would increase to some degree. Forrest Kinley pointed out an area near Carter Point which he suggested could be set aside for the Lummi. Being an extremely productive area, an exclusive Indian fishery in this area would greatly increase their catch per unit of effort. The United States fishermen would still have an opportunity (in the Point Roberts area) to catch the fish which the Indians did not as the fish made their way northward towards the Fraser River. There was general agreement that this system was a valid approach, bearing in mind the reservations outlined above, although there was some concern about its political acceptability.

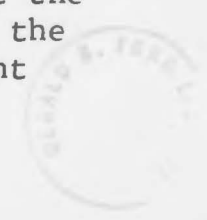


Discussion then turned to finding a similar area for the Makahs to use. It was clear that the Makahs had no areas similar to the Carter Point area which would give them the same kind of advantage enjoyed by the Lummi. It was pointed out that the area restrictions could work in one of two ways: first, a small area within which the Indians would have a completely exclusive right to take salmon; or, second, a broader area within which the exclusive Indian fishery would be limited to certain of the days granted to the United States by the Commission. Although no one was particularly happy about the proposal, it was pointed out that this was just a one-year plan to get some recognition for the preferential Indian fisheries.

It was generally agreed that simply adding extra days was a much simpler and more domestically politic solution. It was recognized that any "extra days" proposal would have to be acceptable from the standpoint of conservation. Mr. Tollefson then inquired as to whether or not Judge Boldt would object were he to unilaterally grant extra days as he had in the past. Mr. Morisset responded that it would be highly unlikely that going to Judge Boldt would be an acceptable short-term solution, since the Judge would be out of town for at least two weeks. Mr. Peterson also recommended that the United States Commissioners at least ask once again for extra days for the Indians, and it was also recommended that Mr. Johnson raise the possibility of such recognition with the State Department.

After a long series of huddles, it was agreed that the Makahs would look at an exclusive Indian fishery west of the line drawn from the Sekiu River to Magdalena Point. At this point in the discussion, the Indian and Department of Interior representatives went to caucus, accompanied, at the request of Mr. Heckman, by Dr. Henry.

After a few minutes the Indians returned. Mr. Morisset stated that he wanted to express thanks to all of the attendees for making a good faith effort at reaching a solution. However, they had concluded that the concept of an exclusive Indian fishery cutting down the time in which non-Indians could fish would not conform with the spirit of Judge Boldt's decision, and would not be acceptable to the Indians, since it would work contrary to the best interests of the Indians and all of the citizens of the State of Washington. He requested that the United States Commissioners once again give their best efforts to attempting to get extra fishing days for the Indian tribes, either formally or informally. He also noted that the Indians will continue to work simultaneously through all of their channels, including Congressional delegations. He did want the United States Commissioners to keep up maximum pressure on the Canadians to get extra fishing days for treaty fishing right Indians.



Mr. Tollefson asked Mr. Johnson to call Washington the next morning, and to attempt to get the United States Government to make contacts with the Canadian Government in Ottawa, and try to ascertain what their reaction would be to Mr. Tollefson's taking unilateral action for the Indian tribes concerned, as he had in the past for the Makah tribe. Mr. Johnson agreed with Mr. Tollefson that that would be a better solution than to try to establish exclusive fishing areas. He also noted that he would always be available to representatives of the newly-formed Indian fishing commission for consultations. Mr. Morisset also requested that progress be continued in formulating a permanent regulation which the Commission could adopt for the 1975 season.

Mr. Johnson at this point stated his personal feeling that he was worried about the United States arrogating too much authority to itself; and emphasized the concept of shared decision-making for a common resource, pointing out that the managerial expertise for dealing with Fraser River runs was largely in the Commission staff. Mr. Tollefson also cautioned that as each of the two nations attempts to allocate fisheries to their different domestic fishing groups, allowance had to be made for the management capabilities of the Commission staff. Mr. Kinley stated that the Indian fishing authorities stood ready to take any action which was necessary if their own fishing activities were disruptive to the Commission's regulatory pattern. Responding to an inquiry from Mr. Johnson, Mr. Kinley pointed out that the Lummi would have the following gear operating within the sockeye fishery during the present season: 32 gillnetters; 180 sixteen-foot skiffs, of which 30 would be using fifty mesh nets; two purse seiners; and no reef nets, unless extra days were allowed. (The Lummi were going to lease the reef net sites from the non-Indian fishermen, and use them on the extra days allocated to them by Mr. Tollefson. However, if Mr. Tollefson is unable to allocate extra days, the Lummi will have no reef sites.)

The meeting ended on an amicable note.

John H. Dunnigan
Staff Attorney

cc: Mr. Brennan
Mr. Johnson
Mr. Henry
Mr. Tollefson
Mr. Morisset
Mr. Dysart
Mr. McCarthy





DEPARTMENT OF STATE

Washington, D.C. 20520

MEMORANDUM

July 29, 1974

TO: Bradley H. Patterson, Jr., The White House

FROM: Stuart Blow ^{SB} Department of State, S/FW-COA

SUBJECT: Status of Indian Treaty Fishing Problem in
Washington State

Following the US-Canada meeting in Washington July 18 on the Indian treaty fishing problem, a meeting was held at Olympia, Washington on July 22 to try to develop proposals for further discussions with Canada. In attendance were representatives of the Makah and Lummi Indian tribes with their attorney, and officials from Commerce, Interior and Washington State.

First discussed were proposals for an exclusive Indian fishery in certain areas or on certain days or a combination of days and areas. This exclusion of non-Indian fishermen from the selected areas and/or days would, on the face of it, create no conflict with existing salmon fishing regulations and would thus be the cleanest way to approach the problem. There was recognition however that domestic problems would be created through the reaction of the non-Indian fishermen. In the final event the Indian representatives rejected the concept of an exclusive Indian fishery by areas and/or days.

As a substitute the Indian representatives urged the US Commissioners to try to obtain from the Commission additional fishing days for the Indian tribes. Such a proposal has already been rejected by the Commission. It is true that the Director of the Washington State Department of Fisheries has in the past two years unilaterally provided extra fishing time for the Makah Indians, which was a violation of Commission regulations. However, the effect of the additional Makah fishing was apparently minimal and the Canadian Commissioners, though not happy about the action,

did not choose to protest formally. The situation is now somewhat different in that extra fishing time is also being requested for the Lummi tribe and, moreover, the question has now been taken to government level. These factors may make it difficult for Canada to tacitly acquiesce in US unilateral action because of potential fishery management problems and the question of US fulfillment of its treaty obligations. In any event, the possibility of extra fishing time has been discussed further with Canadian representatives, both on the West Coast and between the Department of State and an official of the Department of the Environment in Ottawa. The Canadians have not rejected the possibility out of hand and as of July 26 discussions were continuing.

A report of the July 22 meeting is at Tab A. A Summary Record of the US-Canada meeting of July 18 (subject to Canadian review and comment) is at Tab B and a more detailed record of that discussion (US distribution only) at Tab C.

Attachments:

- Tab A - Report of July 22 Meeting
- Tab B - Summary Record
- Tab C - Record of Discussion





Puyallup Tribe of Indians

MEDICINE CREEK TREATY NATION



August 21, 1974

Mr. R. Kahler Martinson,
Regional Director,
U.S. Fish and Wildlife Service
Department of the Interior
PO Box 3737
Portland, Oregon 97208

Dear Director Martinson:

On July 25, Mr. L. Edward Perry forwarded an informational copy of your 'Salmonid Hatchery Feasibility Study - South Puget Sound Area' to the Puyallup Tribal Council. Frankly, some aspects of it are as surprising as its deficiencies are disappointing.

There are several matters, including the hatchery study status, that we choose to discuss with you at this time. Perhaps some of these issues should also be taken up at a meeting between the Puyallup Tribal Council, perhaps with other Tribes represented, and yourself and your staff. An early meeting date would be preferred.

By separate letter we have sent you copy of a statement to the Bureau of Indian Affairs regarding pressing budget needs of the Puyallup Tribe for fisheries management activities and related purposes. We are interested in whether your office may have any funds which might be used to meet some of these program requirements. At this point, it is an inquiry of interest rather than a direct request.

We understand that your Regional Office is securing the approximate \$690,000 in appropriations secured through its add-on, or amended, budget request. A variety of agencies and offices have indicated that these funds will be split between your Fisheries Services Program and the Washington Departments of Fisheries and Game. If this be true, we are confused by it. Departmental communications with us, and briefing papers, indicated that the Northwest Fisheries Program (Tumwater) had earlier this year requested \$550,000 for its 'case area' biological and technical services program, plus \$140,000 for its Columbia River related activities.

At a meeting with Indian representatives from a score of Tribes in Portland on May 1, you made reference to the case area amount ("about half-a-million-dollar increase") before going on to state: "We are going to be advocating for the state to get money, too, but *** that's not part of the budget request we are making." We seriously doubt that different Tribes would have urged OMB and Administration clearance for these funds, and congressional support for their appropriation, if tribal representatives had known that your May 1 statements were false. Were they? Have we again been misled in order that your Office might make good some commitment it has made to these State agencies? We know that the combined tribal needs for funding and assistance services have not diminished since May 1.

We recognize that considerable amounts of federal funds have been used regularly in support of State fisheries management, hatchery production, research, and other operations. Also, we are aware that the Northwest Fisheries Program has provided limited supplemental funding assistance to State activities on occasion. Federal assistance to the State and its agencies can appropriately serve legitimate needs. That would not be the basis for any of our objections.

Unilateral action by federal agencies to withdraw effective services and support to Indian Tribes in favor of sponsoring a blind commitment to State priorities and plans seem inconsistent with the established federal obligations to Indian people -- and is contrary to the objectives of the Boldt Decision for bringing about improved cooperation and coordination between the governments of the Tribes themselves and the State. The increased management responsibilities resting with the Tribes requires a larger role in planning and budgeting processes, not that Indians be eliminated from those processes altogether.

