

**Hearing
Before the
United States
Commission on Civil Rights**

**AMERICAN INDIAN FISHING RIGHTS
IN THE STATE OF WASHINGTON**

**Hearing Held in
SEATTLE,
WASHINGTON**

August 25, 1978

VOLUME IV: Exhibits 4—15

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U.S. COMMISSION ON CIVIL RIGHTS

The U.S. Commission on Civil Rights is a temporary, independent, bipartisan agency established by Congress in 1957 and directed to:

- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, or national origin, or by reason of fraudulent practices;
- Study and collect information concerning legal developments constituting a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, or national origin, or in the administration of justice;
- Appraise Federal laws and policies with respect to the denial of equal protection of the laws because of race, color, religion, sex, or national origin, or in the administration of justice;
- Serve as a national clearinghouse for information in respect to denials of equal protection of the laws because of race, color, religion, sex, or national origin;
- Submit reports, findings, and recommendations to the President and the Congress.

MEMBERS OF THE COMMISSION

Arthur S. Flemming, Chairman

Stephen Horn, Vice Chairman

Frankie M. Freeman

Manuel Ruiz, Jr.

Murray Saltzman

Louis Nunez, Acting Staff Director

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Exhibit No. 4

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United States Senate
 COMMITTEE ON COMMERCE, SCIENCE,
 AND TRANSPORTATION
 WASHINGTON, D.C. 20510

March 8, 1978

Honorable Cecil D. Andrus
 Secretary
 Department of Interior
 Washington, D. C.

Dear Mr. Secretary:

I write to request a complete and detailed budget justification for two items in the FY 79 Interior Department Budget: The Bureau of Indian Affairs Trust Responsibilities/Rights Protection activity and the Office of the Solicitor.

For the Trust Responsibilities/Rights Protection activity, please provide me with a case-by-case breakdown in each instance where funds are proposed to be expended for litigation. This should include a narrative description of each case, past amounts obligated for each case, the number of permanent positions assigned to litigation and funds for attorneys' fees. I also request a detailed justification for the activities entitled "Boldt decision", "Attorney fees", "Hunting and Fishing Treaty Rights Support", and "Unresolved Indian Rights Issues". For Trust and Rights Protection for the State of Washington, I would appreciate a detailed justification by Tribe or Agency Office, along with a description of how these funds are to be expended by each Tribe or Agency Office.

For the Office of the Solicitor, please provide me with a similar justification, with particular emphasis on funds for litigation and permanent positions assigned to litigation.

Lastly, please identify any other expenses in the Department's budget related to these matters.

Sincerely,

Warren G. Magnus
 WARREN G. MAGNUS, U.S.S.

WGM:mgw

cc: Hon. Robert C. Byrd, Chairman, Interior Appropriations Subcommittee, U. S. Senate

Office of the Attorney General
Washington, D. C. 20530

May 25, 1978

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

Dear Senators Magnuson and Jackson:

am writing in response to your letter to me of March 1, concerning the problems raised by various claims on behalf of Indians and Indian tribes. You point to two areas of concern.

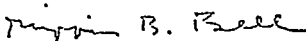
Your first concern has to do with who represents the Indians in advancing their claims, and the second has to do with the forum in which those claims are adjudicated. I share your concern in both areas. The fact that the United States Department of Justice represents the United States in its capacity as trustee for Indians under treaty arises out of the treaty relationships themselves. It would perhaps be simple enough to have some entity of government other than the Department of Justice represent the United States in its role as trustee for the Indians, but I am not at all certain that this would be any basic solution to the problem. The problem lies in the trust relationship itself. Any alteration of that would be a most complex and controversial undertaking, involving not only the Executive Branch but also the Congress.

Claims brought on behalf of Indians against entities other than the United States are now brought in our existing court system. It would be possible presumably to provide by law for some other mechanism to handle these claims.

Both of these subjects go to the core of the policy of the United States on Indian matters. I have met with Secretary Andrus to begin discussions looking towards some resolution of the problems which will be fair to the Indians and to the non-Indian population of the United States, and I have asked the Associate Attorney General to continue these discussions. The Associate Attorney General has requested the Domestic Policy Staff at the White House to give these

problems immediate and careful attention. As stated above, the resolution will involve cooperation of many agencies of government, as well as the Congress, and I hope that a high-level policy study of the matter can commence in the very near future. We will, of course, welcome your participation in any such endeavor.

Sincerely yours,

A handwritten signature in cursive script that reads "Griffin B. Bell".

Griffin B. Bell
Attorney General

March 1, 1978

Honorable Griffin B. Bell
Attorney General
Department of Justice
Washington, D.C. 20530

Dear Mr. Attorney General:

During our recent discussion we spoke about the Federal government's role in representing Indian tribes pursuant to the trust relationship vis-a-vis its responsibilities to non-Indians.

Relations between Indians and non-Indians have become strained in many areas as Indians have begun claiming rights to natural resources and jurisdiction over non-Indians. The Federal government's advocacy of the Indians' claims has seriously contributed to the tension. This is especially so when Indian claims adversely affect the rights or livelihood of non-Indians. Both Indians and non-Indians in my own Washington State now endure the divisive affects of the infamous 1974 fishing rights decision handed down in U.S. v. Washington while the resource-- and the livelihoods of all those who rely on it--is in jeopardy.

Many non-Indians object to their tax dollars being used by the Federal government to defeat their rights in court, while at the same time, there are no Federal personnel or funds used to protect their rights. Especially disconcerting is the Federal advocacy of cases in which Indian tribes claim jurisdiction over non-Indians when non-Indians do not have the right to participate in Indian tribal government.

While I recognize the historic trust relationship of the Secretary of the Interior to represent the best interest of Indian tribes, the trend in recent years has been to extend the meaning of that relationship to include the resources of the entire Federal government. Although there may be some legal or moral authority to extend that definition, I believe that a thorough objective review of that policy should be undertaken. In short, a clarification of the Federal trust responsibility to Indian tribes is needed.

Honorable Griffin Bell

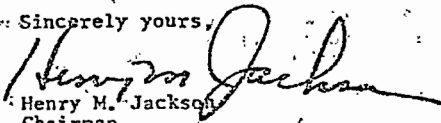
March 1, 1973

Additionally, the profusion of Indian claims to natural resources and jurisdiction over non-Indians has highlighted the inadequacy of the judicial process to resolve these conflicts between Indians and non-Indians. Recent judicial decisions have not served to ease the tensions that engulf Indian/non-Indian relations. Rather, animosity has increased, litigation costs proliferate and uncertainty prevails.

Because the judicial process seems unable to handle the task of resolving major Indian claims to natural resources and jurisdiction, it is imperative that your Department, in conjunction with the other affected agencies, develop methods of reducing litigation while increasing peaceful non-litigious resolution of such claims which would be fair to Indians and non-Indians alike.

Because of the importance of this matter, I urge your early attention to, and constructive comments on, how this problem can be best resolved.

Sincerely yours,



Henry M. Jackson
Chairman

HMJ:rdfj

United States Senate

WASHINGTON, D.C. 20510

August 4, 1978

Honorable Cecil D. Andrus
Secretary
Department of Interior
Washington, D. C. 20240

Dear Mr. Secretary:

As you know, the implementation of the so-called "Boldt decision" has caused four years of conflict and controversy in Washington State. President Carter established a Cabinet-level Task Force to negotiate a long-term settlement to the conflict and the Task Force is developing legislation to implement a proposed settlement plan.

However, the long-term plan will not reduce the civil conflict and disobedience that will occur this fishing season with full implementation of the Boldt decision. We believe immediate steps must be taken if the regrettable incidents of the last four years are to be prevented during this fishing season.

For example, it has become impossible to provide adequate protection of the resource with the present enforcement capabilities. A substantial Indian and non-Indian illegal fishery has developed in Puget Sound. In 1976, illegal non-Indian fishing accounted for an estimated 34% of the total non-Indian catch in all of Puget Sound. Last year, the number of illegally caught fish doubled. The illegal fishery was so great that minimum escapement levels were not reached in some areas such as Hoodspout. This year, enforcement officials will face faster fishing boats and a comprehensive network of citizens band communications. Enforcement officers cannot possibly monitor the fishery and insure adequate escapement under these circumstances.

We deplore the civil conflict that prompted President Carter to establish the Task Force. We deplore the civil disobedience illustrated by the illegal fishery and those who seek increased fishing time at the expense of the resource. Our responsibility for the resource recognizes the devastating impact of the illegal fishery and recognizes that adequate escapement levels necessary for the perpetuation of the resource are in jeopardy. This is the greatest tragedy.

Inasmuch as judicial regulation of the State's fishery will continue through 1978, we strongly believe that it should provide an allocation among treaty and non-treaty fishermen that reflects an understanding of the results that disparate regulations could bring. We believe that such a decision is fully justified since an allocation of less than the full

Honorable Cecil D. Andrus

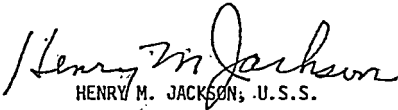
- 2 -

August 4, 1978

"Boldt" level was recommended by your Department last year. The circumstances that led to that recommendation have not changed. In fact, the predictions of salmon stocks and increased illegal fishing make such an allocation even more imperative.

A similar, if not more numerically equitable allocation this year will engender better respect for enforcement officials, reduce illegal fishing, and improve relations between Indian and non-Indian citizens.

We support your efforts to implement a negotiated settlement to end this conflict. But, while we work together for a long-term solution, we must urge your very serious consideration of less than full implementation of the Boldt decision for this year.


HENRY M. JACKSON, U.S.S.

Sincerely,

WARREN G. MAGNUSON, U.S.S.

Northwest Indian
Fisheries Commission



EXECUTIVE SUMMARY

of

Formal Response to

Settlement Plan for Washington State
Salmon and Steelhead Fisheries

October 1978

EXECUTIVE SUMMARY

INTRODUCTION

The nature and extent of Indian treaty rights has been established by the federal courts. But the State and its non-Indian allies have refused to obey the law. Instead they have gone to Congress seeking a "solution" to the court decisions. As a result, a "Task Force" was established to propose such a solution. The proposal has been rejected by the Northwest Indian Fisheries Commission for the following reasons:

1. The Task Force did not attempt to devise a solution which accommodated Indian treaty rights. Rather it ignored or abrogated those rights.
2. The State of Washington and its officials as well as members of Congress did not commit themselves to a good faith effort to negotiate.
3. The plan failed to address the true problems which plague the fisheries which problems include decades of mismanagement, the recalcitrance of state officials to abide by the federal court's decision, and lack of state law enforcement.

PART 1 - SUMMARY OF LEGAL RIGHTS ABRGATED BY THE TASK FORCE

The Task Force proposal undermines or eliminates virtually all legal rights affirmed by the courts.

1. Traditional fishing areas of Indian people are eliminated.
2. The tribal opportunity to harvest 50% of the resource is reduced.
3. Steelhead - a necessary winter fish - can no longer be harvested commercially by most tribes.
4. Substantial tribal authority to regulate tribal members in both on- and off-reservation fishing is removed.
5. The state's regulatory power over treaty fishing is expanded without regard to court limitations.
6. The treaty defense in state court proceedings is limited.
7. The federal court and federal trust protection of Indian people is substantially weakened.

PART 2. - JURISDICTION, MANAGEMENT AND ENFORCEMENT

I. The Treaty Fishing Right

The treaty fishing right is based upon treaties negotiated between the United States Government and Indian tribes in which tribes relinquished claims to "land" but reserved to themselves all rights not granted to the United States including the right to fish off-reservation. The meaning of the treaty fishing language was clarified in 1974, in United States v. Washington and was affirmed upon appeal. The decision held that the treaty was the Surpeme Law of the land and that the State of Washington could not limit treaty fishing except in limited circumstances.

II. The Task Force Failed to Address the Real Problems

The problems threatening the resource are state recalcitrance in accepting the lawless illegal non-treaty fishing, state non-enforcement, and state and private attempts to overturn the decision by collateral attack. Treaty fishing and tribal management are not substantial contributing factors. The Task Force does not meaningfully address these concerns but rather suggests a complete restructuring of tribal management while leaving the state's management untouched despite its dismal record in environmental protection and fisheries regulation. The Task Force undermines the progress made by the tribes and state toward cooperative management.

III. Legal Relationships Between the State and Tribes

- A. Jurisdiction of Tribes and State Prior to United States v. Washington
- B. Jurisdiction After The United States v. Washington
- C. Post United States v. Washington Jurisdictional Development

Off-reservation, the state has only the authority to regulate treaty fishing when reasonable and necessary for conservation. On-reservation, the state's power is limited to those areas where Congress allows the state to act. The jurisdictional limitations on the state are settled by United States Supreme Court decisions.

United States v. Washington did not change existing law. Its benefit was to clarify the law. The decision did free Indians from the burdens of discriminatory state regulations which were improper under pre-decision case law.

Nevertheless, the state and the non-Indian fishing groups did not accept the decision. Non-Indian

fishermen engaged in massive illegal fishing while the state failed to regulate non-Indian fishing, and assisted private groups in attacking the decision. Fish managers for the tribes and state have begun to work cooperatively toward coordinated management systems designed to protect the resource. Tribes have employed fishery scientists and technicians to insure their part of management is done professionally. Such cooperative management has served both treaty and non-treaty fishing interests in developing a healthier fishery. What was left for the Task Force to deal with was the non-Indian illegal fishing - the only jurisdictional problem not effectively addressed by the Task Force.

IV. The Settlement Plan for Jurisdiction and Management

- A. The Task Force Proposal Abrogates the Treaties
- B. The Task Force Management Proposal Discriminates Against Tribal Management and Regulation
- C. Task Force Goals Discriminated Against the Treaty Fishing and Violated Treaty Guarantees

The proposal eliminates the ability of tribes to regulate and exercise jurisdiction over their own members. It imposes limited state regulation over some aspects of the on-reservation fishery. The abrogation is accomplished through the transfer of jurisdictional authority to the state, and the creation of a tribal commission which does not equally represent all of the tribal interests. Duplication of jurisdiction is perpetuated by providing for state secondary control in those few areas where tribes or the tribal commission retains some authority. Local control (as opposed to federal involvement) abrogates the trust responsibility of the United States for Indian people. The United States has been the only institution which has been effective in protecting treaty rights in the past. The state has shown no willingness to assume the role of protecting and enforcing treaty rights.

- D. The Management Structure: A Negation of the Treaty Rights to Regulate Tribal Fisheries
 - 1. State management authorities supplement Tribal authorities

The state is free to manipulate its management models and plans without effective participation from tribal management entities. The

ability of tribes to manage their own sport fishery both on and off reservation is significantly and adversely affected. The tribal ability to regulate off-reservation at all usual and accustomed places is eliminated. Tribal management is delegated to a Tribal Commission and limited to reservation and small newly created Indian fishing zones. No standard for determining a conservation closure is set out. Given the historic state practice of limiting treaty fishing on the unfounded pretense of a conservation need, tribes can expect a further limiting of their fishery. The ability of tribes to develop their own enhancement and resource projects is eliminated as state permits are required for all such activities.

2. Tribal authorities are supplanted by super government

The proposal creates a Tribal Commission which is not representative of all of the treaty tribes. The Tribal Commission preempts all aspects of tribal management. It even manages on-reservation fishing. Tribal licensing, research, management, enforcement, and judicial authority are removed from the tribes and placed with the Commission. Tribal management, a part of the treaty rights, is eliminated. The authority of the Tribal Commission is significantly less than that held by the tribes under United States v. Washington.

3. The Fishery Review Board - A Study of Frustration

The Fishery Review Board established to enforce the principles of the Task Force settlement is impotent. The Board has no power to insure that the Settlement Plan is complied with; no power to enforce against illegal fishermen, or to require any of the parties to thus enforce; nor power to provide for an allocation, or to enforce allocation regulations. The agreements and procedures already reached between the tribes and the state which work toward cooperative management are undermined, for the state need not, under the Settlement Plan, meet and agree with the tribes on any aspects of management. In-season management problems are not dealt with by the Fishery Review Board but are relegated to a post-season determination and possible equitable adjustment which further

exacerbates the animosities between the parties. Federal Court review of Fishery Review Board decisions or non-decisions is cumbersome and is unlikely to be implemented,

V. Enforcement

Much of the enforcement plan is welcome. However, the enforcement scheme also fails to recognize essential treaty rights. Tribal court systems are replaced with a Tribal Commission Court used only in limited situations. Instead heavy reliance on state court jurisdiction and legal process is substituted, but the treaty defense in those courts is eliminated. Cross deputization, while welcome, serves only to provide a vehicle for state enforcement of regulations on-reservation, but does not provide an equal opportunity for tribes to enforce in the newly created state fishing areas. Tribal enforcement and management systems created place an inordinate financial burden on the tribes. Tribal governments must provide all costs for the Tribal Commission, one-third of the cost of the Fishery Review Board, the cost of their own enforcement, and the cost of the operation and maintenance of their enhancement facilities. Tribes do not have the resources of either the federal or state government yet are made to pay as if they had equal revenue producing ability. Such a discriminatory system will bankrupt the tribes.

PART 3. - A SETTLEMENT PLAN FOR RESOURCE DISTRIBUTION

I. Principles of Resource Distribution Under the Settlement Plan

The resource distribution plan is based upon five principles, none of which are adequately supported by the substance of the plan. The plan does not protect the fishery as it continues to rely upon mixed stock fisheries and extensive use of hatchery plants. The plan does not guarantee a fair fishing opportunity to all fishermen because of the absence of comprehensive harvest management. The concept of an equal opportunity fishery is not supportable either in biological or economical terms. It would force tribes to give up their traditional fisheries and fishery locations and promote continued use of energy wasteful fishing gear. The plan continues to discriminate against historic treaty fisheries in favor of non-treaty highly mobile present day fisheries. The plan increases potential conflict as fishermen would be forced to fish at the same times and in the same areas.

II. Components of Resource Distribution.

A. Enhancement

The Task Force recognizes the depelted nature of the present day fishery caused in the main by overzealous and uncontrolled non-Indian fishing and environmental degradation. The enhancement system proposed is without adequate management control and runs the risk of adversely affecting existing natural stocks.

1. The Task Force attempted to blackmail tribes to accept the terms of the settlement.

The plan utilizes federal funds and the expectancy of more fish to convince tribes to "voluntarily" forego exercising their fishing rights.

2. The plan calls for tremendous increase in artificially propagated fish (T.F. p. 118) without the results of research and development studies which are required to develop effective enhancement plans

Many enhancement proposals are mere feasibility studies without sufficient planning to insure they will not have an adverse impact upon the existing fishery. Monies provided by the Task Force are insufficient to insure that the necessary studies are undertaken.

3. The plan would require tribes to absorb the cost of operations and maintenance for their facilities prematurely

Insufficient revenues are projected from all funding sources to fully fund the operation and maintenance of the hatcheries to be built under the proposal.

4. The Task Force misrepresented their settlement plan and information relating to the Tribal-State negotiations

The Task Force has selected certain preliminary statements made by tribal and state negotiators and characterized them as agreements on enhancement. Neither the state nor the tribes agreed, both indicating that any agreement would depend upon the structure of the entire settlement rather than any one unit within it.

5. Ill-conceived enhancement is dangerous.

While enhancement does in fact provide certain benefits to the fishery and in certain cases can be highly productive, uncontrolled hatchery operations may swamp resident populations in the environment, spread disease, and contaminate genetically adapted stocks, all leading to the destruction of natural stocks and perhaps the destruction of the hatchery fish planted.

6. The task force plan could cause the demise of salmon and steelhead.

The Task Force report emphasizes a need to harvest all hatchery fish, and therefore, runs the risk of significant over harvest of natural fish that cannot withstand the higher harvest rates used for hatchery fish. The continued reliance on mixed stock fishing as proposed by the Task Force will increase the danger that natural stocks will be adversely affected.

7. The settlement plan would place the state in a position to manipulate tribes.

The Task Force proposal requires that enhancement projects be undertaken by tribes only after obtaining a permit from the state. This allows the state to accept or reject tribal enhancement programs to benefit non-treaty fishermen or state political motives. In the past the state has forced tribes to make significant concessions in certain of their harvest practices in order to receive permission to rear fish.

8. The Task Force calls for the use of settlement funds to finance projects which would not appreciably benefit treaty fisheries

Several enhancement projects are to be placed in Willapa Bay and on the Columbia River. These enhancement projects will not significantly benefit treaty fishermen.

B. Resource Distribution.1. The settlement can provide no guaranteed harvest opportunities for treaty fishermen.

The Task Force provides no mechanism to enforce any

allocation which may be mandated by the settlement plan. The system established encourages overharvest by non-treaty fisheries before the salmon return to the tribal management zones.

2. Harvest opportunity is a particularly unmanageable basis for allocation

Under the current state of fishery science it is practically impossible to evaluate and manage the fisheries on the basis of a guaranteed opportunity. The fish are subject to a long series of intercepting harvests. In order to control such harvest adequately an extensive and costly reporting system would have to be, but is not, established. The management structure does not provide for co-management responsibility and there is no adequate mechanism for tribes to evaluate and challenge determinations of prior interceptions, recreational harvests, etc.

3. Catch counting formulas do not protect the resource.

The proposal to count harvest opportunity in terms of adult equivalent is not sufficient. The ocean troll and sport fishery which is perpetuated by the Settlement Plan kills more fish than would have died naturally without the fishery.

4. Settlement plan would require the tribes to give up their traditional treaty fishing areas

Tribes are required to give up their usual and accustomed fishing grounds and stations for tribal commercial management zones which are smaller and less productive.

5. The tribal rights of 50% of the harvest are negated.

The tribes are required to accept an immediate reduction in their harvest opportunity to, in some cases, less than 25% of the available fish.

6. The Task Force proposed elimination of separate accounting for on-reservation ceremonial and subsistence classifications for treaty harvest.

The treaties reserved an exclusive right to harvest on-reservation and to harvest an additional number of subsistence and ceremonial fish. These aspects of the consideration for signing the treaties are taken without compensation.

7. Settlement plan provides meaningless tests for compliance.

The test for compliance is made after a six year period, and is based upon percentages of harvest opportunity enjoyed by treaty fishermen. Such a method is difficult if not impossible to quantify, and cannot uniformly be utilized throughout the case area because of different harvest goals.

8. The harvest management structure established by the Task Force is incapable of regulating the fishery either to insure a treaty harvest opportunity or protect the resource.

The settlement plan proposes a pass through system designed to protect the tribal harvest opportunity. However, there is no mechanism established either in the Fisheries Review Board or other body which can insure that the pass through is maintained. The settlement plan does not address difficult questions of harvest management created by the plan's heavy reliance on hatchery fish and mixed stock fishing.

9. Ocean fisheries and prior interceptions are inadequately regulated in the settlement plan

- a. The settlement plan does not propose specific measures regulating harvest of Washington chinook and coho by Oregon, Alaska, and especially Canadian fisheries.
- b. The settlement plan does not propose meaningful regulation of Washington ocean troll fisheries.
- c. Charter boat regulation is inadequate.
- d. Recreational fisheries are inadequately addressed.
- e. The settlement plan's approach to the ocean fishery will not be possible to implement in practice.

The plan does not provide for the regulation of ocean fisheries. The ocean fisheries account for a substantial interception of fish that would otherwise be available to treaty fishermen. Other United States fisheries such as, Oregon, and Alaska are not dealt with and those

fisheries will continue to intercept case area fish. Of special importance is the Canadian fishery which intercepts significant numbers of United States bound fish. Treaty Indian harvest has been substantially diminished by bilateral agreements between the United States and Canada. The plan does not propose meaningful regulation of the Washington troll fisheries. It is unclear whether or not the reduction of the troll harvest rate is to apply to all troll fisheries or to just those within Washington State waters. The Task Force report does not deal with the charter boat and recreational fisheries. These fisheries take substantial numbers of mature salmon and under the plan will continue to do so in an unregulated fashion. The settlement plan would continue to allow the state to curtail treaty fishing while leaving the recreational fishery unregulated - a process that cannot withstand scientific study. Unless the intercepting ocean, and sport fisheries are regulated there is little likelihood that a substantially larger in-Sound fishery can develop. The failure of the settlement plan is assured by its failure to mandate the development of needed data and a change in coastal and international management.

10. Coastal resource distribution

a. Plan for the south coast

The Quinault Tribe is asked to forego fisheries in Willapa Bay and on the Columbia River at a potential economic loss of \$4 million. Those fisheries remaining in Grays Harbor are calculated on a basis which perpetuates non-treaty prior interceptions which all but wipe out the available fish.

b. Resource distribution plan for the north coast.

The interim plan provides for a stabilization of ocean harvest rates to reverse a decline of ocean salmon stocks, but gives no guarantee that the rates proposed will be sufficient to bring about the reversal planned. The plan requires inter-governmental participation from the tribes, state and

federal government without providing any vehicle to insure that all of the parties do in fact comply. The final plan provides for a substantial reduction in the treaty share of the harvests.

11. Salmon distribution plan for the Strait of the Juan de Fuca.

The plan establishes the terminal fishing areas but does not set out how those will apply to Indians. Fresh water fisheries which provide the mainstay of tribal fishing in this area, are not clearly provided for. While harvest rates are referenced for the Strait there is no sharing formula developed which would employ the harvest rates to control the fishery. The maximum tribal fishery in the Strait is set by a quota. With the anticipated enhancement under the settlement plan, the tribes will continue to harvest a decreasing portion of the available fish. Traditional fishing methods are limited, especially the use of set nets or other fixed gear. For the first time a non-Indian gillnet fishery is established outside of the IPSFC jurisdiction. This will only further exacerbate existing problems.

12. Salmon resource distribution for Puget Sound.

- a. Introduction
- b. Interim Plan, Puget Sound Stocks
- c. Interim Plan, IPSFC.
- d. Final salmon distribution plan, Puget Sound Origin Stocks.
- e. Final salmon distribution plan, IPSFC fisheries.

The salmon resource distribution plan for Puget Sound is based upon the establishment of well defined geographic areas within which tribal fishing is confined, and the institution of a so-called equal opportunity fishery where treaty fishermen would compete directly with non-treaty fishermen. The fishery proposed continues to inadvisedly explicit mixed stocks consisting of strong and weak runs of both natural and artificial stocks, and requires that treaty

fishermen give up their more efficient terminal fishery and enter the biologically unsound mixed stock fishery. The settlement plan uses terms in contradictory ways, making it impossible to evaluate the actual impact of many provisions - for example, the phrase "Puget Sound origin harvestable runs". If this phrase is used to refer to the total numbers of harvestable fish originating in Puget Sound then the sharing formula does not allow for the harvest of any Puget Sound fish by other than Puget Sound fisheries. However, if this phrase applies only to harvestable fish available in Puget Sound, then the distribution formula would be correct. But, because of prior interceptions, the true treaty share of the chinook and coho catch would be reduced substantially below the nominal shares stated in the plan. There is no guarantee that after fleet adjustment, the resulting "equal opportunity" fleet will be small enough to allow treaty fishermen to catch even the small number of fish which they are allocated.

C. Steelhead resource distribution plan

The plan calls for virtual elimination of tribal commercial steelhead fishing. This is based upon the incorrect view that sportsmen cannot compete with a commercial fishery. In 1976, according to the Department of Fish and Game, only 19% of the persons who purchased fresh water fishing licenses in Washington State, fished for steelhead. Thus, the curtailment of a treaty right is done to benefit only a small segment of the fishing community. Non-Indian fishermen have traditionally harvested significant numbers of steelhead even after the runs have passed through tribal fisheries. The plan does not take into consideration the particular need of tribes for the steelhead fishery for their subsistence and winter commercial needs.

D. Fleet Adjustment

The Plan incorporates a massive non-Indian gear reduction program as one of its primary methods of insuring that treaty fishermen can realize their opportunity. The gear reduction will not provide any meaningful guarantee to the tribes. Under the proposal, the

most inefficient fishermen are removed from the fishery leaving only the most efficient. The non-Indian ocean fishery and other commercial fisheries will continue to harvest the overwhelming majority of the fish before they are available to Indians. For example, if the total troll licenses are reduced by 53% (as predicted under the mandatory portion of the license reduction program), that reduction would amount to a mere 4% reduction in the harvest by the troll fisheries.

PART 4. - SOLUTION

The tribes see the settlement plan as a devise to strip them of their rightful share of the fish and their governmental powers over their own people and resources. The plan cannot be salvaged as a vehicle to protect the resource since it perpetuates and encourages wasteful and biologically dangerous mixed stock fisheries. The settlement plan provides no meaningful assurances that the meager promises made can be carried out. Finally, the Task Force avoids coming to grips with the salient problems: illegal non-Indian fishery and a recalcitrant state government. Rather the bad faith of the state and its non-Indian allies are rewarded by a grant to the state of even more authority at the expense of tribal governments, and an increase in the share of fish to non-treaty fishermen.

The tribes believe, therefore, that the hope of settlement and protection of the resource lies with a new commitment to implement the law as it is. The majority of our citizens believe in the rule of law and with normal leadership from the state and federal governments will accept their responsibilities with a firm commitment to the law; details of implementation can be worked out with fairness to all.

PART IV
SUMMARY OF LEGAL RIGHTS ABROGATED BY THE TASK FORCE PROPOSAL

We have, throughout this report, noted the vested legal rights recognized and affirmed by the federal court's decision. We have noted the ways in which these rights would be abrogated or seriously modified by Task Force proposal. This section summarizes briefly some of the more important rights so affected.

A. Usual and Accustomed Places.

In its decision, the Federal District Court noted:

The Court finds and holds that every fishing location where members of a tribe customarily fished from time to time at and before treaty times, how ever distant from the then usual habitat of the tribe, and whether or not other tribes then also fished in the same waters, is a usual and accustomed ground or station at which the treaty tribe reserved, and its members presently have, the right to take fish." United States v. Washington, p. 332.

The Task Force Proposal would essentially abrogate this finding by the Court. Under the proposal, usual and accustomed places are essentially abolished. In place thereof are tiny Tribal Commercial Management Zones "intended to replace tribal usual and accustomed fishing grounds" (T.F. p. 4).

B. Fifty-Fifty Sharing.

As to fifty-fifty sharing the court held,

. . . non-treaty fishermen shall have the opportunity to take up to fifty percent 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. . . .
United States v. Washington, page 343.

To accomplish this sharing the court stated:

The State "will make significant reductions in the non-Indian fishery, as are necessary to achieve the ultimate objectives of the court's decision. . ." United States v. Washington, page 420.

This basic sharing formula of the decision would be negated by the Regional Task Force Proposal. In its place are various percentages for different areas and fisheries, from a high of 33% in the TCMZ's to a low of 15% in marine areas.

C. Steelhead.

The Court held:

. . . A primary concern of the Indians. . . was that they have freedom to move about to gather food, particularly salmon, (which both Indians and non-Indians meant to include steelhead), at their usual and accustomed fishing places. United States v. Washington, p. 355.

And further:

The rights secured by the treaties to the Plaintiff tribes is not limited as to species of fish, the origin of fish, the purpose or use, or the time or manner of taking, . . . United States v. Washington, p. 401.

As to steelhead regulations specifically, the court held:

The State laws and regulations pertaining to game fish were reserve the entire harvestable portion of a species of fish for a special interest and purpose discriminate illegally against the treaty Indians. United States v. Washington, p. 403-404.

These rulings also, would be abrogated by the Task Force proposal. Treaty Commercial fishing for steelhead by many tribes would be immediately ended. Other tribes would phase out the fishery over a period of time. As to those tribes dependent upon steelhead this would mean an effective end to the treaty right.

D. Tribal Regulation

In a recognition of the governmental status of treaty tribes and the concept of self-determination, the court held:

... This court hereby finds and holds that any one of the 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. United States v. Washington, p. 340.

The Task Force Proposal would effectively end tribal self-regulation. Since usual and accustomed places are essentially abolished, no meaningful tribal regulation remains in those areas. To the extent that there is any Indian regulation in the TCMZ's, that regulation is given over to the tribal commission and not tribal governments. Even on-reservation regulation can be affected because of the concurrent power in the tribal commission and, in some circumstances, State government to regulate on-reservation as necessary for conservation.

E. Tribal Jurisdiction

Both tribal jurisdiction on-reservation and off-reservation is

adversely affected by the proposal. In Final Decision #I the court held:

An exclusive right of fishing was reserved by the tribes within the area and boundary waters of their reservations, ... United State v. Washington, p. 332

No one, prior to the Task Force Report challenged the authority of the tribal governments to regulate fishing by their members within the reservations.

The Task Force Proposal, however, again would seriously undermine this authority. In certain circumstances, the tribal commission and State government would be given authority over the reservation areas.

Off-reservation, the decision recognized the defacto ability of the tribes to regulate their fisheries (see Interim Plan and Stay Order, United States v. Washington at page 420 and United States v. Washington, page 340). Here again the Task Force proposal, through the imposition of State Commercial Management Zones would effectively end tribal governmental and tribal court jurisdiction over treaty fishing in those areas.

F. State Power to Regulate Indians -- Treaty Defense

Central to the treaty right was the federal court's conclusions concerning State power to regulate Indian fishing. The court held:

The fishing right was reserved by the Indians and cannot be qualified by the State. The State has police power to regulate off-reservation fishing only to the extent reasonable and necessary for conservation of the resource. United States v. Washington, p. 333.

To be "reasonable and necessary for conservation" the State must prove that a regulation is:

- (a) essential to the perpetuation of a particular run or species of fish;
- (b) appropriate to its purpose;
- (c) that existing tribal regulation or enforcement is inadequate to prevent demonstrable harm to the actual conservation of fish; and
- (d) that conservation cannot be achieved to the full extent necessary consistent with the principle of "equal sharing" by restriction of fishing by non-treaty fishermen or by other less restrictive alternative means or methods."

United States v. Washington, p. 115

If State regulations do not meet these standards then an Indian fisher has a "Treaty defense" against prosecution.

This protection would also be abrogated by the Task Force Plan. In its stead is proposed a complex plan involving more fish, more boats for the Indians, less boats for the non-Indians and other schemes designed to create a "equal opportunity" fishery. As a result, the State is given virtual complete police power over treaty fishing in usual and accustomed places without meeting the conservation standard.

G. Equitable Adjustment

Recognizing that many fish bound for usual and accustomed places were intercepted by Washington fishermen before they reached those places, the Court ordered an equitable adjustment for such "interceptions".

Therefore the court held that in determining the total number of harvestable fish available for treaty tribal fishing the State must make

"an 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." United States v. Washington p. 344.^{1/}

This "equitable adjustment" provision would also be essentially negated by the Task Force proposal. In its stead are promises of "more fish" made possible by expensive enhancement projects, a hopeful reduction in "intercepts" because of gear reductions and limitations on ocean fishing, *and an unworkable "resource distribution adjustment" based on unworkable concept of harvest opportunity.* (T.F.P. 212)

H. Remedies -- The Treaty Defense

The decision in United States v. Washington protects treaty tribes in the exercise of their treaty right in two ways.

First, the decision, as substantive law, remains available to the tribes in any litigation necessary to stop discriminatory practices or implement the decision.

Secondly, the court itself, noted the need to "maintain continuing jurisdiction" to provide meaningful implementation of the treaty right;

The court will retain continuing jurisdiction of this case to grant such further relief as the court may find

^{1/}Noted that this was later modified by the 9th Circuit to include only fish caught by Washington fishermen as opposed to fish caught by foreign fishermen beyond any control of the State of Washington.)

appropriate. United States v. Washington, p. 333.

"The parties or any of them may invoke continuing jurisdiction of this court in order to determine: . . . such other matters as the court may deem appropriate. United States v. Washington p. 419.

One of the most devastating results of the Task Force Proposal would be the elimination of federal court protection for the treaty fishing right. In place of the substantive rights of the decision, a whole new "body of law" is suggested by the plan. Gone is 50-50 sharing, usual and accustomed places, tribal regulation to name a few. In their place are new allocations, fishing areas and jurisdiction schemes.

In place of the continuing jurisdiction of the federal courts, a new body entitled the "Fisheries Review Board" is proposed. This body is given no real power to enforce implementation of either the decision or the Settlement Plan. Even in the event that the Plan were implemented, the Board has no power to force implementation. In the event that "business and usual" occurred in that the State continued to deny Indian fishing rights, the only access to the court's for the treaty Indians would be a long convoluted procedure starting with the Fisheries Review Board. In that procedure, a finding of "substantial non-compliance" must be had before there could be any resort to federal court. Given the history of this litigation and the recalcitrance of the State of Washington, this proposal virtually negates the decision and ignores the long litigation which lead up to it. It is a turning back of the clock to pre-decision days with the requirement that the tribes must start all over again in the event of State failure to recognize their rights.

In summary, as to the vested legal rights affirmed and recognized by the decision, the Task Force plan amounts to nothing more than full abrogation and negation of those rights.

**SETTLEMENT PLAN FOR WASHINGTON STATE
SALMON AND STEELHEAD FISHERIES**

**Prepared By
The Regional Team of the
Federal Task Force
On
Washington State Fisheries**

**John C. Merkel, Chairman
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PREFACE

This settlement plan has been prepared by the Regional Team of the Federal Task Force on Washington State Fisheries Problems. The purpose of this settlement plan is to recommend to the national administration and Congress, as well as all interested parties, actions and policies which, if implemented, would provide a set of solutions to the complex salmon and steelhead fisheries problems confronting the Washington State fishery.

The members of the Federal Task Force are: Ms. Anne Wexler, Deputy Under Secretary for Regional Affairs, Department of Commerce; Mr. Leo Krulitz, Solicitor, Department of the Interior; Mr. James Moorman, Assistant Attorney General, Land and Natural Resources Division, Department of Justice; Mr. Forrest Gerard, Assistant Secretary for Indian Affairs, Department of the Interior; and Mr. Richard Frank, Administrator, National Oceanic and Atmospheric Administration, Department of Commerce.

The members of the Regional Team are: Mr. John C. Merkel, United States Attorney and Chairman of the Regional Team; Dr. Dayton L. Alverson, Director, Northwest and Alaska Fisheries Center, National Marine Fisheries Service, Department of Commerce; and Mr. John D. Hough, Director, Western Field Offices, Department of the Interior.

In developing the settlement plan, the Regional Team has used as its terms of reference the four following guidelines established by the Federal Task Force:

1. The optimum utilization of the fisheries resource, including Federal assistance for fisheries enhancement.
2. A healthy commercial and sport fishery that will provide an opportunity for all who depend upon salmon fishing for their livelihood to earn a good living.
3. A utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens Treaties of 1854 and 1855.
4. Development of management systems that will ensure that the salmon fishery is preserved and developed so as to satisfy points 1 through 3.