If your Office is to function as an "advocate of fish resources", as you have described its attitude, then surely you cannot refuse or fail to recognize the Tribes' role and responsibilities as advocates, managers, and protectors of fish resources. Any attitude that Tribes are nothing more than another 'self-interested user group' is wholly unjustified. Any assumption that State agency positions are inherently valid and that tribal motives and views are naturally suspect abandons a posture of objectivity and advocacy, and plainly disregards existing relationships to the fish resources.

We question the appropriateness of dividing up the \$690,000 Boldt Implementation funds with State Fisheries and Game, if the identified needs of plaintiff Indian Tribes are neither addressed nor met. The 1973 Inter-Agency Agreement between your Office and the BIA, under which \$250,000 was contracted to your Bureau from BIA FY-1974 funds, provided for "assistance to the Indian tribes in the protection and development of their fishery resources and to assist the BIA and the Interior Solicitor and the Justice Department in defending the Indians' treaty fishing rights." Obviously, the request and justification for the \$690,000 add-on budget were developed under the terms of that contract.

By January 9, 1973, the U.S. Attorney's Office had outlined the services it expected from your Bureau under the contract, specifically detailing the need to identify and develop a post-trial federal commitment for meeting tribal technical assistance needs. Noting that "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", the U.S. attorney emphasized that "post-trial assistance" should "terminate only if a tribe is capable of obtaining such expert assistance".

After the March 29, 1974, Interior departmental briefings in Washington, D.C., where funding needs were outlined for Boldt implementation needs, the Deputy Assistant Secretary for Fish and Wildlife and Parks, Mr. Curtis Bohlen, wrote us on April 26 and declared: "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. *** we are planning to expand our capability to assist the Puget Sound tribes in qualifying for self-regulation of anadromous fish harvests at off-reservation locations."

It seemed further force was given to the direction and promises, expressed to us and other Indian representatives by Departmental and agency officials, by the April 12 congressional declaration of policy included in the Indian Financing Act of 1974, stating:

"It is hereby declared to be the policy of Congress *** to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities."

Recent discussions with the Washington congressional delegation in D.C. indicated their solid support for that policy and its application to the consistent effect of the Boldt Decision. Their commitment to the people involved and to the fish resources uniformly followed the declared principles that (1) the Decision should not be subverted, but should be implemented for the good of all; (2) there should be no congressional attempt to override the Boldt ruling at the expense of Indians in favor of non-Indians; and (3) there should be increased tribal-State communications, coordination and cooperation in various facets of management and increased production of fish resources in order that all needs and interests could be met and served. In sum, more fish and less fighting.

We know of no Tribe which has opposed these attitudes and various policy statements. We are aware, however, of growing Indian concern over contradictions and adverse actions developing in federal circles and in the increasing subordination of federal decisions to State designs.

The questions of hatchery construction, operations, funding, and policies -- and the nature of your South Puget Sound Area feasibility study -- presents an excellent example which points out crucial problems.

The engineering studies and cost estimates can be useful, and most assuredly would have been useful in a complete feasibility study which we, and the several other Tribes also requesting it, had expected would be done. Nowhere do we find any general or specific statements of need or justification, nor any inclusion of information furnished by the Tribes relating to current or projected future fisheries and management plans. We would expect that these and other considerations would themselves be examined in making a determination of feasibility.

Rather than simply permitting the State agencies to write in their own positions and conclusions for this partial study -- and those conclusions attracting the major force for consideration in the absence of crucial justifying materials and statements showing Indian and general need for the proposed project -- their positions also ought to be examined before making a final statement on feasibility. How valid are their stated positions? Are they valid and of sufficient oppositional merit to justify both non-feasibility and defeat of the proposal? Does a feasibility study stop with their assertion that there should be no additional hatchery management agency in the area, or does it proceed to examine why they have insisted upon a dual and divided system of fish management themselves? How well have they managed hatchery and stocking operations in the study area? What findings lead to what conclusions in examining such considerations in developing a final form judgement on feasibility?

We are not suggesting inclusion of voluminous extraneous matter, but only a fair chance for actual feasibility to be demonstrated or denied. Some considerations cited by the State agencies are of substantial concern to ourselves as well. The "population density barrier" question, and the impact of artificial plants on natural run stocks, were, in fact, issues that the Puyallup Tribe raised in the Game Department's civil lawsuit against the Tribe in Puyallup Remand III when returned from the U.S. Supreme Court. They are issues we shall be carrying in U.S. v. Washington, Phase II. The Game Department has been planting steelhead on the Puyallup River for some years, progressively increasing the numbers planted with a resultant progressively decreasing return of both natural run and hatchery reared adults. The answer to the issue is not that the Game Department should continue its programs without examination, and that there should be no federal Indian hatchery in the area, but there should be determination of what the problems are and what are the most appropriate solutions.

That Department's assertion that they can readily supply all smolts needed in the area stands in contradiction to other Puget Sound Marine Water area studies which state future hatchery needs, the present efforts to secure \$7.4 million for increasing production capacity of all existing federal and state hatcheries in Washington, as well as previous efforts by Fisheries and Game to secure Nisqually Indian Community approval for establishment of both hatchery and rearing facilities on the Nisqually River.

The Indian Tribes of this area are cognizant of the excellent reports previously issued out of the Tumwater Indian Fisheries Services office. Both Indian people and the citizenry of Washington should be greatly appreciative of the lead taken by that office in moving for dramatic changes in public policy regarding the effects of improper logging operations upon fish resources. The cooperative efforts of that Office and the Quinault Tribe in addressing the problem and acting and reporting on it preceded general recognition of the need to do something about it in all areas by nearly a decade. The impetus came from the Quinault projects and the staunch support of U.S. Representative Julia Butler Hansen in insisting that the efforts be federally funded. Thus, we are gravely disappointed that your "feasibility study" in the present instance is so far below the quality and standards we had come to expect from your Bureau.

We do believe that the hatchery engineering information supplied in the study could be the base for a finalized feasibility study and master plan consistent with the objectives of the Indian Tribes of the study area. The time loss in being able to proceed now to seek supportive federal, private, foundation, or other investment funds for developing the desired facilities is probably the major harm of not having been provided a complete feasibility study and implementation plan.

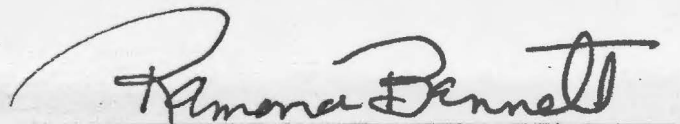
The Puyallup Tribe will be addressing the other affected Tribes, the Medicine Creek Treaty Council, and the Indian Fisheries Commission, about the prospects of our proceeding jointly, in cooperation with the Northwest Fisheries Program office and other resources, for completing the study and a final plan. That would, of course, require some sources of funding. We believe it would constitute another reason why you should hold tightly onto your \$690,000 add-on funds -- at least until the extent of such needs are presented and you are able to meet with all the concerned Tribes.



We sincerely hope that you are responsive to our expression of concerns as presented in this letter. However, since various of the issues of policy and plans are determined in other decision-making areas as well, we consider it necessary to communicate these and related concerns to additional parties and officials. Insofar as the functions of your Office and Programs are involved, we shall send you copies of our related correspondence or complaints.

We shall sincerely appreciate your every consideration in these matters, and look forward to an early response.

Respectfully yours,



RAMONA BENNETT, Chairwoman
Puyallup Tribal Council



HANK ADAMS, Puyallup Fisheries
Management Coordinating Consultant

Copies to:
Distribution on
Attached Page.



Copies Sent To:

U.S. Senator Warren G. Magnusen
U.S. Senator Henry M. Jackson
U.S. Senator Alan Bible
U.S. Senator James Abourezk
U.S. Representative Julia Butler Hansen
U.S. Representative Floyd Hicks
U.S. Representative Lloyd Meeds

Interior Secretary Rogers C.B. Morton

Under Secretary John C. Whitaker

Mr. Lynn A. Greenwalt

Mr. Curtis Bohlen

Indian Commissioner Morris Thompson

BIA Area Director, Portland Area Office

Mr. James Heckman, Program Manager, NWFP

Mr. George Dysart, Ass't Regional Solicitor

Mr. Marshall Cutsforth, Western Washington Agency - BIA

✓ Mr. Brad Patterson, Special Presidential Assistant

U.S. Attorney Stan Pitkin

Dr. George Blue Spruce, ONAP - HEW

Governor Daniel J. Evans

Bill Rodgers, Attorney

Forrest Kinley

Guy McMinds

Charlie Peterson

Five Treaty Councils

Indian Fisheries Commission



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 23 1974

Mr. Forrest Kinley
P.O. Box 309
Marietta, Washington 98268

Dear Mr. Kinley:

I must apologize for taking so long to acknowledge the mailgram you and the four other gentlemen sent concerning the financing of Indian fishing rights.

As you probably know, we asked the Congress for an additional \$2,490,000 in 1975 to implement Judge Boldt's decision. We feel that this amount is sufficient to accomplish the objective, given the resources already available within the Department of the Interior, and we expect this amount to be appropriated.

We did not ask for additional money for the Regional Solicitor in Portland because we believe that any legal activity associated with implementing Judge Boldt's decision should be either conducted within existing totals or should be provided by deferring other work of lower priority.

Sincerely,

/s/ Frank G. Zarb

Frank G. Zarb
Associate Director

Not needed, according to
Dyprad



MEMORANDUM
OF CALL

TO:

Brad



YOU WERE CALLED BY—



YOU WERE VISITED BY—

Hank Adams

OF (Organization)



PLEASE CALL

PHONE NO.
CODE/EXT.

(206) 456-1793



WILL CALL AGAIN



IS WAITING TO SEE YOU



RETURNED YOUR CALL



WISHES AN APPOINTMENT

MESSAGE

*Budget for
BIA
Indian Tribes Western Wash.
Fisheries Wildlife.
(Boldt Decision)*

RECEIVED BY

Linda

DATE

9-4

TIME

4:10

STANDARD FORM 63

REVISED AUGUST 1967

GSA FPMR (41 CFR) 101-11.6

☆ U. S. GPO: 1972 - 472-749

63-108

UNITED STATES GOVERNMENT

DEPARTMENT OF JUSTICE

Memorandum

TO : Bradley H. Patterson, Jr.

DATE: September 3, 1974

FROM : WJ Wallace H. Johnson
Assistant Attorney General
Land and Natural Resources Division

SUBJECT: Executive Order for Presidential chartering
of the Indian Fisheries Commission

This is in response to the copy of your memorandum to Kent Frizzell re the chartering of the Indian Fisheries Commission.

I am hard pressed to provide any guidance on this because I don't have enough information with respect to purpose, composition, etc. Under most circumstances, there would have to be a statutory basis on the creation of the Commission, and that certainly would be the case if it was to have Presidential status.

I would be happy to provide further guidance if you would give me some more background on this.



August 28, 1974

MEMORANDUM FOR:

**KENT FRIZZELL, Solicitor, Department
of the Interior**

FROM:

BRADLEY M. PATTERSON, Jr.

SUBJECT:

**Executive Order for Presidential
chartering of the Indian Fisheries
Commission**

I am enclosing a copy of Hank Adams' correspondence in regard to a proposed draft for an Executive Order for Presidential chartering of the Indian Fisheries Commission for your consideration and comment.

Is Presidential action appropriate for this situation or should it be an Act of Congress or if neither, what would be an appropriate way to give the right kind of recognition to the new Commission?

cc: Wallace Johnson, Justice
George Dysart, Interior

Central Files



SURVIVAL OF AMERICAN INDIANS ASSOCIATION
PO Box 719 - Tacoma, Washington 98401

PH: 206-456-1793
August 15, 1974.

Mssrs. Leonard Garment & Brad Patterson
Special Assistants to the President
The White House
Washington, D. C. 20050

Dear Len and Brad:

Enclosed is a copy of a draft for a proposed Executive Order for presidential chartering of the Indian Fisheries Commission, as discussed during the July meeting with the interim Commission members.

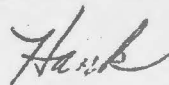
This draft has been reviewed by the different tribal representatives, Commission members, and various of the tribes' legal counsel. The suggested changes are noted on page 3 of the draft. Tribal attorneys indicated that they would study the proposed order and advise of any additional suggestions for changes.

Otherwise, the Commission has authorized myself to work on attempts to secure appropriate (presidential) action for this issuance of such an Executive Order, essentially through yourselves and other concerned federal officials.

I'm forwarding copies to Interior Solicitor Kent Frizzell and Assistant Attorney General Wally Johnson with copies of this letter in order that they may offer their response on the proposal as quickly as possible. The purposes to be served by the Order are generally stated in the draft. However, there are additional justifications and these can be communicated when your offices present us an initial response and address us with any questions you would need us to answer.

Please respond directly to Forrest Kinley, Chairman, Indian Fisheries Commission, PO Box 309, Marietta, WA 98268; with copies to myself. We sincerely appreciate your every consideration and action on this matter.

Respectfully yours,



Hank Adams, SAIA
National Director

cc: Kent Frizzell
Wally Johnson
Forrest Kinley

EXECUTIVE ORDER

NO. _____

September __, 1974; ____ F.R. ____

ESTABLISHING AND CHARTERING AN INDIAN FISHERIES COMMISSION (PACIFIC NORTHWEST)

WHEREAS the United States has entered into and maintained contracts with the several Indian Tribes, Bands, and Nations as are parties to the Treaties of Medicine Creek, Quinalt, Point Elliott, Makah, and Point No Point, respectively, under which the separate Indian populations retained certain autonomous rights and authorities for governing their communities and for controlling the extensive fish resources secured to them; and

WHEREAS these Indian people uniformly own or possess a "right of taking fish", exclusively within the boundaries of their designated reservations, and "in common with all citizens" in their other customary tribal fishing areas, as reserved against relinquishment in the language of the several treaties; and

WHEREAS it is the declared policy of the United States "to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians"; and

WHEREAS there exist significant modern opportunities for fulfilling basic beneficent policy and program objectives for Indian people while satisfying the promising ideas, initiatives, plans and hopes of numerous Indian Tribes and communities; and



WHEREAS the separately held treaty rights and resources of these Indian Tribes are substantially interrelated for such reasons as major migratory fish resources are involved and being affected by actions of unrelated tribal entities at distance as well as by authorities of mixed jurisdictions in joint use areas, additional to the impact and diverse interests of non-Indian user groups and agencies operating under the responsibilities or claims of State, National, and Inter-national governmental bodies; and

WHEREAS the treaties leave the President with authority to implement their provisions in safeguarding the independent interests and established rights of the respective Indian Tribes, or to recognize common needs among the separate Indian communities in acting to advance their common welfare and unique opportunities:

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States, it is ordered as follows:



Section 1. Establishment of Commission. There is hereby established the Indian Fisheries Commission of the Pacific Northwest (hereinafter referred to as the "Commission"). The Commission shall be subordinate to, and shall act as an inter-tribal governmental agency in behalf of ~~(organized federal)~~ Indian Tribes under the respective Treaties of Medicine Creek, Quinault, Point Elliott, Makah, and Point No Point, whose recognized tribal governments are hereby granted charter and authorization to devise and adopt a Constitution and Bylaws providing for the organization and operation of the Commission. In the designation of any board or body of commissioners for the Commission, the Indian people possessing tribal fishing rights under each particular treaty shall be represented by at least one (1) commissioner for the combined area or tribes covered by that treaty.

(a) The Commission may exercise any power or authority possessed by any member Indian Tribe, or member treaty nation, to whatever extent such powers or authorities are assigned the Commission by the member tribes, collectively or individually, and assented to by any individual Indian Tribe affected by their exercise. Any member tribe, or combination of tribes, may contract with the Commission to permit it to exercise any assigned authorities, to provide any services, or to conduct any approved programs.

(b) The Commission is authorized, subject to direction from the tribes, to receive and expend funds from both public and private sources, and, accordingly, may seek authorizations and appropriations from the Congress in support of the functions of the Commission, or in support of the activities and programs of the member tribes, collectively or individually. The Commission is further authorized, consistent with and its Constitution and Bylaws, any existing law, to contract with Federal agencies for the administration or delivery of any funds, programs, or services, which would otherwise be provided by such agencies to the same Indian tribes or people.

Section 2. Functions of the Commission. The Commission shall:

- (a) Formulate general Indian treaty fisheries policies and programs to promote, coordinate, or enhance the management and conservation practices of member Indian Tribes, and to generate broad utilization of the collective information and experience available through the combined Indian populations.
- (b) Assist in providing technical advice or training services from available or developed sources for member tribes as needed in their independent, coordinated, or cooperative fishery management efforts.
- (c) Aid in the gathering, exchange or dissemination of report, statistical or other information for use by the tribes, state and federal agencies, and international commissions, in the operation, regulation, or evaluation of their anadromous fish management programs and related activities.
- (d) Coordinate with tribal, state, federal and related agencies in the development of program plans or priorities, budgeting processes, conduct of fish harvests, maintenance or rehabilitation of fish resources, and in the development of future public policies for the care and utilization of these resources, while representing the specific Indian interests in such matters.
- (e) Assist in public information and education projects, including any meetings or exchanges with non-Indian commercial or sportsfishery interests and user groups, for minimizing conflicts and developing good will in attitudes, and for addressing the environmental, ecological, and conservation concerns of the Indian and general public.
- (f) Assist the member tribes in planning or programming for fisheries related industries or economic enterprises, management related job structures, and the training or education of qualified industrial, technical or professional personnel from among the Indian population for advancing tribal objectives.
- (g) Recommend amendments to this Order, or other acts which may be taken under 25 U.S.C. 9, for effecting or furthering the purposes of this Order.

Section 3. Establishment of Planning Council. There is hereby established, for purposes of advancing the efforts and objectives of the Commission, a federal Indian Fisheries Policy and Planning Council (hereinafter referred to as the "Planning Council"). The Planning Council shall have membership as follows: The Secretary of the Interior who shall be the chairman of the Planning Council, and the two Assistant Interior Secretaries having primary administrative responsibilities for each the subject matter of Indian Affairs and of Fish and Wildlife; the Assistant Secretary of Commerce having primary administrative responsibility over the National Marine Fisheries Service; the Assistant Secretary of State having primary administrative responsibility for international fisheries policies and problems; the Associate Director of the Office of Management and Budget having primary responsibility over budget matters relating to Indian people and programs; and five commissioners from the Commission as shall represent it and each Indian treaty area included under the Commission.

Section 4. Compensation and per diem. Members of the Planning Council who are officers of the Federal government shall receive no additional compensation by reason of this order. Other members of the Planning Council shall be entitled to receive compensation and travel expenses, including per diem in lieu of subsistence, as authorized by law for persons in the government service employed intermittently (~~§~~ U.S.C. §§ 3109, 5703).

Section 5. Assistance to the Council and Commission. (a) Each Federal department and agency represented on the Planning Council shall furnish such necessary assistance to the Planning Council and to the Commission as may be authorized by section 214 of the Act of May 3, 1945, 59 Stat. 134 (31 U.S.C., 691), or other law. The Department of the Interior shall furnish necessary administrative services for the Planning Council.

(b) Any staff of the Planning Council which may be necessary, shall be assigned by the departments and agencies represented on the Planning Council, and may be detailed or assigned as necessary to work for designated periods with the staff of the Commission.

(c) The chairmen of each the Planning Council and the Commission shall periodically submit timely reports and budget recommendations to the Director, Office of Management and Budget (OMB) as appropriate (86 Stat. 770).

Section 6. Meetings. The Planning Council shall meet on the call of the chairman and at least once semi-annually. The Commission shall meet at times prescribed in its Constitution and Bylaws.

~~RICHARD M. NIXON~~
President

THE WHITE HOUSE

September __, 1974.

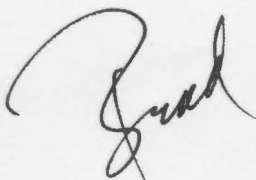


THE WHITE HOUSE
WASHINGTON

September 13

LG:

This is a step forward,
if only to bridge a
communications gap...