In addition to establishing these terms of reference, the Federal Task Force charged the Regional Team with the responsibility to propose a set of solutions which will have been discussed with, and will have the broadest possible acceptance by, non-treaty sport and commercial fishermen, the tribes, State government, and the Federal Government.

In order to meet this additional responsibility, the Regional Team began its work and established a series of meetings to discuss fisheries problems and possible solutions with the various user groups and tribes in May, 1977. These meetings continued throughout the summer and fall. During the

summer of 1977, the tribes and user groups were requested to submit written proposals for resolving the problems of the fishery. Proposals were received from almost all of the tribes and user groups. These proposals ranged in scope from brief declarations to comprehensive plans for enhancing the salmon and steelhead resources, reducing the amount of fishing effort, managing the fishing and enforcing fisheries regulations.

The Regional Team carefully reviewed all proposals and incorporated them into a single document entitled, "Proposals, Recommendations, and Suggestions Submitted by All Interested Parties." Using this document as a reference point, the Regional Team conducted an intensive series of negotiations during November and December 1977, with State officials, each tribe in the case area, tribal organizations and representatives of non-treaty commercial and sport fishing interests. The purpose of these negotiations was to obtain a clearer definition of the fisheries problems among all parties, and to work toward developing a consensus for resolving them.

In addition to the meetings and proposal discussions with the various groups, the Regional Team prepared a series of technical reports which were used to establish a factual base of information about the fishery. These technical reports were widely disseminated to treaty and non-treaty fishermen as a means of establishing an accepted data base and a common understanding of the major problems of the fishery.

An effort was made through newsletters, thorough involvement of the news media and other actions to keep the fishing communities fully informed of Regional Team activities and the progress which was being achieved toward resolving the fisheries problems.

In January 1978, the Regional Team issued an initial report entitled, "Proposed Settlement for Washington State Salmon and Steelhead Fisheries." This proposed settlement incorporated the results from negotiations in those instances where a majority of the fishing interests were in agreement. In areas where a general consensus could not be established among the fishing interests, members of the Regional Team formulated recommendations which would facilitate the optimum utilization of the fishery resource within a cohesive and effective management system, and which were consistent with the rights and interests of each of the parties.

After the issuance of the Settlement Offer in January of 1978, the Regional Team again conducted a series of meetings with interest groups to explain the settlement offer. In response to State and tribal requests, the Regional Team deferred submittal of its final settlement plan to provide additional time for State and tribal negotiations. Results from these negotiations, as well as new findings from continued Regional Team studies, have been incorporated into this settlement plan. In addition, in order to reduce any

possible misunderstanding, special efforts have been taken to clarify, correct and more fully describe each of the various aspects of this settlement plan.

This settlement plan is intended to describe and recommend solutions to this complex and emotional problem. It is not intended to be a legal document, nor does it address many of the steps which would be necessary for its implementation. These steps can be taken if there is substantial support for the plan.

The members of the Regional Team once again wish to thank the leadership of the various tribes, sport and commercial fishing groups and State government who have devoted so much time and thought to assisting us in our efforts.

We specifically wish to thank Mr. James Waldo, Assistant United States Attorney, who conducted the negotiations on behalf of the Regional Team, and spent countless hours during the past two years developing solutions to the fisheries problems. We also wish to thank the staff of the Regional Team, Wallace Miller, J. Carl Mundt, Ronald Costello, Robert Azevedo, Dr. Lars Moberg, George Tananaka, Joan McKenzie, Edward Evans, Richard Marasco and Virginia Thompson for their hard work and support during the past year.

BACKGROUND

On April 7, 1977, President Carter announced the establishment of a Federal Task Force and assigned to it the task of developing solutions to the highly complex and increasingly emotional problems occurring in the salmon and steelhead fishery in Washington State. The events which brought the controversy to a head were the 1969 Sohappy v. Smith case in Oregon,^{1/} and later the February 1974 Federal District Court decision in United States v. Washington^{2/}.

While there has been a long history of legal conflict in the fishery not only between the States and the tribes, but also among non-treaty fishermen, these decisions have become landmark cases because, for the first time, they address the issue of the right of Indians to a fair share of the fishery resource.

1/ The Oregon case, Sohappy v. Smith, 302 F. Supp. 899 (D. Or. 1969), affirmed, 529 F.2d 570 (9th Cir. 1976), is a case heard by the Federal District Court in Oregon, affecting fisheries in the Columbia River area.

2/ United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), affirmed, 520 F.2d 676 (9th Cir. 1975), cert. denied, 423 U.S. 1086 (1976).

The question facing the Federal District Court in United States v. Washington was the meaning of the following provision (or its equivalent) which appeared in a series of treaties negotiated between the Federal Government and Indian tribes in the mid-1850's: "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the territory."

The Court decided that the quoted phrase meant, in part, that certain Indian tribes and tribal members within a broad geographic "case area" in Western Washington had an enforceable right to an opportunity to harvest a specified proportion of the salmon and steelhead resource at the tribes' usual and accustomed fishing grounds. The "case area" is presently defined as all of the watersheds and marine fishing areas of Puget Sound, the Strait of Juan de Fuca and the coast of Washington from Grays Harbor north. The Court developed a formula which provided the tribes with the opportunity to take fifty percent of the harvestable numbers of fish. In addition, the Court held that fish taken by the tribes on-reservation or for use for subsistence or for ceremonial purposes were not to be counted as a part of the treaty share.

The Court defined the harvestable number of fish to be the total number of fish within the case area regulatory jurisdiction of the State of Washington, after deducting spawning requirements, which would have been available for

harvest at the treaty tribes' usual and accustomed fishing places. The Court also provided an adjustment to compensate the tribes for fish harvested enroute by non-treaty fishermen within Washington waters. The essence of this Court formula was to establish a means for sharing "common property" between treaty and non-treaty fishermen.

The United States District Court decision, commonly referred to as the "Boldt" decision because the decision was rendered by Senior United States District Court Judge George H. Boldt, was met with a strong and bitter reaction by non-treaty commercial and sports fishermen, as well as some State authorities. The salmon catch by treaty fishermen increased from about six percent of total Washington State landings in the years immediately preceding the decision, to approximately fifteen percent by 1976.^{3/} In order to achieve the increased level of catch for treaty fishermen, special "treaty only" salmon fishing days were established, and other regulations were put into effect to implement the court decision. The result was a complex and often confusing situation.

^{3/} While the fifteen percent for the 1976 salmon season is a total aggregate percentage, the treaty catch percentage varies significantly by geographic area. In the ocean troll and sport fishery, the 1976 catch by treaty fishermen is less than one percent. For Puget Sound in 1976, the percentage was twenty-two percent.

Extensive litigation, acts of violence, vandalism and damage to boats and nets increased with the implementation of the Court decision. Since February 1974, to the spring of 1978, numerous Court decisions were rendered by Federal and State Courts on this issue. These decisions, while doing little to change the original decision, were often contradictory and served to heighten tensions between treaty and non-treaty fishermen.

Because steelhead trout, a highly prized anadromous sport fish, were also affected by the Court decision, sportsmen and sport groups also reacted angrily to the decision, as well as to the steps taken to implement the decision. It should also be noted that the steelhead fishery, like the salmon fishery, has a long history of legal conflict.^{4/}

It is within the preceding context of circumstances and events that the Washington State congressional delegation requested President Carter to appoint a Federal Task Force to find ways of resolving the controversy. Based upon a close examination of the various points of view in the controversy, it is apparent that the origins of the problems giving rise to

^{4/} The Puyallup I, Puyallup II, and Puyallup III cases established the treaty right of Indians to share in the catch of steelhead, which was quantified in United States v. Washington.

the controversy go far deeper than the effect of the decision in United States v. Washington. In order to provide reasonable and effective solutions to the problems, significant changes have to be made in the fishery. To simply turn back the clock to conditions which existed preceding the Court decision will not provide adequate solutions; nor will such an action result in a healthy commercial and sport fishery in which the rights and interests of each of the parties are recognized. Turning back the hands of the clock would also not be a satisfactory solution to treaty fishermen who have used this country's courts as a means of establishing their treaty rights.

Given the statement that significant changes are necessary in the fishery, the following discussion is intended to provide a clearer picture of the core problems and issues in the fishery which create the need for change.

UNDERLYING PROBLEMS AND ISSUES IN THE SALMON AND STEELHEAD FISHERIES

The combination of problems, issues and expected results of the settlement plan preclude the use of such direct solutions as reallocation and enforcement, and creates the need to substantially restructure the fishery. The following discussion of the major problems and issues in the fishery identifies the types of changes which will be necessary to

resolve the problems and issues and meet the expectations of the established guidelines.

Salmon Resource Development

Since the early 1900's, when record catch levels were recorded, catches of the five species of salmon (chinook, coho, sockeye, chum and pink) have significantly declined. Overfishing, habitat destruction, inadequate resource protection and management have all played a role in the decline. In order to counteract this trend, since the mid-1960's increased artificial production and improved fisheries habitat management practices have been implemented by the State, Federal government and tribes. In many cases, this has halted the dramatic decline in run sizes. In other instances, run sizes have been significantly increased to make an important contribution to the fishery.

Currently, Washington State commercial and sport fishermen are landing an average of 7.5 million salmon per year. The full potential of freshwater natural and artificial salmon propagation has not been adequately measured (nor has the carrying capacity of the ocean to provide the necessary food supply). Nonetheless, current studies indicate that increased natural and artificial production, as well as other measures, could increase salmon landings to 15 to 20 million fish per year.

Rather than embark on a program which would divide already too few fish among too many fishermen, the Regional Team believes increasing the number of fish available for harvest and establishing reasonable harvest opportunities for treaty and non-treaty fishermen, are essential elements in establishing a healthy fishery.

Gear Adjustment Program

During the preceding decade, the number of non-treaty fishing vessels has rapidly increased. For example, in 1965, there were 1,822 trollers licensed by Washington State. By 1977, the number had increased to 3,232. During the same period, the Puget Sound gillnet fleet increased from 906 vessels to over 1,500; the Columbia River gillnet fleet increased from 237 to over 700.

These fleet sizes had grown excessively large in relationship to the salmon resource. While a moratorium on increases in the number of commercial non-treaty fishing vessels was enacted in 1974, this action occurred after much of the expansion had already taken place. In order to accommodate the increased fleet sizes and to adjust for declining runs in some areas, the number of days and areas that a commercial fisherman could fish has been reduced again and again, until many fishermen could no longer earn sufficient income from the fishery to sustain their families.

In recognition of the economic and managerial problems resulting from excess fishing capacity, Washington State initiated a modest federally-financed "buy-back" program in 1976 for Puget Sound fishing vessels. Under this voluntary program, the State purchased boats, license and gear of Puget Sound fishermen. These boats were later sold at public auction under the stipulation that they could not be used as commercial fishing vessels in Washington State waters.

The State "buy-back" program has reduced the Puget Sound fleet by approximately 400 vessels. A continuation and expansion of this program, together with other measures such as a one-time minimum catch requirement to qualify for a license, could provide the means of reducing fleet sizes which would help bring about a healthy commercial fishery.

In order to provide treaty fishermen with an increased opportunity to share in the harvest, low interest loans for boats and equipment could be made available to treaty fishermen. The resulting changes in fleet composition between treaty and non-treaty fishermen would eliminate the present procedure of providing separate fishing times for treaty fishermen, which has been a major factor in the controversy.

An increased supply of fish resulting from the resource enhancement program, when coupled with an adjustment in the overall size and makeup of the commercial fishing fleets, becomes a primary means for establishing a healthy fishery.

Lack of Resource Management Coordination

Another major factor underlying the current controversy is the inability of the State and the tribes to jointly develop an effective management system. Because of the long-standing conflict between the State and the tribes, the tribes in the "case area" have increasingly developed salmon propagation facilities and fisheries management systems independent of the Washington State Departments of Fisheries and Game. This situation of multiple resource managers and propagation facilities has resulted in uncoordinated hatchery releases, increasingly more complex harvesting problems, as well as other resource and economic problems.

If this disjointed management of the salmon and steelhead resource is allowed to continue, it will be difficult, if not impossible, for the resource to be restored, maintained and enhanced. A coordinated management system involving the State and the tribes which will promote closer working relationships and greater unity of purpose is essential for the long-term well being of the fishery.

Steelhead

On the surface at least, the steelhead portion of the controversy centers around, on the one hand, the position of sport groups who wish to see steelhead harvested only by hook-and-line methods for non-commercial purposes. Steelhead

is not only a prize sport fish, but is the main species, within the salmon-steelhead family, for freshwater sports fishing. It should be emphasized that while there are not many steelhead, there are thousands of sport fishermen who enjoy this fishery. Many tribes, on the other hand, have a long tradition of catching steelhead in a net fishery and selling them commercially, and wish to continue to take steelhead for commercial purposes.

The steelhead issue is an extremely emotional one, and has been the cause of some of the violence and vandalism to boats and nets.

In addition to this obvious surface conflict, there are several very difficult underlying problems to overcome in resolving the steelhead issue. First, steelhead often return to the river systems to spawn at the same time as salmon. Because the steelhead are often of the same general size as the salmon; changes in net mesh size or other available means of selectively capturing salmon cannot be readily implemented.

Secondly, for some tribes who fish in the mouths of rivers or upriver, the steelhead has been the only assured harvest opportunity they may have had during a season. This situation has occurred because, in many instances, the tribal fishermen fish first on steelhead, but are last in line on salmon which has often meant little or no opportunity to fish. Historically, prior interceptions of salmon by ocean and marine

fishermen have reduced the returning run size to where the remaining salmon are necessary for spawning to maintain the run.

Many tribes have indicated a willingness to not exercise their treaty rights to commercially fish on steelhead. They, however, ask in return for a guarantee that returning salmon will not be overharvested in the ocean and marine areas so that a portion of the run will be available for harvest in the river. Further, given the past history of conflict, the tribes strongly believe that unless they have a voice in developing harvesting regulations through their participation in the management of the resource, any harvest share guarantees would be meaningless.

A remaining major hurdle in the steelhead issue has been the current lack of opportunity for coastal treaty river fishermen to target their fishery on species other than steelhead. While the coastal rivers are, or could be, good salmon producers, the chinook and coho species from these rivers are heavily harvested by United States and Canadian troll and sport fishermen. This currently leaves the coastal tribal fishermen with little choice but to maintain a commercial fishery for steelhead, until suitable replacements are available.

Resource Distribution

The Regional Team has decided to preserve each of the types of fishing and areas of fishing which have been important historically in the State of Washington. We have heard numerous arguments about which is the "best," most economical, or most important fishery. There have been recommendations that various fisheries, e.g., troll, gillnet, purse seine or tribal terminal, be eliminated to make room for the surviving "better" fisheries. We have rejected this approach.

Rough estimates indicate there are currently 6,000 licensed non-treaty fishermen, and 1,000 to 1,500 licensed treaty fishermen. Many feel that to evenly divide a resource, given the greater number of non-treaty fishermen, is basically unfair.

Some believe that because the total population of treaty tribes is less than two percent of the total State population, that treaty fishermen should only be allowed to catch that percentage of the total harvest.

If the number of fishermen were used uniformly as a criterion for determining who can catch the fish, sport groups which collectively have a large membership, and trollers, which are the largest group of commercial fishermen, could lay claim to substantially greater shares of the fishery than they now take. Obviously, the implementation of any such population-related criteria would substantially alter the historic catch patterns, and further, would work hardships on purse seiners

and other smaller groups of fishermen, who, while fewer in number, employ very efficient harvesting methods. We rejected this approach also.

Others have suggested that another way to resolve the resource distribution problem is to adopt the view that salmon belong to the first person who has the opportunity to catch them. This suggests that if treaty fishermen want to share in the harvest, they must leave their traditional river fisheries and participate in the ocean and inside marine harvest. Some treaty fishermen have historically been marine fishermen and might agree with this view. Just as gillnetters wish to remain gillnetters and not trollers, and many Puget Sound sport fishermen do not want to sport fish in the ocean, many treaty fishermen wish to retain their right to fish in their historical usual and accustomed places, and would strongly resist leaving their river fishery for an already overcrowded marine fishery.

In order to accommodate the various fisheries, the Regional Team opted for a "pass-through" system which provides each succeeding fishery with a substantial opportunity. Sufficient technical information and managerial skill is available to accomplish such a pass-through. The use, therefore, of a pass-through principle would allow all sectors, treaty and non-treaty commercial, as well as sportsmen, to share in the salmon harvest.

Finally, if treaty rights are to be recognized, a principle and a method must be established which will provide treaty fishermen with an opportunity to harvest salmon in the marine areas for those who wish to fish there, and in the rivers for those who prefer that type of fishery.

Enforcement

Enforcement of fisheries regulations, or the lack of it, has become an increasingly difficult and emotional element of the controversy. The lack of effective enforcement during the past several seasons has led to illegal fishing, even on stocks closed to fishing and critically needed for spawning escapement.

Enforcement for conservation, as well as enforcement actions to meet the Court allocation formula have often been frustrated by State Courts, which generally have not convicted fishermen for illegally fishing. In cases tried in Federal Court, an extremely cumbersome contempt of Court procedure must be used to gain conviction. Consequently, it has not provided a significant deterrent to illegal fishing. Unless major changes are made in the entire enforcement system, from apprehension through the judicial system, there is little hope that the resource can be sustained, or that guarantees to honor treaty rights will be met.

Canadian Interceptions

Another factor which must be dealt with in an already overly complex problem is the interception of Canadian-origin fish by United States fishermen, and the interception of United States-origin fish by Canadian fishermen.

In the States of Washington and Alaska, United States fishermen intercept Canadian salmon. On the other hand, Washington Puget Sound, Columbia River, and coastal stocks of chinook and coho are heavily intercepted by Canadian troll fishermen. Unless some means are found to limit each country's interceptions of the other's fish, there is little incentive for either country to enhance its salmon resources. Such limitations are an essential ingredient in rebuilding Washington State stocks of chinook and coho, which is a key element in the equitable enhancement and distribution of the resource. The alternative of only enhancing chum salmon stocks, which are not significantly intercepted by Canadian troll fishermen because chum is primarily a net-caught fish, would be of little or no benefit to United States troll, charter and sport fishermen. In order to achieve the earlier stated principle of maintaining a balance among the various fishing fleets, it is essential that a balance be maintained among the species caught by those fleets and sport groups.

United States V. Washington, Phase II

Two issues were raised in the original United States v. Washington case which were separated for a later hearing. The issues are whether the treaties provide the tribes with the ability to protect the salmon fishery habitat from "substantial and adverse impacts" and whether the treaty right includes fish reared in State hatcheries.

These issues are of major importance to the achievement of an overall settlement. First, unless additional protection for fishery habitat can be assured, existing runs as well as the additional salmon and steelhead from projects included in the multi-million dollar resource enhancement plan, will be destroyed.

Secondly, tribal claims to a share of hatchery fish as compensation for prior destruction of fish runs is an equally important consideration in the development of this plan. It is abundantly clear that the proposed Federal, State and tribal resource enhancement projects set forth in this plan cannot be successfully coordinated or operated if the catch opportunity is based upon who releases the fish.

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Chapter 1

INTRODUCTION

In January 1978, the Regional Team of the Federal Task Force on Northwest Fisheries Problems issued a proposed plan for settling the fisheries dispute. During the intervening months, the Regional Team has continued to meet with the various salmon and steelhead fishing interests. The purpose of these meetings has been to discuss the proposed settlement plan, as well as any changes which could be made to the proposal to make it more acceptable to all parties involved in the fishery.

During the past several months, the Washington State Department of Fisheries and the Northwest Indian Fish Commission of the treaty area tribes and, subsequently, representatives of the commercial and sport groups have held meetings to negotiate their differences on various aspects of the fisheries problems addressed in the proposed plan. These meetings and negotiations have been helpful in narrowing differences and in providing more effective solutions to the fisheries problems. While the Regional Team has reached the point where it must recommend its final settlement plan, the Team strongly encourages the State, the commercial and sport groups, and the tribes to continue to negotiate on their remaining differences. Should agreements be achieved by the

State and the tribes in areas where the Team has selected a different course of action, we would support their agreement over our proposed solution if the intent of the agreement was generally consistent with this settlement plan. If additional agreements are not forthcoming, it is our judgment that this settlement plan is the most equitable and sure way to secure the four major goals established by the Presidential Task Force. These are:

1. Establish a healthy commercial fishery for non-Indian and Indian fishermen;
2. Establish a healthy sports fishery;
3. Fulfill treaty fishing rights;
4. Establish a fisheries management system.

In January of 1978, in an open letter to the Washington State salmon and steelhead fishing interests, the Regional Team made several comments which we believe need to be restated.

Despite the turmoil and strife, erosion of management capacity and conservation problems which have occurred during the past several years, we strongly believe that through settlement the Washington State fishing communities have a rare and unique opportunity to fashion a better and more secure future for their fishermen as well as the salmon and steelhead resource. Time, however, is running out. National interest in facilitating a broadly based settlement cannot continue to be taken for granted given the pressure to solve complex problems

elsewhere in the country. It would be indeed unfortunate for all the citizens of Washington State now and for the generations to follow if this opportunity is lost.

After months of meetings, discussions and carefully weighing many proposals and plans, the Regional Team has become even more convinced that within each segment of the fishing community there exists an historic fishing pattern which should be maintained. Together they make a significant contribution to the economic well being of the State of Washington. Some fishermen, such as tribal members who possess treaty rights, have their historic rights and interests established by Federal law. Others, such as the trollers, charter boat operators, gillnetters, purse seiners, reef netters and sportsmen, have established their historic rights and interests through years, if not generations, of participation in the fishery. All of these historic patterns must be recognized if we are to have a healthy commercial and sport fishery in which the rights and interests of all parties are maintained.

The specific provisions of this settlement plan are set forth in Chapters 2-11. Each of these chapters represents a major problem which must be resolved to achieve the goals of the settlement. Chapter 2 contains the Regional Team's recommendations for managing Washington State salmon and

steelhead fisheries. This recommended management system will provide greater coordination, unity of purpose, and a more effective utilization of the talent and expertise of not only the Washington State Departments of Fisheries and Game, but also of the tribes, the sportsmen, and non-treaty commercial fishermen. Each can make a valuable contribution to wisely developing and using our salmon and steelhead resources. This recommended management system is designed to ensure that decisions which affect fishermen and the resources will be made in a more open manner.

Chapter 3 recommends area arrangements which provide for tribal fishing in Tribal Commercial Management Zones (TCMZ) and for the all-citizen fishery in State Commercial Management Zones (SCMZ).

The Tribal Commercial Management Zones are intended to replace tribal usual and accustomed fishing grounds and provide defined river and terminal areas in which treaty fishermen can harvest their share of the salmon under the resource distribution part of the settlement plan. The tribes are not being asked to give up their treaty rights to their usual and accustomed grounds, but instead to exercise their rights in a manner consistent with this settlement.

The State Commercial Management Zones generally encompass coastal waters, marine areas in the Strait and Puget Sound. These zones will continue to be under the management of the Washington State Department of Fisheries.

Chapter 4 describes the resource enhancement and research projects included as a part of this settlement plan. These projects provide a viable means for restoring depleted fish runs and supplementing the dwindling supply of natural production. In addition to recommending these enhancement projects, this chapter contains recommendations designed to ensure that selected projects are technically sound and make an important contribution to the fishery and settlement. Overall, based upon the new State enhancement program and the State, tribal and Federal recommended enhancement projects in this plan, the total Washington State harvest of all salmon species is forecast to increase from the 1974-1977 current annual average of 7.5 million harvestable salmon to 15.5 million by 1987.

Chapter 5 describes the salmon resource distribution plan. This plan takes into consideration critically important principles necessary to achieve a healthy commercial and sport fishery in which the rights and interests of all parties are reflected. One of the principles reflected in the plan is the need to ensure that the distribution plan assists in the protection and development of the resource. Another principle provides for an equal opportunity in particular areas in the fishery where fishermen fish using similar gear, at the same time under the same or comparable regulations.

The principles of balance and stability have been reflected in the resource distribution plan. Balance is necessary to ensure that all groups of fishermen have an opportunity to share in the harvest and that none are excluded by virtue of the type of gear used, geographic location or the runs or species upon which they may fish.

Stability is important to the fishery and fishermen. Fishermen need to know they can depend upon the long term viability of the fishery. In order for this stability in opportunity to be available, resource stability has been provided through creating a broader range of species and fishery options in the resource enhancement plan. A stable management system is also necessary if there is to be stability in fishing opportunity. The management system set forth in this settlement plan is in large part designed to bring about greater stability in the management of the resource which will help to bring about stability in opportunity for the fishermen. Another principle reflected in the resource distribution plan is the historic rights and interests of all fishermen to share in the harvest. This resource distribution plan is the primary means of ensuring that the legacy of historic treaty rights, as well as the legacy established by non-treaty fishermen through generations of participation in the fishery, can be maintained for future generations of fishermen.

The need to minimize conflict between the various groups of fishermen is another important principle addressed in the distribution plan. The history of the fishery is replete with conflict between gear groups, and only more recently between treaty and non-treaty fishermen. Because of this long history of conflict, common interests such as habitat protection and improving the resource, have been neglected. This neglect has allowed a further deterioration in the resource, which in turn has sharpened the conflict over the fewer remaining fish to be harvested. This vicious spiral of increased conflict over fewer and fewer fish must give way to increased cooperation among all user groups if they are to do their share in rebuilding the fishery.

Based upon these principles and taking into consideration the benefits available from an improved management system, an increased supply of harvestable fish from the resource enhancement program and reduced fleet sizes, Chapter 5 specifies the various terms and conditions for resource sharing for each of the groups participating in the salmon fishery.

Chapter 6 sets forth a plan for resolving the conflict over steelhead. The Washington State Department of Game and sportsmen's organizations strongly desire to see an end to tribal commercial steelhead fishing. For many tribes, because of the excessive amounts of gear in the salmon fishery and depleted conditions of the salmon runs, a commercial fishery on

steelhead is the only assured source of income from fishing. The steelhead distribution plan is based on replacing steelhead income through restoring former salmon runs, establishing new runs, and ensuring a specified percentage of harvestable salmon will return to tribal harvesting areas. Given that these changes will occur, the plan provides for a phase-out of commercial fishing for steelhead on coastal and all but two Puget Sound rivers.

Chapters 7 and 8 describe the proposed fleet adjustment program. Under this program, the excessive number of commercial fishing vessels will be reduced to a level more commensurate with the size of the resource. Funds would be provided to purchase licenses, gear and boats through a buy-back program. In addition, limitations would be placed upon the number of licenses which could be issued to ensure that the fleet size does not become excessive. A program is also proposed for increasing the numbers of commercial fishing vessels used by treaty fishermen. This is designed to establish a more appropriate balance between the number of treaty and non-treaty fishermen in the commercial fleets.

Chapter 9 describes the fisheries enforcement plan. The implementation of this plan is essential if the guarantees and other terms and conditions of this settlement plan are to be realized. In fact, the very survival of the salmon and steelhead resource is dependent upon a revitalized and effective enforcement plan.

Chapter 10 sets forth recommendations for limiting the interception of State of Washington origin coho and chinook salmon by Canadian troll fishermen. Unless limitations are placed upon these interceptions, it will be difficult, if not impossible, to fully meet all of the terms and conditions contained in this settlement plan.

Chapter 11 contains recommendations regarding the habitat and hatchery fish issues which are still to be litigated. The resolution of these issues is an important element in the implementation of this settlement plan.

Chapter 2

MANAGEMENT SYSTEM FOR
WASHINGTON STATE SALMON AND STEELHEAD FISHERIESI. INTRODUCTION

The management of Washington's salmon and steelhead fisheries has been characterized by more widespread controversy in the past few years than at any time in the State's history. All of the management agencies, State, Federal, tribal, and international, have suffered through a period of chaos and confusion hampered by conflicting Court orders and uncertainty concerning the future.

The settlement contains a system which would replace the chaos and confusion and reduce the Court involvement. The process of developing this plan required that the Regional Team carefully analyze the existing situation and seek the guidance of the agencies and parties actually involved.

The central theme running through the management proposals received by the Regional Team from the various industry groups, tribes, and State agencies was that management of the salmon and steelhead fisheries is a matter principally of local concern. Washington State people, both tribal and non-tribal, should be primarily responsible and accountable for resolving their disputes and for the conduct of a cohesive fisheries management system. Consequently, the Task Force's management proposal emphasizes the utilization of institutions at the local level and de-emphasizes

Federal management of the fisheries. In addition, the proposal eliminates the continuing jurisdiction of State and Federal courts in day-to-day fisheries management activities and provides for Court review only as a last resort after a detailed review and appeal process has been exhausted.

A second frequently made recommendation was that a management "system" should be created which reduced conflict between management agencies and which required coordination among agencies. The suggestion was also made that all agencies within the system should conform their practices to a single uniform set of principles which would insure that no agency took an independent and uncontrolled approach to management. Consequently, we have proposed a comprehensive management system in which change would occur in the manner in which the State and tribes exercise their authority in the future. Tribal and State governments would integrate their efforts within a system designed to achieve the management goals to which the parties agree. Some consolidation would occur in tribal fisheries management agencies.

The proposed institutional system would manage Washington State's salmon and steelhead fisheries. No change would occur in the management of other fisheries. The system is aimed at achieving five goals. These are:

A. Goals

1. The use of existing fisheries management expertise in a coordinated fashion which delegates authority

to agencies which are best suited to perform specific management functions;

2. The avoidance of unnecessary duplication in management functions among the various agencies;

3. The involvement to the greatest possible extent of commercial, charter, sport, and tribal fishermen in the ongoing fisheries management process;

4. The achievement of a smoothly functioning management structure which results in compliance with the terms of the settlement legislation; and

5. The emphasis upon involvement of State citizens, both tribal and non-tribal, rather than Federal agencies, in fisheries management matters within Washington.

If this plan is implemented, an integrated State-tribal fisheries management system would manage Washington's salmon and steelhead fisheries. The system would be composed of several parts. Each part, however, would be subject to a single set of rules and procedures.

Open access to information would be formalized and required as a part of this settlement.

B. Commercial Fisheries Management

Commercial fisheries would be managed in a coordinated manner. The Washington Department of Fisheries, "WDF", would be called upon to institutionalize coordination with other agencies to a substantially greater degree than at present. WDF would be responsible for managing the commercial salmon fisheries in a State Commercial Management

Zone, "SCMZ". WDF would also manage the commercial salmon fisheries of the Columbia River in the manner provided in the Interstate Columbia River Compact with Oregon and to meet the management and in-river sharing goals set forth in the Columbia River Plan of February 25, 1977. The remaining commercial fisheries of the State, those conducted in a Tribal Commercial Management Zone, "TCMZ", would be managed by the Tribal Commission.

The Tribal Commission would be a unified tribal fisheries management institution formed by the tribes and the Federal government and would serve as a tribal focal point for fisheries management. The Commission would be organized to represent the various tribes involved. The Tribal Commission would not however, have jurisdiction in the TCMZ for purposes other than fisheries management.

We envision that the actual day-to-day management activities will be conducted by the professional managers on a regional basis. The Tribal Commission would no doubt rely heavily on individual tribes and treaty areas to perform many tribal fishery management functions. Similarly, the State agencies would likely continue to develop their regional management system. Within the systematic framework which we are proposing, which clearly defines the authority of every party, a substantial amount of informal staff to staff cooperation will develop which will insure the smooth functioning of the system.

The two commercial management zones, the SCMZ and the TCMZ, were developed to reflect historic commercial fishing practices and fishing grounds and to provide for dividing lines between geographical management areas in the State. The SCMZ includes areas where purse seine, gillnet, reef net, and troll fisheries have predominately fished while the TCMZ includes the areas in which set net, beach seine, and skiff fisheries have occurred. Figures 2-1 through 2-3 on Pages 15-17 set out the areas of the State within each zone.

C. Sport Fisheries Management

Sport fisheries would be managed in a coordinated manner. The Washington Department of Game, "WDG", would be called upon to institutionalize coordination with other agencies to a much greater degree than at present. The Game Department would license and manage the steelhead sport fishery throughout the State, including within the TCMZ, except on reservations. Similarly, the Fisheries Department would license and manage all salmon sport and charter fisheries throughout the State, including within the TCMZ, except on reservations. The Tribal Commission would license and manage all sport fisheries on reservations. This management should insure consistency with WDG sport steelhead management in off-reservation areas.

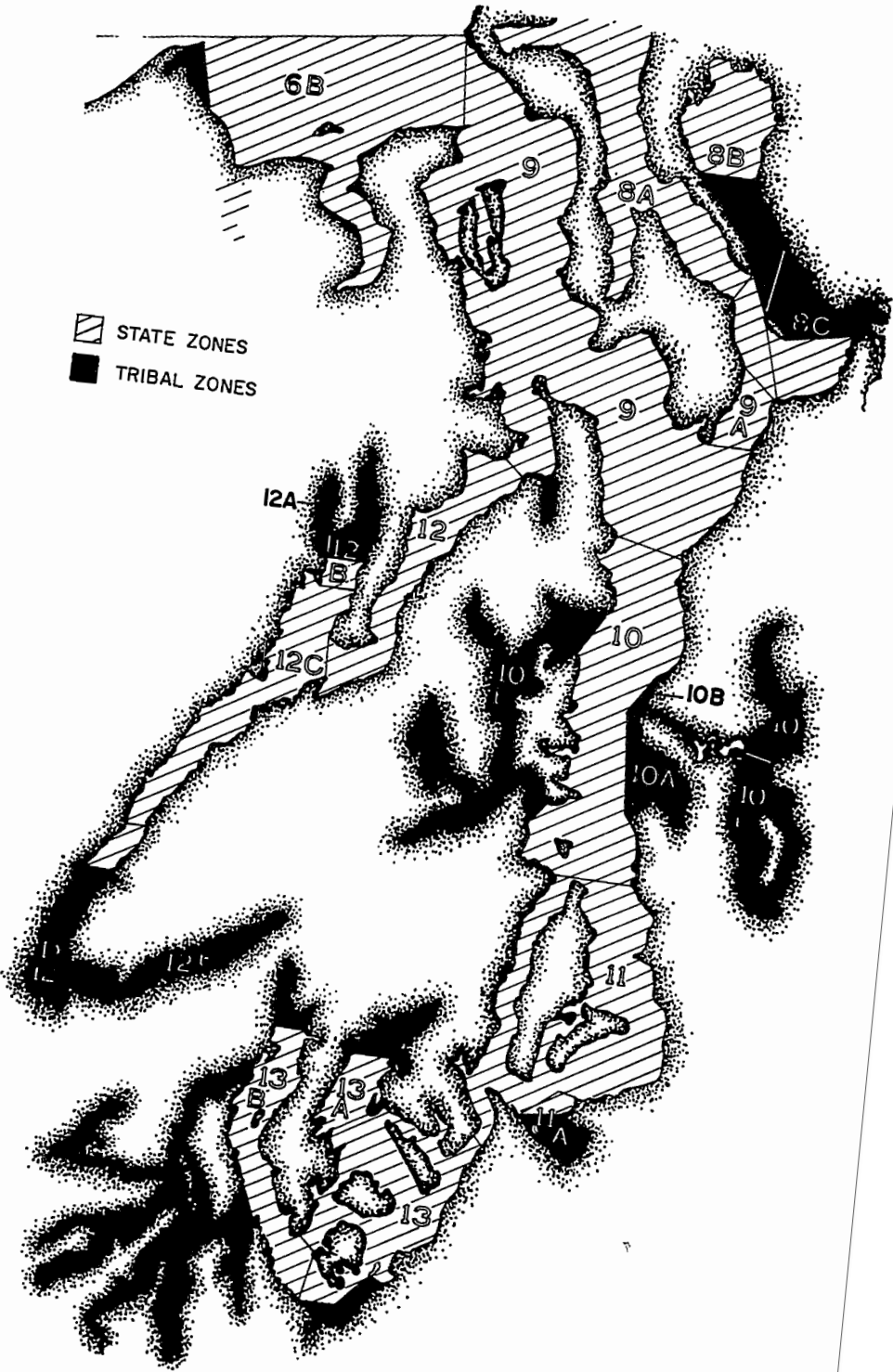


Figure 2-1

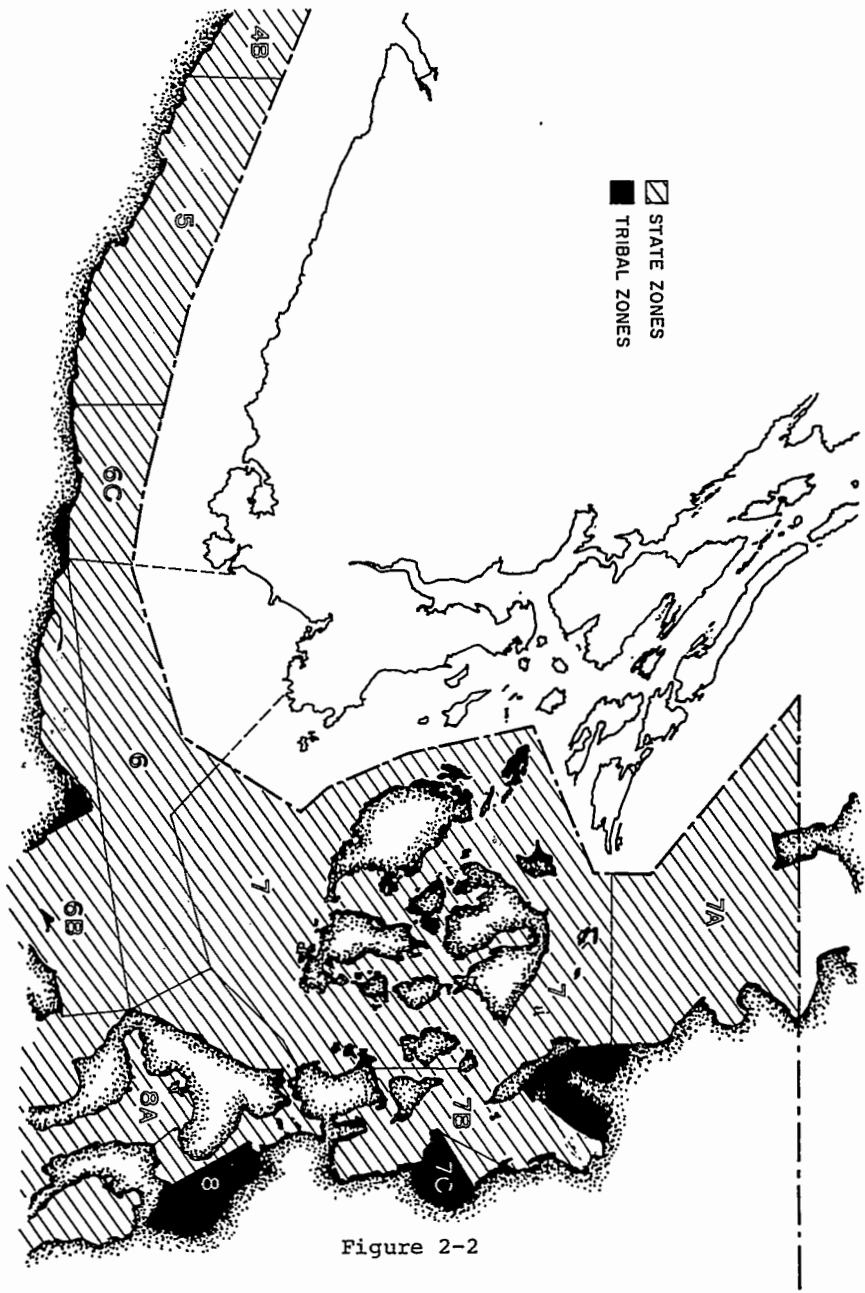


Figure 2-2

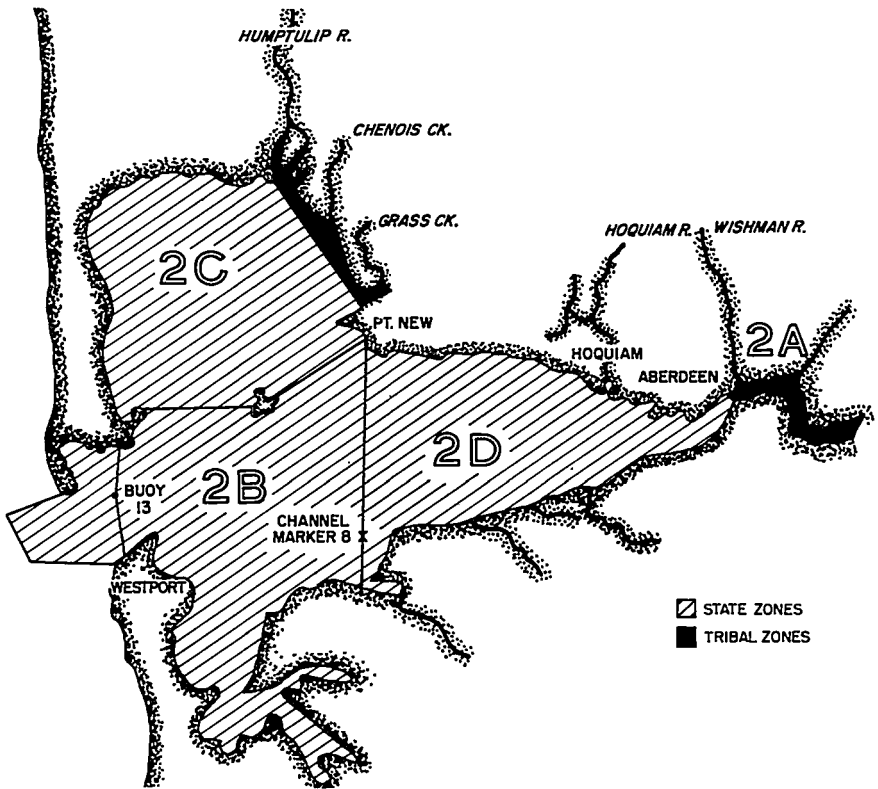


Figure 2-3

D. Fisheries Review Board

A new institution would be created whose sole purpose is to insure that the terms of the settlement are fulfilled. The new institution, the "Fisheries Review Board", would probably require State, tribal, and Federal legislation but would be composed exclusively of State and Tribal Commission nominees. If, at the end of the ten-year period 1978-1988 (or earlier if the parties so agreed), the managing agencies had developed confidence in the workings of the management system, then the Board could be terminated. The Board's basic responsibility is to respond to disputes raised by WDF, WDG, or the Tribal Commission relating to compliance or non-compliance with the settlement legislation. The Board would recommend corrective action to any of the management agencies consistent with the settlement documents. The Board could, upon the request of WDF, WDG, or the Tribal Commission, act in an emergency to order the closure of fisheries for conservation reasons to preserve stocks of salmon or steelhead.