U.S. DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

SEP 10 1974

F42

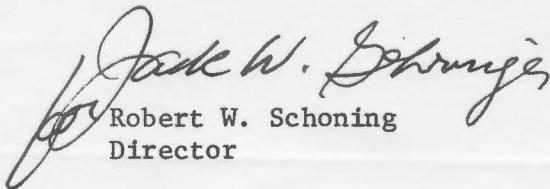
Mr. Bradley H. Patterson, Jr.
The White House
Washington, D.C. 20500

Dear Mr. Patterson:

This is in response to your memorandum of August 30, 1974, concerning consultation with the Indian fishing community by the International Pacific Salmon Fisheries Commission (IPSFC).

I would like to assure you that we are moving forward with respect to such consultations. A meeting has been set up for the evening of September 28, 1974, in Seattle which will include attendance by the five members of the Indian Fisheries Commission, the U.S. Commissioners to the IPSFC, and the U.S. members of the IPSFC Advisory Committee. Carmen Blondin, my Assistant Director for International Fisheries, and I will attend the meeting. We are looking forward to a useful consultation.

Sincerely,


Robert W. Schoning
Director



A Century of Fish Conservation



BP Files

August 30, 1974

MEMORANDUM FOR:

ROBERT SCHONING, Director of
National Marine Fisheries,
Department of Commerce

SUBJECT:

Consultation with Indian fishing
community by the International
Pacific Salmon Commission

Following up our telephone conversation of yesterday and our meeting of last July 11, I am writing to express the active interest we have in making sure that a full and open consultative process is opened up promptly between the U. S. Members of the International Pacific Salmon Fisheries Commission and the Indian fisheries community, especially in the geographic area covered by Judge Boldt's decision in United States v Washington.

A formal way to do this would be to add an Indian member to the Commission's Advisory Committee. But if that takes time, or requires international agreement, I believe that an equally effective and certainly more expeditious step would be for the three U. S. Commissioners to take the initiative and call a meeting of themselves with the principal members of the newly formed Indian Fisheries Commission.

I would not presume to say what the agenda would be or specifically what kind of proposed 1974 or 1975 regulations should be discussed in such a meeting; I am sure the Commissioners have many points for discussion on their minds, certainly the Indians do.

But of several things I am certain: the United States Government does have a clear responsibility to consult with responsible Indian leadership on any matter affecting them; the Indian tribes in the U. S. v Washington area have acted responsibly by establishing the Fisheries Commission, so there is a group of experienced and representative Indian leaders to consult with; the United States



Government, further, has a responsibility affirmatively to protect Indian trust rights, in this case as Judge Boldt has set them forth. That duty rests on the shoulders of all officers with a federal responsibility, including the three U.S. Commissioners.

Personally I believe that the responsibilities we have under the Salmon Fisheries Convention and those we have under our trust role to Indian people are compatible. It will be up to the skill and good will of the Commissioners, their staff, and the Indian representatives to work out together proposals which can then be persuasively presented to the Canadian Commissioners. The only way to do this is to begin the Commissioners-Indian dialogue promptly and to continue it regularly, with appropriate local and Washington staff attending to be of help. I would hope that the first such meeting could be held this month; perhaps you personally should attend to help make sure it gets off on the right foot.

Through the Advisory Committee and in other ways, the Commissioners have long had a dialogue going with non-Indian fisheries representatives. In the spirit of the Boldt decision, it is time to begin the Indian consultative process as well.

Please let me know when this process starts.

Bradley H. Patterson, Jr.

cc: Stewart Blew, Department of State
Kent Friessell, Department of the Interior

bcc: George Dysart
Harry Sachse

Central Files





United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

August 16, 1974

Dear Brad:

I'm enclosing a xerox copy of a memorandum received by me from my Assistant Regional Solicitor in Portland, Oregon, George Dysart, relating to the implementation of U.S. v. Washington as it affects the International Pacific Salmon Fisheries Commission. Frankly, Brad, this information has caused me to want to go all out and do what I can to protect the Indian fishing interests. At the prior meeting at your office, I was trying to be as objective as possible and see both sides of the issue. But if this is the type of "behind the scene" maneuvering being practiced by the anti-Indian fishing interests, I'm ready to do battle. This type of "cooperation" by other departments of the Government is inexcusable and is to be deplored.

If, after reading the memorandum, you have any thoughts on how we could best deal with the problems inherent therein, please give me a ring.

Sincerely,

Kent Frizzell
Solicitor

Enclosure.

Mr. Bradley H. Patterson, Jr.
Executive Assistant to Mr. Garment
Room 182, Executive Office Building
Washington, D.C.





United States Department of the Interior

Aug 1 1974

OFFICE OF THE SOLICITOR

SOLICITOR

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

August 12, 1974

In reply refer to: GDD

Memorandum

To: Solicitor

From: George D. Dysart, Assistant Regional Solicitor

Subject: U. S. v. Washington, No. 9213, USDC W.D. Washington
Position of United States Commissioners to International
Pacific Salmon Fisheries Commission

Several points stand out concerning the management of the salmon fishery under the jurisdiction of the International Pacific Salmon Fisheries Commission and the United States' input thereto.

1. After the Boldt decision (U. S. v. Washington) the United States Commissioners neither sought the advice or analysis of the United States Department of Justice or Department of the Interior, the two agencies which handled the case for the United States Government) regarding that decision and its impact on their function or the Commission's function, nor did they communicate with those Departments that they were briefing the Canadians on the decision. Moreover, they sought no instructions or clarifications from the State Department as to how to apply or deal with Judge Boldt's decision. Instead, and without any notice whatsoever to those agencies, they arranged for briefings of the Commission staff by the attorney for the Defendant State of Washington (Mr. McGimpsey) and an attorney for the National Marine Fisheries Service--whose views on the case have not been those advocated by the United States Government. Justice and Interior Department attorneys have been excluded from all contacts with either the Commission and its staff or representatives of the Canadian Government. At a recent discussion with the Canadian authorities the Department of State expressly excluded any Department of the Interior presence on the grounds that discussions would go better if only State Department people were present. Yet the regional attorney for the National Marine Fisheries Service of the Department of Commerce was present at such discussions. And, of course, Indians have been totally excluded, not only from discussions with Canadians, but from participation on the Commission's Advisory Committee made up of representatives of the principal affected user interests.



2. The summary of IPSFC management (prepared by NMFS) notes the following relevant points:

(a) Under the treaty the federal responsibilities are two-fold:

- i. biological problem of achieving proper escapement for maximum production;
- ii. dividing the catch as nearly equal as possible between the two countries.

Judge Boldt's decision contemplates no intrusion whatsoever on either responsibility and recognizes that the Indian rights exist only within the context, and subject to the limitations resulting from fulfillment of, each of those responsibilities. The Indians have never argued otherwise.

(b) IPSFC management is based upon each country making the primary determination of where and by what means it wishes to take its share of the fish. A user interest advisory committee has input into these decisions. The Indian treaty fishery has been excluded from representation on the U. S. section of this advisory committee. Under this point the Canadian fishery takes place primarily in the Strait of Juan de Fuca and in and around the lower part of the Fraser River and the U. S. fishery primarily in northern Puget Sound. Thus the regulations discriminate against the Makah Indian fishing area in the outer Strait of Juan de Fuca. The regulations also prevent the Lummi Indians from effectively participating in any reef net fishery at their usual and accustomed fishing locations without a compulsory displacement of existing non-Indian reef net gear. The Lummi Tribe has sought to avoid this consequence with a modest proposal for three reef net locations for two days per week, with the understanding that the total U. S. reef net fishery could be cut back if necessary to maintain the escapement and the U. S.-Canadian equal division of catch.

The United States Commissioners (backed by a request from the Reef-netters) requested the Commission to approve the arrangement but the United States has refused to exert any bargaining leverage to get the Canadians to agree to it.

(c) Management by the IPSFC is through seasonal regulations adopted each year based upon predicted run size "as well as predicted levels of U. S. and Canadian fishing effort and efficiency", with in-season modification of the regulations to reflect changes in either of the above. The Commission staff makes daily observations and analyses as the salmon begin to appear in the fisheries including analysis of

"amounts and efficiencies of fishing gear actually being used." Test fishing operations are conducted to assist in further analysis. The Commission generally meets "two or three times each week to review the status of the run almost on a daily basis."

But both the Commission and the United States Commissioners have refused to apply this principle to the regulation of the Indian fishery. No such analysis of anticipated level of Indian fishery or of its effect on the Commission goals has been made or even requested. Discussions I have had with attorneys for NMFS have disclosed that the primary motivation for NMFS's refusal to push aggressively for allowance of an Indian fishery for this year has not been the effect of such a fishery but the fear of what might be the situation in future years if the concept urged by the United States before Judge Boldt and adopted by him is allowed even to get started.

The Washington Department of Fisheries' pre-Boldt unilateral allowance of a limited Indian fishery over that expressly authorized by IPSFC regulations was not objected to by either the Commission or the NMFS because the anticipated level was such that no significant impact on the Commission's above two responsibilities was likely. This year, however, the United States has not applied such a standard in its dealings with the Commission. If anything the NMFS has been even more aggressive than the Canadians in resisting the continuation of the pre-Boldt policy. Until this year the NMFS never sought to oppose Washington's efforts to authorize such a limited fishery beyond IPSFC regulations nor did they ever seek to have the United States Government take over any aspects of direct enforcement of IPSFC restrictions so as to confine Indians to them.

The impact of the requested 1974 Makah fishery and Lummi reef net fishery would have been no greater than the pre-1974 Indian fishery. By applying pre-season analysis of anticipated Indian fishing effort and in-season daily monitoring of actual effort and catch--the procedure which NMFS says IPSFC applies to determine and modify the annual regulations for the non-Indian fishery--the Commission can adequately control the Indian treaty fishery so as to confine it to the International treaty requirements. Judge Boldt's decision gives both the Washington Department of Fisheries and the IPSFC full authority to limit Indian treaty fishing to conform to U. S. obligations under the International treaty. Nothing in it says that the regulatory authorities must adopt the same season for a year in which there are expected to be 300 Indian boats as they do for a year in which there are expected to be nine such boats.