Finally, the Board would have the authority to determine whether the actions or inactions of any of the management agencies were in substantial non-compliance with the terms of the settlement. If substantial non-compliance were found to exist, the Board could recommend that the Federal government suspend all or a part of any agency's salmon or steelhead fishery management functions. A three

judge federal court panel would make the final decision on the Board's recommendation. The Departments of Commerce, Interior, and Justice, as appropriate, would be the managing agencies during the time of the suspension.

E. Other Agencies

The management system proposed for Washington's salmon and steelhead fisheries would also work with systems managing fisheries in waters outside of Washington or outside Washington's jurisdiction. As indicated above, coordination with Oregon with respect to the Columbia River would be achieved pursuant to the Interstate Compact between Oregon and Washington and the Columbia River Plan. Coordination with the management efforts of the Pacific Fishery Management Council within the fishery conservation zone established by the Fishery Conservation and Management Act of 1976 would be required pursuant to the terms of the Federal statute implementing the settlement. Finally, coordination with the International Pacific Salmon Fisheries Commission, "IPSFC", would be achieved through the efforts of the Secretaries of Commerce and State and through the United States Commissioners serving on the Commission.

The Regional Team recommends that the tribes be represented on both the Pacific Council and the IPSFC or its successor Commission. The Federal legislation implementing the settlement should amend the Fishing Convention and Management Act to add two additional voting tribal

members to the Pacific Council. In the interim the Governor of Washington should give serious consideration to appointing a tribal member to the next vacancy on the Council.

Similarly, we recommend that the tribes have representation on any new U.S.-Canadian Fisheries Commission and on any of the Commission's panels which affect the tribes. In the interim, if the new Commission is not in place within six months of the time at which the settlement legislation is adopted, we recommend that a tribal member replace the commission representing WDF on the IPSFC. The commissioner representing the State of Washington could then be appointed to the new expanded panel which would probably coincide with the resumption of the State's role in the implementation of IPSFC regulations.

F. Conclusion

Changes in salmon and steelhead management will not be accomplished without good faith on the part of all concerned. The State and the tribes have made significant progress in the recent past in working together on fisheries management matters despite the fact that no coordinated management system existed. Many characteristics of the system which the Regional Team has developed clearly reflect the procedures and accommodations which the State and tribes have achieved in the difficult period since the decision in United States v. Washington. In fact, much of the Task Force's system merely formalizes the principles which the State and tribes had informally worked out.

We wish to make clear that the National Team of the Federal Task Force and the State and Federal legislatures should pay close attention to any modifications to our management proposal which the State and tribes jointly recommend.

Finally, we should indicate the basis for our optimism concerning the future. The chaos of the past has stimulated managing agencies, both State and tribal, to concentrate their efforts on fishery management as never before. The tribal agencies, in particular, have improved their management capabilities significantly. It appears to us that the only ingredient missing is a set of agreed upon principles and practices so that the managing agencies can concentrate their energy on managing and can leave jurisdictional battles behind. It is just such a set of principles and practices that we have proposed in this settlement plan.

II. FISHERIES MANAGEMENT INSTITUTIONS, AUTHORITIES AND FUNCTIONS

A. General Operation

Fisheries management in Washington needs to be improved, duplication needs to be reduced or eliminated, coordination must be increased, and authority centralized and removed from the Courts. The Regional Team's system holds specific management agencies, both State and tribal, accountable for performing specific fisheries management functions. Further, the system sets out the standards and

procedures governing each agency in the execution of its designated responsibilities. Finally, full and complete access to all necessary information is guaranteed so that each of the three managing agencies and the fishermen can be satisfied that each agency is performing in conformity with the standards.

The management system which is proposed provides that WDF will be the central source of much of the basic fishery information and services which are required for management. WDF, WDG, and the Tribal Commission will be accountable for the collection of pertinent biological data for managing specific geographical areas, and for providing specific fisheries management functions. The schematic form of the system which is proposed for Washington appears as Figure 2-4 on Page 23.

WDF would manage the commercial harvest of salmon in the SCMZ. WDF would manage the commercial harvest of salmon in the Columbia River pursuant to the Interstate Compact with Oregon and in compliance with the Columbia River Plan of 1977 as described above. WDF would manage all salmon and charter sport fishing including within the TCMZ, other than on reservations. WDF would also have emergency conservation power with respect to salmon everywhere in the State including within the TCMZ, except on reservations.

WDG would manage all off-reservation steelhead sport fisheries. WDG would also have emergency conservation

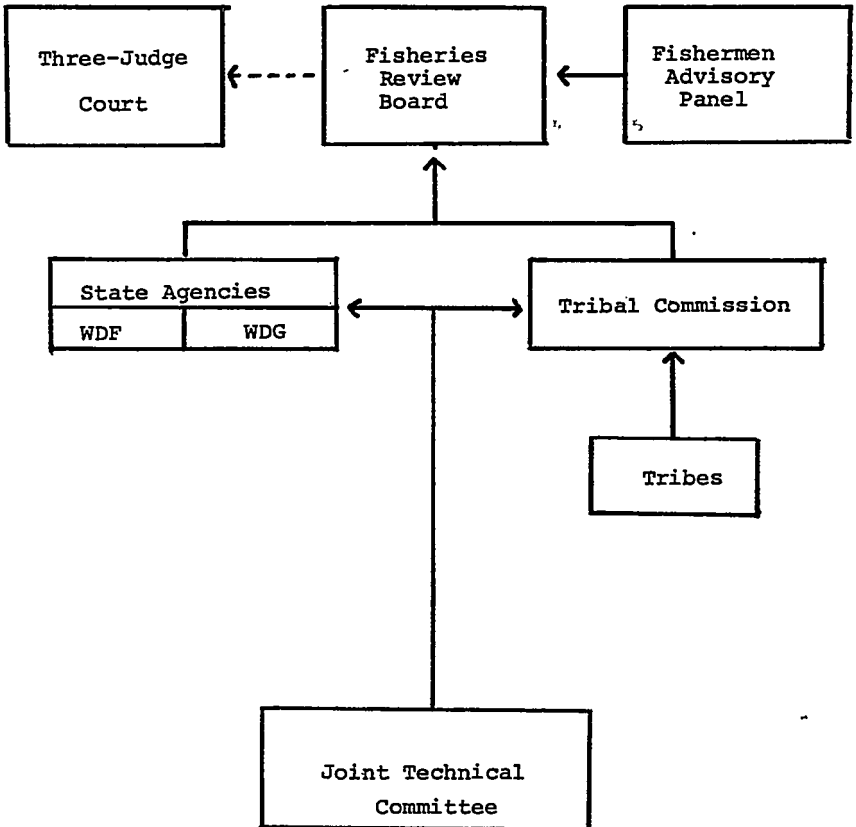


Figure 2-4

Washington Fisheries Management System

power with respect to steelhead everywhere in the State including within the TCMZ, except on reservations.

The Tribal Commission would coordinate the tribes in managing all commercial fishing in the TCMZ and all on-reservation salmon and steelhead sport fisheries. The Tribal Commission would have emergency conservation power with respect to commercial salmon and steelhead fishing in the TCMZ and all fishing on reservations. The tribes would also have emergency conservation power with respect to commercial salmon and steelhead fishing in their respective portions of the TCMZ and all fishing on reservations. The Tribal Commission and the State agencies are free to modify the exact descriptions of the TCMZ and SCMZ if they should so agree.

For information and central data storage purposes, all management regulations from whatever source would be communicated to WDF. This would provide a source of information for the State agencies, the tribes, and the Tribal Commission. Tribal Commission, tribal, and State regulations should be communicated to the central storage file prior to becoming effective so that the tribes, Tribal Commission and State agencies will be able to perform their review functions. All these agencies have equal rights of access to data contained in these files. Finally, all Tribal Commission regulations relating to steelhead would be communicated to WDG (as well as to WDF). The State filing

requirements are informational only; no approval of the communicated regulations would be necessary by the State agencies.

The balance of this Section is composed of a discussion of the authority of each major component of the system.

B. Structure and Authority of Fisheries Review Board

The Fisheries Review Board would be created by tribal, State, and Federal legislation; its primary purpose will be to evaluate and recommend compliance by all concerned with the settlement. The Board would only consider compliance issues upon request by WDF, WDG, or the Tribal Commission. The actual day-to-day management of the fisheries will be performed by WDF, WDG, and the Tribal Commission or the tribes under the Commission's authority, subject to the specified authority and review powers of the Board.

WDF, WDG, and the Tribal Commission will begin at the conclusion of the Board's ninth year, or earlier if all three agencies agree, to prepare a report for submission to the Congress, State legislature, and the Board in the following year. After soliciting the positions of all parties involved, WDF, WDG, and the Tribal Commission would prepare an options document to be widely circulated for comment. The report would be prepared in consultation with all affected parties with the goal of the greatest possible agreement among them, but in any event would present any

differing recommendations. These recommendations for legislative action might range from requesting that the Board's charter be terminated to reforming the Board with lessened responsibilities to continuing the Board in its present form for an additional period. Termination would require the agreement of the State and the Tribal Commission.

1. Necessary Legislation

Probably Federal, State, and tribal legislation will be required to establish the Board and to empower it with the necessary authority. The main elements of the settlement should be contained within the legislation.

2. Membership, Nomination, and Appointment

The Fisheries Review Board would be composed of seven members. Three members would represent State interests, three would represent tribal interests, and the seventh would be at-large. The three State representatives would be nominated by the Governor. In formulating this list of nominees, the Governor would consult with WDF and WDG, interested groups of fishermen, and members of the public. Similarly, the three tribal representatives would be nominated by a majority of the Tribal Commission. The list would be prepared after consultation with the treaty tribes. At the Governor's or the Tribal Commission's discretion, the lists might contain only enough names to fill the State and tribal positions.

The State and tribal Board members would jointly prepare a single list of nominees for the at-large position. Each name on the list would be mutually satisfactory to a majority of Board members. The Board would be free to nominate a single person.

The Board would present such nomination or nominations for the at-large position within sixty days after the initial six Board members were appointed. If there were no timely nomination, then the Board would cease to exist and the State and Tribal Commission nomination process would start over. In the event of a failure to nominate the at-large Board member, the same State and Tribal Commission members could not be re-nominated by either the State or the Tribal Commission.

All nominees for any of the Board positions would necessarily be knowledgeable or experienced with regard to the management or harvest of salmon or steelhead resources in Washington State.

All Board members would be appointed by the Secretary of Commerce. After appointment, the Board members would select a Chairman.

3. Term of Office

The State and tribal Board members would serve 3-year terms and the at-large Board member would serve a 2-year term. It would be desirable to include a mechanism for removing any member prior to expiration of a term, in which

case, (and also in the event of a resignation), the above-described selection process would be used to find a replacement. The initial State and tribal Board members would serve 1, 2, and 3 year terms drawn by lottery so that a staggered system could be established.

4. Staff

The Fisheries Review Board would be empowered to have a small clerical staff and could contract for any technical assistance. The technical assistance could be provided by individuals loaned from the various State, Federal, and tribal agencies and perhaps, individuals from the University of Washington's College of Fisheries or Institute for Marine Studies. A small clerical staff should be retained by the Board. It would also be desirable to enable the Board to have the technical and legal assistance of any Federal agency. The Board could also retain outside counsel if necessary.

5. Fishermen Advisory Panel

The Board would establish a Fishermen Advisory Panel. This group would be composed of actual fishermen, both tribal and non-tribal. This panel would periodically inform the Board how the settlement was working from the fishermen's perspective. The panel would be advisory only, but would be valuable for the Board because panel members would be in a unique position to comment concerning the practical application of the settlement.

6. Location and Funding

The Board's office would be in Olympia, Washington, in order to be easily accessible to WDF, WDG, and the Tribal Commission. Funding for the Board would be provided by the Federal government for the first three years of the Board's existence. Thereafter, funding would be contributed in equal one-third shares by the Federal, State, and tribal governments.

7. Authority

The Board will review the actions of the management agencies upon request of WDF, WDG, or the Tribal Commission to assess whether the settlement legislation is being successfully implemented. Each of the three agencies, WDF, WDG, or the Tribal Commission, will have the power to bring any other agency's action or inaction before the Board for a determination of compliance with the settlement. The Board will have the authority to determine compliance and, in all cases except emergency questions of conservation, will have the jurisdiction to recommend a correction of non-complying management activity or inactivity. The Board has no authority to compel compliance. However, continued non-compliance with the settlement and the Board's recommendations could lead to suspension of all or a part of an agency's management function.

With respect to emergency questions of conservation, the Board, upon request of one of the three agencies,

would have the authority to order a conservation closure. The Board would not, however, have authority to order the lifting of a conservation closure imposed by one of the agencies.

In the exercise of its primary purpose of re-viewing compliance with the settlement agreement, the Fisheries Review Board would be expected to develop separate procedures for handling two major categories of compliance questions. For ease of reference, these categories may be labeled "non-compliance" and "substantial non-compliance."

Although procedural details should be left to the Board, certain broad operational guidelines appear appropriate. The Board would have the power to designate the category under which a question brought before it would be addressed, regardless of the label placed on the question by the moving agency. All such questions would be open to public inspection upon filing with the Board, which would establish procedures for routinely publicizing a summary of pending matters.

a. Non-Compliance The moving agency would advise the Board of the reason the agency complained against was not in compliance, together with the steps, if any, previously taken to resolve the conflict and the recommendation requested from the Board. The Board would be required to act in a timely fashion to convene an informal "hearing" with interested parties, which could be accomplished by

telephone conference if necessary. If the Board found non-compliance and that the matter was an emergency conservation question, it would issue an order directing the agency complained against to bring its action into compliance. As to other questions in which non-compliance was found, the Board would request the non-complying agency to correct its actions.

b. Substantial Non-Compliance A Board finding of substantial non-compliance could lead to suspension by the Federal government of all or a part of State or Tribal Commission fisheries management functions. This extraordinary authority of the Board to enter findings which could lead to Federal suspension of an agency's management functions would be used only when a formal evidentiary procedure established that the agency's activities were substantially and adversely interfering with the implementation of the settlement legislation. Such a case would probably never be made on the basis of a single act of non-compliance, but instead would follow from a pattern of non-complying activity which, if continued, would seriously undercut implementation of the settlement.

Although steps leading to a suspension recommendation would be formal given the result they might occasion, the procedure should not be so complex as to discourage valid complaints. Prior to bringing the matter before the Board, the moving agency would be required to advise the

agency complained against of its intention to file with the Board a substantial non-compliance complaint. During an automatic "cooling-off" period of 15 days, the agency complained against would be expected to engage in discussions with the moving agency which might lead to a pre-Board resolution of the controversy. If the effort were unsuccessful, the moving agency would bring the issue to the Board detailing its reasons and the previous efforts made to resolve the matter. The Board would determine as a threshold matter that the complaint had merit. (The threshold determination by the Board could, in the alternative, lead to dismissal of the complaint or, more likely, the Board's handling of the matter as an ordinary non-compliance question). The Departments of Commerce, Interior, and Justice, which would be involved in the Federal suspension, would be afforded the opportunity to participate in the proceedings.

The formal hearings would result in the compilation of an exhaustive record. If the Board determined that a function or functions should be suspended, then the Board would petition a three judge Federal Court panel for an order requiring full or partial suspension of all or a part of an agency's salmon and steelhead management functions by the appropriate Federal agency. The Federal agencies involved would be the Departments of Commerce, Interior, and Justice. Federal management would continue until such time as the court ordered the State or Tribal Commission suspension discontinued. Any party would be free at any time to

request that the Board change its recommendation or the Court its order.

c. Other Powers The Board would be able to resolve conflicts between on- and off-reservation enhancement projects. In the event of an unreconciled conflict between two ongoing or proposed biologically sound projects, one of which was on-reservation and one of which was off-reservation, and for which the appropriate permits had been issued by the State and Tribal Commission, the Board would, upon request by one of the three management agencies, be able to first determine whether the settlement legislation suggested a resolution. If the legislation were not conclusive, the Board would then also have the power to arrive at a resolution based on wise fishery management principles. In this limited situation, the Board's decision would be binding on the parties.

The Board would have the general power to establish rules of a procedural nature for its internal operation and for that of its Fishermen Advisory Panel or any other technical advisory panels it chose to create. The Board would have no authority to develop its own management regulations.

In rare cases in which WDF, WDG, or Tribal Commission management regulations were not being, or could not be, effectively enforced by State or Tribal Commission enforcement officers, the Board would have the residual authority to adopt as Federal regulations the unenforced or

unenforceable regulations of WDF, WDG, or the Tribal Commission. If the Board adopted such regulations, they would exist simultaneously as Federal/State or Federal/Tribal Commission regulations. The Board's regulations would then be enforced by the National Marine Fisheries Service, the U.S. Coast Guard, or other Federal agencies, and would bear Federal criminal penalties. The Board itself would have no enforcement capability.

It should be noted that State and Tribal Commission regulations need not be adopted by the Board in order to be effective. On the contrary, State and Tribal Commission regulations would be effective apart from Board action.

At least once each year the Board would conduct a general assessment of the success of implementation of the settlement plan. The Board would report its findings and recommendations to the Secretaries of Commerce and Interior and the Attorney General of the United States, the State, tribal, and Federal governments, fishermen, and to the public. The report would include a discussion of the success of settlement programs funded by the Federal government.

A Board quorum would be obtained with the presence of a majority of the Board provided that at least two State and two Tribal Commission representatives were present. The Board would be able to conduct hearings, request documents, and invite witnesses.

Finally, a decision of the Board other than a recommendation for suspension could be appealed to the Federal District Court. The Court would determine whether the Board's decision was clearly erroneous.

C. Authority of Washington Department of Fisheries

WDF would remain unchanged in institutional structure; no changes are made in WDF's management responsibilities for food fish other than salmon. WDF would seek authority from the State legislature to carry out the settlement agreement and to fulfill the management and in-river sharing goals of the Columbia River Plan of 1977. Without the necessary grant of authority from the State legislature, the settlement could not be implemented.

The authority of WDF would be as follows:

1. License non-tribal commercial salmon fishermen, salmon charter boat owners, and salmon sport fishermen;
2. WDF will be the central depository for licensing and regulatory information. WDF will be accountable to insure that the Tribal Commission, WDG and the Fishery Review Board have full access to all centrally-stored licensing information as well as to all the management regulations of WDF, WDG, the tribes, and the Tribal Commission. These regulations will be stored by WDF and will be

- available through remote access to each of the management agencies;
3. Collect necessary catch and effort data from State licensed commercial and sport salmon fishermen, salmon charter boat owners, and all off-reservation salmon buyers. The commercial data would be collected in part by the use of fish tickets;
 4. WDF will be the central depository of all salmon and steelhead catch and effort information. Data relating to commercial fisheries would be obtained from fish tickets. WDF would be obligated to place the data obtained by WDF together with that obtained from other agencies into a computer system. WDF would be accountable to insure that WDG, the tribes, the Tribal Commission, the Pacific Council, the IPSFC, and the Fisheries Review Board, had full access to the catch and effort information stored in the central computer file. This access would include remote terminal access if necessary;

5. Provide central data service to the Tribal Commission and WDG. Execute computer models directed at obtaining pre- and in-season estimates of run sizes for specific stocks of salmon bound for Washington spawning grounds or the Columbia River (See Figure 2-6 on Page 61 for the development of the models);
6. Major responsibility for in-season data gathering systems aimed at identifying run sizes and timing for specific stocks of salmon during the time such runs are exposed to harvest. This will include coordination of the receipt of catch data from test fisheries and racial composition studies conducted by the management agencies;
7. Propose escapement plans for all salmon fisheries. Propose pre-season harvest plans (with regulations if appropriate) for commercial salmon fishing in SCMZ and sport salmon fishing everywhere in the state including within the TCMZ except on reservations. These harvest and escapement proposals would be

reviewed by the agencies in the manner depicted in Figure 2-7 on Page 62 and would be adopted by WDF;

8. Promulgate harvest regulations for all commercial salmon fishing in SCMZ. Promulgate harvest regulations for sport and charter salmon fishing in all areas of the State (including within the TCMZ and SCMZ) other than on reservations (See Figure 2-8 on Page 63 for the development of harvest regulations);
9. Promulgate harvest regulations for all commercial and sport salmon fishing in the Columbia River in conjunction with Oregon and to fulfill the terms of the management and in-river sharing goals of the Columbia River Plan of 1977;
10. Promulgate emergency conservation closures with respect to all commercial or sport salmon fishing throughout the State including within the TCMZ except on reservations. (The Tribal Commission and the tribes also have concurrent emergency conservation authority with respect to commercial fishing within the TCMZ and all fishing on reservations);

11. Authority to issue permits, after joint technical review, for salmon enhancement projects, salmon hatchery stocking policies, and salmon research projects affecting fish habitat in off-reservation areas of the State;
12. Operate State salmon enhancement and scientific research projects in all areas other than on reservations; and
13. Conduct a Federally-funded State operated license and gear reduction program with respect to the settlement objectives.

D. Authority of Washington Department of Game

WDG remains unchanged in basic institutional structure and no significant changes would be made in WDG's management authority for game fish other than steelhead. WDG would be empowered to manage steelhead fisheries under WDG jurisdiction to achieve the terms of the settlement. WDG's authority would be as follows:

1. License sport steelhead fishermen everywhere but on reservations. This licensing information would be transmitted to WDF for storage;
2. Collect catch and effort data from steelhead sport fishermen licensed by WDG and transmit to WDF for storage;

3. Execute computer models directed at obtaining pre- and in-season estimates of run sizes for specific stocks of steelhead bound for the limited areas of the State in which tribal commercial steelhead fishing will continue, (see Figure 2-5 on Page 41 for a description of the areas and Figure 2-6 on Page 61 for the development of the models);
4. Major responsibility for in-season data collecting for the purposes of identifying run sizes and determining catch and escapement for specific stocks of steelhead in areas where tribal commercial steelhead fishing will continue. This will include coordination of the receipt of catch data from off-reservation buyers and from Tribal Commission sources for the real time data system and receipt of data from test fisheries and racial composition studies conducted by the management agencies;
5. Propose escapement plans for all steelhead fisheries. Propose pre-season sport steelhead harvest plans (including proposed regulations if appropriate) for all areas including within the TCMZ

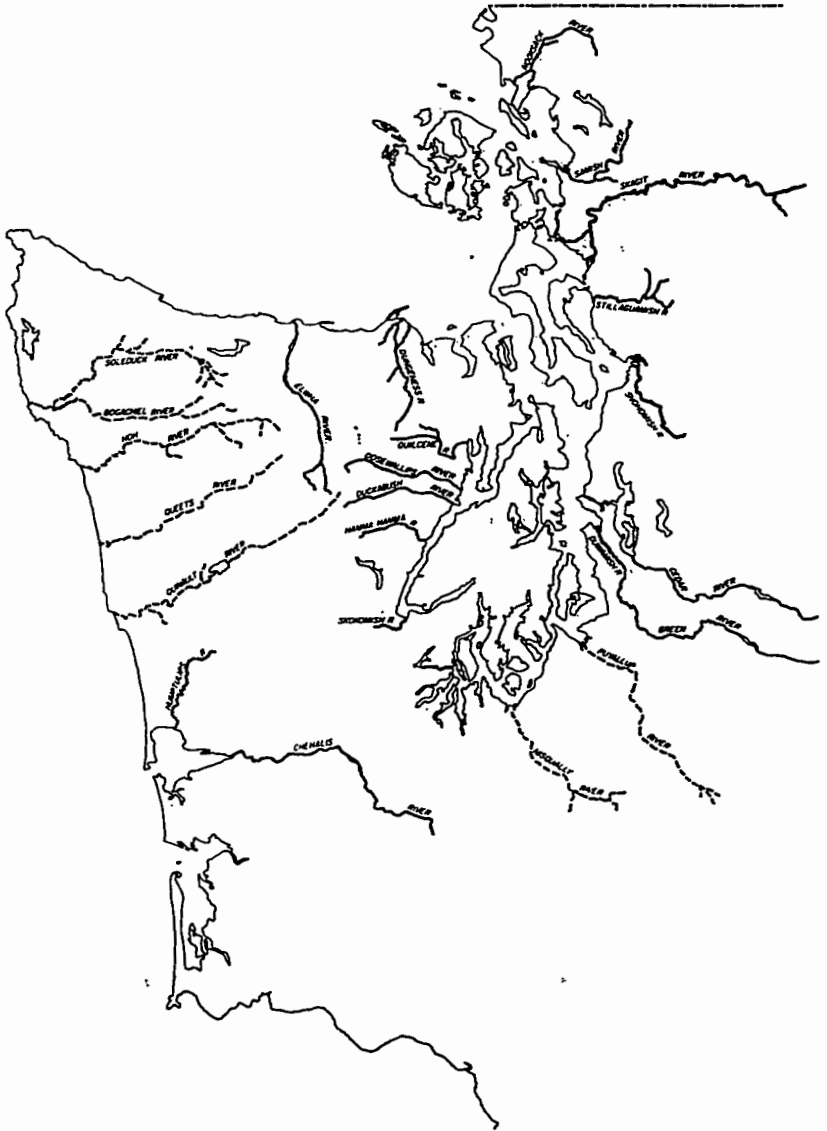


Figure 2-5

Steelhead Fishing Zones:
Tribal ---
Sports —

except on reservations. These plans would be reviewed by the agencies in the manner depicted in Figure 2-7 on Page 62 and would be adopted by WDG;

6. Promulgate harvest regulations for all sport steelhead fishing including within the TCMZ other than on reservations (see Figure 2-8 on Page 63 for the development of harvest regulations);
7. Promulgate emergency conservation closures with respect to all steelhead fishing within the State including within the TCMZ other than on reservations. (The Tribal Commission and the tribes have concurrent emergency conservation authority with respect to commercial fishing in the TCMZ and all fishing on reservations);
8. Authority to issue permits for steelhead enhancement projects, steelhead hatchery stocking policies, and steelhead research projects affecting fish habitat in off-reservation areas of the State; and
9. Operate State steelhead enhancement and scientific research projects everywhere but on reservations.

E. Authority of Tribal Commission

The tribes would organize the Tribal Commission to serve as a unified fisheries management institution for all Federally recognized tribes possessing treaty fishing rights in the U.S. v. Washington case area, including within Grays Harbor.

Any tribe which became Federally recognized in the future by the Department of Interior or the Federal Court would automatically become bound by the settlement legislation. The Commission would serve as an intertribal coordinating body as well as a single source of tribal fisheries management authority. The Tribal Commission would be accountable for insuring that the commercial fisheries within the TCMZ were managed in compliance with the agreed-upon principles in the settlement documents. The Commission would also be responsible for insuring that sport fisheries on the reservations were managed to conform to the settlement agreement. The Commission could delegate a wide range of specific management functions to individual tribes but would retain responsibility for fulfilling the settlement. The Commission would necessarily be formed before the proposed management system became effective.

The Commission should be an effective unified voice for the tribes. The Commission itself should be composed of a small group of Commissioners, in no event more than five. The Commission would be created by Federal and

tribal law, would be located in Olympia to facilitate coordination with WDF and WDG, and would be funded by the tribes and, at least initially, by the Federal government. Membership on the Commission would be representative of the case area treaty tribes. The exact method of funding, nominating the five Tribal Commissioners, staffing, quorums, and rules for voting are matters of primary concern to the tribes. The authority of the Tribal Commission would be as follows:

1. License tribal fishermen wherever they fish. These licenses might be area-specific at the discretion of the Tribal Commission. License all non-tribal fishermen fishing on reservations and all non-tribal commercial fishermen fishing in the TCMZ to the extent permitted by the Tribal Commission. Transmit all licensing information to WDF for storage;
2. Collect all catch and effort data from on-reservation buyers via the fish ticket system. The Tribal Commission is also free to collect any information it or the tribes feel necessary from fishermen licensed by the Tribal Commission. Transmit all such catch and effort information to WDF for storage;

3. Carry out agreed-upon responsibilities for collection and reporting of catch and effort data for the statewide real time data system, and for reporting of data from test fisheries and racial composition studies or other run size and timing research conducted by the tribes;
4. Review and recommend modifications to the predictive models and plans developed by WDF or WDG for statewide pre-season harvest and escapement and/or recommend alternative models or plans to effectively provide for escapement and harvest procedures pursuant to the terms of reference of the settlement, (see Figures 2-6 and 2-7 on Pages 61 and 62 for the development of the models and plans);
5. Propose and adopt pre-season harvest plans for commercial salmon and steel-head fisheries in the TCMZ and for on-reservation sport fishing. On-reservation sport regulations should be compatible with off-reservation rules to the extent that seasons be the same and

the bag limit be no larger for on-reservation than off-reservation. These plans could include proposed harvest regulations;

6. The Tribal Commission would be responsible for management data and information flow between the tribes and the State in a timely manner in order to maintain each party's ability to comply with the terms of the settlement agreement;
7. Promulgate pre-season and in-season harvest regulations for commercial fisheries in the TCMZ and all fisheries on reservations (see Figure 2-8 on Page 63 for the development of in-season harvest regulations). The on-reservation sport steelhead fishery would remain closed until opened by the Tribal Commission;
8. Promulgate emergency conservation closures with respect to any commercial fishing in the TCMZ and all fishing on reservations. The Tribal Commission's emergency conservation power for commercial fishing in the TCMZ is concurrent with that of the State;

9. Authority to issue permits for on-reservation salmon and steelhead enhancement projects as well as on-reservation scientific research projects affecting fish habitat;
10. Oversee operations of tribal salmon and steelhead enhancement and scientific research projects. Projects on reservations require a permit from the Tribal Commission; off-reservation projects require a permit from either WDF or WDG;
11. The Tribal Commission would have the authority and responsibility to institute a unified Court and enforcement system to deal with violations of Tribal Commission regulations by tribal fishermen; the Tribal Commission would have the power to set penalties under the unified tribal fisheries enforcement and judicial system which are comparable to penalties applicable to non-tribal members under Federal and/or State law even if these penalties are greater than those presently authorized by the Indian Civil Rights Act;
12. The Tribal Commission would have the power to enforce Board decisions

regarding tribal non-compliance with the settlement legislation;

13. The Tribal Commission would have the authority to enter into contracts, agreements, and to conduct business, as necessary to maintain the capability of assuring compliance with the settlement;
14. The Tribal Commission would have the power to represent the treaty tribes on all issues of State compliance or non-compliance before the Board and the Federal Courts. It would be similarly accountable for tribal compliance with the settlement before the same entities;
15. In order to carry out its obligations under this agreement, the Tribal Commission would have the authority to tax tribal fishermen. This authority would be concurrent with that of the tribes; and
16. The Tribal Commission would have the authority to operate the Tribal Commission license and fleet adjustment program described in Chapter 8.

F. Authority of Tribes

Tribal fisheries management jurisdiction would remain in the Tribal Commission but could be delegated back

to the individual tribes by the Commission. It is anticipated that the Commission could rely on the tribes for much of the day-to-day tribal fisheries management activity, particularly of a regional nature. Ultimate accountability for managing fisheries within the jurisdiction of the Tribal Commission would, however, remain with the Tribal Commission. The role of the tribes could be as follows:

1. The tribes would perform such licensing and data collection and correction functions as delegated by the Tribal Commission;
2. The tribes would assist the Tribal Commission in reviewing State predictive models and plans to insure that the terms of the settlement are met;
3. The tribes would assist the Tribal Commission in developing the Commission's pre-season harvest plans;
4. All tribes could submit proposed regulations for their on-reservation fisheries to the Tribal Commission for adoption based upon the proposed regulation's compliance with the terms of the settlement legislation;
5. The tribes would assist the Tribal Commission upon request by the Commission in developing harvest regulations

for commercial fisheries in the TCMZ. These regulations would be promulgated by the Commission;

6. The tribes would have the authority to promulgate emergency conservation closures with respect to commercial fishing in the TCMZ and sport fishing on reservations. Such regulations should be filed in the central regulation file in WDF; and
7. The tribes would have the responsibility as delegated by the Tribal Commission to operate tribal salmon and steelhead enhancement and scientific research projects.

G. Authority of Quinault Tribe

The Quinault Tribe is in a unique position with respect to fisheries management in Washington. The settlement would require that the tribe forgo its possible claims to the Columbia River and Willapa Bay areas. Further, the Quinalts are being asked to accept a substantially smaller fishery in Grays Harbor. Finally, the fisheries which occur in the Quinault, Queets, and Raft riversheds of the TCMZ are predominately tribal and on a reservation. The State managed sport fisheries off-reservation occur in relatively small areas and State agencies are not actively involved in any enhancement projects on these rivers. As a consequence,

the Regional Team has developed a special management system for those three watersheds. The Quinault Tribe would have the special following authority.

1. The tribe would develop and execute pre-season and in-season predictive models directed at obtaining estimates of run sizes for stocks of salmon bound for the three watersheds;
2. The tribe would develop pre-season harvest and escapement plans for its respective portion of the TCMZ. These plans could include proposed pre-season harvest regulations;
3. The tribe would develop and promulgate in-season harvest regulations for its portion of the TCMZ;
4. WDF and the Pacific Council would license and manage the ocean troll and ocean sport salmon fisheries together with river sport salmon fisheries in the three rivers off the reservation and not in the TCMZ. WDF would license and manage sport steelhead fisheries in the rivers off-reservation and not in the TCMZ; and
5. The State would subject the tribal models, plans, and regulations to the same type of review mechanism to which

State models, plans, and regulations are subjected by the Tribal Commission in other areas of the State.

H. Court Enforcement

1. Commercial Regulations

All violations of State commercial fishery regulations in the SCMZ would be processed in State Court. All violations of fishery regulations by tribal members in the TCMZ including within reservations, would be processed in the Tribal Commission Court. All Tribal Commission commercial harvest regulations in the TCMZ including on reservations would automatically be incorporated in State law. The State would cross-deputize tribal enforcement officers. Non-Indians violating these TCMZ regulations would be prosecuted in State Court.

2. Sport Regulations

All violations of State sport fishery regulations promulgated by either WDF or WDG would be processed in State Court including within the TCMZ except on reservations. All violations of Tribal Commission sport regulations on-reservation by tribal members would be prosecuted in Tribal Commission Court. Non-Indians violating Tribal Commission sport regulations on-reservation would automatically be prosecuted in State Court because the State would incorporate all Tribal Commission regulations in State law and tribal enforcement officers would be cross-deputized by the State.

I. Authority of Joint Technical Committee

WDF, WDG, and the Tribal Commission would form and convene a joint technical committee, the "Committee". The members of the Committee would include a scientist appointed by the Director of WDF, one appointed by the Director of WDG, one additional scientist appointed by the Director of either WDF or WDG depending on whether salmon or steelhead issues were involved, and three scientists appointed by the Tribal Commission. Membership on the Committee could rotate among a variety of scientists at the pleasure of the respective Directors. It is envisioned that individuals from the various regions would serve depending on the precise nature of the issue involved.

The Committee would provide the initial formal technical review for all salmon or steelhead enhancement activities in the case area as well as for those proposed fishery research projects within the case area which would affect anadromous fish habitat. This would include reviewing any changes in stocking policies.

The Committee would also be the initial point for technical review of annual run forecasts, harvest plans, escapement goals, procedures for in-season changes in harvest, and conservation openings or closures. The Committee would communicate its findings to State fishery agencies, the Tribal Commission, and the Fisheries Review Board.

1. Enhancement Activities

The Committee would be responsible for a technical review of all case area salmon and steelhead enhancement proposals as well as those projects of a scientific nature which would affect anadromous fish habitat in the case area. The scope of the Committee's review would take into account the principles and requirements currently found in applicable State or Federal law as well as any additional principles and constraints contained in the settlement documents. Committee review of all tribal, State, private, and Federal enhancement proposals would be required.

The capital funding for enhancement projects proposed by the Task Force would only be available from the Federal government after the State and Tribal Commission had developed a 10 year comprehensive enhancement plan which was satisfactory to both and which was certified by the Fisheries Review Board to be in overall compliance with the settlement. The projects proposed by the Task Force would be subject to the same permit process as all other projects.

The Committee would transmit its recommendation with respect to each proposal to either the Director of WDF (off-reservation salmon projects), the Director of WDG (off-reservation steelhead projects), or the Director of the Tribal Commission, (on-reservation salmon and steelhead projects). The Committee would also communicate its recommendation to the applicant. WDF, WDG, or the Tribal Commission would then consider the issuance of a permit to the

respective applicants except that if the Committee found that the project were not technically sound no permit could be issued. If the Committee found that the project was technically sound and if the permit were issued, the applicant would then conduct the project as outlined in the permit.

Specific procedural guidelines for expeditious handling of permit applications at the Committee level would be developed. All applications would receive a prompt written response from the Committee indicating the time frame during which the Committee would consider the application. If the time frame were not satisfactory to the applicant an appeal to the appropriate Director would be possible. All applications would be public and easily available for comment by the various fishermen organizations and industry and sport advisory panels of WDF and WDG.

The Committee would also function as a technical forum in which the agencies might try to resolve biological or technical conflicts between existing or proposed enhancement or research projects at the request of the parties. Those conflicts would be ultimately resolved by WDF and WDG (if both were off-reservation), by the Tribal Commission (if both were on-reservation), or by the Fisheries Review Board as set out on Page 33 above (if one were on- and one were off-reservation).

The Committee would have a long-range ongoing responsibility to assist WDF, WDG, and the Tribal Commission in developing statewide plans for salmon and steelhead enhancement and for habitat improvement. The three managing agencies would have responsibility to develop the plans but could call on the Committee for assistance.

2. Predictive Models

The Committee would also review predictive models for estimating run sizes of Washington's case area stocks of salmon and steelhead for both pre- and in-season use. WDF would propose such models with respect to salmon; WDG would do likewise with respect to steelhead. The proposals would be available to both the Committee and the Tribal Commission. The Committee would consider the proposals in an effort to recommend the best predictive models possible. The Committee would then publicize and transmit its recommendations to the Directors of the three agencies. Interested groups of fishermen should have the opportunity to have the models explained to them by WDF, WDG, or the Tribal Commission prior to adoption. Criticism and comments of these fishermen and of the Tribal Commission would be taken into account and the models changed if appropriate.

WDF would be responsible for implementing and executing the predictive models and for publishing pre-season and in-season run size predictions for all salmon resources of the State. WDG would perform a similar responsibility for the State's steelhead resources.

The Tribal Commission through the Committee Process will have participated in the development of the models. The Tribal Commission could propose alternate models if it felt that the models proposed by WDF or WDG were inconsistent with the terms of the settlement. The Commission will also be able to check on the validity of the predictions themselves because it will have access to the models and to all the data which are used to execute the models.

3. Harvest and Escapement Plans

Each year after the pre-season run size predictions were published by WDF and WDG, WDF would propose escapement plans for salmon and harvesting plans for the fisheries under WDF's jurisdiction and WDG would do the same for steelhead; the Tribal Commission would propose a plan for commercial harvest for salmon and remaining steelhead fisheries in the TCMZ as well as for on-reservation sport fisheries. The proposed plans would be exchanged and sent to the Committee which would review the plans and recommend changes or modifications. The Tribal Commission could also propose an alternate escapement plan if it felt that the plan proposed by either WDF or WDG was inconsistent with the settlement. The principles contained in the settlement documents and goals concerning distribution of the harvest among the different geographical areas and fishery zones would serve as guidelines for reviewing the details of the

pre-season plans. The Committee's recommendations would be transmitted to the Directors of the three agencies.

4. In-Season Harvest Management

After receipt of the Committee's recommendations, WDF, WDG, and the Tribal Commission would regulate the harvest within their respective areas of jurisdiction. If changes to harvest regulations were necessary during the season due to modification to run size predictions or other factors, the agencies would each respectively change their harvest regulations after following the communication procedures outlined above.

The Committee could be on call during the season and would operate pursuant to expedited procedure so that disagreements relating to models or plans could be reviewed immediately if the Committee were so requested by an agency. If no resolution were reached, the affected Directors would attempt resolution.

In disputes relating to predictive models or plans, the affected Directors could request the assessment of a knowledgeable but disinterested third party if the Directors themselves were unable to resolve the matter. This assessment would not be binding but would supplement the record of the dispute. If the dispute were still unresolved after the third party's assessment was received by the Directors, the Fisheries Review Board could review the matter at the request of one of the three managing agencies.

In disputes relating to in-season harvest regulations the affected Directors would not seek the assistance of a third party. These harvest regulation disputes would be conglomerated over the course of each season and reviewed by the Fisheries Review Board at the end of the season. A failure to meet resource distribution goals would be made up in succeeding seasons (see Chapters 5 and 6). Disputes relating to emergency questions of conservation would be reviewed immediately by the Board.

The procedure for developing the predictive models is set out in schematic form in Figure 2-6. The procedures for pre-season planning and in-season regulation are set out in Figures 2-7 and 2-8, respectively.

5. Data

The Committee would also review the fish ticket catch and effort data collection, verification, and storage programs. The Directors of the three managing agencies would propose fisheries data production programs together with the necessary uniform forms on which to collect the data. The Committee would then recommend minimum fisheries data production requirements as well as the necessary forms on which to collect the data. All recommendations would be made to the three Directors. Thereafter, WDF, WDG, and the Tribal Commission would arrange for the collection of the required data.

To the extent necessary, each agency would also be responsible for correcting the data which it had collected. All data would then be transmitted to WDF, which would

maintain a statewide data storage center. Every party would have immediate access via computer terminal to the centrally-stored data. The three agencies (WDF, WDG, and the Tribal Commission) would exchange information in a timely fashion concerning the operation of the data program. If any agency were dissatisfied with the way in which any other agency were conducting data collection, correction, or storage, a meeting of the Committee could be convened to recommend a resolution. If no resolution were obtained at either the Committee or Director level, the Fisheries Review Board would review the matter to determine compliance with the terms of the settlement.

The Directors of the three managing agencies would also propose the operation of an in-season data system aimed at developing real time catch and effort statistics with respect to all salmon and steelhead taken in the State. The Committee would review the proposals and transmit its recommendations to the three Directors. WDF, WDG, and the Tribal Commission would then expand the coverage of the current in-season data system with respect to all geographical areas of the State, both on- and off-reservation. The sources of information for the in-season data system would include State and tribal test fisheries. The in-season data system would be available to any agency requiring the information and the nature of the system and the times and manner of gathering and using such information to make in-season adjustments shall also be available to the affected groups of fishermen.

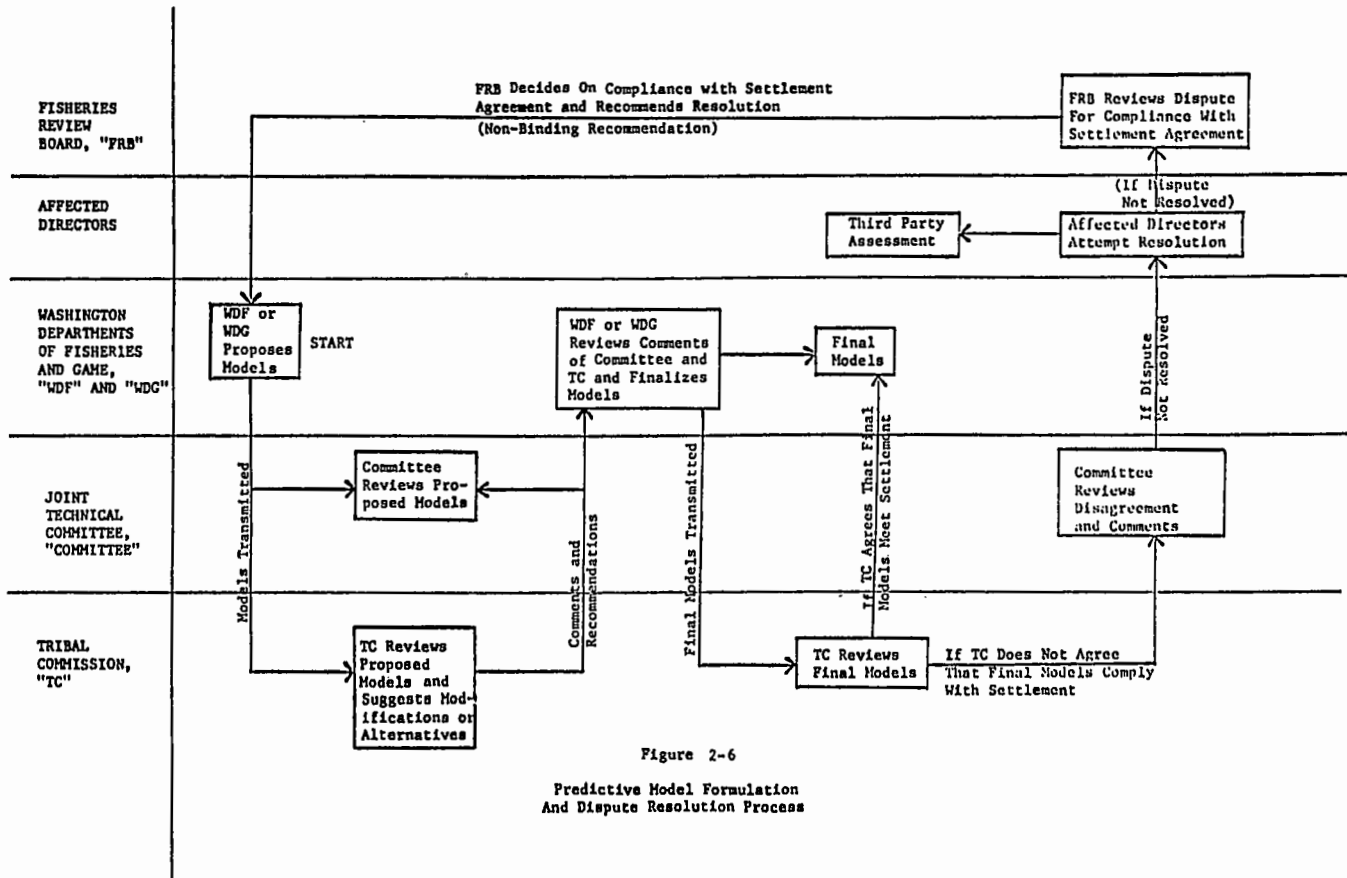


Figure 2-6
 Predictive Model Formulation
 And Dispute Resolution Process

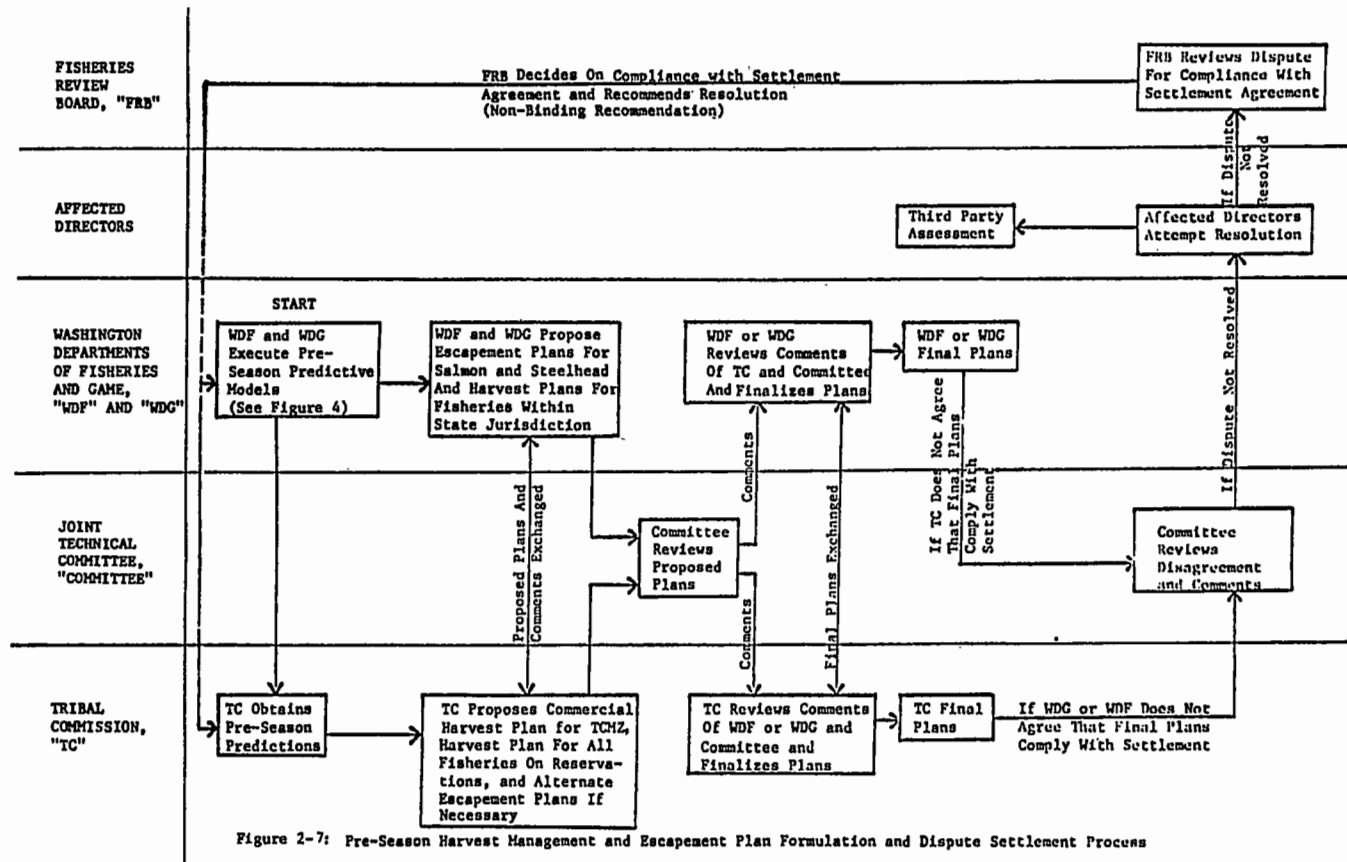


Figure 2-7: Pre-Season Harvest Management and Escapement Plan Formulation and Dispute Settlement Process

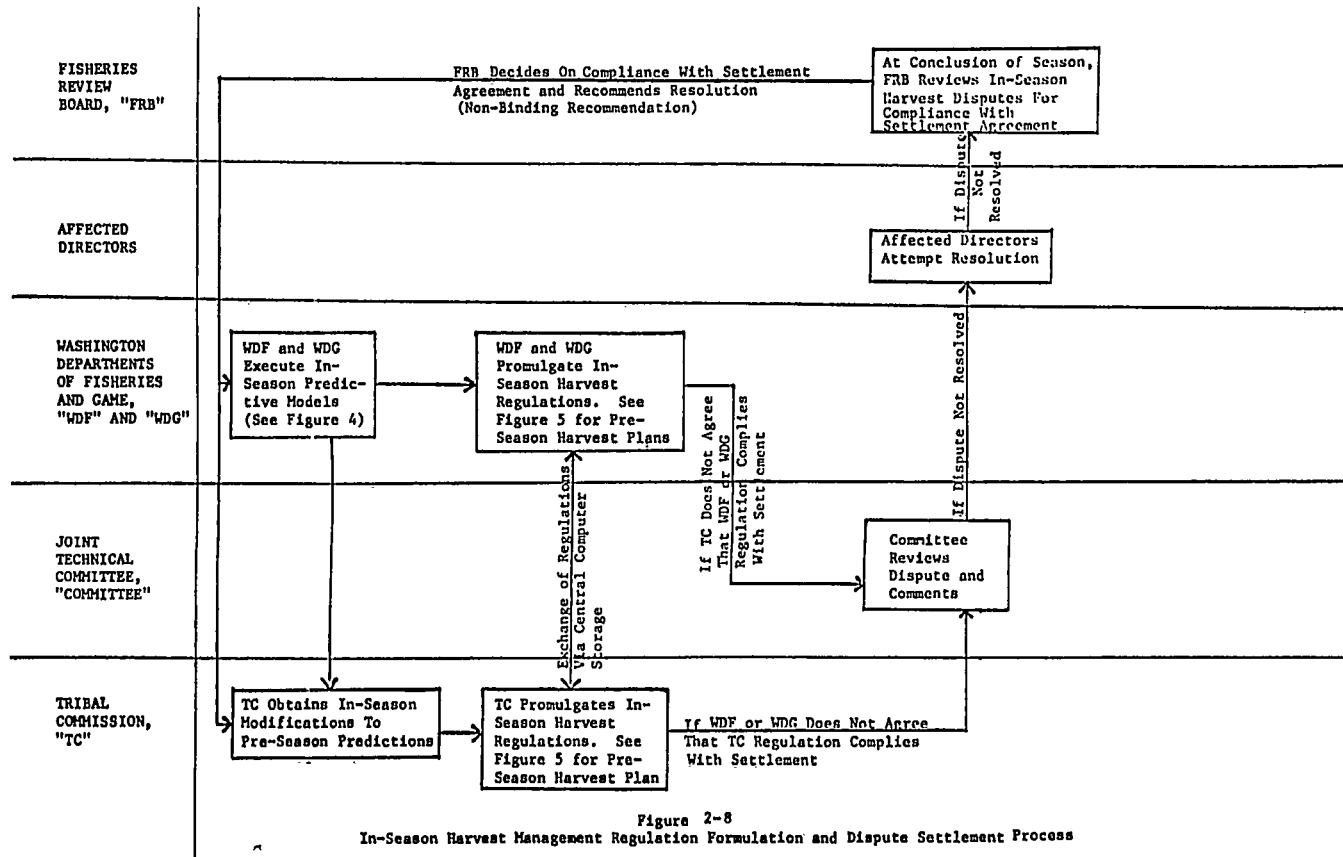


Figure 2-8
In-Season Harvest Management Regulation Formulation and Dispute Settlement Process

III. ADDITIONAL FISHERIES MANAGEMENT PROGRAMS

A. Conservation Management

Insuring adequate spawning escapement is the paramount objective of any salmon or steelhead management effort. The system, described above, is characterized by a number of safeguards which should prevent over-fishing.

First, the predictive models will be tailored so that run size estimates will be conservative and planned harvest rates will not result in excessive harvesting. Second, all of the agencies have substantial concurrent authority to close fisheries for conservation purposes. In that regard, WDF can close all off-reservation salmon fishing; WDG can close all off-reservation steelhead fisheries. The Tribal Commission can close all on-reservation salmon or steelhead fisheries and all commercial fishing in the TCMZ as well as all fishing on reservations. Finally, the Fisheries Review Board can order the closure of any salmon or steelhead fishery in the State for emergency conservation reasons.

B. Harvest Management

A second critical aspect of fishery management is the regulation of harvesting activities to achieve management goals (including conservation goals). Figure 2-8 on Page 63 sets out in schematic form the steps leading to the promulgation of a harvest regulation.

This section details in step-by-step example form the manner in which two typical harvest management decisions

would be made as well as the method in which a dispute would be resolved. Subsection 1. describes the development by WDF of a commercial salmon harvest regulation in the SCMZ. Subsection 2. describes the development by the Tribal Commission of a commercial salmon harvest regulation in the TCMZ. Subsection 3. details the procedure for resolving a dispute arising under either subsection 1. or 2.

1. Development of a Commercial Salmon
Harvest Regulation - SCMZ

- a. WDF proposes pre- and in-season salmon predictive models to the Joint Technical Committee for consistency with the implementation of the settlement agreement.
- b. Committee reviews models, considers fishermen comments, and recommends modifications or additions.
- c. Tribal Commission reviews models for consistency with settlement legislation and recommends modifications to WDF or suggests alternative models as appropriate.
- d. WDF takes recommendations of Tribal Commission and Committee into account and finalizes models to comply with settlement.
- e. WDF executes pre-season model and publishes pre-season salmon predictions. Contemporaneously, WDF proposes salmon harvesting plan and salmon escapement plan to Committee and provides copies to Tribal Commission for review for consistency with the settlement legislation.
- f. Committee reviews plans, considers fishermen comments, and recommends modifications or additions.

g. Tribal Commission reviews plan for consistency with settlement and makes recommendations to WDF or suggests alternative plans as appropriate.

h. WDF takes recommendations of Tribal Commission and Committee into account and finalizes plans to comply with settlement legislation. Thereafter, WDF promulgates pre-season harvest plans for the fisheries under its jurisdiction including those within the SCMZ.

i. WDF executes in-season data system and utilizes real time data from State and Tribal Commission sources for in-season salmon predictive model. Thereafter, WDF executes in-season model and publishes in-season modification to pre-season run size predictions.

j. WDF promulgates any required in-season modification to its harvest regulations affecting the SCMZ.

k. At any time, WDF may promulgate conservation closure regulations affecting any salmon fisherman fishing off-reservation in the waters of the State. This would include within the waters of the SCMZ.

2. Development of Commercial Salmon

Harvest Regulation - TCMZ

a. Steps a through e same as subsection 1.

b. The Tribal Commission proposes a harvesting plan for the TCMZ and forwards to WDF and the Joint Technical Committee for review and comment.

c. The Committee reviews plans, considers fishermen comments, and recommends modifications or additions.

d. WDF reviews Tribal Commission plan for consistency with the settlement and makes recommendations to Tribal Commission as appropriate.

e. Tribal Commission takes recommendations of WDF and Committee into account and finalizes plan to comply with the settlement legislation.

f. WDF executes in-season data system and utilizes real time data from State and Tribal Commission sources for in-season salmon predictive model. Thereafter, WDF executes in-season model and publishes in-season modification to pre-season run size predictions. WDF makes this information available to Tribal Commission.

g. The Tribal Commission promulgates any required in-season modification to the commercial harvest regulations for the TCMZ.

h. At any time, the appropriate tribe or the Tribal Commission has the authority to promulgate a conservation closure affecting commercial salmon fishing in the TCMZ. (WDF also has concurrent conservation authority in the TCMZ other than on reservations.)

3. Resolution of a Dispute Arising Under
Either Previous Subsection

a. At any time, WDF, WDG, or the Tribal Commission may raise a technical harvest or data issue relating to the

settlement for review and comment by the Joint Technical Committee. This would only occur if staff to staff discussions had failed to resolve the problem.

b. The Committee will review the dispute and make recommendations to the appropriate management agencies.

c. If the dispute were not technical in nature, or if it was technical but WDF, WDG, or the Tribal Commission were not satisfied with the Committee's recommendations, the appropriate Directors would attempt resolution.

d. If WDF, WDG, or the Tribal Commission were not satisfied and believed that the dispute was a matter of non-compliance then they could ask the Fisheries Review Board to examine the matter for compliance with the settlement.

In cases involving predictive models or harvest and escapement plans the Directors would first ask for the assessment of the third party as set forth on Page 58 above.

e. For all issues relating to the settlement, the Board could recommend correction of non-complying action or inaction. In cases of emergency conservation questions, the Board could order compliance. The Board would have the benefit of the Committee's recommendation and the assessment of the third party, but would not be bound by that recommendation or assessment.

f. After repeated and serious instances of non-compliance, the Board could make the finding that an agency was "conducting management activities in a manner which

substantially and adversely affected compliance with the settlement agreement." That finding could lead to a recommendation for suspension, see Page 32 above.

C. Complaints by Individuals

The Fisheries Review Board is designed to review matters relating to the settlement which are brought before the Board by one or more of the three managing agencies. In certain cases, however, individuals may raise questions relating to the settlement which would be appropriately considered by the Board.

Each of the three managing agencies would establish an internal administrative procedure for hearing an individual's complaints. Complaints concerning the settlement only which were unresolved after going through the internal administrative procedures would then be forwarded to the Board.

The Board would have the discretion to determine whether the complaint involved a question concerning the settlement or not. If the complaint did involve the settlement, the Board would have the option of hearing the problem itself or appointing an administrative law judge to consider the problem. In either case, the Board or the administrative law judge would review the matter to determine whether the action or inaction of the agency against which the individual complained was in compliance with the settlement legislation.

If the individual were still not satisfied after exhausting all of these administrative remedies an appeal of the Board's or administrative law judge's decision would be possible to the Federal Court.

D. Fleet Size Adjustment Programs

WDF, as authorized by the State legislature, and the Tribal Commission would have the responsibility for insuring that the fleets subject to their respective jurisdictions reach the proportions projected in the settlement legislation in a timely fashion.

E. Licensing and Scientific Research

The Directors of the three agencies would develop a system and a set of licensing forms for use in the State. Thereafter, WDF would issue licenses to non-tribal commercial and sport salmon fishermen and to salmon charter boat owners. WDG would issue licenses to steelhead sports fishermen. The individual tribes would issue licenses to tribal fishermen and all other fishermen fishing on reservations.

All information obtained through the licensing program from agencies other than WDF would be transmitted for storage to WDF. The information would be available to all managing agencies at all times. WDF, WDG, and the Tribal Commission would exchange information in a timely fashion concerning the operation of the licensing system.

The Directors of the three agencies would plan and recommend a statewide fisheries research program and would attempt to resolve any conflicts between research projects. The Directors would particularly attempt to identify duplication in projects as well as voids in research.

Chapter 3

STATE AND TRIBAL COMMERCIAL MANAGEMENT ZONESI. INTRODUCTION

The concept of establishing separate commercial management zones for the Washington Department of Fisheries (WDF) and the tribal licensed commercial fisheries is a keystone of this plan. It is a means to reduce the present overlapping management and jurisdiction of the State and tribes. It is also tied to the resource distribution plan.

However, judging from the comments which we have received from the State, the tribes and some commercial fishing groups, there is a need to provide for some flexibility. The tribes basically argue for larger zones but recognize that these larger zones would pose problems for the equal opportunity marine fleet in certain harvesting situations. The State and some commercial fishing groups have argued for smaller zones to accommodate these marine fisheries but acknowledge that this might leave some tribal fisheries with little more than mud flat areas in which to conduct their terminal fisheries.

The zones may require further review in light of the proposal (see Chapter 5: Salmon Resource Distribution Plan) to develop area licensing for the Puget Sound net fisheries.

There have been several recommendations for variable zones, periodic shifting in jurisdiction and limited purpose zones proposed by some tribes and WDF. However, there was not sufficient time available to reach a consensus on the best method of proceeding, nor could the possible effects of a more specific area licensing be evaluated in the time available.

Thus, we recommend:

The State of Washington, through WDF and the Tribal Commission, may agree to any system of areas, zones and temporary jurisdiction shifts which are necessary in either the short or the long term to implement the basic intent of the management system and the resource distribution plan. Such agreements may be implemented through year-to-year regulations or over longer periods of time provided there is sufficient notice and opportunity to comment by sport, commercial or tribal fishermen.

We should point out that we have established one such special arrangement in Area 2A in Grays Harbor to handle the special situation of a large harvestable surplus where runs move quickly through the Harbor.

It is our expectation that the need for such special arrangements will diminish as the resource enhancement and fleet sizes are adjusted as required by the settlement.

The State and tribal commercial zones are set forth below.

II. STATE COMMERCIAL MANAGEMENT ZONE

All waters within the State boundaries other than those under the jurisdiction of the International Pacific Salmon Fisheries Commission (IPSFC), or under the jurisdiction of the Tribal Commission (as outlined below, Section III) shall be within the State Commercial Management Zone (SCMZ).

III. TRIBAL COMMERCIAL MANAGEMENT ZONE

One of the main elements of this resource distribution plan is the establishment of defined Tribal Commercial Management Zone (TCMZ) river and terminal areas in which treaty fishermen can harvest the formula share of the salmon. In addition, the Tribal Commission may license tribal fishermen to fish throughout Puget Sound when fishing is authorized in the SCMZ or by the IPSFC. This circumstance will have the effect of expanding fishing areas presently available to many tribes. Of particular importance in this regard is the IPSFC fishery in the North Sound. Many of the river and terminal areas are smaller than the present usual and accustomed grounds, but are deemed to be sufficient for the purposes of harvesting those portions of the runs which are planned for these areas. As in other aspects of this plan, the parties, in this case, the

tribes, are not being asked to give up their legal rights to usual and accustomed grounds. Rather for the purposes of this plan, they will be asked to agree to exercise their rights in a manner consistent with the plan.

The TCMZ is defined as follows:

A. Bellingham Bay and Adjacent Waters

The proposed zone includes Lummi Bay, Hale Passage, that portion of Bellingham Bay north of a line drawn from Point Francis to Treaty Rock, including rivers and tributaries emptying into these waters.

B. Samish Bay

Includes that area of State catch reporting Area 7C, east of a line drawn from Williams Point to Oyster Creek including all rivers and tributaries.

C. Skagit Bay

Includes that portion of State catch reporting Area 8 east of a line from Brown Point north to Goat Island, and continuing to the first prominent point north of Goat Island, and all rivers and tributaries emptying into these waters.

D. Port Susan Bay

That portion of State catch reporting Area 8B south of a line drawn from Kyak Point to a corresponding point on Camano Island north of a line drawn from Camano Head to Gedney Island, including all rivers and tributaries entering Port Susan Bay.

E. Port Gardiner Bay

That portion of State catch reporting Area 8C east of a line starting from the northernmost point of Area 8C, continuing on a straight line to the northern tip of Gedney Island and north of a line from the southern tip of Gedney Island to Preston Point, including rivers and tributaries.

F. Duwamish Bay, Shilshole Bay and Lake Washington

Includes that portion of State catch reporting Area 10A east of a line drawn from Alki Point to Four-Mile Rock, Area 10B, except for the Lake Washington Ship Canal and Lake Union, and Areas 10C and 10D, including rivers and tributaries.

G. East Kitsap Peninsula

Includes State catch reporting Area 10E and that portion of catch Area 10 in Port Madison Bay west of a line from Point Jefferson to Point Monroe, including rivers and tributaries.

H. Commencement Bay

Includes that portion of State catch Area 11A east of a line from Brown's Point to the stack, including the river.

I. Carr Inlet

That portion of State catch reporting Area 13A north of a line from Raft Island to a point due west on the Kitsap Peninsula.

J. Nisqually River

That portion of State catch reporting Area 13 lying south and east of lines projected from the old Atlas Powder

Dock to the Dupont Wharf, from the Nisqually Flats black can buoy to the southern tip of Ketron Island, and from the southern tip of Ketron Island east to the mainland shore, including the river and tributaries.

K. Case Inlet

That portion of State catch reporting Area 13B lying north of a line drawn from the northern point of Treasure Island easterly to the most westerly point of land between Vaugh Bay and Rocky Bay.

L. Lower Puget Sound

That portion of State catch reporting Area 13B south and west of a line drawn from Johnson Point west to Point Wilson, including rivers and tributaries.

M. Hood Canal

Includes State catch reporting Areas 12A, that of 12B north of a line due east from Whitney Point, 12E and that portion of 12D south of a line from the north shore of Lilliop Creek due east to the north shore of Dewatts, including rivers, and tributaries in 12A, 12E, and the freshwaters emptying into the above-described Areas of 12B and 12D.

N. Port Gamble Bay

That portion of State catch reporting Area 12 which is Port Gamble Bay.

O. Dungeness River Area

That portion of State catch reporting Area 6B lying westerly of a line drawn from the Dungeness Light to Kulakola, and including the Dungeness River.

P. Strait of Juan de Fuca

That portion of management Area 6C south of a line from Observatory Point to Angeles Point and including the Elwha River.

Q. Washington North Coast and Grays Harbor

The following areas within State catch reporting areas 2, 3 and 4:

1. That portion of State management Area 4 from Waatch Point to Portage Head.

2. That portion of State management Area 3 circumscribing a quarter-mile radius around the Quileute River mouth, including the Quileute River and its tributaries.

3. That portion of State management Area 3 circumscribing a quarter-mile radius around the Hoh River mouth, including the Hoh River and its tributaries.

4. That portion of State management Area 2 circumscribing a quarter-mile radius around the Queets and Quinault Rivers and other rivers on the Quinault Reservation, including rivers and tributaries.

5. That portion of State catch reporting Area 2C within Grays Harbor northerly of a line starting at a monument located near the bench in front of the Giles Hogan residence located west of the mouth of the Humptulips River, then projected in a southeasterly direction to the left bank of the Grass Creek estuary.

6. State catch reporting Area 2A and that area above Area 2A in the Chehalis River.

However, WDF and the Quinault Tribe shall establish a special State regulated drift gillnet fishery in Area 2A whenever 2A is needed to harvest the equal opportunity share of a large surplus.

7. No gillnet fishery by treaty or non-treaty gillnetters outside the Buoy 13 line.

Chapter 4

ENHANCEMENTI. INTRODUCTION

Enhancement programs constitute one of the major approaches traditionally employed by managers for restoration of depleted fish runs and for supplementing natural production. To the lay public, enhancement is tantamount to more fish, but to the professional manager, enhancement techniques constitute one of the many tools which can be applied to achieve goals associated with conservation and rational utilization of fishery resources. The Regional Team members are acutely aware that there are both costs and certain risks associated with enhancement programs. But, the importance of enhancement as one means to help resolve the problems confronting the Washington State commercial (treaty and non-treaty) and recreational fishermen should be measured in terms of its role in achieving an overall settlement, and, in particular, how enhancement projects can contribute to resolving the outstanding disputes and conflicts.

Properly planned enhancement programs will significantly contribute to increased runs of salmon and steelhead. Resource enhancement, however, should not be considered as a panacea for fisheries problems generated and/or aggravated by the Boldt and Belloni Decisions; but, as a part of an overall settlement.

Increased production (coupled with gear limitations) can, for example, address the contemporary problem of "too many fishermen and too few fish." It can play a major role in providing for better distribution of fish among user groups, gears, etc.; that is, by careful choice of species and areas involved, as well as stocking procedures, an equitable sharing of the benefits of enhancement can be achieved. Enhancement programs can also be used to insure greater stability in the fishery in terms of inter-year and intra-area variations in fish availability. Finally, the traditional problems of stock restoration required as a remedial action to over-fishing problems, and resource supplementation to offset losses incurred from long-term environmental degradation are addressed.

Further Government funding of enhancement programs is not urged, independent of resolving the broad set of problems concerned with resource management and distribution, enforcement and control of fishing effort -- issues treated elsewhere in this document.

A. Guidelines

In order to evaluate the potential contribution of enhancement projects to resolution of conservation and socio-economic problems in Washington State, the Regional Team (1) established a set of guidelines for resource enhancement proposals; (2) invited the State and tribal management entities

to submit projects that would contribute to conflict resolution; and (3) established a Technical Working Group comprised of State, Federal, tribal and user group scientists to evaluate the technical feasibility and ecological problems associated with the proposed projects.

B. Analysis

On completion of the technical reviews, the Regional Team analyzed the aggregate projects in terms of 1. potential increments in fish production by species, area and stocks; 2. benefits of projects to various user groups; and 3. cost involved. Projects accepted were selected on the basis of technical feasibility of success, resolution of extant conservation problems, and the importance of the project to a balance of benefits among various groups of fishermen.

In addition, we have identified research programs essential for the successful implementation and evaluation of this enhancement program.

II. BACKGROUND

There are many ways to enhance the resources of salmon and steelhead trout. Remedial measures that are often taken include the removal of obstructions to the passage of fish in streams or rivers, laddering of falls or dams to facilitate the upstream passage of adults, screening of turbines in dams to

prevent the entrance and destruction of downstream migrating juveniles, and construction of artificial spawning channels to compensate for the loss of natural spawning grounds by man's removal of gravel from the stream beds. A widely-used technique is artificial propagation. The science of fish culture was, in fact, one of the first activities undertaken by the United States Fish Commission, established in 1871; culture and other enhancement activities continue to be one of the major roles undertaken by State and Federal Government fisheries entities. The salmon and steelhead trout hatcheries of the Pacific Northwest are among the most highly developed and technically sophisticated aquatic culture systems in the world.

In Chapter 1, reference was made to the general decline in harvestable numbers of salmon and steelhead. While this general trend has been in evidence since before the turn of the century, the most significant efforts to halt this downward trend have occurred since the mid-1960's. Since that time, the introduction of increasing numbers of artificially propagated salmon and steelhead, together with some improvement in habitat management for wild stocks, has helped to reverse the long term downward trend in numbers of harvestable fish.

Releases from hatcheries in the Pacific Northwest now average 279 million fish annually with nearly thirty percent coming from case area hatcheries. These releases of fish

(primarily coho salmon, chinook salmon and steelhead trout) are presently justified by favorable benefit-cost operations for most hatcheries. Although generally successful, some biologists and fishery managers believe that expanded hatchery programs and larger releases may not produce all of the anticipated payoffs in terms of cost-effectiveness or adult runs. For example, the ratio of the number of smolts released has generally declined in Washington in recent years.

That we may have reached a point of declining returns for coho salmon production is strongly suggested by the fact that there has been a fourfold increase in the number of coho smolts produced by hatcheries since 1961, yet annual harvest rates have not kept pace. Although the reasons for this phenomenon are not fully understood, they may include lower survival of hatchery fish because of space and food limitations in freshwater and estuaries, delayed outbreaks of disease, or release of some fish before or after they were best physiologically adapted to entering a new environment. Another contributing factor has been the sharp decline in production of wild fish.

In artificial propagation, it has been recognized by fishery agencies that the release of smolts which are better fitted for marine survival may produce the same results as increasing production, and at a far lower cost than required to construct and operate new hatcheries. Measures which increase

the survival of fish released from existing artificial production facilities could conceivably double their returns. This does not seem unreasonable considering some British Columbia and Washington State hatcheries have at times obtained coho salmon survivals of 10% to 12%, compared to 6% to 7% survivals obtained at other similar facilities.