The United States has never sought to have the test fishing operations conducted by Indians as one way of offsetting the restrictions on Indian fishing required by IPSFC regulations.

3. At the briefings of the IPSFC staff by the Defendant's attorney and the NMFS attorney (undertaken without seeking the views of the United States Attorney or others who represented the United States in the case) the Boldt decision was held to have provided that "unilateral action by the State, granting fishing time to the Makahs when the area was closed under Commission regulations, would be illegal." Judge Boldt's decision holds no such thing. He has authorized the state to enact and enforce the Commission's restrictions but he has not restricted the state in allowing further Indian fishing time if the Commission interposes no active opposition thereto. Washington's authority in this regard remains as broad as it was before the court decision.

4. In April the United States Commissioners on the IPSFC consulted "with state and industry people" re Judge Boldt's decision (Mr. Johnson's letter of April 19, 1974, to Canadian Commissioner Hourston) but not with Interior or Indian people.

George Boldt





United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

IN REPLY REFER TO:

AUG 26 1974

Mr. Leonard Garment
and
Mr. Brad Patterson
Special Advisors to the President
for Minority Affairs
The White House
Washington, D. C. 20501

Re: Indian Treaty Fishing Rights and
the International Pacific Salmon
Fisheries Commission

Dear Messrs. Garment and Patterson:

This letter is to reaffirm the Department of the Interior's support of such amendments to the International Pacific Salmon Fisheries Commission regulations as will recognize and be consistent with the Indian treaty fishing rights decision of Judge Boldt in U. S. v. Washington.

This was the position expressed by the Interior Department at our meeting at the White House on July 11, 1974, which position was concurred in by the Departments of State, Commerce, and Justice.

Efforts have been made in meetings with Canadian officials both in Washington, D. C., and Olympia, Washington, to immediately add additional days to the Indian fishery and subsequently to amend the regulations in order to give recognition to Indian treaty fishing rights on a permanent basis.

The reports I have received indicate that the Canadian representatives have flatly rejected the addition of Indian fishing days during the 1974 season but have left the door open to negotiations for favorable changes in the 1975 season. We understand that such negotiations are presently in progress.



The Department of the Interior urges that renewed efforts be made to change the Commission regulations for the 1974 season as well as for future years. Such changes must and can be made without affecting the allocation of fish between the United States and Canada and with no detrimental effect to the fishery resources. Representatives from the Solicitor's Office, the Fish and Wildlife Service, and the Bureau of Indian Affairs stand ready to meet with you and the Canadian representatives, if you deem it appropriate, at your convenience as to time and location.

The United States Government filed the case of U. S. v. Washington at the request of the Department of the Interior. The Government has now won a significant victory on behalf of the Northwest Indians and we should not permit the benefits of that decision to be lost or delayed.

We wish to thank Mr. Patterson from the White House for his leadership on this matter as well as Stewart Blow and Mary Beth West of the State Department, Robert Schoning of the Department of Commerce, and Harry Sachse of the Justice Department, for their past good efforts on this matter and request their aid and support in the future.

Sincerely yours,

/S/ KENT FRIZZELL

Solicitor



THE WHITE HOUSE
WASHINGTON

August 29

LG:

In view of Kent's two memoranda to us on this Salmon Fisheries question, I propose to lean on Commerce and ask them to do what they are, in fact, already planning to do, i.e. call a meeting later this month with the Indian representatives.

Schoning with whom I talked, asked me to write him a memo as a help and leverage for him -- and that is the real purpose of this.



OK?

OK.

L.

Good

NORTHWEST INDIAN FISHERIES COMMISSION (NWIFC)
Washington, D.C. - September 18 - 20, 1974.

Purposes of Discussions with Federal Officials:

The several Treaty Councils and Tribes under the Treaties of Quinault, Makah, Medicine Creek, Point No Point, and Point Elliott have collectively charged the Northwest Indian Fisheries Commission with the responsibility of evaluating and acting upon certain emergent issues of critical importance to Indian people of the Pacific Northwest relating to tribal treaty rights fishing and valued fish resources.

Issues and questions which require discussion, clarification, direction, resolution, or formulation of commitments, include:

1. What shall be the extent and nature of federal commitments for assistance to Indian Tribes and for implementing the Boldt Decision on treaty Indian rights?
2. What are the existing and future Indian tribal needs -- for federal budgetary support and for scientific professional expertise and technical assistance -- for carrying out the Tribes' management responsibilities for fish resources?
3. What are the present tribal needs for biological services and management assistances from the U.S. Fish & Wildlife Service and its Northwest Fisheries Services Program (headquartered at Tumwater, Washington), and how long will their program services be needed by the Tribes?
4. Why was there a dramatic congressional cutback in Boldt Implementation Funds for BIA and Indian Tribes as requested by the (Nixon) Administration, and what will happen to those funds (\$690,000) specifically requested for the USF&WS Northwest Fisheries Program's continued services to Washington and Oregon Indian Tribes, and appropriated by the Congress?
5. Has a covert policy become operational in the Interior Department, with other Administration and Congressional support, to defeat the effects of the Boldt Decision, to deny Indian Tribes and people the full benefit of their rights under the treaties, and to prevent the Tribes' positive assumption of major management responsibilities or control over their separate and inter-related fish resources?
6. What federal funding support is actually needed and justified for Washington State fish and game agencies for implementation of the Boldt Decision; for rehabilitation and development of fish resources; and for their own management responsibilities? Can needed funds for services and assistances to Indian tribes, as now available in limited measure, justifiably be diverted to the undefined and unqualified requests of these State agencies? If diverted away from tribal programming needs, what will be the impact upon the tribal rights and affected fish resources?

7. What is the import of the treaty fishing rights to the Indian people of the Pacific Northwest? The Boldt Decision ruled that major readjustments in the management and resource allocation systems, which had operated with near-total disregard of the Indian treaty rights, are necessary. How can the required readjustments and reallocations best be achieved?
8. What standing should the Northwest Indian Fisheries Commission have in relationships to federal, state, and international agencies and decision-making bodies; and what role is expected of the NWIFC by the Indian Tribes and Treaty Councils which have formed and organized it?
9. What considerations argue against the State of Washington's exercise of absolute control and primary management responsibility for all off-reservation Indian fish resources and fishing activities? What is the State's record in the management of salmon and steelhead resources, and what have the State agencies done with the public funding resources previously available to them for management and maintenance of fish resources?
10. What will be the impact upon the Indian tribes and communities if the operative designs to defeat the Boldt Decision and to again deny Indian people the benefit of their treaty resource and tribal governmental rights are successful?

FOCUS OF TRIBAL AND NWIFC CONCERNS:

Indian concerns and questions regarding future federal actions, which may curtail needed assistances in tribal fish management programs -- and which may be harmful to Indian rights and resources, or inimical to our known interests -- have been heightened by several recent actions and statements of Interior Department officials.

After the Boldt Decisions was first issued, Indian people were encouraged by the immediate steps being taken by federal officials in the Administration and Interior Department to implement its requirements and effects. In particular, the moves to meet a post-trial federal commitment to provide necessary scientific and biological assistances for tribal fish management and self-regulation programs were heartening.

Subsequent actions by the Interior Secretary and Regional Office of the U.S. Fish & Wildlife Service (Technical Assistance) appeared to transfer priority in support and assistance to Washington State agencies. Departmental accounts of a meeting between Secretary Morton and State officials clearly indicated that the Interior Department was prepared to assume a posture of opposition to the strengthened Indian rights and the tribal or inter-tribal role in the management of fish resources./1 The Secretary's agreement with State game and fish departmental directors that there should be no Indian role in the management of fish resources, and no additional federal commitments to Indian salmon or steelhead hatcheries, were particularly distressing. The Secretary's characterization of the unfairness of the Boldt Decision to non-Indians has operated against its implementation.

THE WHITE HOUSE

WASHINGTON

September 19, 1974

MEMORANDUM FOR:

ATTENDEES

SUBJECT:

September 18, 1974, Meeting on
Northwest Fisheries and Indian
Trust Rights

1. Allocation of the Fish and Wildlife Service's Extra \$690,000

Assistant Secretary Reed notified the meeting that these funds would be split up among the Service, the Indians and the State of Washington and denied an allegation that all those funds would be allocated to the State alone. He confirmed that the USFWS Regional Director had been instructed to consult with State and Indian leaders about the allocation and invited Mr. Kinley, on behalf of the Indian Fisheries Commission, to let him know, after the coming tripartite meeting, what the IFC's recommendations would be concerning the final allocation.

2. BIA Support for Indian Fisheries Management

Mr. McDonald agreed to arrange for a meeting this week between the Indian Fisheries representatives and the appropriate BIA budget officers to discuss the allocation of the additional BIA funds which the Congress has approved, and also to review the question of FY 1976 recommendations.

3. Membership of the Advisory Committee to the International Pacific Salmon Fisheries Commission

State will check to ascertain what the procedures are for getting an additional member added to the U.S. section of the Advisory Committee, i. e. an Indian representative.



4. The 1975 Fishing Season

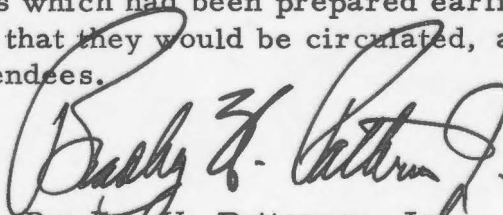
Mr. Kinley assured the meeting that he and his colleagues have drafted and will present, at the meeting with the U.S. Commissioners on September 28, specific proposed Commission regulations for the 1975 season. He described them as meeting what seemed to be the agreed objective: providing general flexibility for the responsible authorities on the U.S. side, staying in conformity with the International Convention, to go ahead and make internal U.S. arrangements which will, in turn, enable compliance with the Boldt decision. Mr. Kinley agreed to circulate copies of his proposed regulations to the principal attendees at the meeting.