Because our present knowledge of the rearing capacity of streams and estuaries is limited, we must be guided by the best information available on past successes and failures in artificial propagation. Additional information would be forthcoming as a result of new research to be carried out as part of the recommended enhancement program. The following studies of past successes and failures were made to guide the Team in its development of an enhancement plan:

- A. Salmon and steelhead trout production (hatchery and wild) from Boldt case area river basins from 1952 - 1976.
 - B. A compilation of wild and hatchery production for salmon and steelhead trout in eight fishery zones of the Boldt case area.
 - C. A summary of survival and fishery contribution of hatchery produced salmon in Washington State.
- These studies covered 22 river basins in the case area. Briefly, some of the findings are:

1. Past enhancement programs on salmon and steelhead trout in the Case Area have emphasized three species: coho salmon, fall chinook salmon, and steelhead trout.

2. The trend for the three species has been one of approximately doubling of the number of migrants released every ten years during 1950-75 (Figures 4-1, 4-2 and 4-3).

3. Releases on the North Coast have always represented a small part of the total production in the case area, 4%, 15% and 20%, respectively, of coho, fall chinook and steelhead. This is because most of the State hatcheries for coho salmon, fall chinook and steelhead trout were built on the inland drainage basins of Puget Sound.

4. Survival rates by species vary significantly. Some Washington State hatcheries, at times, have been able to achieve a survival rate of 10 to 12 percent, compared to 6 percent or less for similar facilities at other times.

5. The number of coho smolts has been increased fourfold since 1961, while the pounds landed has approximately doubled during the same period. While it would appear we may have reached a point of declining returns for artificial coho salmon production, given the sharp decline in production of wild fish and the suspected less than optimum hatchery operations, these factors may account for some or a major portion of the apparent leveling off in returns.

Figure 4-1

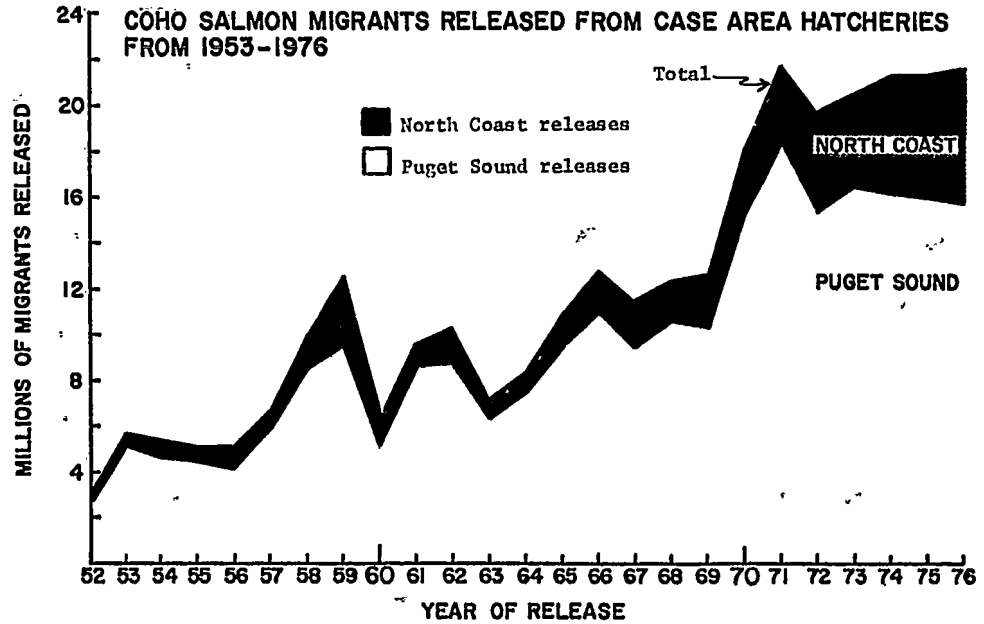


Figure 4-2

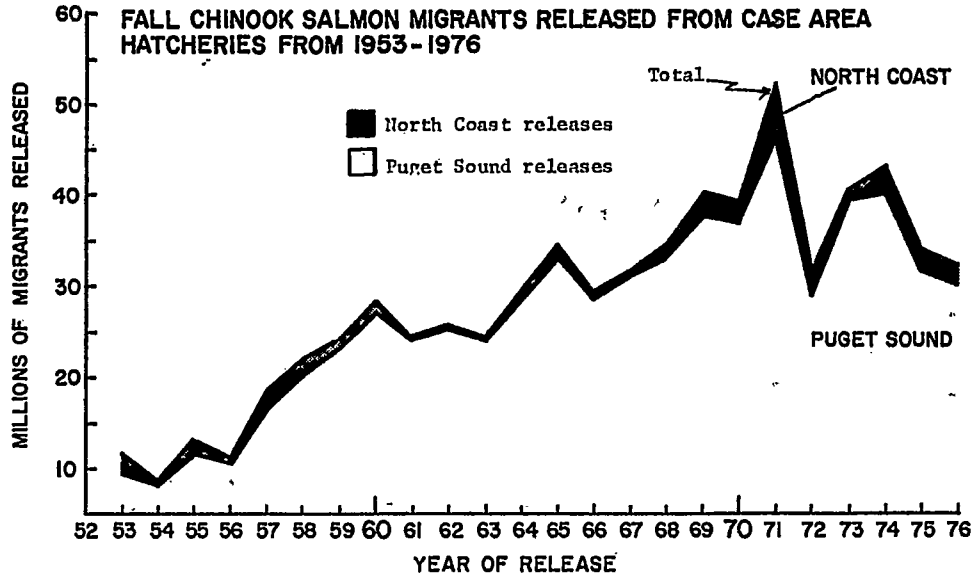
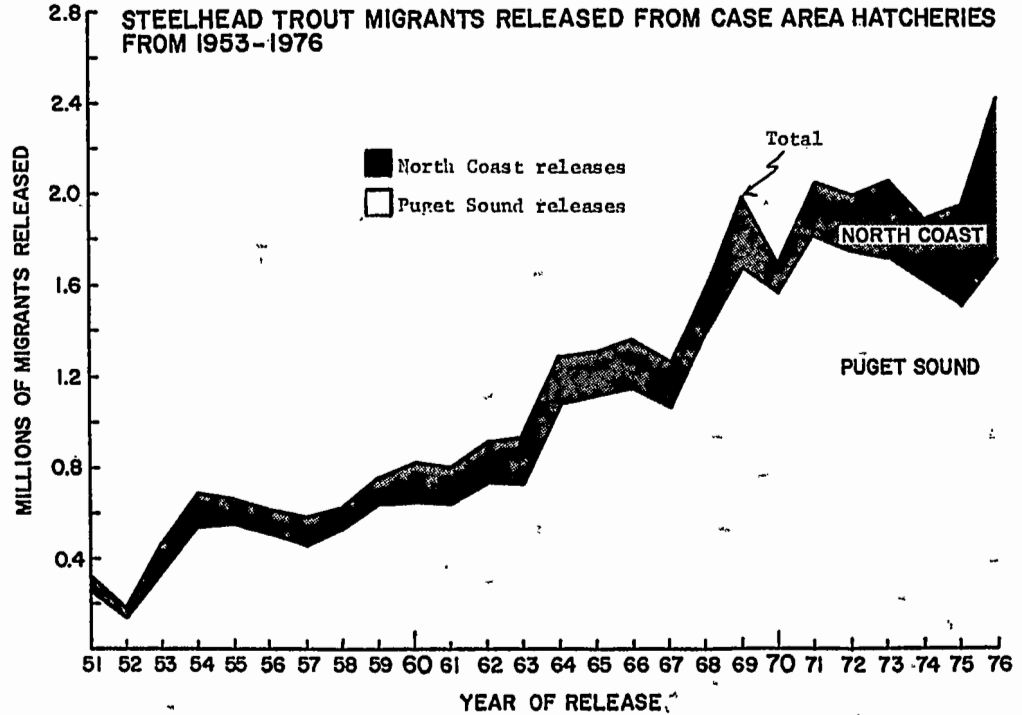


Figure 4-3



These factors notwithstanding, it is nevertheless estimated that based upon current estimates of the production opportunities in Washington State waters, the current annual average number of landings of 7.5 million fish could be increased to 15 to 20 million annual landings. Obviously, an increase which doubles or more the supply of harvestable fish would make a major contribution to re-establishing a healthy fishery and provide significant economic benefits to the State and nation.

III. GENERAL CONSIDERATION AND GUIDELINES

There are two basic options for increasing the supply of available fish. The first is to improve the survival of wild runs through such actions as streambed stabilization or rehabilitation, removal of such artificial barriers which limit entry into spawning areas as log jams, excessive vegetation, mudslides and similar barriers or conditions which limit the opportunity for wild stocks to spawn in adequate numbers to maintain and enhance the runs.

A second option for increasing the supply is through the use of carefully sited hatcheries or other facilities which are used to artificially propagate salmon and steelhead. It is important to note that the use of either option can increase the run sizes, depending upon the specific stream or river circumstances. In addition, the overall need to maintain stock

diversity (genetic and biological considerations) and harvest management problems all influence the choice of whether natural production or artificial production is used as a method to increase run sizes.

Considering all factors, it was decided that the most prudent approach would be to support an enhancement plan that addresses both artificial and natural production, and augmented by practices which have the potential for increasing the survival of fish. This is in keeping with the Team's principle of balanced growth: quantity with quality; and provides alternative operational modes which may be chosen on the basis of which means is best suited to a particular region or watershed.

Geographic and species selection considerations, as well as the area and type of fishery, were important factors considered in the development of a resource enhancement program. Commercial troll and sport fishermen almost exclusively fish for chinook and coho species, while purse seine and gillnet are effective harvesting methods for all species. The addition of a significant increase in the harvestable supply of chum salmon through a planned State resource enhancement program will be highly beneficial to net fishermen. Because chum salmon do not readily take lures or bait when returning to spawn, they contribute little to the troll and sport harvest. Similarly, because of their schooling characteristics and feeding habits,

sockeye and pink salmon are not significantly harvested by sport and troll fishermen.

If the supply of harvestable salmon is to be significantly increased over present levels, and if a balanced opportunity is to be achieved for all who participate in the harvest, then geographic concerns and species selection become primary means for achieving a more balanced opportunity for each group of fishermen.

Three guidelines were developed for all proposals to be submitted to the Regional Team. These guidelines were developed by the Resource Development Team, composed of State, Federal and tribal professional fisheries biologists. Numerous meetings were held regarding these guidelines with resource representatives from the treaty tribes and State and Federal agencies. These meetings helped to develop a common understanding of the guidelines and assisted the various groups in the development of their proposals.

A. Genetic Integrity

The first guideline addressed the need for maintaining genetic integrity and is as follows:

As a general policy, the Regional Team will not recommend proposals which threaten to diminish desirable natural genetic variations within and among populations.

Genetic variation between species and within species arises from the accumulation within each population of gene combinations that place them in a favorable survival relationship with their specific environments. Variation is maintained within a population that reflects the variable environment to which each population is specifically adapted. Because of these phenomena there is no guarantee that the historic distribution of a species, once diminished, could be reestablished with brood fish from any single population.

In artificial propagation, the variation between populations is often disregarded and eggs are obtained from remote locations. All too often as enhancement programs develop, there is little concern for protecting native fish of the same or different species in the waterways adjacent to the production facilities. Consequently, there is an increasing probability that the native stocks adapted to these locations will be lost. The loss of native or wild stocks decreases the possibility for developing alternative management schemes.

B. Biological Criteria

The second guideline was the establishment of biological criteria for resource development. These criteria were established to provide a basis for evaluating the adequacy of proposed fish culture projects. These criteria, which are

set forth below, are largely based on existing practices and criteria used by State and Federal agencies and Indian tribes.

1. Program considerations

a. Does the facility or project meet the needs of the program?

b. Are project personnel competent?

c. Is the size of the program commensurate with available space and water?

d. Is the number of fish to be reared or propagated and released or spawned commensurate with the aquatic environment capacity to support the increased number of produced fish?

2. Aspects of the proposed resource development project

a. Site location in general

(1) What is the proximity to nearby hatcheries and/or other resource developments?

(2) What are the possible impacts of the proposal upon native or other hatchery fish stockings?

(3) What obstacles are present (falls, dams, pollution, etc.) below the project site which might affect the survival of down and upstream migrants?

(4) What is the availability of returning adult and/or brood stocks to the harvest?

b. Adult collection facilities (artificial propagation).

(1) Are they adequate to meet the needs of the program?

(2) Are treatment capabilities inherent in the design?

c. Egg-taking operation and incubation facilities (artificial propagation).

(1) Is the method of fertilization and transfer of eggs adequate?

(2) Are the facilities simple and of a proven design?

(3) Are the treatment capabilities inherent in the design of equipment used?

d. Raceways or ponds (artificial propagation).

(1) Are they a proven design?

(2) Are they arranged to facilitate proper handling of fish?

(3) Do they have treatment capabilities?

e. Water flow

(1) What is the quality of the water source?

(2) What is the temperature range throughout the nursery or rearing and spawning periods?

(3) What is the quantity of water flow required during the nursery or rearing and spawning periods?

(4) What is the adequacy of water flow pattern within the project site to sustain the production-related activities?

f. Methods for releasing fish (artificial propagation).

(1) Is the release of fish done safely from rearing pond or raceway?

(2) Is the equipment adequate to transfer fish between ponds or off-station?

g. Are pollution abatement requirements being met?

3. Transfer of live fish and fish eggs

a. Does shipment meet health and disease certification standards?

b. Are shipments of live fish and fish eggs within the State guided by the policies and regulations provided by governing agencies in the State?

4. Fish species and stocks

a. What are the expectations of the proposed propagation program for each species?

b. What are the possible trade-offs arising from species interaction on freshwater and/or marine environments?

c. What are the behavioral trade-offs arising from interaction of hatchery and wild fish caused by

conflicting (1) run timing, (2) spawning times, (3) size and age at time of release, (4) as adults, and (5) marine life histories?

d. What are the possible genetic trade-offs arising from interaction of hatchery and wild fish?

e. What is the genetic history of the stocks selected?

f. What will be the size and time of fish released?

g. What is their survival potential?

C. Project Evaluation

The third guideline addresses the general inadequacy of past project evaluation. More precisely, in order to determine what part of adult fish harvest is attributable to wild, existing, or proposed enhancement projects, it will be necessary to conduct fish-marking programs. These programs must be an integral part of any enhancement project. The third guideline is as follows:

All project proposals should set out a plan for evaluating contributions to the fishery.

In the past, a variety of enhancement programs have been undertaken, frequently with little controls or effort to determine the value of the activity. They have often been continued without any real concern for their value and

contribution to the resource. We urge that a carefully planned evaluation program be a criteria for approved enhancement projects.

IV. FUTURE PLANNING REQUIREMENTS

Notwithstanding the studies conducted by the Regional Team and the guidelines and criteria established to evaluate proposals received from the State and tribes, there is a critical need to establish a coordinated ten-year master enhancement plan. The need for such a coordinated plan has been addressed by State and tribal negotiators. They have jointly endorsed several principles which are incorporated into the recommendations of this report. These are:

A. Guidelines For Anadromous Salmonid Production (Existing and Future)

1. Natural and artificial production must be integrated into a single unified management plan. The plan must be developed on a system-by-system and area-by-area basis.

2. Enhancement programs must be evaluated by analyzing the potential positive and negative impacts.^{1/}

^{1/} Negative impacts generally involve interactive effects between proposed and existing production. These include, but are not limited to, the following:

- a. Fisheries on mixed stocks having different allowable harvest rates cause over- and under-escapement.
- b. Introduced stocks may either compete with, consume, or otherwise negatively affect other stocks, primarily as juveniles.
- c. Returning artificially-produced adults may spawn with and alter the genetic composition of natural stocks.

These interactions may be between the same or different species. These interactions are generally due to co-mingling, and therefore, natural and artificial stocks should be separated whenever possible.

Enhancement programs must seek to minimize the negative impacts while maximizing the positive impacts.^{2/} Benefits, including cultural, social, economic, and/or recreational, should outweigh negative impacts.

3. Enhancement must be conducted in such a manner as to provide for the protection of viable stocks. Because of the many possible views of what the term "viable stock" means, it will not be defined in a general way, but rather an agreed-to list will be compiled and reviewed periodically. One of the considerations in identifying viable stocks will be providing for protection of desirable natural genetic variations. Cases may occur where stocks currently considered non-viable may have potentially important characteristics, such as timing, size,

2/ Ways to reduce negative impacts: Negative interaction may best be minimized by selecting stocks or species sufficiently different in size or migration pattern (time and area) from the potentially affected production. If this is not possible and over-fishing of the natural stock would occur, the parent stock for artificial culture can be derived from the local natural stock and used to fill under-utilized natural rearing space. Several possible approaches are fry or smolt plants, and egg boxes or rearing pens located so returning adults will scatter to spawn in natural areas. Where the magnitude of artificial production greatly exceeds natural production, an important possibility is that where the straying of impacted native stock is not considered viable or where the natural stock does not have potentially important genetic characteristics, the under-utilized rearing space can be used by another cultured stock that would be compatible with that particular environment.

The problems of competition and predation between hatchery and natural stocks and between different hatchery stocks can be reduced by selecting appropriate planting sites or by timing of release. The only case where non-migratory (non-smolt) plants should be made in natural areas is where there is evidence that unused rearing potential exists.

etc. Such stocks must be identified and arrangements made to preserve such gene-pools (e.g., egg banks).

4. Hatchery design, operations, and personnel must meet minimum uniform standards (see Appendix II).

5. There are clearly cases where it is inadvisable to transfer stocks from area to area due to disease, genetic, harvest management, or other considerations. To avoid difficulties of trying to precisely define these problems, a list of such restrictions will be jointly developed. This list will be periodically updated.

6. Certain services and resources are common to many production facilities and operations, and should be coordinated and combined between State, tribal and Federal facilities. These may include, but are not limited to, pathological services, food purchases and quality control, egg supplies, planting trucks, and training facilities.

B. Procedures For Development Of a Comprehensive Management Plan For Anadromous Salmonid Production

A comprehensive management plan must be consistent with the "Guidelines for Anadromous Salmonid Production." All enhancement programs, both existing and future, must be included in the plan.

1. Identify objectives.
2. Describe and assess present natural production.

3. Determine and assess present artificial production.
4. Determine potential natural production.
5. Identify viable stocks and non-viable stocks that have potentially valuable characteristics.
6. Identify acceptable enhancement possibilities. These must be consistent with harvest management strategies.

C. Implementation of Enhancement Proposals

Before any additional enhancement proposals are initiated, they must be consistent with a comprehensive plan that is yet to be developed, and will be accepted on the basis that they conform to the enhancement guidelines. Further considerations must be made for the time frame over which the projects can be implemented from the standpoint of egg availability. The time frame should be consistent with maintenance of reasonable fisheries during the phase-in period.

D. Conclusion

In conclusion, the Regional Team joins with the State and the tribes in recommending that a coordinated enhancement program plan be developed and implemented prior to the start of construction of any proposed enhancement project contained in this settlement plan.

The Regional Team further believes the resulting additional review will help improve certain technical aspects of various proposals, as well as eliminate site conflicts, increased species competition, and remaining mixed stock harvest management problems. These improvements resulting from a coordinated plan will help ensure that each of the proposed enhancement projects makes an appropriate contribution to the overall increased supply of harvestable salmon and steelhead.

V. PROJECTS SELECTED

A. Description.

A total of 85 enhancement related projects has been tentatively approved in principle by the Task Force (Table 4-1). The projects came from 16 organizations/groups involved in the settlement. It should be noted that some of the projects were already planned or underway and are, therefore, not totally new. The projects were divided into two major activity categories:

<u>Category</u>	<u>Activity</u>
<u>Capital & Engineering</u>	Artificial propagation facilities
(C & E)	Natural propagation
	Habitat improvement and protection
<u>Research & Development</u>	Resource surveys and inventories
(R & D)	Research on resource and ecology

Table 4-1.--Enhancement projects relating to settlement of the Northwest fisheries problem.

Project No./Type	Organiza-tion/	Prod. area/	Site	Proposed item/activity	Species/	Production smolt/fry/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital costs/			O&M/Engin.		Total cost
								Yed.	Other	Total	Years	Cost	
1 - CEZ	WDF	8	Skagit Valley -Main Station -Holmes Harbor -East Sound -Case Inlet	Hatchery complex: -Hatchery -Saltwater pens -Saltwater pens -Egg incubation facil.	Salmon F. chinook Coho Coho F. chinook	— 2.0 2.0 2.0 3.0	"Mother" hatchery system with satellite rearing/release sites. Adults are expected to return to the saltwater release sites.	3,880	500	4,380	5	1,750	8,130
2 - CEZ	WDF	9	Skykomiah Rv., So. Fork	Smolt rearing ponds	Su. chinook	1.5	Supply of fry from existing State salmon hatcheries in the Skykomiah System.	2,900	0	2,900	5	1,000	3,900
3 - CEZ	WDF	9	Skykomiah Slough	Flow control, gravel cleaning & replacement	Pink Chum Chinook Coho	Not avail. " "	Improve upon and expand natural spawning/incubation grounds.	376	0	376	-	-	376
4 - CEZ	WDF	10	Cedar River	Hatchery (building, ponds, raceways, etc.)	Coho F. chinook	2.0 4.0	For rearing native chinook and coho salmon, and experimental lots of sockeye.	3,520	471	3,991	5	1,500	5,491
5 - CEZ	WDF	10,11	Skokomiah Valley -Main Station -Chimacum Bay -Ho. Wood Canal -Capitol Lake -Deschutes Rv. -Quartermaster Mbr.	Hatchery complex: -Hatchery -Smolt rearing ponds -Smolt rearing ponds -Smolt rearing ponds -Smolt rearing ponds -Smolt rearing ponds	Salmon F. chinook F. chinook F. chinook F. chinook F. chinook Coho	— 2.5 4.0 *6.0(0.3) *3.0(0.3) 4.0 1.5 1.0	"Mother" hatchery system with satellite rearing/release sites. * Signifies production (all or partly) related to "super smolts," vis-a-vis, extended rearing technique. Yearling fish production in parenthesis.	6,950	770	7,720	5	2,375	10,095
6 - CEZ	WDF	10	Cedar River	Spawning channel	Sockeye	30.0	Develop a sockeye spawning channel to produce fry for natural rearing in Lake Washington.	1,940	860	2,400	5	75	2,475
7 - CEZ	WDF		Puget Sound and coastal area	Fish passage improvement	Salmon-steelhead	Not avail.	Increase accessibility of fish to spawning/rearing areas to enhance natural prod.	(included under	ODM)		5	2,000	2,000
8 - CEZ	WDF	4	Mycoshee River	Hatchery (building, ponds, raceways, etc.)	Coho F. chinook	4.0 3.0	For rearing native coho and chinook salmon.	4,370	1,150	5,500	5	1,500	7,000
9 - CEZ	WDF	1	Grays Rv., lower area Grays Rv. Hatchery	Adult fish holding & smolt rearing ponds Expand egg incubation facility	F. chinook F. chinook	5.0	Increase production of fall chinook in the lower Grays River.	1,800	0	1,800	5	375	2,175
10 - CEZ	WDF	3	Willapa Harbor area: -Williams Creek -Del Creek -Youth Camp Creek	Satellite rearing ponds -Rearing/release pond -Rearing/release pond -Rearing/release pond	Salmon F. chinook F. chinook F. chinook	— 2:5 3.0 2.0	Optimize production from existing hatcheries: -Nemah State Salmon Hatchery -Naselle State Salmon Hatchery -Naselle State Salmon Hatchery	1,890	500	2,390	5	650	3,040
11 - CEZ	WDF	1	Kalama Rv. (Wildhorse Creek)	Smolt rearing pond	Coho	1.2	Satellite rearing pond to Kalama Falls Hatchery.	656	0	656	5	330	986
12 - CEZ	WDF	1	Cowlitz Rv. Hatchery	Smolt rearing ponds	Coho	6.0	Increase production from the hatchery.	2,200	1,160	3,360	5	1,500	4,860

Table 4-1.--(cont'd., p. 2)

Project No./Type 1/	Organiza-tion2/	Prod. area3/	Site	Proposed item/activity	Species4/	Production smolt/ryd5/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital costs6/			O&M/Engrin-		Total cost
								Yed.	Other	Total	Years	Cost	
13 - CEK	WDF	1	Toutle Rv. Hatchery	Smolt rearing pond & adult fish collection facility	Coho	2.0	Coho production will be doubled with this additional rearing pond. Adult fish facility will enhance collecting and holding activities.	950	0	950	-	-	950
14 - CEK	WDF	1	Klickitat Hatchery	Expand hatchery facility	F. chinook	1.0	Increase production from existing hatchery.	454	0	454	5	485	939
15 - CEK	WDF	4-11	Puget Sound and coastal streams	Fish counting facilities	Salmon	---	Upstream and downstream enumeration of salmon leading to better predictions/optimum harvest levels on wild stocks.	70	0	70	5	645	715
WDF- CEK project total =								33,556	5,391	38,947	-	14,185	53,132
16 - RED	WDF	-	State-wide	Related to fish tagging experiments	Salmon	---	See Table 4-7.						
17 - RED	WDF	7-11	Puget Sound	Adult salmon tagging	Coho, chum chinook	---	See Table 4-7.						
18 - RED	WDF	11	Hood Canal plus other areas	Fish tagging, disease studies, and production/harvest mgt. models	Chum	---	See Table 4-7.						
19 - RED	WDF	7-11	Puget Sound	RED Section on genetic mark method.	Salmon	---	See Table 4-7.						
20 - RED	WDF	-	Selected streams	Evaluation of gravel mining techniques	Salmon	---	See Table 4-7.						
21 - RED	WDF	-	State-wide	Washington State stream catalogs	Salmon	---	See Table 4-7.						
22 - RED	WDF	-	Selected streams	Habitat improvement study	Salmon	---	See Table 4-7.						
23 - RED	WDF	-	State-wide	Evaluation of salmon stock potential	Salmon	---	See Table 4-7.						

Table 4-1.--(cont'd., p. 3)

Project No./Type	Organization	Prod. area	Site	Proposed item/activity	Species	Production smolt/ fry/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital costs		O&M/Engr.			
								Fed.	Other	Total	Years	Cost	Total cost
24 - CZE	WDC	7-	Lake Whatcom	Smolt rearing pens	Steelhead	0.3	Expand smolt rearing capacity. Source of fingerlings--South Tacoma Hatchery.	150	0	150	5	300	450
25 - CZE	WDC	7,8,10	Nooksack, Samish, Skagit and Puyallup Rivers	Smolt release and homing ponds	Steelhead	Not avail.	Increase smolt survival and influence distribution of returning adults.	400	0	400	5	100	800
26 - CZE	WDC	8	Sauk River	Smolt rearing pond	Steelhead	0.1	Expand smolt rearing capacity.	100	0	100	5	150	1250
27 - CZE	WDC	9	Snoqualmie	Hatchery (building, ponds, raceways, etc.)	Steelhead	0.5	Smolts to be released into case area streams.	1,250	0	1,250	5	450	1,700
28 - CZE	WDC	10	Thurston County	Hatchery (building, raceways, etc.)	Steelhead	1.1	Provide 1.1 million small fingerlings to WDC rearing ponds.	500	0	500	5	200	700
29 - CZE	WDC	10	Green River	Smolt rearing pond	Steelhead	0.15	Expand smolt rearing capacity at present site	300	0	300	5	150	450
30 - CZE	WDC	10	Puyallup Hatchery	Smolt rearing pond	Steelhead	0.15	Expand smolt rearing capacity at present site	500	0	500	5	150	650
31 - CZE	WDC	10	South Tacoma Hatchery	Fingerling raceways	Steelhead	0.5	Expand fingerling rearing capacity at present site.	100	0	100	5	50	150
32 - CZE	WDC	11	Lake Sutherland	Smolt rearing pens	Steelhead	0.3	Utilize the lake to expand smolt rearing capacity. Smolts to be released into Olympic Peninsula streams.	200	0	200	5	300	500
WDC: CZE project total								3,500	0	3,500	-	1,850	3,350
33 - RED	WDC	8	Skagit River system	Survey & evaluation of wild fish production	Steelhead	---	See Table 4-7.						
34 - RED	WDC	10	Green River watershed	Survey-feasibility study	Steelhead	---	See Table 4-7.						
35 - RED	WDC	-	State-wide	Evaluation of habitat	Steelhead	---	See Table 4-7.						
36 - CZE	Lummi	7	Skookum Fish Hatchery Nooksack Rv.	Capital improvements and financial support for O&M of hatchery, sea pond and sea laboratory.	F. chinook Chum Steelhead	1.64 4.0 0.03	Establish runs of the three species to the Nooksack River and also provide hatchery fish for the rearing and release/return program at the Sea Pond. O&M support is needed to achieve the goal of a viable, self-supporting fishery program.	241	0	241	5	1,455	1,696
37 - CZE	Lummi	7	Sea Pond-Sea Lab, Lummi tidal area					15	0	15	5	641	656
Lummi: CZE project total								256	0	256	-	2,096	2,352

Table 4-1.--(cont'd., p. 4)

Project No./Type	Organiza-tion/	Prod. area/	Site	Proposed item/activity	Species/	Production smolt/rye/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital cost/			O&M/Equip.		Total cost
								Fed.	Other	Total	Years	Cost	
38 - CCE	Nooksack	7	Nooksack Rv., eight tributaries	Gravel washing and addition, install weir, stabilize channel, etc.	Salmon	Not avail.	Restore and increase fish production from natural spawning/incubation grounds.	-	-	-	5	375	375
39 - CCE	Nooksack	7	Williams Creek, Nooksack Rv.	Incubation and rearing facility--in-stream	Chum Coho		Pilot project on enhancement of native runs from natural grounds.	5	0	5	(Not avail., reserve fund)		5
40 - CCE	Nooksack	7	Nooksack tributary; site to be selected.	Incubation and rearing facility--in-stream	Chum Coho	0.50 0.20	Native run enhancement via in-stream incubation and rearing.	4	0	4	(Not avail., reserve fund)		4
41 - CCE	Nooksack	7	Nooksack tributaries; three sites	Incubation and rearing facility--in-slough	Chum Coho		Native run enhancement via in-slough incubation and rearing.	12	0	12	(Not avail., reserve fund)		12
Nooksack: CCE project total =								21	0	21	-	375	396
42 - RED	Nooksack	7	Nooksack River	Feasibility study on spawning channel	Salmon	---	See Table 4-7.						
43 - CCE	Skagit Sys. Coop.	8	Skagit Rv., upstream Sauk & Cascade	Spawning channel	Chum	30.0	Restore and increase the productivity of natural runs of chum salmon.	1,975	0	1,975	5	295	2,270
44 - CCE	Skagit Sys. Coop.-MDF (joint prop.)	8	Skagit Rv., MDF's Clark Creek Hatchery	Holding & rearing ponds, raceways, etc.	Sp. chinook	2.0	Additional facilities to expand production of Skagit Rv. spring chinook salmon.	1,842	0	1,842	5	1,829	3,471
Skagit Sys. Coop.: C&E project total =								3,817	0	3,817	-	1,824	5,741
45 - RED	Skagit Sys. Coop.	8	Skagit Basin	Evaluate natural production	Salmon	---	See Table 4-7.						
46 - CCE	Misqually-MDF (joint proposal)	10	Misqually Rv; McAllister Springs	Hatchery (buildings, ponds, raceways, etc.)	Chum F. chinook	18.0 2.25	New Wash. State hatchery to enhance salmon production of the Misqually system.	0	2,300	2,300			-
47 - CCE	Misqually (with MDF cooper.)	10	Clear Creek-Hill Creek	Hatchery (buildings, ponds, raceways, etc.)	Chum F. chinook Coho	18.0 0.82 0.25	Tribal hatchery to enhance salmon production of the Misqually system. (Contract to MDF for initial 10+ years of hatchery mgmt.)	4,800	0	4,800			-
48 - CCE	Misqually (with MDF cooper.)	10	Misqually Reservation	Hatchery (buildings, ponds, raceways, etc.)	Coho	1.3	Tribal hatchery to enhance salmon production of the Misqually system.	2,800	0	2,800	5	1,750	-
49 - CCE	Misqually (with MDF cooper.)	10	Muck Creek	Satellite hatchery	Coho	1.8	Expand incubation and rearing capacity.	500	0	500			-
50 - CCE	Misqually (with MDF cooper.)	10	McKenna-Shorno	Rearing ponds	Chum F. chinook	2.5 2.25	Satellite rearing ponds of the Misqually-MDF enhancement program.	0	1,000	1,000			-
Misqually-MDF: C&E project total =								8,100	3,300	11,400	-	1,750	13,150

Table 4-1.--(cont'd., p. 5)

Project No./Type	Organiza-tion/	Prod. area/	Site	Proposed item/activity	Species/	Production smolt/ryg/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital costs/			O&M/yr/yr.		Total
								Fed.	Other	Total	Year	Cost	Total cost
51 - CCE	Squaxin	10	Elson Creek, Skookum Inlet	Hatchery expansion	Chum Coho Pink	3.0 --- ---	Off reservation tribal facility to develop chum salmon run, and experimental releases of coho and pink salmon.	238	0	238	5	370	608
52 - CCE	Squaxin	10	To be selected	Hatchery	Coho	1.0	Production of coho for transfer to the pen rearing system.	1,000	0	1,000	5	850	1,550
53 - CCE	Squaxin	10	Squaxin Island	Additional saltwater pens	Coho	0.25	Expand rearing capacity of existing saltwater pens.	65	0	65	5	450	515
54 - CCE	Squaxin	10	Southern Puget Sound, west of Nisqually.	Stream restorations	Salmon	---	Enhance wild salmon production.	500	0	500	5	50	550
Squaxin: CCE project total =								1,803	0	1,803	--	1,420	3,223
55 - RED	Squaxin	10	Southern Puget Sound: Tribal project and fisheries area.	Estuarine study, net pen feasibility studies	Chum Coho Pink Sockeye	---	See Table 4-7.						
56 - CCE	Point No Point	11	Skokomish Tribal Hatchery	Hatchery completion	Chum Pink	2.76 2.0	Complete construction of hatcheries and make them fully operations. Increase the availability of harvestable fish to various fisheries, and make the hatcheries economically self-sustaining.	60	0	60	5	250	310
57 - CCE	Point No Point	11	Port Canby Klamath Tribal Hatchery	Hatchery completion	Chum Pink	3.16 2.0		60	0	60	5	255	315
58 - CCE	Point No Point	6	Lower Elwha Tribal Hatchery	Hatchery completion	Chum Coho Pink(odd yr) Steelhead	10.0 0.40 - 0.1		270	0	270	5	800	1,070
59 - CCE	Point No Point	11	Food Canal	Hatchery complex and stream rehabilitation	F. chinook Coho Pink Chum	14.0 8.8 3.5 5.0	Native stock restoration via mother hatchery systems with satellite rearing/release sites, and stream rehabilitation projects.	(Reserve fund)					
60 - CCE	Point No Point	6	Straits of Juan de Fuca	Hatchery complex and stream rehabilitation	F. chinook Coho Pink Chum	11.0 2.2 5.0 1.0		(Reserve fund)					
Pt. No Pt.: CCE project total =								390	0	390	--	1,305	1,695
61 - RED	Point No Point	6,11	Point No Point Treaty Area	RED on biology, habitat productivity, etc.	Salmon-Steelhead	---	See Table 4-7.						
62 - RED	Point No Point	6,11	Point No Point Treaty Area	RED on sampling/monitoring of fisheries and escapement.	Salmon-Steelhead	---	See Table 4-7.						

Table 4-1.--(cont'd., p. 6)

Project No./Type 1/	Organiza-tion2/	Prod. area3/	Site	Proposed item/activity	Species4/	Production smc1/ky2/ (dollars)	Information/Remarks	Estimated cost (in thousands of dollars)											
								Capital cost6/			O&M/Ensin.		Total cost						
								Fed.	Other	Total	Years	Cost							
63 - CEK	Suquamish	10	Miller Bay	Tribal hatchery complex	Chum	5.0	Production is directed at (1) enhancing resource, (2) expand economic base of the Tribe, and (3) make the hatcheries economically self-sustaining.	821	[18]	839	5	1,240	2,079						
				Saltwater rearing facility	F. chinook	1.5													
					Coho	1.0													
					Chum	5.0													
64 - RED	Suquamish	10	Kitsap Peninsula	Adult fish tagging	Above species	---	See Table 4.7.												
							Suquamish: CEK project total =	821	[18]	839	--	1,240	2,079						
65 - CEK	Nakah	5	Nakah Tribal area	Survey/ass-essment of sites and engineering/architectural design of satellite hatchery	Salmon-Steelhead	---	A satellite facility to the U.S.F.W.S. hatchery now under construction.	-	-	-	2	70	70						
66 - CEK	Nakah	5	Nakah Tribal area	Satellite hatchery	Salmon-Steelhead	Not avail.	Expand rearing capacity of species to be selected.	500	[594]	894	(Not avail. reser-ve fund)		894						
							Nakah: CEK project total =	500	[594]	894	-	70	964						
67 - RED	Quileute	5	Quileute River	Natural production assessment study	Coho Chinook Steelhead	---	See Table 4.7.												
68 - CEK	Soh	5	Hoh River: -Upper Hoh Av. -(To be selected) -Goodman Creek	Hatchery complex:	F. chinook	1.43	"Mother" hatchery system with satellite rearing facilities. Objectives: Enhance salmon-steelhead resources, and achieve tribal goals of (1) co-mgt. of natural resource, (2) economic development, and (3) self-determination.	2,327	0	2,327	5	1,165	3,492						
				-Main station	p. chinook	1.5								40	0	40	5	25	65
				-Incubation/rearing channels	Chum	2.8													
				-Rearing tanks	Steelhead	0.1								47	0	47	5	90	137
69 - CEK	Quinault	5	Quinault National Hatchery	Rearing pond, plus water recirculation system for egg incubation	Chum Coho Steelhead	1.5 0.4 0.23	Expand and increase production from existing national hatchery.	250	0	250	5	1,712	1,962						
70 - CEK	Quinault	5	Lake Quinault Hatchery	Rearing pens and support facilities	F. chinook Sockeye	1.0 10.0	Expand and increase production from existing hatchery.	1,100	0	1,100	5	3,100	4,200						
71 - CEK	Quinault	5	Queets River Hatchery	Rearing ponds and facilities	F. chinook p. chinook Chum	1.0 0.3 3.0	Upgrade and increase productive capacity of hatchery.	815	(87)	702	5	400	1,102						
72 - CEK	Quinault	5	Maft River	Ocean ranching facility (buildings, ponds, equipment, etc.)	F. chinook p. chinook Coho Chum	3.05 0.8 2.80 12.0	Designed to make part of the production available to various fisheries, and the remainder for harvest at the site to generate revenues and make the Tribe self-sufficient in carrying out their various fishery programs.	2,000	[15]	2,013	4	2,085	4,076						

Table 4-1.--(cont'd., p. 7)

Project No./Type	Organiza-tion/	Prod. area/	Site	Proposed item/activity	Species/	Production smolt/ fry/3/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital cost/			O&M/Engin.		Total cost
								Fed.	Other	Total	Years	Cost	
73 - CCE	Quinault	5	Quinault Rv. system	Spawning channel	Sockeye	Not avail.	Enhance natural production of sockeyes. (Implementation is contingent upon results of environmental/lake studies.)	500	0	500	5	150	650
74 - CCE	Quinault-Hoh	5	Quinault area	Support facilities (structures and equipment)	---	---	Facility complex for Quinault-Hoh programs: -Fish food processing plant -Laboratories, marking trailers, etc.	1,070	0	1,070	(Not avail., reserve fund)		1,070
75 - CCE	Quinault-Hoh	5	Quinault-Hoh support facility	Dietary studies	Salmon-Steelhead	---	Increased survival of cultured fish through dietary improvements.	-	-	-	5	375	375
76 - CCE	Quinault-Hoh	5	Quinault-Hoh support facility	Disease diagnostics	Salmon-Steelhead	---	Contributes to disease prevention and control in fish propagation.	-	-	-	5	250	250
Quinault-Hoh: CCE project total =								7,949	(100)	8,049	-	9,332	17,381
77 - RED	Quinault	5		Acoustic fish counting	Salmon-Steelhead	---	See Table 4-7.						
78 - RED	Quinault	5	Quinault area	Behavioral and physiological studies	Salmon-Steelhead	---	See Table 4-7.						
79 - RED	Quinault	5	Quinault area	Coded wire tagging	Salmon-Steelhead	---	See Table 4-7.						
80 - CCE	Puyallup	10	To be selected	Hatchery	Salmon	Not avail.	Single pass 35,000 pound production hatchery.	(Reserve fund)					
81 - CCE	Puyallup	10	To be selected	Hatchery	Salmon	Not avail.	Single pass 35,000 pound production hatchery.	(Reserve fund)					
82 - CCE	Puyallup	10	South Prairie Cr.	Install side channel	Pink Chinook Chum	Not avail.	Control flow to increase salmon production.	249	0	249	(Not avail.)		249
83 - CCE	Puyallup	10	Swan Creek	Gravel restoration	Salmon	Not avail.	Remove and restore gravel in streambed.	55	0	55	-	-	55
84 - CCE	Puyallup	10	Variable	Portable fish weir	Salmon	---	Trap adult salmon to aid in Sgt. and escapement counts.	13	0	13	-	-	13
85 - CCE	Puyallup	10	Puyallup Rv.	Fish wheel	Salmon	---	Construct fish wheel to aid in estimating numbers of adult fish entering the river.	37	0	37	-	-	37
Puyallup CCE project total =								(354)	0	(354)	-	-	(354)

Table A-1.--(cont'd., p. 8)

Project No./Type 1/	Organis- tion2/	Prod. area3/	Site	Proposed item/activity	Species4/	Production smolt/fry5/ (millions)	Information/Remarks	Estimated cost (in thousands of dollars)					
								Capital cost6/			O&M/Engin.		Total cost
								Fed.	Other	Total	Years	Cost	
86X- CEE	NW Steelhead & Salmon Council	10	Cedar River	Hatchery complex	Sockeye	---	[Referred to state agencies (WDF and WDG) since their ongoing or proposed projects cover most of the proposal.]	-	-	-	-	-	-
87X- CEE	Federation of Fly Fishermen (NW Regional Council)	-	State-wide on specified sites	15 recommendations on: habitat protection, stream clearance & maintenance, production, etc.	Steelhead (salmon, in part)	---	[Referred to state agencies (WDF and WDG) for integration with their ongoing or proposed projects.]	-	-	-	-	-	-

1/ "No." is the numerical sequence of projects in the table. Letter "X" denotes projects under reevaluation or referred to appropriate agencies at this time.

2/ WDF (Washington Department of Fisheries); WDG (Washington Department of Game); Lummi (Lummi Tribal Enterprises); Nooksack (Nooksack Indian Tribe); Skagit System Cooperative (an organization formed by the Swinomish, Sauk-Suiattle and Upper Skagit River tribes); Nisqually (Nisqually Indian Tribe); Squaxin (Squaxin Island Tribe); Point No Point (Point No Point Treaty Council, an organization of the Port Gamble, Lower Elwah and Skokomish tribes); Suquamish (Suquamish Tribe); Makah (Makah Tribal Council); Quileute (Quileute Tribe); Hoh (Hoh Indian Tribe); Quinault (Quinault Indian Tribe); Puyallup (Puyallup Tribe of Indians).

3/ Production area:

Code	Fishing area	Water Resource Inventory Area (WRIA)	River Basin
1	Lower Columbia	Outside of Case Area but contributing to fisheries in the settlement	
2	Upper Columbia	"	"
3	Willapa Bay	"	"
4	Grays Harbor	Chehalis	
5	North Coast	Soleduck-Hah, Queets-Quinault	
6	Strait of Juan de Fuca	Elwha-Dungeness, Lyre-Hoko	
7	Bellingham Bay-Samish	Nooksack	
8	Skagit	Lower Skagit, Upper Skagit -	
9	Port Susan-Gardiner	Stilligumish, Whidbey-Camano, Snohomish	
10	Central and Southern Puget Sound	Lake Washington, Green River, Puyallup, Nisqually, Tacoma, Deschutes, Shelton	
11	Hood Canal	Kitsap, Hood Canal, Quilcene	

4/ Species: F. chinook (fall chinook); Sp. chinook (spring chinook); Su. chinook (summer chinook).

5/ Coho and chinook salmon and steelhead trout releases are in terms of smolt. Chum, pink and sockeye salmon releases are in terms of fry.

6/ Category of "Other" consists of two types: state funding (not in brackets), and the opportunity cost of tribal lands upon which new projects are to be located (in brackets).

Of the 85 projects listed in Table 4-1, 65 are related to capital structures and engineering activities (C&E), directed primarily at increasing salmon and steelhead trout production. The proposed C&E projects range from new hatcheries, additions to existing hatcheries, saltwater rearing facilities, semi-natural incubation/rearing facilities, etc., to restoring natural spawning/rearing grounds. In addition, 21 projects are related to research and development of technology activities (R&D), while two C&E projects (86X and 87X) were referred to State agencies for consideration and integration into their enhancement plans.

Some overlap is apparent among the enhancement proposals received by the Team. This is to be expected in the initial submissions which were received from a diverse group of people and interests. Nevertheless, the proposed projects provide a first estimate of (1) fishery and resource enhancement activities which are required to meet the goals of the settlement (healthy commercial and sport fisheries, effective management, etc.), and (2) the magnitude and scope of capital outlay and research requirements for enhancement.

The following figures provide some highlights on the proposed enhancement plan.

Figure 4-4 indicates the location of existing Washington State Department of Fisheries (WDF) and United States Fish and Wildlife Service (USFWS) salmon production facilities.

Figure 4-5 indicates the location of existing tribal production facilities.

Figure 4-6 indicates the location of State planned and funded salmon enhancement projects.

Figure 4-7 indicates those State and tribal facilities which the Regional Team is recommending be funded as a part of the settlement plan.

As may be noted in Figures 4-6 and 4-7, WDF has requested Federal financial assistance on many previously State funded salmon production sites. The additional Federal financing in most cases will be used to more fully develop these proposed sites in terms of rearing capacity or provide the necessary funds to complete the project as originally planned.

The section to follow provides information on the contributions expected from enhancement programs (settlement and others) planned on Washington State salmon and steelhead.

B. Contributions from Enhancement

In broad terms, Federal and State agencies and Indian tribes now annually release from hatcheries located in Washington State approximately 198.5 million salmon and 6.5 million steelhead. In addition, current estimates indicate that natural production equivalent to hatchery releases provides more than 122.5 million salmon. (Data on natural production of steelhead are unavailable.) The total current

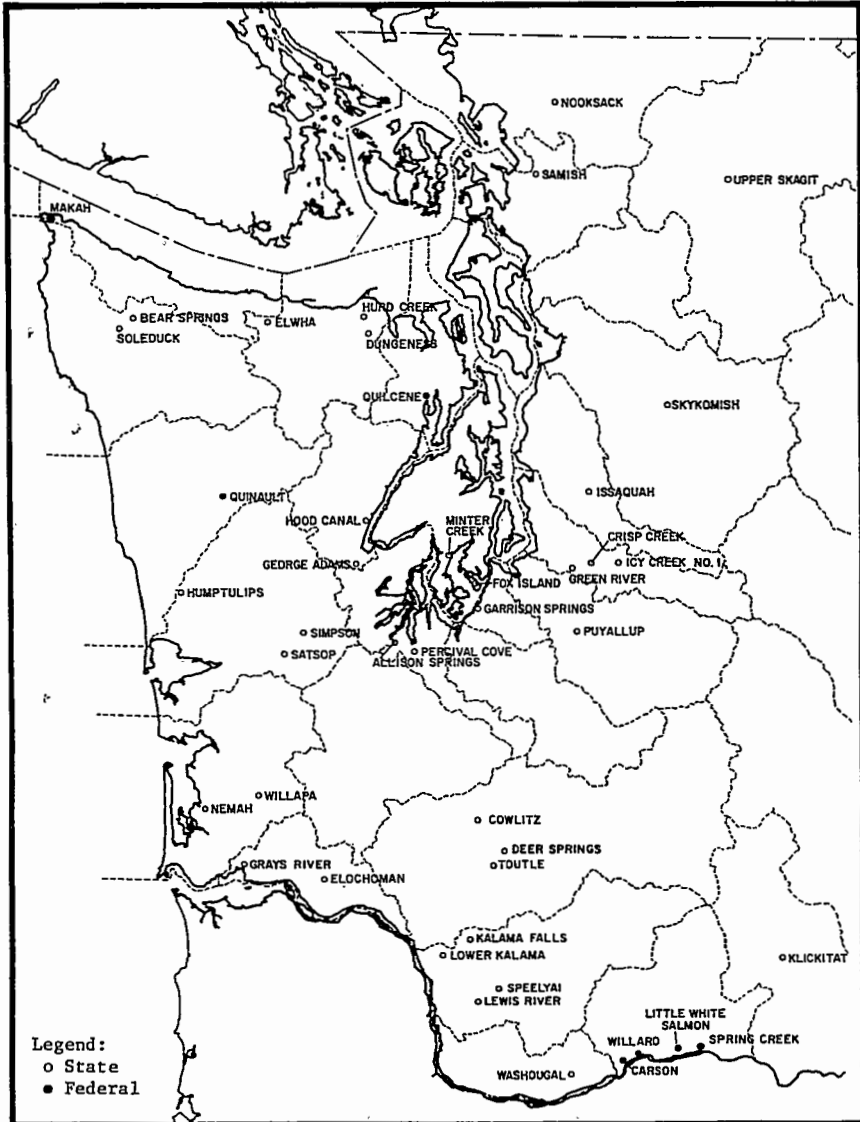


Figure 4-4.--Present production facilities of the Washington Department of Fisheries and U. S. Fish and Wildlife Service.

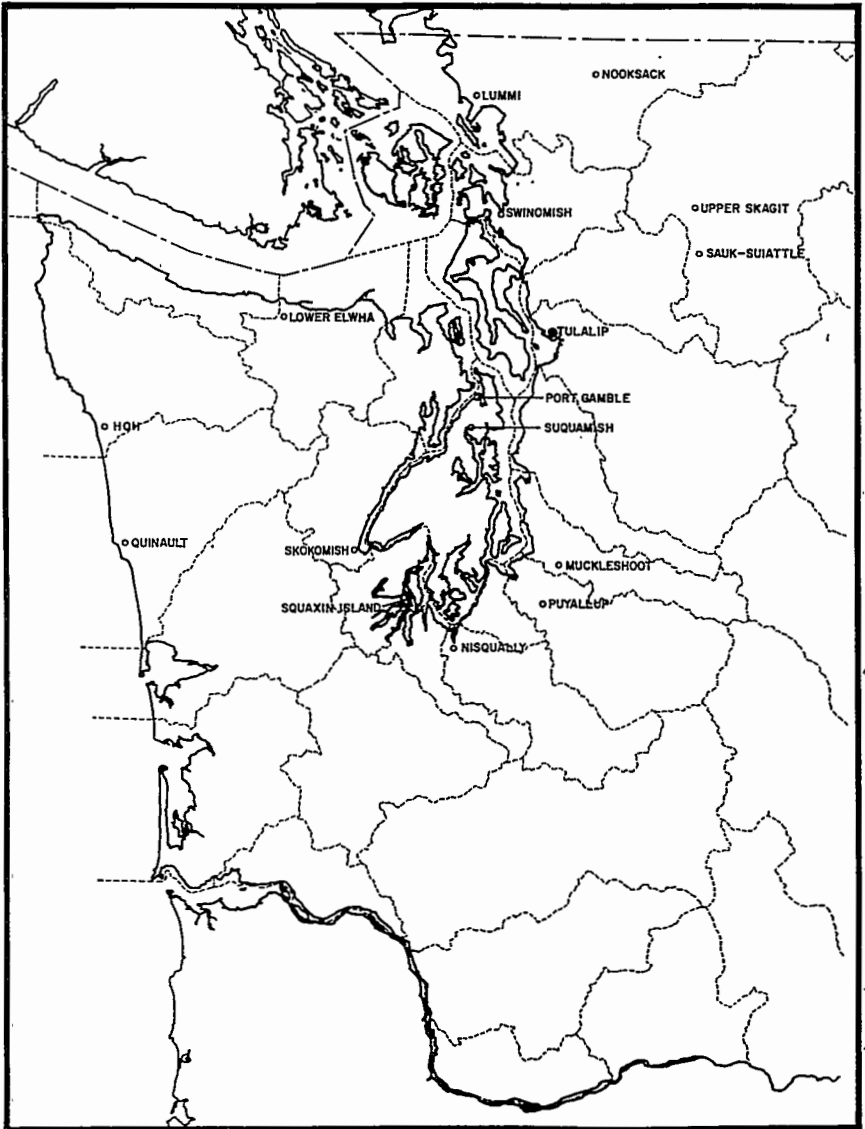


Figure 4-5.--Present tribal production facilities.

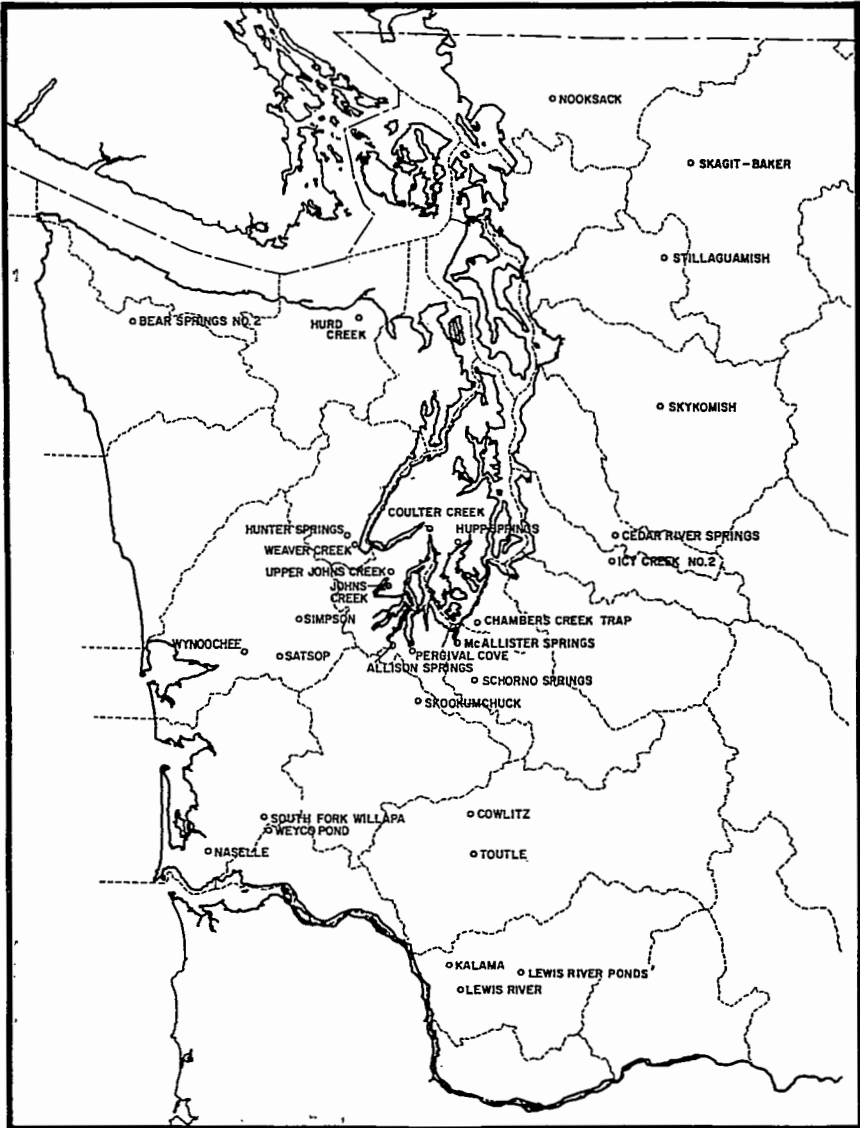


Figure 4-6.--Washington State Department of Fisheries enhancement projects.

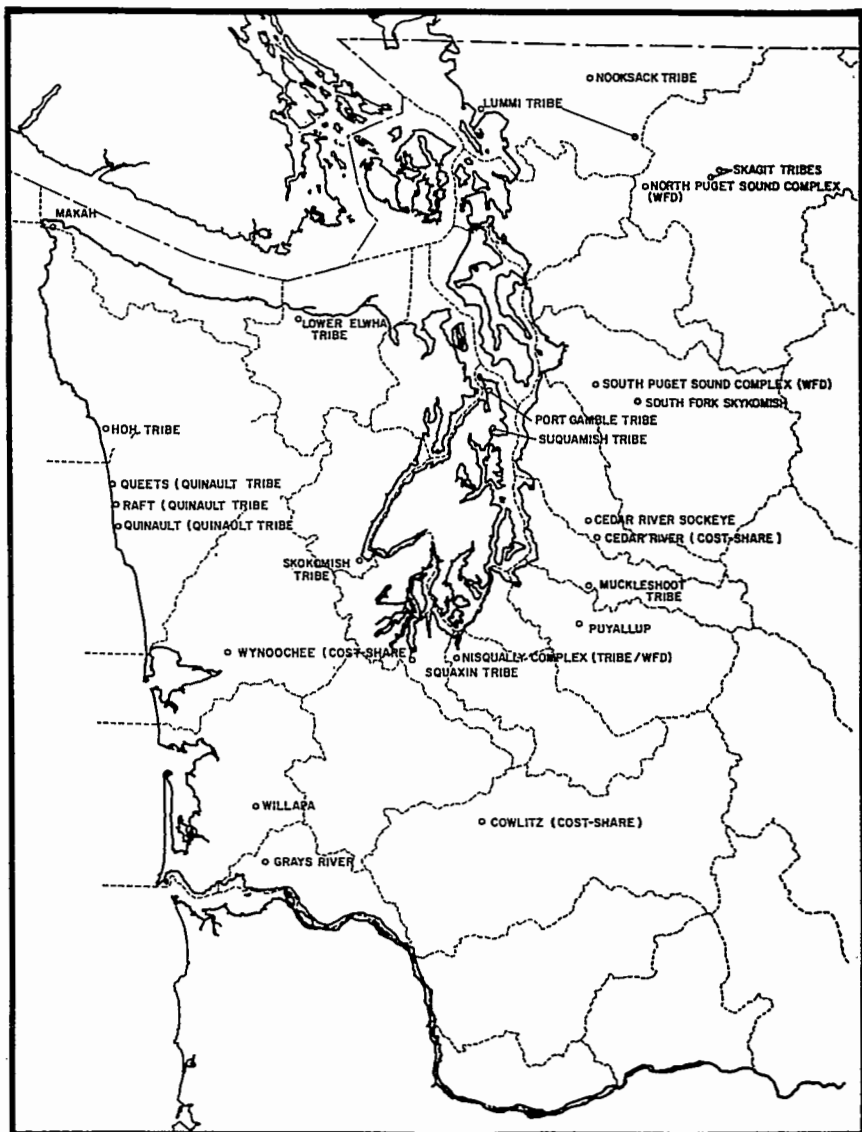


Figure 4-7.—Enhancement facilities recommended by the Regional Team.

artificial and natural production, therefore, is 321.0 million salmon and more than 6.5 million steelhead. The settlement projects will augment this production by 310.8 million salmon and 2.0 million steelhead.

A summary (by organization and species) of the incremental annual production (fish releases) of juvenile salmon and steelhead trout attributable to the settlement projects, when they are fully operational, is presented in Table 4-2. Projected productions are: 127.2 million chum; 38.2 million coho; 40.0 million sockeye; 86.9 million fall chinook salmon; 4.6 million spring chinook salmon; 1.5 million summer chinook salmon; pink salmon; and 2.0 million steelhead trout annually. These are minimal production figures because when in doubt concerning any particular project the lower value of the estimated range in production was used.

A summary of the numbers of adult fish (by producing area and species, excluding escapement) attributable to the settlement projects is given in Table 4-3. A total of 5.7 million salmon and 40.0 thousand steelhead trout is expected annually. The availability to and expected harvest of these adult fish by the various fisheries is examined in detail in the Resource Distribution Chapter.

In addition to the settlement projects, other salmon enhancement projects are planned for Washington State. Table 4-4 provides a perspective on this total enhancement

Table 4-2.--Projected annual production (fish releases) of smolt and fry from settlement projects listed in Table 4-1.

Organization	Salmon						Steelhead trout	
	Chum (fry)	Coho (smolt)	Sockeye (fry)	Pink (fry) ^{1/}	F.Chinook (smolt)	Sp.Chinook (smolt)	Su.Chinook (smolt)	(smolt)
(millions of fish)								
Wash. Dept. Fisheries	0	20.20	30.00	*	47.10	0	1.50	0
Wash. Dept. Game	0	0	0	0	0	0	0	1.50
Lummi Indian Trib. Int.	4.00	0	0	0	1.64	0	0	0.05
Nooksack Indian Tribe	0.50	0.20	0	0	0	0	0	0
Skagit Sys. Coop.--WDF.	30.00	0	0	0	0	2.00	0	0
Nisqually Ind. Tribe--WDF	38.50	3.35	0	0	5.12	0	0	0
Squaxin Is. Tribe	3.00	1.25	0	0	0	0	0	0
Point No Point Tr. Coun	21.92	8.40	0	12.50	25.00	0	0	0.10
Suquamish Ind. Tribe	10.00	1.00	0	0	1.50	0	0	0
Makah Tribal Coun	(not available)							
Quileute Tribe	(not available)							
Hoh Ind. Tribe	2.80	0.55	0	0	1.45	1.50	0	0.10
Quinault Ind. Tribe	16.50	3.20	10.00	0	5.05	1.10	0	0.25
Puyallup Triba	(not available)							
Total =	127.22	38.15	40.00	12.50	86.86	4.60	1.50	2.00

* Production is indicated but the numbers are unavailable.

^{1/} Even or odd year cycle production -- not annual production.

Table 4-3.--Numbers of adult fish (by producing area and species) expected annually from the settlement projects.^{1/}
(Excludes escapement)

Species	Producing area ^{2/}													Grand Total
	Outside case area ^{3/}				Case area									
	1	2	3	Total	4	5	6	7	8	9	10	11	Total	
	----- (In thousands of fish) -----													
Chum	0	0	0	0	0	69.1	94.0	53.6	287.7	135.0	580.0	156.3	1,375.7	1,375.7
Coho	352.8	0	0	352.8	156.6	115.6	187.6	160.3	300.6	0	890.1	546.1	2,356.9	2,709.7
Sockeye	0	0	0	0	0	208.4	0	0	0	0	198.0	0	406.4	406.4
Pink ^{4/}	0	0	0	0	0	0	43.0	0	0	0	7.7	64.2	114.9	114.9
Chinook, fall	31.9	0	69.9	101.8	28.0	65.7	80.8	31.8	11.8	2.4	148.7	434.6	803.8	905.6
Chinook, spring, and summer	0	0	0	0	0	91.9	0	0	78.6	58.9	0	0	229.4	229.4
Total salmon	384.7	0	69.9	454.6	184.6	550.7	405.4	245.7	678.7	196.3	1,824.5	1,201.2	5,287.1	5,741.7
Steelhead trout	0	0	0	0	0	7.0	2.0	7.0	2.0	10.0	6.0	6.0	40.0	40.0
Grand total	384.7	0	69.9	454.6	184.6	557.7	407.4	252.7	680.7	206.3	1,830.5	1,207.2	5,327.1	5,781.7

^{1/} Data source: Wash. Dept. Fish. and Wash. Dept. Game.

^{2/} See Footnote 3 of Table 4-1 for area code designations.

^{3/} Outside of Case Area but contributes adult fish to fisheries related to the settlement.

^{4/} Biannual production.

Table 4-4.--Preliminary listing of new salmon enhancement projects (settlement and others) planned for the State of Washington.

02/23/78

FORECASTED ENHANCEMENT DATA FOR NORMAL FALL CHINOOK SALMON

CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
1- 1	WASHOUAL	LOWER COLUMBIA RIVER	WDF	FEDERAL	1981	2.0	---
1- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1981	2.0	90
1- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1982	17.85	90
1- 1	TOUTLE (GREEN RIVER)	LOWER COLUMBIA RIVER	WDF	STATE	1984	3.0	90
1- 1	LEWIS RIVER	LOWER COLUMBIA RIVER	WDF	STATE	1984	2.0	100
1- 1	GRAYS RIVER	LOWER COLUMBIA RIVER	WDF	FEDERAL	1984	5.0	100
1- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1984	9.0	90
1- 2	PALOUSE MARMES	UPPER COLUMBIA RIVER	WDF	FEDERAL	1987	9.16	90
1- 3	NASELLE	WILLAPA BAY	WDF	STATE	1984	3.375	90
1- 3	S. F. WILLAPA	WILLAPA BAY	WDF	STATE	1984	2.0	50
1- 3	S. F. WILLAPA	WILLAPA BAY	WDF	STATE	1984	2.0	90
1- 3	WILLAPA	WILLAPA BAY	WDF	FEDERAL	1984	7.5	100
1- 4	HUMPTULIPS	GRAYS HARBOR	WDF	STATE-LOC.	1981	4.0	---
1- 4	WYNOOCHEE	GRAYS HARBOR	WDF	FEDERAL	1984	3.0	100
1- 5	----	NORTH COAST	HOH	FEDERAL	1980	0.05	100
1- 5	----	NORTH COAST	QUINAUT	FEDERAL	1980	4.03	---
1- 5	BEAR SPRINGS NO. 1	NORTH COAST	WDF	STATE	1981	1.0	100
1- 5	BEAR SPRINGS NO. 2	NORTH COAST	WDF	STATE	1984	2.16	90
1- 5	QUINAUT	NORTH COAST	USFWS	FEDERAL	1984	0.7	90
1- 5	----	NORTH COAST	HOH	FEDERAL	1985	1.45	100
1- 5	----	NORTH COAST	QUINAUT	FEDERAL	1985	1.50	---
1- 6	ELWHA CHANNEL	STRAITS JUAN DE FUCA	WDF	STATE-LOC.	1981	0.83	---
1- 6	MAKAH	STRAITS JUAN DE FUCA	USFWS	FEDERAL	1982	4.0	90
1- 6	STRAITS COMPLEX	STRAITS JUAN DE FUCA	PT-NO-PT	FEDERAL	1987	11.0	100
1- 7	NOOKSACK	NOOKSACK-SAMISH	WDF	STATE	1984	7.0	90
1- 7	LUMMI	NOOKSACK-SAMISH	LUMMI	FEDERAL	1987	1.83	---
1- 8	SKAGIT	SKAGIT	WDF	FEDERAL	1984	5.0	100
1- 9	----	STILLAGUAMISH-SNOHOM	TULALIP	FEDERAL	1980	1.0	---
1- 9	TULALIP	STILLAGUAMISH-SNOHOM	WDF	STATE	1981	0.38	90
1-10	CEDAR RIVER	SOUTH PUGET SOUND	WDF	STATE	1984	0.2	50
1-10	CEDAR RIVER	SOUTH PUGET SOUND	WDF	FEDERAL	1984	4.0	100
1-10	SOUTH PUGET SOUND	SOUTH PUGET SOUND	WDF	FEDERAL	1984	8.5	100
1-10	----	SOUTH PUGET SOUND	NISQUALY	FEDERAL	1985	0.625	---
1-10	----	SOUTH PUGET SOUND	SUQUAMSH	FEDERAL	1985	1.512	---
1-11	WEAVER CREEK	HOOD CANAL	WDF	STATE	1984	2.7	90
1-11	SOUTH SOUND COMPLEX	HOOD CANAL	WDF	FEDERAL	1984	10.0	100
1-11	HOOD CANAL COMPLEX	HOOD CANAL	PT-NO-PT	FEDERAL	1987	14.0	100

Table 4-4.---(cont'd.)

		FORECASTED ENHANCEMENT DATA FOR CHUM SALMON			02/23/78		
CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
2- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1981	2.0	FRY
2- 3	EGG BOXES	WILLAPA BAY	WDF-COOP	STATE	1981	0.3	FRY
2- 3	NASELLE	WILLAPA BAY	WDF	STATE	1984	22.5	300
2- 3	S. F. WILLAPA	WILLAPA BAY	WDF	STATE	1984	3.0	300
2- 4	HUMPTULIPS	GRAYS HARBOR	WDF	STATE	1981	2.0	----
2- 4	EGG BOXES	GRAYS HARBOR	WDF-COOP	STATE	1982	0.45	FRY
2- 4	SATSOP SPRINGS	GRAYS HARBOR	WDF	STATE	1984	10.0	300
2- 4	----	GRAYS HARBOR	CHEHALIS	FEDERAL	1985	0.2	----
2- 5	----	NORTH COAST	HOH	FEDERAL	1985	3.0	----
2- 5	----	NORTH COAST	QUINAULT	FEDERAL	1985	14.4	----
2- 6	MAKAH	STRAITS JUAN DE FUCA	USFWS	FEDERAL	1982	5.25	FRY
2- 6	L. ELWAH	STRAITS JUAN DE FUCA	PT-NO-PT	FEDERAL	1985	10.0	400
2- 7	NOOKSACK	NOOKSACK-SAMISH	WDF	STATE	1984	20.0	300
2- 7	LUMMI	NOOKSACK-SAMISH	LUMMI	FEDERAL	1985	5.2	----
2- 7	----	NOOKSACK-SAMISH	NOOKSACK	FEDERAL	1985	0.75	----
2- 8	SKAGIT	SKAGIT	WDF	STATE	1981	5.0	----
2- 8	EGG BOXES	SKAGIT	WDF-COOP	STATE	1981	0.1	FRY
2- 8	LOWER SKAGIT	SKAGIT	WDF	STATE	1984	10.0	300
2- 8	----	SKAGIT	SKG COOP	FEDERAL	1985	32.0	----
2- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1981	8.0	----
2- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1984	7.5	300
2- 9	----	STILLAGUAMISH-SNOHOM	TULALIP	FEDERAL	1985	15.0	----
2-10	GARRISON SPRINGS	SOUTH PUGET SOUND	WDF	STATE	1981	10.0	----
2-10	EGG BOXES	SOUTH PUGET SOUND	WDF-COOP	STATE	1981	0.335	FRY
2-10	SCHORNO POND	SOUTH PUGET SOUND	WDF	STATE	1984	11.4	300
2-10	HUPP SPRINGS	SOUTH PUGET SOUND	WDF	STATE	1984	3.0	300
2-10	COLTLER CREEK	SOUTH PUGET SOUND	WDF	STATE	1984	15.0	300
2-10	ALLISON SPRINGS	SOUTH PUGET SOUND	WDF	STATE	1984	4.0	300
2-10	MCALLISTER SPRINGS	SOUTH PUGET SOUND	WDF	STATE	1984	18.75	300
2-10	JOHNS CREEK (LOWER)	SOUTH PUGET SOUND	WDF	STATE	1984	15.0	300
2-10	----	SOUTH PUGET SOUND	MUCKLSHT	FEDERAL	1985	3.0	----
2-10	----	SOUTH PUGET SOUND	NISQUALY	FEDERAL	1985	22.4	----
2-10	----	SOUTH PUGET SOUND	PUYALLUP	FEDERAL	1985	1.9	----
2-10	----	SOUTH PUGET SOUND	SQUAXIN	FEDERAL	1985	3.0	----
2-10	----	SOUTH PUGET SOUND	SUQUAMSH	FEDERAL	1985	4.0	----
2-11	EGG BOXES	HOOD CANAL	WDF-COOP	STATE	1981	0.025	FRY
2-11	HUNTER SPRINGS	HOOD CANAL	WDF	STATE	1984	18.75	300
2-11	WEAVER CREEK	HOOD CANAL	WDF	STATE	1984	13.0	300
2-11	QUILCENE	HOOD CANAL	USFWS	FEDERAL	1984	1.0	FRY
2-11	ENETAI CREEK	HOOD CANAL	PT-NO-PT	FEDERAL	1985	3.0	400
2-11	PORT GAMBLE	HOOD CANAL	PT-NO-PT	FEDERAL	1985	2.86	400

Table 4-4.---(cont'd.)

FORECASTED ENHANCEMENT DATA FOR COHO SALMON

02/23/78

CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
4- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1979	0.05	20
4- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1979	0.75	20
4- 1	----	LOWER COLUMBIA RIVER	OREG-DFW	----	1979	2.016	20
4- 1	ELOKOMIN	LOWER COLUMBIA RIVER	WDF	STATE	1980	2.0	----
4- 1	CATHLAMET	LOWER COLUMBIA RIVER	WDF	STATE	1980	0.5	----
4- 1	TOUTLE	LOWER COLUMBIA RIVER	WDF	STATE	1983	2.0	20
4- 1	LEWIS RIVER	LOWER COLUMBIA RIVER	WDF	STATE	1983	6.0	20
4- 1	COWLITZ REARING POND	LOWER COLUMBIA RIVER	WDF	STATE	1983	6.0	20
4- 1	WEYCO POND	LOWER COLUMBIA RIVER	WDF	STATE	1983	2.5	20
4- 1	LEWIS RIVER	LOWER COLUMBIA RIVER	WDF	STATE	1983	1.0	15
4- 1	KALAMA FALLS	LOWER COLUMBIA RIVER	WDF	FEDERAL	1983	1.2	20
4- 3	NASELLE	WILLAPA BAY	WDF	STATE	1983	2.4	20
4- 3	S. F. WILLAPA	WILLAPA BAY	WDF	STATE	1983	1.2	20
4- 4	HUMPTULIPS	GRAYS HARBOR	WDF	STATE	1980	2.0	----
4- 4	SIMPSON	GRAYS HARBOR	WDF	STATE	1980	0.239	20
4- 4	NET PENS	GRAYS HARBOR	WDF-COOP	STATE	1980	0.195	20
4- 4	SIMPSON	GRAYS HARBOR	WDF	STATE	1983	1.0	20
4- 4	SKOOKUMCHUCK	GRAYS HARBOR	WDF	STATE	1983	2.4	20
4- 4	WYNOOCHEE	GRAYS HARBOR	WDF	FEDERAL	1983	4.0	20
4- 5	----	NORTH COAST	HOH	STATE-FED	1981	0.2	20
4- 5	----	NORTH COAST	QUINAULT	STATE	1981	1.0	----
4- 5	BEAR SPRINGS NO. 2	NORTH COAST	WDF	STATE-FED	1983	0.6	20
4- 5	----	NORTH COAST	HOH	FEDERAL	1987	0.55	----
4- 5	----	NORTH COAST	QUINAULT	STATE-FED	1987	1.8	20
4- 6	ELWAHA	STRAITS JUAN DE FUCA	WDF	STATE	1980	0.902	----
4- 6	MAKAH	STRAITS JUAN DE FUCA	USFWS	FEDERAL	1981	0.75	----
4- 6	L. ELWAHA	STRAITS JUAN DE FUCA	PT-NO-PT	FEDERAL	1981	0.4	20
4- 6	HURD CREEK PUMPS	STRAITS JUAN DE FUCA	WDF	STATE	1983	0.6	20
4- 6	STRAITS COMPLEX	STRAITS JUAN DE FUCA	PT-NO-PT	FEDERAL	1987	2.2	20
4- 7	----	NOOKSACK-SAMISH	LUMMI	FEDERAL	1981	2.0	----
4- 7	NOOKSACK	NOOKSACK-SAMISH	WDF	STATE	1983	1.0	17
4- 8	SKAGIT	SKAGIT	WDF	STATE	1979	0.464	20
4- 8	SKAGIT	SKAGIT	WDF	FEDERAL	1983	4.0	20
4- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1980	0.961	----
4- 9	TULALIP CREEK	STILLAGUAMISH-SNOHOM	WDF	STATE	1980	0.504	----
4- 9	STILLAGUAMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1983	2.0	20
4-10	CRISP CREEK	SOUTH PUGET SOUND	WDF	STATE	1980	0.332	----
4-10	FOX ISLAND	SOUTH PUGET SOUND	WDF	STATE	1980	0.156	----
4-10	LAKE SEQUALITCHEW	SOUTH PUGET SOUND	WDF	STATE	1980	1.509	----
4-10	----	SGUTH PUGET SOUND	NISQUALY	FEDERAL	1981	0.5	----
4-10	CEDAR RIVER	SOUTH PUGET SOUND	WDF	FEDERAL	1983	2.0	20
4-10	SOUTH SOUND COMPLEX	SOUTH PUGET SOUND	WDF	FEDERAL	1983	1.0	20
4-10	----	SOUTH PUGET SOUND	NISQUALY	FEDERAL	1985	3.35	----
4-10	----	SOUTH PUGET SOUND	SUQUAMSH	FEDERAL	1985	0.497	----
4-11	WEAVER CREEK	HOOD CANAL	WDF	STATE	1983	0.2	20
4-11	HOOD CANAL COMPLEX	HOOD CANAL	PT-NO-PT	FEDERAL	1987	5.8	20

Table 4-4.--(cont'd.)