5. The Anadromous Fish Act

In answer to an inquiry, the NOAA representative indicated that the Act does permit direct grants to federally recognized Indian groups providing that the latter's proposals meet the statutory program requirements. A review will be made of this eligibility and any proposals submitted, especially for FY 1976. Mr. Patterson confirmed that it was government policy to have federally recognized tribal governments be direct recipients of domestic assistance programs, and not force such tribal governments to receive this federal assistance through State governments. This is evidenced in a number of recent or pending legislative actions.

6. List of Questions

At the conclusion of the meeting, the Indian representatives made available a list of questions which had been prepared earlier but not circulated; it was agreed that they would be circulated, attached here, for the attention of the attendees.


Bradley H. Patterson, Jr.



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Rights

<u>NAME</u>	<u>AGENCY</u>	<u>PHONE</u>
Brad Patterson	W. H.	456-2657
Nat Reed	Interior	343-4416
Lee Talbot	CEQ	382-1254
Guy R. McMinds	NWIFC	(206) 276-4471
Donald Dworsky	OMB	395-4993
Ted Perry	FWS	343-4767
Mike Spear	FWS	343-4767
Michele Metrisko	Interior	343-4344
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Edward S. Lazowska	Justice	739-2736
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John H. Dunnigan	NOAA	(206) 442-4140
James W. Brennan	NOAA	967-3043
Hubert A. Becker	Solicitor's Office	343-9331
Sam St. Arnold	BIA	343-9468
Don McDonald	BIA	343-5704
Howard Borgstrom	OMB	395-4993
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Marshall M. Cutsforth	BIA	258-2651
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September 19, 1974

Duplicate

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1948





DEPARTMENT OF STATE

Washington, D.C. 20520

Sec - Patterson

October 2, 1974

Dr. Michael Shepard
Director, International Fisheries
Fisheries and Marine Service
Department of the Environment
Ottawa, Ontario, Canada KIA OH3

Dear Dr. Shepard:

I refer to the discussions in Washington on July 18 and other discussions amongst the Canadian and United States Commissioners to the International Pacific Salmon Fisheries Commission (IPSFC) concerning actions which might be taken to implement decisions within the United States for the protection of Indian fishing rights.

The following instructions have now been issued to the United States Commissioners to the IPSFC:

"1. It appears equitable that an Indian be appointed to the IPSFC Advisory Committee and the U.S. Commissioners should seek this vigorously and accomplish it in the near future."

"2. The 1975 and subsequent IPSFC regulations need not contain any specific provisions for the U.S. Indians but must be sufficiently flexible to ensure that domestic decisions on the Indian fishery can be implemented, within the salmon treaty constraints of conservation and the 50/50 split of the treaty catch between Canada and the U.S. It is not the intent of the Department to issue specific instructions on the details of the regulations at this time."

It would be appreciated if the Canadian IPSFC Commissioners were to be informed of the foregoing. It is the U.S. expectation that the Canadian Commissioners will agree to such action as is necessary to accommodate domestic considerations in the United States without prejudice to Canadian interests. It would be appreciated if the Canadian Commissioners could be so instructed.

Sincerely,

William L. Sullivan, Jr.
William L. Sullivan, Jr.

Acting Coordinator of Ocean Affairs



October 1, 1974

Mr. Thor C. Tollefson
Director, Washington State
Department of Fisheries
Room 115, General Administration Building
Olympia, Washington 98501

Dear Mr. Tollefson:

This is to confirm the verbal instructions to the United States Commissioners to the International Pacific Salmon Fisheries Commission (IPSFC) conveyed at the meeting in Seattle on September 28, 1974.

It is a firmly established policy, binding on all officers of the United States Government, including the three U.S. Commissioners, that the responsible Indian leadership be consulted on all matters affecting them. Further, the Government has a responsibility to protect Indian treaty rights. The decision in U.S. vs Washington should thus be implemented to the extent possible by affirmative action by U.S. officials in matters within their purview, including the IPSFC Commissioners.

In the case of IPSFC, the regulations adopted should provide, to the extent possible, for affirmative action to secure the Indian fishing rights, but in any event should not serve as an impediment to domestic action to secure those rights. Given the consultations which have taken place between the Canadian and U.S. Commissioners, and between fisheries officials in Ottawa and Washington, it would not appear feasible to secure adoption of IPSFC regulations which will specifically accord special treatment to the U.S. Indians.

It is regretted that the attempts of the U.S. Commissioners to secure Indian participation in the IPSFC advisory process through some ad hoc mechanism were not successful. The willingness of the Indians to participate on this basis and the efforts of the U.S. Commissioners are appreciated.

In these circumstances, then, the following will apply:

1. It appears equitable that an Indian be appointed to the IPSFC Advisory Committee, and the U.S. Commissioners should seek this vigorously and accomplish it in the near future. (It is realized that this instruction poses problems for the current American members of the Advisory Committee and the groups they represent. Accordingly, before deciding on a specific action, the U.S. Commissioners are expected to consult with the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission to achieve the minimum possible inconvenience to all concerned in implementing this change. Please inform the Secretary of State, through this Office, when the change has been accomplished.)

2. The 1975 and subsequent IPSFC regulations need not contain any specific provisions for the U.S. Indians but must be sufficiently flexible to ensure that domestic decisions on the Indian fishery can be implemented, within the salmon treaty constraints of conservation and the 50/50 split of the treaty catch between Canada and the U.S. It is not the intent of the Department to issue any specific instructions on the details of the regulations at this time.

Canadian officials will be informed of the foregoing, and that the U.S. expects the Canadian IPSFC Commissioners to agree to such action as is necessary to accommodate domestic considerations in the United States without prejudice to Canadian interests.

In conveying these instructions, I wish to add the following for the guidance of the U.S. Commissioners. The Department of State does not consider that either the Indian treaties, or Judge Boldt's decision in *U.S. vs Washington*, is inconsistent with our legal obligations under the salmon treaty, and we intend to continue our full support of the IPSFC. We see no reason why any appropriate action taken pursuant to the decision in *U.S. vs Washington* which relates to the IPSFC need be incompatible with the salmon treaty. Moreover, great care must be exercised in pursuing any particular action in the IPSFC, since the question of basic revisions in the salmon treaty, or even its continued existence, has existed for some time. It would appear that the likely results of any revision of the treaty or its abrogation would be less salmon, perhaps very substantially less, for the American fishermen, Indian and others alike. We believe this result is to be avoided, and that any revision in the salmon treaty must be the result of a deliberate decision by the United States Government and not an inadvertent result of any particular move to meet an immediate need.

It is the policy of the United States in international fisheries matters that the representatives of the United States will consult fully with all affected interests in the United States before taking any definitive action. This will ensure that all interests of the United States are protected to the maximum extent possible. Therefore, it is expected that the U.S. Commissioners will maintain a free and open dialogue with both Indians and non-Indians concerned with the work of the IPSFC.

It is suggested that the Commissioners confirm the above instructions to the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission in their next meeting with them.

Identical letters are being sent to Commissioners Saletic and Johnson.

Sincerely,

William L. Sullivan, Jr.
Acting Coordinator of
Ocean Affairs

cc: White House - Mr. Patterson ✓
Commerce - Mr. Schoning
Interior - Mr. Frizzell



October 1, 1974

Mr. Donald R. Johnson
Regional Director
Department of Commerce
National Marine Fisheries Service
1700 Westlake Avenue, North
Seattle, Washington 98109

Dear Mr. Johnson:

This is to confirm the verbal instructions to the United States Commissioners to the International Pacific Salmon Fisheries Commission (IPSFC) conveyed at the meeting in Seattle on September 28, 1974.

It is a firmly established policy, binding on all officers of the United States Government, including the three U.S. Commissioners, that the responsible Indian leadership be consulted on all matters affecting them. Further, the Government has a responsibility to protect Indian treaty rights. The decision in U.S. vs Washington should thus be implemented to the extent possible by affirmative action by U.S. officials in matters within their purview, including the IPSFC Commissioners.

In the case of IPSFC, the regulations adopted should provide, to the extent possible, for affirmative action to secure the Indian fishing rights, but in any event should not serve as an impediment to domestic action to secure those rights. Given the consultations which have taken place between the Canadian and U.S. Commissioners, and between fisheries officials in Ottawa and Washington, it would not appear feasible to secure adoption of IPSFC regulations which will specifically accord special treatment to the U.S. Indians.

It is regretted that the attempts of the U.S. Commissioners to secure Indian participation in the IPSFC advisory process through some ad hoc mechanism were not successful. The willingness of the Indians to participate on this basis and the efforts of the U.S. Commissioners are appreciated.

In these circumstances, then, the following will apply:

1. It appears equitable that an Indian be appointed to the IPSFC Advisory Committee, and the U.S. Commissioners should seek this vigorously and accomplish it in the near future. (It is realized that this instruction poses problems for the current American members of the Advisory Committee and the groups they represent. Accordingly, before deciding on a specific action, the U.S. Commissioners are expected to consult with the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission to achieve the minimum possible inconvenience to all concerned in implementing this change. Please inform the Secretary of State, through this Office, when the change has been accomplished.)

2. The 1975 and subsequent IPSFC regulations need not contain any specific provisions for the U.S. Indians but must be sufficiently flexible to ensure that domestic decisions on the Indian fishery can be implemented, within the salmon treaty constraints of conservation and the 50/50 split of the treaty catch between Canada and the U.S. It is not the intent of the Department to issue any specific instructions on the details of the regulations at this time.

Canadian officials will be informed of the foregoing, and that the U.S. expects the Canadian IPSFC Commissioners to agree to such action as is necessary to accommodate domestic considerations in the United States without prejudice to Canadian interests.

In conveying these instructions, I wish to add the following for the guidance of the U.S. Commissioners. The Department of State does not consider that either the Indian treaties, or Judge Boldt's decision in U.S. vs Washington, is inconsistent with our legal obligations under the salmon treaty, and we intend to continue our full support of the IPSFC. We see no reason why any appropriate action taken pursuant to the decision in U.S. vs Washington which relates to the IPSFC need be incompatible with the salmon treaty. Moreover, great care must be exercised in pursuing any particular action in the IPSFC, since the question of basic revisions in the salmon treaty, or even its continued existence, has existed for some time. It would appear that the likely results of any revision of the treaty or its abrogation would be less salmon, perhaps very substantially less, for the American fishermen, Indian and others alike. We believe this result is to be avoided, and that any revision in the salmon treaty must be the result of a deliberate decision by the United States Government and not an inadvertent result of any particular move to meet an immediate need.

It is the policy of the United States in international fisheries matters that the representatives of the United States will consult fully with all affected interests in the United States before taking any definitive action. This will ensure that all interests of the United States are protected to the maximum extent possible. Therefore, it is expected that the U.S. Commissioners will maintain a free and open dialogue with both Indians and non-Indians concerned with the work of the IPSFC.

It is suggested that the Commissioners confirm the above instructions to the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission in their next meeting with them.

Identical letters are being sent to Commissioners Tollefson and Saletic.

Sincerely,

William L. Sullivan, Jr.
Acting Coordinator of
Ocean Affairs

cc: White House - Mr. Patterson ✓
Commerce - Mr. Schoning
Interior - Mr. Prizzell



October 1, 1974

Mr. W. G. Salatic
Manager, Seiners Association
P. O. Box 5186
1111 N.W. 45th Street
Seattle, Washington 98105

Dear Mr. Salatic:

This is to confirm the verbal instructions to the United States Commissioners to the International Pacific Salmon Fisheries Commission (IPSPC) conveyed at the meeting in Seattle on September 26, 1974.

It is a firmly established policy, binding on all officers of the United States Government, including the three U.S. Commissioners, that the responsible Indian leadership be consulted on all matters affecting them. Further, the Government has a responsibility to protect Indian treaty rights. The decision in U.S. vs Washington should thus be implemented to the extent possible by affirmative action by U.S. officials in matters within their purview, including the IPSPC Commissioners.

In the case of IPSPC, the regulations adopted should provide, to the extent possible, for affirmative action to secure the Indian fishing rights, but in any event should not serve as an impediment to domestic action to secure those rights. Given the consultations which have taken place between the Canadian and U.S. Commissioners, and between fisheries officials in Ottawa and Washington, it would not appear feasible to secure adoption of IPSPC regulations which will specifically accord special treatment to the U.S. Indians.

It is regretted that the attempts of the U.S. Commissioners to secure Indian participation in the IPSPC advisory process through some ad hoc mechanism were not successful. The willingness of the Indians to participate on this basis and the efforts of the U.S. Commissioners are appreciated.

In these circumstances, then, the following will apply:

1. It appears equitable that an Indian be appointed to the IPSFC Advisory Committee, and the U.S. Commissioners should seek this vigorously and accomplish it in the near future. (It is realized that this instruction poses problems for the current American members of the Advisory Committee and the groups they represent. Accordingly, before deciding on a specific action, the U.S. Commissioners are expected to consult with the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission to achieve the minimum possible inconvenience to all concerned in implementing this change. Please inform the Secretary of State, through this Office, when the change has been accomplished.)

2. The 1975 and subsequent IPSFC regulations need not contain any specific provisions for the U.S. Indians but must be sufficiently flexible to ensure that domestic decisions on the Indian fishery can be implemented, within the salmon treaty constraints of conservation and the 50/50 split of the treaty catch between Canada and the U.S. It is not the intent of the Department to issue any specific instructions on the details of the regulations at this time.

Canadian officials will be informed of the foregoing, and that the U.S. expects the Canadian IPSFC Commissioners to agree to such action as is necessary to accommodate domestic considerations in the United States without prejudice to Canadian interests.

In conveying these instructions, I wish to add the following for the guidance of the U.S. Commissioners. The Department of State does not consider that either the Indian treaties, or Judge Boldt's decision in U.S. vs Washington, is inconsistent with our legal obligations under the salmon treaty, and we intend to continue our full support of the IPSFC. We see no reason why any appropriate action taken pursuant to the decision in U.S. vs Washington which relates to the IPSFC need be incompatible with the salmon treaty. Moreover, great care must be exercised in pursuing any particular action in the IPSFC, since the question of basic revisions in the salmon treaty, or even its continued existence, has existed for some time. It would appear that the likely results of any revision of the treaty or its abrogation would be less salmon, perhaps very substantially less, for the American fishermen, Indian and others alike. We believe this result is to be avoided, and that any revision in the salmon treaty must be the result of a deliberate decision by the United States Government and not an inadvertent result of any particular move to meet an immediate need.



It is the policy of the United States in international fisheries matters that the representatives of the United States will consult fully with all affected interests in the United States before taking any definitive action. This will ensure that all interests of the United States are protected to the maximum extent possible. Therefore, it is expected that the U.S. Commissioners will maintain a free and open dialogue with both Indians and non-Indians concerned with the work of the IPSFC.

It is suggested that the Commissioners confirm the above instructions to the U.S. members of the Advisory Committee and the Northwest Indian Fisheries Commission in their next meeting with them.

Identical letters are being sent to Commissioners Tollefson and Johnson.

Sincerely,

William L. Sullivan, Jr.
Acting Coordinator of
Ocean Affairs

cc: White House - Mr. Patterson ✓
Commerce - Mr. Schoning
Interior - Mr. Frizzell



S/FW-COA - William L. Sullivan, Jr.

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NATIONAL MARINE FISHERIES SERVICE
Washington, D.C. 20235

Date : **OCT 3 1974**

Reply to Attn. of: F42

To : See Distribution

From : *Henry R. Beasley (for)*
Carmen J. Blondin
Assistant Director for International Fisheries

Subject: Meeting of Interested Parties Concerning the International
Pacific Salmon Fisheries Commission and the Implementation
of U.S. v. Washington (IPSFC)

United States Commissioners to the IPSFC, U.S. members of the
IPSFC Advisory Committee, representatives of the Northwest
Indian Fisheries Commission, the Director of the National
Marine Fisheries Service, and other interested parties met
in Seattle, Washington on September 28, 1974, to review
certain matters concerning U.S. v. Washington and the
fisheries management arrangements of the IPSFC.

Attached is a Record of Discussion for that meeting, being
provided to U.S. officials with an interest in the discussions
and to the Indian Fisheries Commission.

Attachment

Distribution:

Mr. Schoning, F
Mr. Blondin, F4
Mr. Snead, F42
Mr. MacKenzie, F42
Dr. Hutton, F3
Dr. Royce, F1
Mr. Brewer, GC
Mr. Powell, GC2
Mr. Johnson, FNW
Mr. Thor Tollefson
Mr. William Saletic

Dr. Ken Henry, F11
Mr. Brad Patterson
Mr. Sullivan, Department of State
Mr. Al Burt, Department of State
Mr. Kinley (3 copies)
Mr. Morisset
Mr. Dysart
Mr. Heckman
Mr. Frizzell, Department of Interior
Mr. Aschenbrenner, Department of Interior



RECORD OF DISCUSSION

Meeting of Interested Parties Concerning the International Pacific Salmon Fisheries Commission and the Implementation of U.S. v. Washington, Seattle, Washington, September 28, 1974.

On September 28, 1974, the following interested parties met in Seattle, Washington to review certain matters relating to U.S. v. Washington and the fisheries management arrangements of the IPSFC:

U.S. Commissioners to IPSFC: Thor Tollefson, Donald Johnson, and William Saletic;

U.S. Members of the IPSFC Advisory Committee: Nick Mladinich, Glenn Schuler, Robert Christensen, Gerald Simmons, and D.M. Franett;

Northwest Indian Fisheries Commission: Forrest Kinley, Guy R. McMinds, Charles Peterson, Calvin J. Peters, Dennis Allen, Hank Adams, and Mason Morisset, Attorney;

Department of Commerce, National Marine Fisheries Service:

Robert W. Schoning, Carmen J. Blondin, William H. MacKenzie, and Ken Henry;

Department of the Interior, Bureau of Indian Affairs: George D. Dysart, and Joe Warner;

Department of the Interior, U.S. Fish and Wildlife Service:

Jim Heckman;

Department of State: William Sullivan and Al Burt.

There was an exchange of views on the following subjects:

I. Structure of the Indian Fisheries Commission (IFC)

Mr. Kinley, Chairman of the IFC, outlined the IFC structure as



set forth in the IFC Constitution and Bylaws. He noted that 18 of approximately 22 tribes represented in the area affected by U.S. v. Washington are members of the IFC, which has been delegated the authority to deal directly with non-Treaty Indian parties. He suggested that the U.S. IPSFC Commissioners, in their dealings with Indian tribes on specific issues related to a particular tribe, first contact the individual tribe and then, if necessary, the IFC.

II. Review of the Boldt Decision

Mr. Tollefson reviewed the U.S. v. Washington decision, noting that Treaty right tribes must comply with IPSFC regulations.

Mr. Tollefson added that although he, as Director of the Washington State Department of Fisheries, had taken unilateral action to provide extra fishing days for the Makahs in past years, he did not do so in 1974 on the presumption that the U.S. v. Washington decision precluded him from doing so. Mr. Dysart suggested that the Department of Interior did not view the decision as precluding the State from providing extra fishing days. Mr. Tollefson noted that extra fishing days for the Makah and Lummi Indians had been proposed by U.S. Commissioners and rejected by Canada. Concerning the division of the catch, the IFC and U.S. Commissioners to IPSFC agreed that Treaty Indians are to be given the opportunity to take up to 50 percent of the harvestable fish, not guaranteed 50 percent. Mr. Dysart added, however, that because the Indian gear is less efficient, extra fishing time would be needed in order to fully provide an opportunity for the Indians to catch their share.