FORECASTED ENHANCEMENT DATA FOR SPRING-SUMMER CHINOOK SALMON							02/23/78	
CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB	
7- 1	DEER SPRINGS	LOWER COLUMBIA RIVER	WDF	STATE	1981	0.3	----	
7- 1	KALAMA FALLS	LOWER COLUMBIA RIVER	WDF	STATE	1981	0.2	----	
7- 2	KLICKITAT	UPPER COLUMBIA RIVER	WDF	STATE	1981	0.5	10	
7- 2	KLICKITAT	UPPER COLUMBIA RIVER	WDF	STATE	1981	0.5	90	
7- 2	----	UPPER COLUMBIA RIVER	OREG-DFW	----	1982	1.043	9-20	
7- 2	----	UPPER COLUMBIA RIVER	USFWS	FEDERAL	1982	0.15	9-20	
7- 2	----	UPPER COLUMBIA RIVER	USFWS	FEDERAL	1982	1.90	9-20	
7- 2	----	UPPER COLUMBIA RIVER	USFWS	FEDERAL	1982	1.00	9-20	
7- 2	----	UPPER COLUMBIA RIVER	USFWS	FEDERAL	1983	1.35	9-20	
7- 2	----	UPPER COLUMBIA RIVER	IDAHO-FG	----	1984	7.90	9-20	
7- 2	----	UPPER COLUMBIA RIVER	IDAHO-FG	----	1984	1.25	9-20	
7- 4	NET PENS	GRAYS HARBOR	WDF-COOP	STATE	1982	0.02	9-20	
7- 4	WYNOOCHEE	GRAYS HARBOR	WDF	STATE	1984	2.25	10	
7- 4	WYNOOCHEE	GRAYS HARBOR	WDF	STATE	1984	2.25	90	
7- 5	BEAR SPRINGS NO. 1	NORTH COAST	WDF	STATE	1981	0.1	----	
7- 5	----	NORTH COAST	QUINALT	FEDERAL	1981	0.25	----	
7- 5	----	NORTH COAST	HOH	FEDERAL	1985	1.5	----	
7- 5	----	NORTH COAST	QUINALT	FEDERAL	1985	0.85	----	
7- 8	----	SKAGIT	SKG COOP	FEDERAL	1985	2.0	----	
7- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1981	0.8	----	
7- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1984	0.2	8	
7- 9	SKYKOMISH	STILLAGUAMISH-SNOHOM	WDF	FEDERAL	1984	1.5	10	
7-10	ICY CREEK	SOUTH PUGET SOUND	WDF	STATE	1981	0.2	----	
7-10	CRISP CREEK	SOUTH PUGET SOUND	WDF	STATE	1984	0.3	----	

Table 4-4,---(cont'd.)

FORECASTED ENHANCEMENT DATA FOR YEARLING FALL CHINOOK SALMON						02/23/78	
CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
6- 4	NET PENS	GRAYS HARBOR	WDF-COOP	STATE	1982	0.015	20
6- 4	SATSOP SPRINGS	GRAYS HARBOR	WDF	STATE	1984	0.20	8
6- 9	TULALIP	STILLAGUAMISH-SNOHOM	WDF	STATE	1981	0.38	10
6-10	ICY CREEK	SOUTH PUGET SOUND	WDF	STATE	1981	0.237	-----
6-10	FOX ISLAND	SOUTH PUGET SOUND	WDF	STATE	1981	0.276	-----
6-10	PERCIVAL COVE	SOUTH PUGET SOUND	WDF	STATE	1984	0.40	8
6-10	COULTER CREEK	SOUTH PUGET SOUND	WDF	STATE	1984	0.16	8
6-10	ICY CREEK	SOUTH PUGET SOUND	WDF	STATE	1984	0.40	8
6-10	CEDAR RIVER POND	SOUTH PUGET SOUND	WDF	STATE	1984	0.30	8
6-10	MCALLISTER SPRINGS	SOUTH PUGET SOUND	WDF	STATE	1984	0.32	8
6-10	SCHORNO POND	SOUTH PUGET SOUND	WDF	STATE	1984	0.304	8
6-10	HUPP SPRINGS	SOUTH PUGET SOUND	WDF	STATE-FED	1984	0.08	8
6-10	JOHNS CREEK (LOWER)	SOUTH PUGET SOUND	WDF	STATE-FED	1984	0.30	8
6-10	SOUTH PUGET SOUND	SOUTH PUGET SOUND	WDF	FEDERAL	1984	0.30	8
6-11	HUNTER SPRINGS POND	HOOD CANAL	WDF	STATE	1984	0.50	8
6-11	SOUTH SOUND COMPLEX	HOOD CANAL	WDF	FEDERAL	1984	2.80	8

FORECASTED ENHANCEMENT DATA FOR SOCKEYE SALMON						02/23/78	
CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
5- 5	-----	NORTH COAST	QUINALT	FEDERAL	1981	1.0	-----
5- 5	-----	NORTH COAST	QUINALT	FEDERAL	1983	9.0	-----
5- 9	STILLAGUAMISH	STILLAGUAMISH-SNOHOM	WDF	STATE	1984	2.0	20
5-10	LK. WASH. EGG BOXES	SOUTH PUGET SOUND	WDF	STATE	1981	12.0	-----
5-10	LK. WASH. EGG BOXES	SOUTH PUGET SOUND	WDF-COOP	STATE	1981	2.0	-----
5-10	CEDAR RIVER	SOUTH PUGET SOUND	WDF	STATE-FED	1984	30.0	1500

FORECASTED ENHANCEMENT DATA FOR PINK SALMON						02/23/78	
CODE	HATCHERY	RELEASE SITE	AGENCY	FUNDING	PRODUCTION DATE	NUMBER (MILLIONS)	FISH PER LB
3- 6	STRAITS COMPLEX	STRAITS JUAN DE FUCA	PT-NO-PT	FEDERAL	1987	4.5	600
3- 8	SKAGIT	SKAGIT	WDF	STATE	1979	5.0	-----
3-10	GARRISON	SOUTH PUGET SOUND	WDF	STATE	1979	2.0	-----
3-10	-----	SOUTH PUGET SOUND	NISQUALY	FEDERAL	1981	0.9	-----
3-10	EGG BOXES	SOUTH PUGET SOUND	WDF	STATE	1987	1.0	-----
3-11	EGG BOXES	HOOD CANAL	WDF	STATE	1987	1.0	-----
3-11	HOOD CANAL COMPLEX	HOOD CANAL	PT-NO-PT	FEDERAL	1987	3.0	600

(settlement and others) planned on salmon. Only new or planned projects are shown in Table 4-4; current or ongoing efforts are not included. The agencies included in the table are WDF, USFWS, and Indian tribal organizations. WDF also has numerous cooperative projects with the Oregon Department of Fish and Wildlife and with sport, commercial, and academic groups in the State of Washington.

Total state-wide annual production (current and projected increases) of salmon and steelhead trout is shown in Table 4-5 and Figure 4-8. The settlement projects will account for:

Chum Salmon: 38% (127.2 million fish) of the projected increase in 334.0 million releases.

Coho Salmon: 58% (38.2 million fish) of the projected increase in 66.2 million releases.

Sockeye Salmon: 71% (40.0 million fish) of the projected increase in 56.0 million releases.

Pink Salmon: 56% (12.5 million fish) of the projected increase in 22.4 million releases.

Fall Chinook Salmon: 48% (86.9 million fish) of the projected increase in 181.8 million releases.

Spring-Summer Chinook Salmon: 22% (6.1 million fish) of the projected increase in 28.3 million releases.

Steelhead Trout: 69% (2.0 million fish) of the projected increase in 2.9 million releases.

For all salmon species combined, the settlement projects will account for 45% (310.8 million fish) of the projected 688.7 million additional fish planned for release annually.

Table 4-5.--Current and projected increase in production (annual fish releases) of salmon and steelhead trout, Washington State.

Species	Production ^{2/}	Source	Fishing Area/WRIA River Basin ^{1/}											Settlement			
			Outside Case Area				Case Area							Total	Total	Grand as percent of	
			1	2	3	Total	4	5	6	7	8	9	10	11	Total	Total	Grand totals
(Millions of fish)																	
GHUM (Fry)	Current Average:	Wild	nd ^{3/}	nd	nd	nd	nd	nd	0.60	1.22	12.04	3.23	25.75	14.02	56.86	56.86	---
		Hatchery	0.50	-	4.50	5.00	2.35	0.70	0.44	0.62	3.06	1.20	2.40	9.70	20.47	25.47	---
		Total	0.50	nd	4.50	5.00	2.35	0.70	1.04	1.84	15.10	4.43	28.15	23.72	77.33	82.33	154
	Projected increase:																
	--Settlement	Hatchery ^{4/}	0	0	0	0	0	19.30	11.00	4.50	30.00	-	51.50	10.92	127.22	127.22	---
	--Other	Hatchery ^{4/}	2.00	0	25.80	27.80	12.65	0	5.25	21.45	17.10	30.50	59.29	32.71	178.95	206.75	---
		Total	2.00	0	25.80	27.80	12.65	19.30	16.25	25.95	47.10	30.50	110.79	43.63	306.17	333.97	38
	Current average:	Wild	nd	nd	nd	nd	---	0.52	0.10	0.25	0.62	2.16	1.28	1.11	6.04	6.04	---
		Hatchery	27.32	2.25	3.50	33.07	2.08	2.73	1.04	1.48	2.34	1.55	6.53	2.70	20.45	53.52	---
		Total	27.32	2.25	3.50	33.07	2.08	3.25	1.14	1.73	2.96	3.71	7.81	3.81	26.49	59.56	64
Projected increase:																	
--Settlement	Hatchery ^{4/}	9.20	0	0	9.20	4.00	3.75	2.60	0.20	4.00	-	8.60	5.80	28.95	38.15	---	
--Other	Hatchery ^{4/}	8.32	0	3.60	11.92	5.84	0.40	2.25	2.80	0.46	3.46	0.75	0.20	16.16	28.08	---	
	Total	17.52	0	3.60	21.12	9.84	4.15	4.85	3.00	4.46	3.46	9.35	6.00	45.11	66.23	58	
Current average:	Wild	nd	nd	nd	nd	nd	1.77	0.46	1.23	4.80	1.93	4.10	0.51	14.80	14.80	---	
	Hatchery	55.45	3.60	5.50	64.55	0.69	1.10	0.45	2.08	6.93	3.44	18.60	4.28	37.57	102.12	---	
	Total	55.45	3.60	5.50	64.55	0.69	2.87	0.91	3.31	11.73	5.37	22.70	4.79	52.37	116.92	74	
Projected increase:																	
--Settlement	Hatchery ^{4/}	6.00	0	7.50	13.50	3.00	6.50	11.00	1.64	5.00	-	21.92	24.30	73.36	86.86	---	
--Other	Hatchery ^{4/}	49.85	9.16	7.38	66.39	4.22	4.39	4.83	7.19	0	1.76	0.49	5.70	28.58	94.97	---	
	Total	55.85	9.16	14.88	79.89	7.22	10.89	15.83	8.83	5.00	1.76	22.41	30.00	101.94	181.83	48	
Current average:	Wild	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	---	
	Hatchery	7.16	5.37	---	12.53	---	0.23	0.14	---	0.06	0.10	0.39	0.20	1.12	13.65	---	
	Total	7.16	5.37	---	12.53	---	0.23	0.14	---	0.06	0.10	0.39	0.20	1.12	13.65	45	
Projected increase:																	
--Settlement	Hatchery ^{4/}	0	0	0	0	0	2.60	0	0	2.00	1.50	0	0	6.10	6.10	---	
--Other	Hatchery ^{4/}	0.50	15.59	0	16.09	4.52	0.10	0	0	0	1.00	0.50	0	6.12	22.21	---	
	Total	0.50	15.59	0	16.09	4.52	2.70	0	0	2.00	2.50	0.50	0	12.22	28.31	22	

Table 4-5.--(cont'd)

Species	Production ^{2/}	Fishing Area/WRIA River Basin ^{1/}											Grand		Settlement as percent of grand totals (percent)				
		Outside Gase Area				Case Area							11	Total		Total			
		Source	1	2	3	Total	4	5	6	7	8	9					10		
(Millions of fish)																			
	Current average:	Wild	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd
		Hatchery	---	---	---	---	---	0.49	---	---	---	---	---	---	---	---	0.49	0.49	---
		Total	---	---	---	---	---	0.49	---	---	---	---	---	---	---	0.49	0.49	8,163	---
SOCKEYE	Projected																		
(Fry)	Increase:																		
	--Settlement	Hatchery ^{4/}	0	0	0	0	0	10.00	0	0	0	0	30.00	0	40.00	40.00	---	---	---
	--Other	Hatchery ^{4/}	0	0	0	0	0	0	0	0	0	2.00	14.00	0	16.00	16.00	---	---	---
		Total	0	0	0	0	0	10.00	0	0	0	2.00	44.00	0	56.00	56.00	71	---	---
	Current average:	Wild	nd	nd	nd	nd	nd	nd	3.03	3.36	20.99	10.81	1.77	4.83	44.79	44.79	---	---	---
		Hatchery	---	---	---	---	---	---	---	---	1.53	0.50	0.19	1.12	3.34	3.34	---	---	---
		Total	nd	nd	nd	nd	nd	nd	3.03	3.36	22.52	11.31	1.96	5.95	48.13	48.13	26	---	---
PINK ^{5/}	Projected																		
(Fry)	Increase:																		
	--Settlement	Hatchery ^{4/}	0	0	0	0	0	0	5.00	0	0	0	0	7.50	12.50	12.50	---	---	---
	--Other	Hatchery ^{4/}	0	0	0	0	0	0	0	0	5.00	0	3.90	1.00	9.90	9.90	---	---	---
		Total	0	0	0	0	0	0	5.00	0	5.00	0	3.90	8.50	22.40	22.40	56	---	---
	Current average:	Wild	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd	nd
		Hatchery	1.62	2.65	---	4.27	0.20	0.27	0.13	0.07	0.35	0.58	0.51	0.09	2.20	6.47	---	---	---
		Total	1.62	2.65	---	4.27	0.20	0.27	0.13	0.07	0.35	0.58	0.51	0.09	2.20	6.47	56	---	---
STEELHEAD	Projected																		
TROUT	Increase:																		
(Smolt)	--Settlement	Hatchery	---	---	---	---	---	0.35	0.10	0.35	0.10	0.50	0.30	0.30	2.00	2.00	---	---	---
	--Other	Hatchery	---	---	---	---	---	0.90	---	---	---	---	---	---	0.90	0.90	---	---	---
		Total	---	---	---	---	---	1.25	0.10	0.35	0.10	0.50	0.30	0.30	2.90	2.90	69	---	---

1/ See Footnote 3 of Table 4-1 for area code designations.

2/ Current production data source:

- (a) Areas 1-3 data are projected average of 1978-79 as estimated from the Wash. Dept. Fish. report "State of Washington Salmon Cultural Program, 1977-1978" by Chuck Dunn. Steelhead data are average for 1974-76, U.S.F.W.S. and WDC productions.
 (b) Areas 4-11 data are from Washington Departments of Fisheries and Game.

Projected increase data source:

- (a) Settlement data are from Table 4-1 of this report
 (b) "Other" data are from Table 4-4 of this report.

3/ nd = no data

4/ Includes production from semi-natural rearing projects.

5/ Biannual production rather than annual production. Primarily odd-year cycle pink salmon.

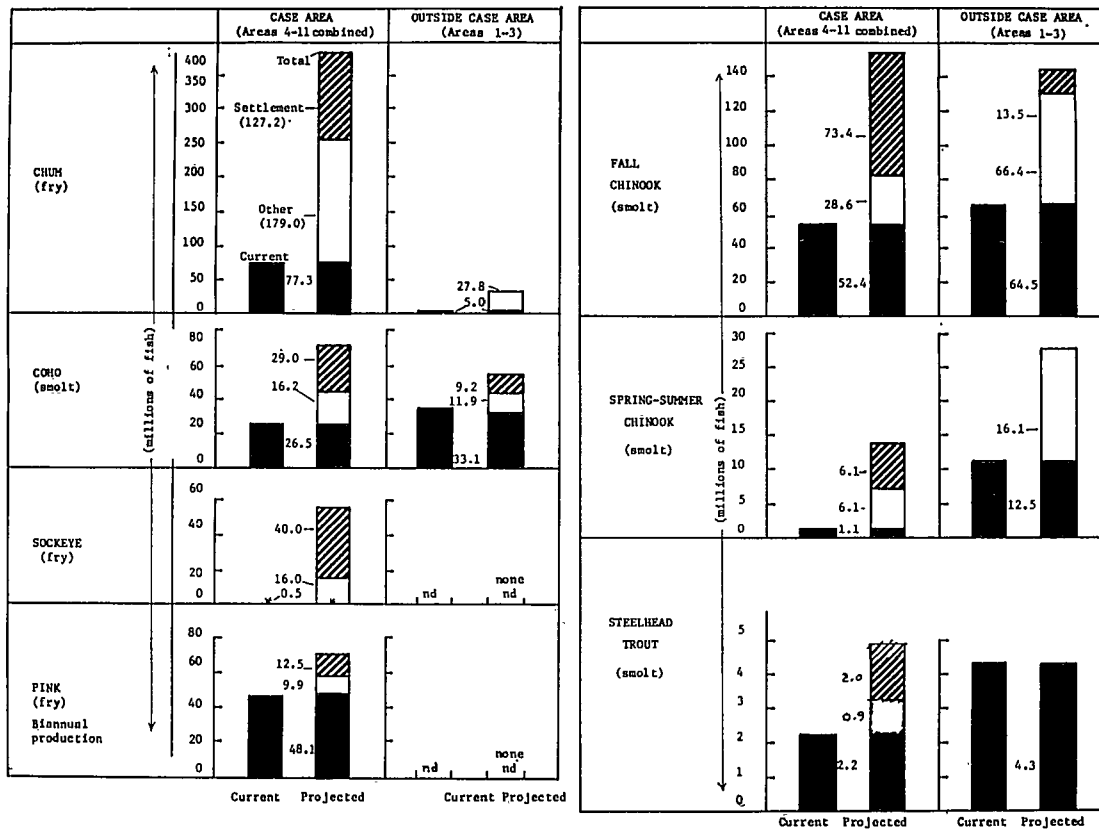


Figure 4-8.--Current and projected increase in production (annual fish releases) of salmon and steelhead trout, Washington State.

A summary of the numbers of adult fish (by producing area and species, excluding escapement) attributable to state-wide enhancement is given in Table 4-6. Approximately 11.2 million additional salmon (excluding escapement) are expected to be available annually to all fisheries (inside and outside of Washington State) when all the enhancement projects become operational. Nearly 8.0 million of this increase will be harvested by Washington State fisheries. By including the current landings of 7.5 million salmon, the total harvest by Washington State fisheries will be more than 15 million salmon by the late 1980's. The settlement projects are expected to contribute 5.7 million to the total.

The availability to and expected harvest of these incremental numbers of adult fish by the various fisheries is examined in detail in the Resource Distribution Chapter. Also examined in detail will be factors which could increase (or decrease) the forecasted numbers of adult fish.

Achieving these numbers of adult fish and achieving them in the most efficient and effective way depends heavily on a solid, as well as more sophisticated research and development of a better information base.

VI. RESEARCH REQUIREMENTS ASSOCIATED WITH ENHANCEMENT PROJECTS

A. Introduction

The Regional Team recognized that for the proposed enhancement projects to be successful, they must be based on

Table 4-6.--Numbers of adult fish (by producing area and species) expected annually from all new enhancement projects (settlement and others) in the State of Washington.^{1/} (Excludes escapement)

Species	Producing area ^{2/}													By Project Source		
	Outside case area ^{3/}				Case area									Grand Total	Settle-ment	Other
	1	2	3	Total	4	5	6	7	8	9	10	11	Total			
----- (In thousands of fish) -----																
Chum	8.0	0	103.2	111.2	50.5	69.1	141.2	233.6	423.4	274.5	1,006.1	779.0	2,977.4	3,088.6	1,375.7	1,712.9
Coho	858.3	0	176.4	1,034.7	385.1	204.1	350.0	240.4	335.5	218.9	1,132.0	565.0	3,431.0	4,465.7	2,709.7	1,736.0
Sockeye	0	0	0	0	0	208.4	0	0	0	157.2	290.4	0	656.0	656.0	406.4	249.6
Pink ^{4/}	0	0	0	0	0	0	43.0	0	43.0	0	33.4	72.8	192.2	192.2	114.9	77.3
Chinook, fall	356.3	58.4	138.6	553.3	72.8	101.7	116.4	153.2	11.8	29.2	322.1	503.7	1,310.9	1,864.2	905.6	958.6
Chinook, spring, and summer	31.7	476.8	0	508.5	101.2	95.4	0	0	78.6	98.1	29.2	0	402.5	911.0	229.4	681.6
Total salmon	1,254.3	535.2	418.2	2,207.7	609.6	678.7	650.6	627.2	892.3	777.9	2,813.2	1,920.5	8,970.0	11,177.7	5,741.7	5,436.0
Steelhead trout	0	0	0	0	0	25.0	2.0	7.0	2.0	10.0	6.0	6.0	58.0	58.0	40.0	18.0
Grand total	1,254.3	535.2	418.2	2,207.7	609.6	703.7	652.6	634.2	894.3	787.9	2,819.2	1,926.5	9,028.0	11,235.7	5,781.7	5,454.0

1/ Data source: Wash. Dept. Fish. and Wash. Dept. Game.

2/ See Footnote 3 of Table 4-1 for area code designations.

3/ Outside of Case Area but contributes adult fish to fisheries related to the settlement.

4/ Biannual production.

reliable technical information concerning (1) the quality of the site selected; (2) potential environmental interactions; (3) carrying capacity of the streams, rivers, etc., to which the young will be released, as well as estuaries; (4) improved cultural techniques; and (5) a monitoring system which can evaluate the benefits versus cost of each enhancement project, as well as aid in establishing the factors associated with the harvest and management of the returning runs. The ultimate purpose of the proposed settlement is the perpetuation of important renewable resources and increased economic and social benefits to people who rely upon these resources for their livelihood and for social and esthetic values.

The Pacific salmon and steelhead have been intensively investigated over a number of decades, and considerable information has been collected concerning their longevity, maturity and reproductivity characteristics, as well as their distribution and migration patterns. Additional information, however, is required to answer important questions about the impact of the proposed enhancement programs, as well as to provide for improved cultural techniques. Any increased funding for research activities should be tailored to acquire the specific information needed for improving the chances of successful enhancement activities. Technical groups assigned to evaluate research needs have proposed three basic areas of

investigation: site and project evaluation; culture and rearing technology; and program evaluation.

B. Research Areas

1. Site and Project Evaluation (Category I)

Many enhancement programs have been proposed to the Regional Team. For some, there is inadequate information concerning the character of natural runs, as well as their water regime requirements. Specific information on water quality and stream flow requirements need to be determined. Site evaluation studies should also include acquisition of information on species interaction, the populations and behavior of wild and artificial stocks, environmental limits in terms of the overall carrying capacity for anadromous species, disease problems as they relate to stocking policies, and the identification of important or viable natural runs.

2. Culture and Rearing Techniques (Category II)

Considerable advancement has been made in culture and rearing techniques over the past decade. However, the continued improvement of culture and enhancement methods, and the application of these techniques, must be ensured. The Regional Team also encourages research designed to improve hatchery performance and the general survival of artificially-reared salmonids. Survival must, however, be evaluated in terms of the contribution to the fisheries and resources involved. Culture and rearing techniques which are particularly important include:

a. Disease control. Disease control includes the development of new methods of diagnosis and prevention of major hatchery diseases. Disease control studies should include the evaluation of new drugs and bacteria and the role that feeds may play in spreading of diseases.

b. Nutrition studies. Feed costs for hatchery-reared salmon have been increasing rapidly during the past fifteen years. There is an urgent need to develop cost effective feeds using new or under-utilized nutrient resources. The relationship between nutrition and the growth and viability of fingerlings, especially needs to be more carefully researched.

c. Evaluation of smolt quality. There is increasing evidence that too little attention has been paid to smolt quality in past enhancement activities and the problem of smoltification in terms of evaluating optimum release time. Hence, the Regional Team recommends that a high priority be placed on developing biochemical and endocrinological indexing methods which can determine smolt quality and on developing technology and methods which will enforce, advance, or delay the smoltification process. The technique should lead to the propagation of fish that will effectively utilize the estuarine environment only as highways to the sea.

d. Brood stock improvement. Specific attention should be given to research which will lead to improved brood

stocks. In developing selective breeding strategies, consideration must be given to disease-resistant strains, growth and maturation characteristics, and to stocks which provide the greatest benefits to both the commercial and recreational fisheries.

e. Altered behavior. Finally, studies should be conducted to improve the understanding of how the behavior of fish is modified as a result of various stocking policies. The effect of time and methods of release on the migratory behavior of salmonids at sea must be investigated. Further study is needed on holding juvenile salmonids in salt-water pens prior to release as a means of inducing them to "home" to particular areas. This research could be important in providing the capability to more equitably distribute fish to the various user groups.

3. Program Evaluation (Category III)

Much experience has been gained from past enhancement programs in the States of California, Oregon, Washington and Alaska. There does not, however, appear to have been any comprehensive evaluation of the success or failure of many of the programs.

The Regional Team strongly urges that a comprehensive evaluation of anadromous fish enhancement programs be undertaken so that past experience can provide

information with which hatchery and other enhancement programs can be achieved.

Finally, there needs to be a comprehensive program established to evaluate the success of the proposed enhancement projects and to determine the consequences such programs may have in terms of the harvest of mixed stock fisheries.

C. Approval and Management of Proposed Research Program

A total of 24 research projects to support enhancement-type activities has been included by the Regional Team in this settlement plan (Table 4-7). These research projects involve a broad spectrum of studies, the majority of which can be categorized into the three categories noted above. Most of the projects, however, have not been in a form, nor do they provide sufficient information, that would allow an evaluation of their experimental design or their importance to the goals defined within the settlement document. Nevertheless, the Regional Team believes that an expenditure of 20 million dollars over an eight-year period would be required to meet the research needs associated with carrying out a successful enhancement program (Table 4-8).

In order to establish a properly-designed, cooperative research program, and to provide a mechanism for project review and evaluation, the Regional Team recommends that a research council be established for this purpose. The research council

Table 4-7.--Research projects related to the Northwest Fisheries Problem.

Project No./Category 1/	Organisa-tion2/	Mgt. area3/	Site	Proposed item/activity	Species	Information/Remarks	Estimated cost (in thousands of dollars) (years) (cost)	
1. R&D (I)	WDF	—	State-wide.	Related to fish tagging experiments	Salmon	Develop system for rapid retrieval of results of coded-wire tagging experiments.	5	139
2. R&D (I)	WDF	7-11	Puget Sound	Adult Salmon tagging	Coho, chum, chinook	Improve info. on spawning escapement (counts and location) to benefit both production and harvest mgt. activities.	5	1,261
3. R&D (I)	WDF	11	Hood Canal plus other areas	Fish tagging, disease studies and production/harvest mgt. models.	Chum	Info. on migrations, feeding, predation, disease, survival, hatchery/wild fish competition, etc.	5	654
4. R&D (II)	WDF	7-11	Puget Sound	R&D Section on genetic mark method	Salmon	Identification of salmon stocks in mixed stock fisheries using genetic tagging techniques.	5	390
5. R&D (I)	WDF	4-11	Puget Sound Washington coast	Habitat improvement, manipulate stream gravels, water temp. etc.	Salmon	Determine feasibility of large scale restoration of natural salmon habitat & test techniques.	7	1,000
6. R&D (I)	WDF	4-11	Puget Sound Washington coast	Catalog physical and biological features of streams & rivers.	Salmon, trout	Develop reference document on physical & biological features of case area streams & status of salmon & salmon usage.	2	400
7. R&D (I)	WDF	4-11	Puget Sound Washington coast	Evaluation of gravel mining techniques.	Salmon, trout	Determine impact of stream gravel mining on salmon and trout resources.	2	100
8. R&D (I)	WDF	—	State-wide	Evaluation of salmon stock potential	Salmon	Identify and describe natural areas where salmon stocks are below potential for purpose of stock introduction or enhancement.	5	300

WDF R&D project total = 4,244

Table 4-7.--Research projects related to the Northwest Fisheries Problem, continued.

Project No./Category 1/	Organization 2/	Mgt. area 3/	Site	Proposed item/activity	Species	Information/Remarks	Estimated cost (in thousands of dollars) (years) (cost)	
9. R&D (I)	WDG	8	Skagit River System	Survey and evaluation of wild fish production	Steelhead	Understand the decline in productivity taking place in the Skagit River system and develop corrective enhancement measures.	5	1,000
10. R&D (I)	WDG	10	Green River watershed	Survey-feasibility study	Steelhead	Determine feasibility of restoring runs in the Green River watershed above City of Tacoma headworks.	1	30
11. R&D (I)	WDG	-	State-wide	Evaluation of steelhead habitat	Steelhead	Evaluate physical & biological habitats of steelhead in case area watershed for purpose of stock enhancement.	5	2,000
							WDG: R&D project total 3,030	
12. R&D (I)	Nooksack	7	Nooksack River	Feasibility study on spawning channel	Salmon	Continue study on the feasibility of placing spawning channels in the Nooksack (Outcome may lead to a capital project.)	1	5
13. R&D (I)	Squaxin	10	Southern Puget Sound Tribal project and fisheries area.	Estuarine study, net pen feasibility studies	Chum, Coho, Pink, Sockeye	Survival, migration, etc. of juveniles and adults in estuary, and feasibility studies on net pen rearing of chum, pink, sockeye.	5	1,185
14. R&D (I)	Point No Point	6, 11	Point No Point Treaty Area	R&D on biology, habitat, productivity, etc.	Salmon-Steelhead	Native stock restoration and development of a comprehensive plan to optimize carrying capacity (natural and artificial runs) of the system in the Treaty area.	2+	767

Table 4-7.--Research projects related to the Northwest Fisheries Problem, continued.

Project No./Category 1/	Organiza- tion2/	Mgt. area3/	Site	Proposed item/activity	Species	Information/Remarks	Estimated cost (in thousand of dollars) (years) (cost)	
15. R&D (I)	Point No Point	6,11	Point No Point Treaty Area	R&D on sampling/ monitoring of fisheries and escapement.	Salmon- Steelhead	Develop harvest management information system (augments WDF activities). Pt. No Pt.: R&D project total = 1,069	5	302
16. R&D (I)	Suquamish	10	Kitssap Peninsula	Adult fish tagging	Above species	Information on population structures, migration routes and rates, etc. to assist in harvest management. Evaluate use of floating fish trap in terminal area.	4	426
17. R&D (I)	Quileute	5	Quileute River	Natural production assessment study	Coho, Chinook	Information leading to restoration and improvement in natural runs of salmon.	5	1,260
18. R&D (I)	Quinault	5	Quinault Area	Acoustic fish counting	Salmon- Steelhead	Develop acoustic fish counters.	2	325
19. R&D (II)	Quinault	5	Quinault Area	Behavioral and physiological studies	Salmon- Steelhead	Information on migration, timing, survival, etc. of salmon-steelhead.	5	385
20. R&D (I)	Quinault	5	Quinault Area	Coded wire tagging	Salmon- Steelhead	Information obtained contri- butes to production and harvest management. Quinault-BohsR&D project total=2,210	5	1,500
21. R&D (I)	Skagit	8	Skagit River	Evaluate spawning channel	Chinook, Chum	Monitor and evaluate adult spawners and juvenile out- migrants from Skagit spawn- ing channel.	5	315
22. R&D (I)	NMFS	4-11	Boldt Case Area	Genetic studies	Salmon	Delineation of salmonid stocks using biochemical genetic techniques.	6	990
23. R&D (II)	NMFS	10	Little Clam Bay	Lagoon rearing study	Coho	Development & testing of extended rearing in lagoons to provide terminal fishing area at sites with limited freshwater.	5	602

Table 4-7.--Research projects related to the Northwest Fisheries Problem, continued.

Project No./Category 1/	Organization 2/	Mgt. area 3/	Site	Proposed item/activity	Species	Information/Remarks	Estimated cost (in thousands of dollars) (years) (cost)
24. R&D (II)	NMFS	10	Clam Bay	Alteration of migrating behavior	Coho-Chinook	Can time of release from marine rearing areas affect ocean distribution and contribution?	.6 \$835 NMFS: R&D project total = 2,427

1/ "No." is the numerical sequence of projects in the table. "Cat" is the research categories of: (I) = Site and project evaluation, (II) = Culture and rearing techniques (III) = Program evaluation;

2/ WDF (Washington Department of Fisheries); WDG (Washington Department of Game); Lummi (Lummi Tribal Enterprises); Nooksack (Nooksack Indian Tribe); Skagit System Cooperativa (an organization formed by the Swinomish, Sauk-Suiattle, and Upper Skagit River tribes); Nisqually (Nisqually Indian Tribe); Squaxin (Squaxin Island Tribe); Point No Point (Point No Point Treaty Council, an organization of the Port Gamble, Lower Elwha, and Skokomish tribes); Suquamish (Suquamish Tribe); Quileute (Quileute Tribe); Hoh (Hoh Indian Tribe); Quinalt (Quinalt Indian Tribe); NMFS (National Marine Fisheries Service);

3/ Management areas:

Code	Fishing area	Water Resource Inventory Area (WRIA) River Basin
1	Lower Columbia	Columbia Basin
2	Upper Columbia	Columbia Basin
3	Willapa Bay	Willapa Basin
4	Grays Harbor	Chehalis
5	North Coast	Soleduck-Hoh, Queets-Quinalt
6	Strait of Juan de Fuca	Elwha-Dungeness, Lyre-Hoko
7	Bellingham Bay-Semish	Nooksack
8	Skagit	Lower Skagit, Upper Skagit
9	Port Susan-Gardiner	Stilligumish, Whidby-Gamano, Snohomish
10	Central & Southern Fugot Sound	Lake Washington, Green River, Fuyallup, Nisqually, Tacoma, Deschutes, Shelton
11	Hood Canal	Kitsap, Hood Canal, Quilcene

Table 4-8.--Preliminary Cost Summary of Research Projects related to the Settlement (in thousands of dollars).

Organization	Research Category			Total
	I	II	III	
Wash. Dept. Fish	3,854	390	--	4,244
Wash. Dept. Game	3,030	--	--	3,030
Nooksack Tribe	5	--	--	5
Squaxin Tribe	1,185	--	--	1,185
Pt. No Pt. Treaty	1,069	--	--	1,069
Suquamish Tribe	426	--	--	426
Quileute Tribe	1,260	--	--	1,260
Quinault Tribe	1,825	385	--	2,210
Skagit Tribe	315	--	--	315
Nat. Mar. Fish. Serv.	990	1,437	--	2,427
Undertermined ^{1/}	--	--	3,500	3,500
Total	13,959	2,212	3,500	19,671
Budgeted	14,000	2,500	3,500	20,000

^{1/} A joint Washington State agencies-Indian tribes effort is recommended.

would be comprised of one member from National Marine Fisheries Service, one from USFWS, one from academia, one from the Washington Department of Game (WDG), one from the WDF, and two tribal scientists. (Members would not, however, be the same as those associated with the State-tribal Joint Technical Committee included in the management chapter of the plan.) The research council would have the responsibility for prioritizing and reviewing research proposals in terms of their contribution to the overall enhancement and management program. The research council would also provide for the effective coordination of the research findings and for identifying the additional research necessary to meet the overall goals of the enhancement program.

The Regional Team envisions that the major research activities proposed in this plan should be primarily associated with existing fisheries management entities such as the WDF and WDG, tribal entities, National Marine Fisheries Service, and the USFWS. Additional research and project proposals may be encouraged from universities and private research groups where appropriate.

In summary, the Regional Team believes that carefully planned enhancement goal-oriented research is a critically important element which is needed to ensure that the proposed enhancement program fulfills its role in providing for a healthy commercial and sport fishery.

VII. COSTS AND RATIONALIZATION

The settlement is a joint Federal-State-Indian tribes agreement and represents a common commitment to the solution of a serious problem. This means that although funds and other contributions will be derived from various sources, the benefits over the entire productive life of each C&E facility or project will be attributable to the "settlement." It does not mention that because the first five-year O&M cost of a project is federally funded, the benefits during that period will be attributed only to Federal efforts. Nor does it mean that because funding of O&M costs from the sixth year to the end of the expected life of a facility is largely from State or tribal sources the benefits then will be attributable only to the State and tribes. By agreeing to the settlement projects, including construction and maintenance of facilities, all parties are contributors to the costs and benefits.

The cost of the capital projects (C&E) listed in Table 4-1 is broken down into capital cost and operation and maintenance cost. Capital cost is further broken down by funding or contributing source according to categories of "Federal" or "other." The "other" category consists of two types: State funding (unbracketed estimates) and the opportunity cost of tribal lands upon which a new facility is to be located (bracketed estimates). The operation and maintenance (O&M) cost shown is the total amount for a five-year period or less.

Not included are the various administrative and management related costs that will be incurred by all organizations during their project planning and operation stages.

A summary of the costs associated with the C&E enhancement projects listed in Table 4-1 is presented in Table 4-9. Capital cost is estimated at \$70.3 million, of which \$61.1 million is sought from Federal sources, \$8.7 million from State sources, and \$512 thousand as the opportunity cost of tribal lands. The five-year O&M costs amount to \$35.5 million and are sought from Federal sources. In addition to the above, a reserve fund of \$25.0 million is created to cover contingency projects and unaccounted costs. By including the reserve funds, the total cost of C&E projects amount to \$121.6 million from Federal sources.

The foregoing costs are initial estimates as they relate to the enhancement parts of the settlement package. The next step will be to further refine the estimated cost of each C&E project as an integral part of the overall production - harvest plans and goals to be developed for each harvest management area. This will require close coordination, such as in the Nisqually-WDF joint and cooperative projects.

In summary, the Federal share of enhancement cost is estimated at:

Table 4-9.—Cost summary of C&E enhancement projects related to the settlement (Source: Table 4-1).