III. The Boldt Decision and the Federal Government

Mr. Schoning, speaking for the Department of Commerce, and referring to correspondence from Mr. Brad Patterson of the White House, reviewed the interest of the White House and of the National Marine Fisheries Service in the implementation of U.S. v. Washington through the IPSFC. He spoke of the need for frequent exchanges of views with the affected Treaty Indians. Mr. Schoning emphasized that the Boldt decision is the Law of the Land and that the U.S. Commissioners to the IPSFC are expected to implement the decision insofar as possible through the IPSFC. He noted that one approach to facilitate IPSFC-Treaty Indian communications would be to have an Indian on the U.S. Advisory Committee.

IV. Possible Regulatory Action for 1975

Mr. Johnson stated the need for the IPSFC to begin analyzing alternative regulatory schemes for 1975 at an early date.

Mr. Tollefson, in response to a suggestion from Mr. Dysart that the U.S. request the IPSFC staff to make studies of various proposals, stated that the IPSFC as a whole must concur in staff assignments. Mr. Dysart suggested that another alternative would be to have U.S. scientists analyze selected regulatory alternatives. Dr. Henry then reviewed one such alternative, providing the Treaty Indians alone with an opportunity to harvest fish on two extra days of each week in 1975. For the purpose of illustrating the potential catch under such an arrangement, Dr. Henry reviewed the material in Attachment A. Mr. Johnson suggested that the IPSFC would find helpful information on the gear which the Indians anticipate having in use in 1975.

Mr. Kinley replied that an effort will be made to provide such information, adding that if harvest opportunity assurances are given, the Indian gear may be upgraded or the amount increased.

Mr. Johnson asked who is eligible to fish. Mr. Dysart answered that any enrolled member of a treaty tribe recognized by Judge Boldt can fish, but each tribe has its own regulations. Mr. Dysart added that Identification cards are being issued to all Member Indians. Mr. Schoning asked whether one fisherman can fish more than one unit of gear. Mr. Dysart answered that this decision is left up to each tribe. Some set limits, others do not. However, the Tribes are now generally following State regulations. Mr. Dysart said that a relative of an Indian can assist in Indian fishing, but only assist for some tribes. He also noted that some tribes not recognized by the Bureau of Indian Affairs had been allowed to intervene in the case, but that Judge Boldt has not yet ruled on their status.

Mr. Sullivan noted that it is unlikely Canada will agree to designate ethnic groups for catch allocations in IPSFC regulations. Rather, it is expected that regulations will be sufficiently flexible to allow the U.S. to allocate its harvest. Mr. Tollefson, commenting that Canadian Indians harvest approximately 150,000 fish which are not counted against the 50/50 U.S.-Canadian split, suggested that a similar arrangement be considered for the U.S. Indians. Mr. Sullivan stated that the Canadian Government will be informed that U.S. Commissioners will propose flexible regulations and that Ottawa will be asked to instruct the Canadian Commissioners

to vote for such regulations in the IPSFC.

The IFC asked that they be informed in advance of IPSFC regulatory proposals for 1975. Mr. Tollefson answered that the IPSFC staff usually develops the regulations for submission at the Annual Meeting in December, but they are not adopted until February. He noted that even the U.S. Commissioners do not receive the complete proposed regulations until the Annual Meeting. Accordingly, there would be sufficient time in the interim, between December and February, for the IFC to have an input to the final regulations.

V. Further Meetings

Another meeting between U.S. Commissioners to the IPSFC, members of the IFC, and other interested parties was suggested for sometime within the next six weeks, perhaps in early November. Details will be worked out between the U.S. Commissioners and the IFC during the week of September 30 - October 6.



Discussions with U.S. Salmon Commissioners,
Advisors and Indian Representatives

A

September 28, 1974
Seattle, WA

One possibility for increasing the proportion of the sockeye and pink salmon catch made by Washington State treaty Indians in U.S. Convention Waters would be to permit Indians two extra days fishing each week in 1975. This action would make it possible for the Indians to significantly increase their portion of the Convention Waters catch.

To gain more insight as to what this might involve, we can look at the daily catches of sockeye and pinks in U.S. Convention Waters in 1971 (brood year for 1975 sockeye) Figure 1. This graph clearly shows for 1971 the buildup of U.S. sockeye catches throughout July, catches generally decreasing throughout August and September, with pink salmon catches increasing rather abruptly in September. For point of reference, I have colored the catch made on the third day of fishing each week and I'll refer back to this in a few minutes.

Before you can reasonably evaluate what two extra days fishing for Indians might mean in terms of numbers of fish caught in 1975, you need to know (1) what fishing regulations are proposed for the entire U.S. fleet, (2) predicted size of the 1975 runs, and (3) the amount of gear that would be fished by the Indians on the additional days. We will not know the first two items (1) regulations and (2) run size until the Salmon Commissions Annual Meeting in December. However, we should be able to get some reliable estimates of the amount of Indian gear fairly soon, and if we had these, we could then make some speculative analyses of what the impact might be.



For example, if the two extra days fishing for only Indians happened to be the 3rd and 4th days of each week, we can see from Figure 1 the general magnitude of the catches that could be made on those days. Although most fishermen recognize that the catches in Puget Sound tend to decrease after the first day of fishing each week, nevertheless substantial quantities of salmon were caught on the 3rd and 4th days fishing in U.S. Convention Waters in 1971. Approximately 544 and 501 thousand sockeye, respectively, and 511 and 534 thousand pinks. Admittedly, it would be expected that the Indian catch on these two days would be less than what the entire U.S. fleet could catch but there obviously is potentially a substantial part of the season's catch available on these two days. This is why the amount of Indian gear is so important.

I'd like to repeat that these catches I just mentioned referred to 1971. The potential catches in 1975 will depend on the size of the 1975 runs, the days selected as Indian fishing only, as well as the amount of Indian gear available.

Finally, from a management standpoint, it would seem incumbent upon the Salmon Commission that they retain control on these extra day fishing for Indians in the same manner as for the entire fleet so that adjustments in the days fishing could be made throughout the season to achieve the Commissions goals for escapement and division of the catch.

K. Henry, NMFS



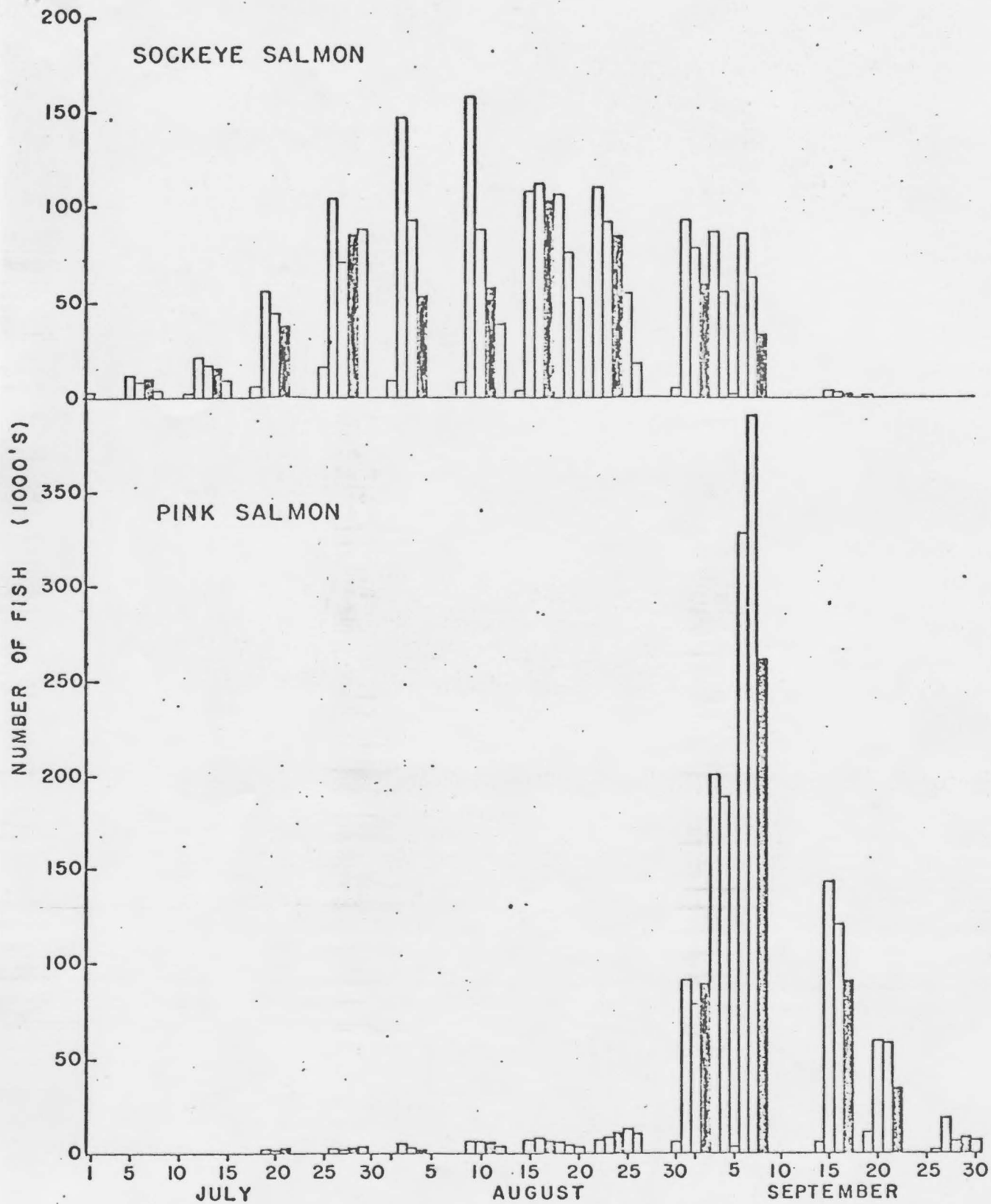


FIGURE 1-- DAILY CATCH OF SALMON IN I.P.S.F.C., U.S. CONVENTION WATERS, 1971.



NOTE : To Interested U.S. Government parties

(1) Dr. Ken Henry is preparing a Record of Discussion of the discussions held prior to the meeting with the IFC on Sept. 28.

This record will be forwarded to interested parties at a later date.