Organization	Type of cost and funding source					
	Capital Cost			Total	OGM (5-years) Federal	Reserve fund ^{2/} Federal
	Federal	State	Tribe ^{1/}			
	(thousands of dollars)					
Wash. Dept. Fish	33,556	5,391	0	38,947	14,185	—
Wash. Dept. Game	3,500	0	0	3,500	1,850	—
Lummi Ind. Trib. Ent	256	0	0	256	2,096	—
Nooksack Ind. Tribe ^{3/}	21	0	0	21	375 ^{3/}	3/
Skagit Sys. Coop. (+WDF)	3,817	0	0	3,817	1,924	—
Nisqually Ind. Tribe (+WDF)	8,100	3,300	0	11,400	1,750	—
Squaxin Is. Tribe	1,803	0	0	1,803	1,420	—
Point No Point Treaty Coun. ^{3/}	390 ^{3/}	0	0	390 ^{3/}	1,305 ^{3/}	3/
Suquamish Ind. Tribe	821	0	18	839	1,240	—
Makah Tribal Coun. ^{3/}	500	0	394	894	70 ^{3/}	3/
Quileute Tribe ^{3/}	3/	0	0	3/	3/	7,000
Hoh Ind. Tribe	2,414	0	0	2,414	1,280	—
Quinault Ind. Tribe	4,465	0	100	4,565	7,427	—
Quinault-Hoh Tribes ^{3/}	1,070	0	0	1,070	625 ^{3/}	3/
Puyallup Tribe ^{3/}	354 ^{3/}	0	0	354 ^{3/}	3/	3/
Muckleshoot ^{3/}	3/	0	0	3/	3/	3/
Total	61,067	8,691	512	70,270	35,547	25,000

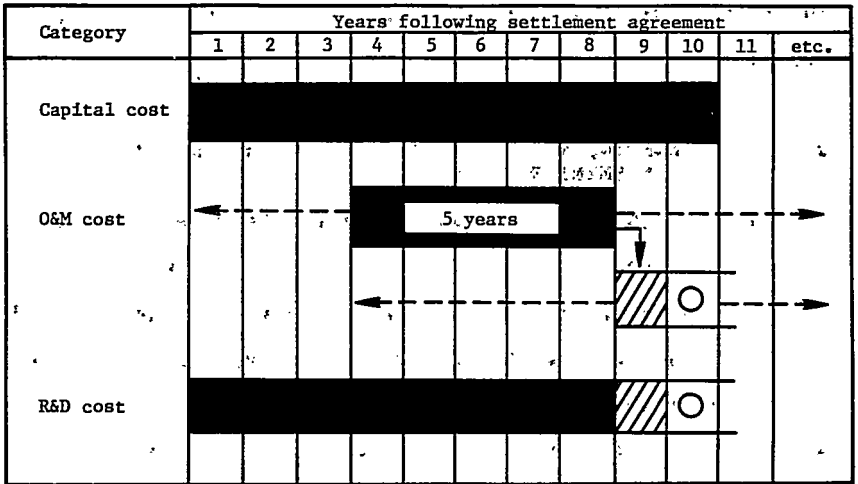
^{1/} The opportunity cost of tribal lands upon which new facilities are to be located.
^{2/} Reserve fund to account for contingencies and unaccounted costs.
^{3/} Additional funding from the reserve fund.

C&E Projects:	Capital.....	\$ 61.1 million	
	O&M.....	\$ 35.5 million	(5-year total)
	<u>Reserve fund.....</u>	<u>\$ 25.0 million</u>	
	Total	\$121.6 million	
R&D Projects:	Cat. I Studies.....	\$ 14.0 million	
	Cat. II Studies....	2.5 million	
	<u>Cat. III Studies...</u>	<u>3.5 million</u>	
	Total	\$ 20.0 million	

Total = \$141.6 million

Funding sources and schedule are shown in Figure 4-9. All C&E projects must be under construction within ten years from the date the settlement is executed. O&M costs will be funded from Federal sources under the settlement for the first five years only on each project. Thereafter, O&M costs will be funded through sources other than the settlement and is the responsibility of each organization undertaking the project. Federal funds for capital projects will be made available only after the projects have been determined to be consistent with and meet the requirements of the master plan for enhancement. Generally, architectural and engineering design funds will be the first monies to be made available on C&E projects. This is to expedite project initiation and also firm up the capital construction cost estimates on each project.

All R&D projects must be started and completed within eight years from the date the settlement is executed. Funding beyond the eight years will be from sources other than the settlement



Legend:



Federal funds under the settlement.



Interim federal funds plus other (matching) funds, such as the Anadromous Fish Conservation Act, Federal Aid in Sport Fish Restoration Act, Sea Grant, etc.



Other funds obtained from those that benefit through landing fees, gear tax, license fees, revenues from production, etc.

Figure 4-9. Funding sources and schedule for resource enhancement.

and is the responsibility of each organization undertaking the research.

VIII. FINANCING FOR OPERATIONS AND MAINTENANCE OF
ENHANCEMENT FACILITIES

Full implementation of massive new enhancement programs is expected to greatly increase commercial and recreational landings in Washington State. New enhancement alone (including the existing WDF program, the Task Force recommendations and other tribal and Federal projects) will add 7 million new salmon to the harvest to double the existing catch level.

Above and beyond these new programs, future mitigation for existing Columbia River system dams will produce more than 60 million chinook salmon smolts. Although location and survival of these Columbia River salmon remain a question due to the sheer magnitude of this mitigation, there is bound to be a strongly positive impact on Washington coastal and Columbia River catches.

Along with the increase in total harvest levels, the proposed Task Force settlement calls for a substantial decrease in the size of the non-Indian fleet. Under these conditions, those benefiting directly from the salmon should be able to provide most of the financial support necessary to operate and maintain the facilities provided as a part of the settlement. Indirect beneficiaries of the salmon resource should also be

included as a source of funds of O&M relating to settlement projects.

The concept that the harvesters of a living resource should contribute toward "sowing" and caring for the crop is hardly new to farmers, livestock producers or timbermen. Neither is it totally unfamiliar to Washington fishermen and processors whose license fees and catch taxes have partially funded the WDF activities. An example is 1977 legislation which was enacted providing for the funding of the construction (not O&M) of salmon enhancement facilities through user fees consisting of a salmon sport fishing license, catch and privilege taxes on commercially-caught salmon, and commercial salmon license fees. Many of the tribes currently have a 5% tax (same as the State of Washington) on the catch of their fishermen.

Benefits from new enhancement facilities are not immediately forthcoming. Assuming adequate and suitable egg sources were immediately available, it would generally take five years from the date of completion for a facility to provide full benefits to the various user groups. In a few cases, however, adequate and suitable brood stock will not be immediately available at the time a facility may come on line. Clearly any tax on fish catch or tax should apply uniformly and equitably within sport and classes of commercial fishermen (e.g., approximately the same tax for State and tribally licensed fishermen).

The State and tribal negotiators have recognized that a new cooperative funding mechanism will be necessary:

The benefits from a given enhancement facility will, in most cases, be spread over a broad geographic area and shared by a diversity of users. The only practical system for defraying O&M costs will involve forming a common funding pool.

It is clear that the State and the tribes will be required to develop means of funding O&M for projects developed pursuant to the settlement.

While this position has not yet been ratified by either side, it makes such good sense that we are adopting it as a part of the proposed settlement.

It is proposed that Federal funds for the new facilities be provided for the first five years of full operation, with an additional period of two years of partial or complete Federal funding for those facilities where there is a delay in full production due to an inadequate or unsuitable brood stock.

IV. AQUACULTURE AND SEA-RANCHING IN THE STATE OF WASHINGTON

The question of private firms raising fish for profit is both a difficult and complex problem which has been, and will continue to be, a thorny issue confronting the State of Washington. The Regional Team has been requested by the Sea-Growers Association to take a position on the merits in favor of such programs. Many of the commercial and sport groups have asked us to take a position on the merits opposing such activities. This concern has been re-emphasized when the commercial, sport and tribal fishing groups sent a joint telegram to the Washington State Congressional delegation asking them to take another look at salmon aquaculture. The Regional Team believes that neither our charter nor our settlement requires us to take a position on the merits.

However, the enhancement sites and egg requirements for the present State, Federal, and tribal hatcheries, the State enhancement program, and the proposed Federal program must have priority over any private fisheries programs. Furthermore, the impact of these new programs on the carrying capacity of the rivers, estuaries, and the salt water, as well as their harvesting impacts on managing the resource should be fully evaluated before additional private ventures are authorized.

Chapter 5

SALMON RESOURCE DISTRIBUTION PLANI. INTRODUCTION

The goal of the Task Force resource distribution plan is to provide commercial and recreational fishermen with a better opportunity to share in the harvesting of productive salmon runs.

To some, resource distribution implies the division of salmon between treaty and non-treaty fishermen. Such a view is incomplete. A comprehensive resource distribution plan must take into account the competing interests in the fishery, as well as the reproduction requirements of the resource. Fishing groups can be classified by the area fished, gear types employed, historic ties to the fishery, treaty rights, etc. The major areal differences exist between ocean fishermen, Puget Sound and Grays Harbor fishermen, river fishermen, sport and commercial groups. Given the diversity of fishing interests, gear types and areas of operation, the evolution of a fishery system and sharing concept which ensures the opportunity to participate in a healthy commercial and sport fishery has been based on seven principles.

A. The need to protect and develop the salmon resource.
The plan assists in accomplishing this objective in several important ways: (1) it establishes a comprehensive State-tribal management regime; (2) the goal of protecting wild

stocks is emphasized; (3) a sharing concept is devised to minimize conflict between groups; and (4) the protection of the habitat is stressed.

B. Each group of fishermen must have a fair opportunity to participate in harvesting the surplus fish (in excess of reproductive needs). Given the amount of different fishing effort which can be applied in various areas, it would be possible for some groups to harvest all or most of the fish available. For example, without adequate control features incorporated into the plan, it would be possible for the ocean commercial and sport fisheries to harvest substantially all of certain stocks at the expense of coastal river, Grays Harbor and Puget Sound commercial and sport fisheries. Puget Sound marine area net fishermen could harvest all or most of certain stocks at the expense of those who fish in the rivers, bays and estuaries. Terminal area fishermen could overharvest stocks needed for spawning escapement. Beneath the competing interests, there exists an interdependent relationship among the fishing groups which governs the economic well being of each group participating in the fishery.

In order to ensure that each group of fishermen has a "fair crack" at the resource, the distribution plan is based on an arrangement which provides fishermen in each area (ocean, inside marine and terminal area) an opportunity to share in the harvest. In addition, because different fisheries in some

cases harvest different species or runs, the resource enhancement projects have been selected on a geographic as well as species basis to improve the probability that the various groups will have a fair opportunity to share in the expanded resource.

C. The right to participate and harvest the surplus production should be based on an equal opportunity fishery. In the Puget Sound and Grays Harbor net fisheries, disparate fishing times have existed since the Boldt decision in order to provide treaty fishermen an opportunity to share in the resource. Our proposal would eliminate the disparate fishing time so that fishermen, fishing in the same area, would fish at the same time and with the same gear. While the elimination of disparate fishing times is an important factor in achieving a lasting settlement, it must be accomplished within a general context of a reduction of the number of commercial fishing vessels and a re-balancing of the remaining fleet between treaty and non-treaty fishermen.

D. The guarantee of the opportunity for harvest in the treaty terminal or special fisheries. Because of historical and cultural ties, many tribal fishermen prefer to harvest salmon in the river mouths, bays and estuaries or certain areas in the Strait of Juan de Fuca. This preference places these fishermen at the "end of the line" in the salmon harvest. All too often in the past, there have been few, if any, remaining fish to be harvested in these places. In order to ensure that

these fishermen have an opportunity to share in the resource, this plan provides a guarantee that a sufficient number of harvestable fish will be passed through the preceding fisheries so that these fishermen will have the opportunity to catch a portion of the authorized surplus harvest. (The specific terms of this guarantee are set out in more detail in subsequent sections of this plan.)

E. The need for increased stability and resource balance in the opportunities to fish. The fishermen will have a better future with a broader resource base. This may be achieved through a balanced development of species and stocks, having a balanced wild and hatchery development, and the harvest sharing plan. Some fisheries rely heavily on a few species of salmon, e.g., sport and troll dependence on coho and chinook. Thus, it is important to develop as many stocks as possible. This dependence must also be weighed in the resource sharing plan. In other fisheries which can catch all species, e.g., nets and terminal fisheries, it is important that the present dependence on a few species be altered to broaden the opportunity on all species. This is important for two reasons: (1) all fishery groups will maintain an interest in the care and propagation of each salmon species and stock, i.e., a broad common interest in conservation and enhancement; and (2) increased number of stocks and species to within season balance and economic stability of each fishery.

Many fishermen have expressed the view, "we need to be able to count on the fishery." All fishermen would prefer a more, stable catch year to year.

Improved stability in the fishery is achieved in several ways. The first is through the balance in species and stocks described above. The coordinated management and hatchery development required by the settlement is a key to developing stability. The investment of 10% of the settlement money, \$20 million, in research will help ensure not only increased production but a more stable and higher quality production. The reduced amount of gear and effort will be a substantial factor in increasing the stability of seasons and fishing opportunity. The emphasis on more sophisticated harvest management in the ocean fisheries will contribute not only to their stability, but to the stability of the inside fisheries. Finally, the commitment to protect important natural stocks will provide for long term stability of this important source of salmon.

F. Recognition of historic fisheries. Treaty fishermen have fishing rights protected by treaties and Federal law. Non-treaty fishermen have inherited a legacy of participation in the fishery which they wish to enjoy and share with future generations of their families. This resource distribution plan recognizes the desires and interests of both treaty and non-treaty fishermen to share in healthy commercial and sport harvests.

G. Minimize Conflict

The remaining principle incorporated into this resource distribution plan is the need to minimize conflict between groups of fisheries. Salmon fisheries have a long history of conflict between various groups. In many respects, the current controversy is a continuation of a pattern which has existed in the fishery for a long period of time. These conflicts have become so much a part of the industry that the common and overriding interests of all fishermen have taken a back seat and been neglected for years. This will not change until a basic settlement and opportunity system has been agreed to by all major groups. The present potential differences between sportsmen and commercial, between inside and outside fisheries, between North Sound tribes versus South Sound tribes, and area versus area for enhancement dollars would replace the treaty Indian-non-treaty fisheries controversies which presently dominate everyone's attention. In order to minimize conflicts, the plan eliminates disparate fishing time and provides specific fisheries management zones which will help reduce gear congestion and allow the managers to more effectively exercise control over their fisheries. It also provides a balanced resource enhancement so that every type of fishery will be substantially better than it is today.

In summary, this resource distribution plan is not a simple allocation formula for dividing the salmon resource. It is an

attempt, as far as possible, to satisfy the principles stated above. An understanding of these principles will provide a better understanding of concepts and elements of this resource distribution plan.

II. THE ELEMENTS OF RESOURCE DISTRIBUTION

The current amount of salmon resources available is inadequate. There are simply too few fish for too many fishermen to meet the principles of retaining all historic fisheries, reducing conflict and providing stability. Accordingly, and as set forth in detail under the resource enhancement chapter of the plan, the Regional Team has recommended that an extensive program be undertaken which will increase the current average annual salmon landings in Washington State from 7.5 million to about 15 million and provide a better balance and more stability.

The total enhancement increase with an approximate confidence band is shown in Figure 5-1.

As indicated in Figure 5-1, there are a number of factors which could increase the forecasted landings above the 15 million level. If the rate of Canadian interceptions of Washington State origin coho and chinook salmon were limited, increased numbers of coho and chinook salmon could be returned to the Columbia River, coastal rivers and Puget Sound. In fact, the implementation of such a limitation would produce a

SALMON HARVEST

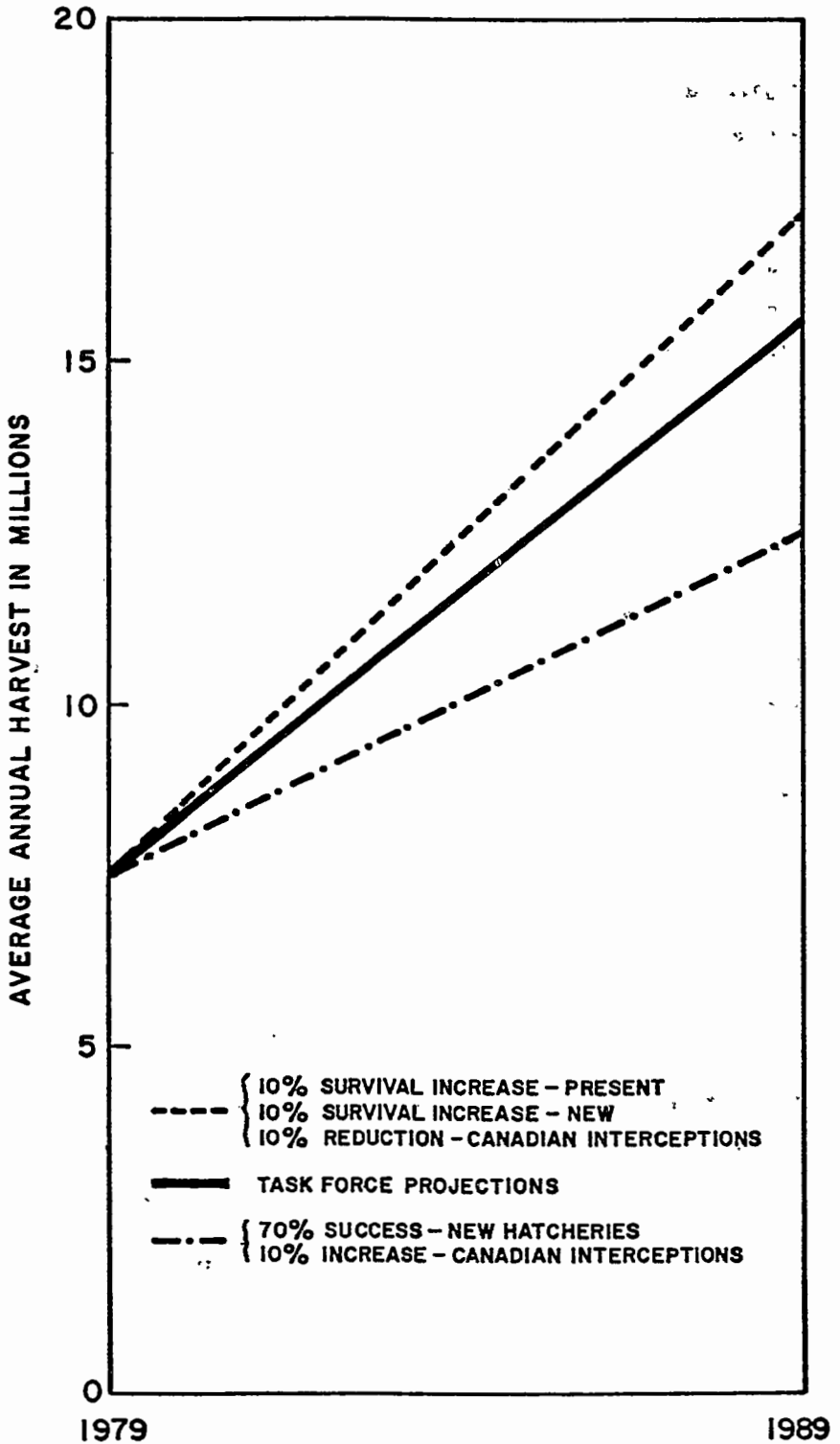


Figure 5-1

significant increase in returns prior to the effect of the enhancement program being reflected in the catches.

A second factor which could significantly increase landings above the forecasted levels is results from the proposed research program. The single purpose of the proposed research program is to provide the knowledge necessary to increase the effectiveness of the management and development of the fishery. Through better disease prevention, improved diet, suitably timed release programs, and other measures, the current survival rates can be improved, which will directly translate into increased landings of salmon.

A third factor which will improve survival rates is the required coordination and unified management of all hatchery programs. This coordination will help control predation and competition between hatchery stocks, and between hatchery or wild stocks, and reduce the harvest management problems which result from over/under fishing on mixed stocks (artificial and natural), which tend to deplete natural runs and result in underfishing on artificial stocks.

The fourth factor which could significantly increase the forecast is a resurgence in the harvestable supply of wild runs. Currently, Puget Sound and coastal wild runs are overfished and have been seriously impacted by environmental degradation. The resource distribution plan and the fleet reduction program contained in this settlement will each help

reduce the overfishing pressure on these runs. Proposals included in the resource enhancement chapter to restore habitat of wild stocks will contribute to their opportunity to produce in increasing numbers.

If these positive factors occur, the harvest forecast would increase substantially as indicated in Figure 5-1.

Just as there are factors which could influence the forecasted harvest upward, there are negative factors which could reduce the potential harvest.

First, if no limitation is placed on Canadian interceptions, the proposed increase in coho and chinook salmon could be substantially decreased.

Secondly, it is possible that not all of the proposed projects will perform as well as existing facilities. The limited availability of hatchery sites, water quality and quantity, and other factors could reduce the potential benefits resulting from some sites. A sound unified enhancement plan and through-site evaluation should reduce the possibility of this result.

Figures 5-2 and 5-3 illustrate both the growth in harvest opportunity to the Washington State fishermen and the attempt to retain or improve the balance of species in that growth. What is not shown in the charts, but can be seen in the Resource Enhancement Chapter is the breadth of stocks and types of enhancement activities.

SALMON AND STEELHEAD HARVEST

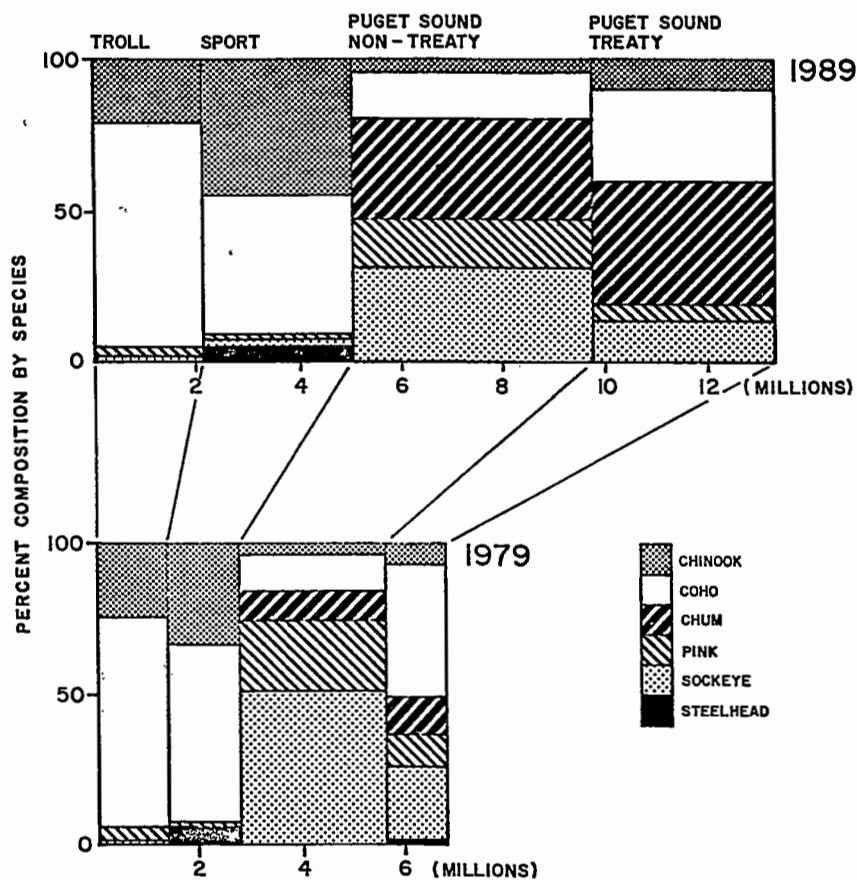


Figure 5-2

SALMON AND STEELHEAD HARVEST - WASHINGTON COAST NET

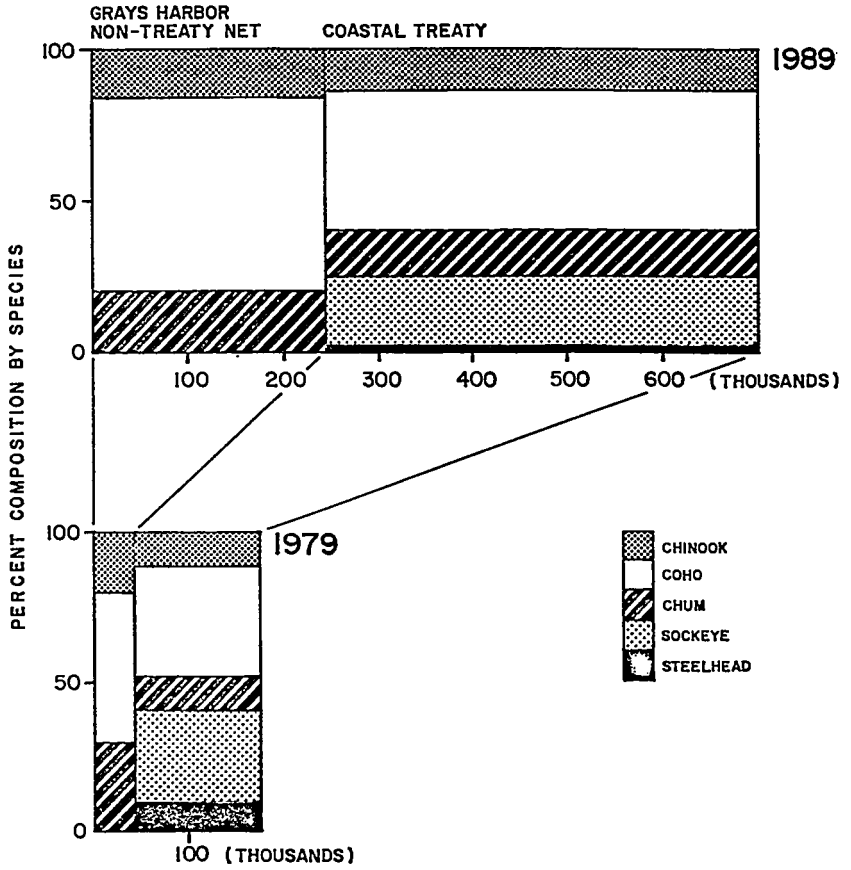


Figure 5-3

Analysis of the growth in the commercial fleets, relatively stable catches, and reduced fishing time are illustrated in Table 5-1 using the Puget Sound gillnetters as an example of what has occurred. There are too many commercial fishermen in the industry to provide all with an opportunity to earn a good living. In order to provide the professional fishermen with an adequate opportunity, the plan provides for an extensive fleet adjustment program. This program is discussed in further detail in Chapters 7 and 8. The combined effect of proposed changes in the amount of salmon available for harvest and the number of participants in the fishery can be seen in Figure 5-4 which shows the average catch per fisherman in the first year of the plan and in 1989. The following specific recommendations are designed to meet the Task Force guidelines and the principles described above.

A. Puget Sound and International Pacific Salmon Fisheries Commission (IPSFC) fishery. The plan provides an opportunity for non-treaty fishermen to harvest sixty percent of the salmon resources, and treaty fishermen to harvest forty percent of the salmon resources. (The more specific provisions of this overall distribution plan, as well as interim measures, are provided in the following section.)

<u>Year</u>	<u>Licenses</u>	<u>Total Salmon Catch In Washington</u>	<u>Fishing Opportunity In Area/Days*</u>
1965	906	636,959	573
1966	835	1,010,412	565
1967	970	1,220,415	408
1968	909	871,397	668
1969	1007	931,184	509
1970	1039	1,122,597	430
1971	1419	1,810,100	434
1972	1194	1,212,535	375
1973	1303	2,040,437	314
1974	1989	1,259,334	167
1975	1659	1,245,504	154
1976	1577	1,032,005	N/A
1977	1507	N/A	N/A

Table 5-1 Analysis of Puget Sound Gillnet Effort, Catch and Fishing Opportunity 1965-1977

* Fishing opportunity is expressed in terms of area/days and the total number of area/days accumulate the days on which each fishing area was open during a year. For example, if two Puget Sound fishing areas were open on the same day, two area/days would be accumulated for that day.

SALMON PER FISHERMAN IN THOUSANDS

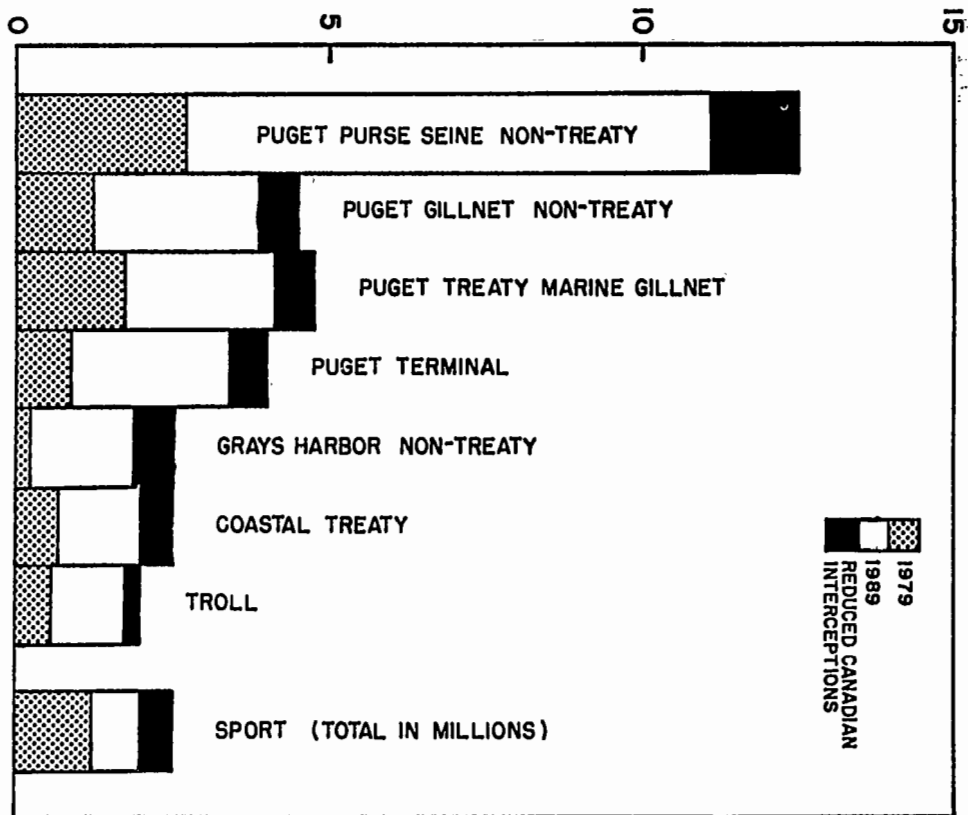


Figure 5-4

This plan, when coupled with the resource enhancement, stabilized ocean harvesting rates, and gear adjustment programs, will substantially improve both the commercial and sport harvest in the Puget Sound and IPSFC fishery. Figure 5-5 illustrates some of the projected results of the plan.

B. Columbia River fishery. The plan incorporates the in-river sharing provisions of the Columbia River Agreement, signed by the States of Washington and Oregon, and the Yakima, Warm Springs, Umatilla and Nez Perce Tribes.

The proposed resource enhancement program for the Columbia River, as well as the stabilized ocean harvesting rates, will provide increased harvesting opportunities for Columbia River fishermen. Figure 5-6 illustrates some of the projected results of the plan.

C. Grays Harbor fishery. The plan provides the opportunity for the non-treaty fishermen to harvest sixty percent of the salmon resources, and for treaty fishermen with the opportunity to harvest forty percent of the salmon resources entering Grays Harbor. (Again, the specific provisions of this overall distribution plan, as well as interim measures, are provided in the following section.)

This plan for Grays Harbor, when coupled with the resource enhancement, stabilized ocean harvesting rates, and gear adjustment programs, will provide for a substantially improved fishery in Grays Harbor. Figure 5-7 illustrates some of the projected results of the plan.

PUGET SOUND SALMON HARVEST

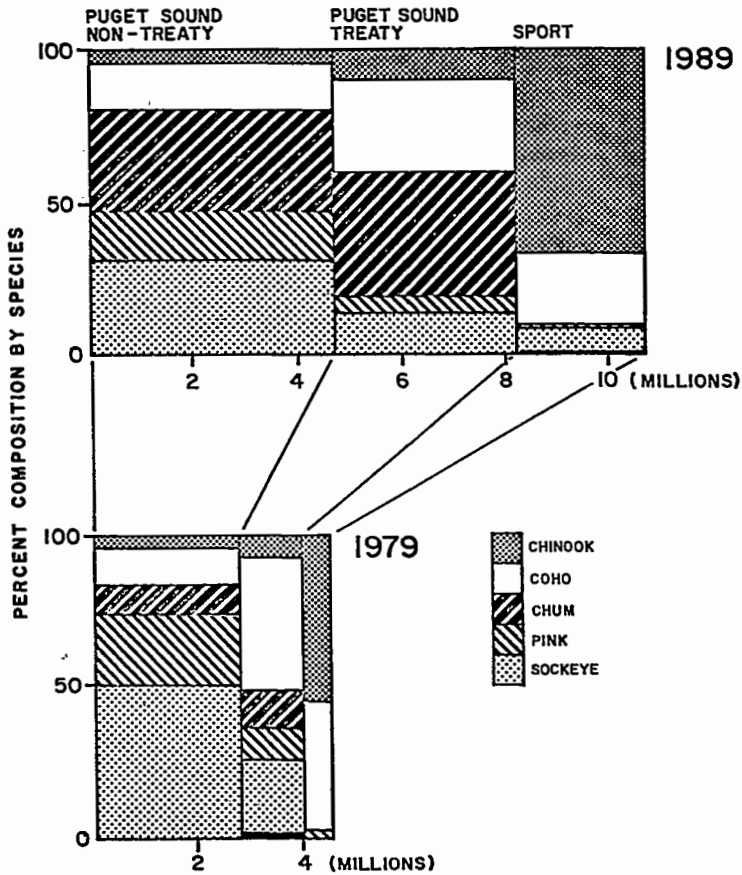


Figure 5-5

COLUMBIA RIVER SALMON HARVEST

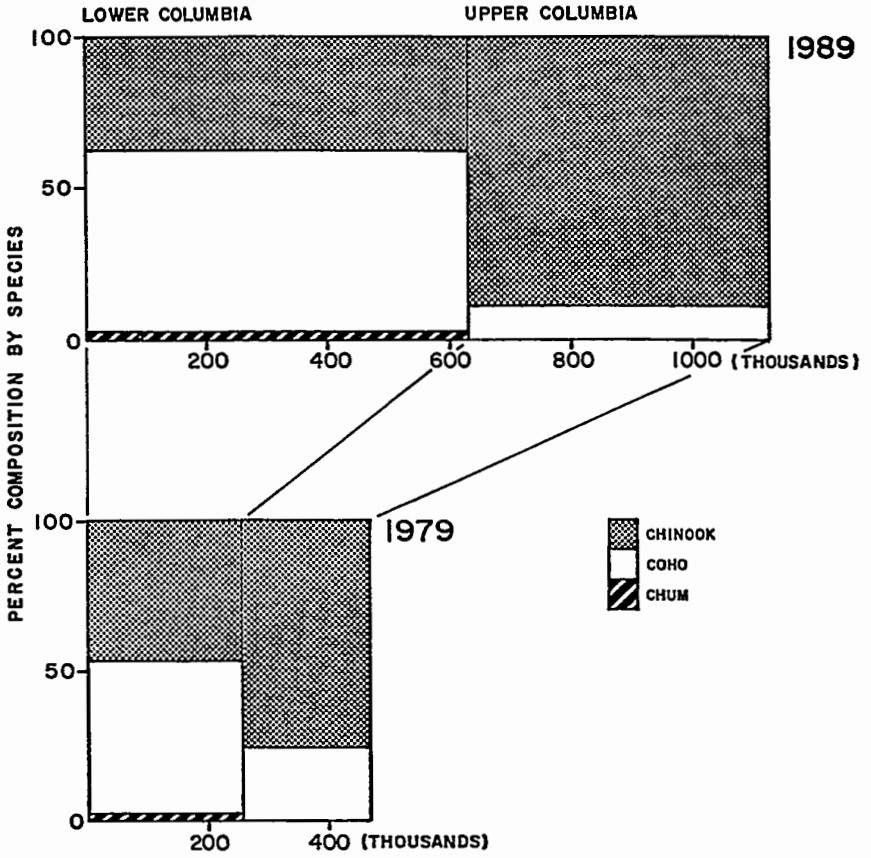


Figure 5-6

GRAYS HARBOR SALMON HARVEST

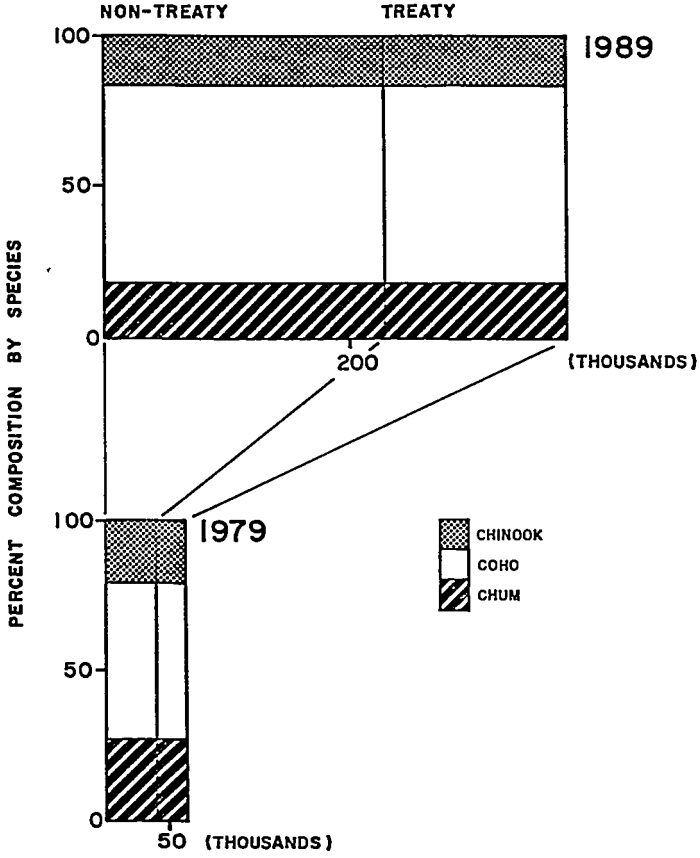


Figure 5-7

D. Willapa Bay fishery. The plan provides an opportunity for all salmon to be harvested in an equal opportunity fishery in accordance with the specific provisions set forth in the following section.

This plan, when coupled with the resource enhancement, stabilized ocean harvesting rates, and gear adjustment programs, will provide for an improved commercial fishery. Figure 5-8 illustrates some of the projected results of the plan.

E. Ocean troll and charter boat fishery. The plan provides for a stabilized rate of ocean harvesting, which, when coupled with the resource enhancement and gear adjustment programs, would provide for a healthy troll and sport fishery. (The more specific provisions of this plan are set forth in the following section.) Figure 5-9 illustrates some of the projected results of the plan.

F. Coastal river fishery. The plan establishes salmon harvest goals, which, when fulfilled, would provide a substantially improved commercial fishery for the Quinault, Quileute and Hoh Tribes. (The more specific provisions of this plan are set forth in the following section.) Figure 5-10 illustrates some of the projected results of the plan.

WILLAPA HARBOR SALMON HARVEST

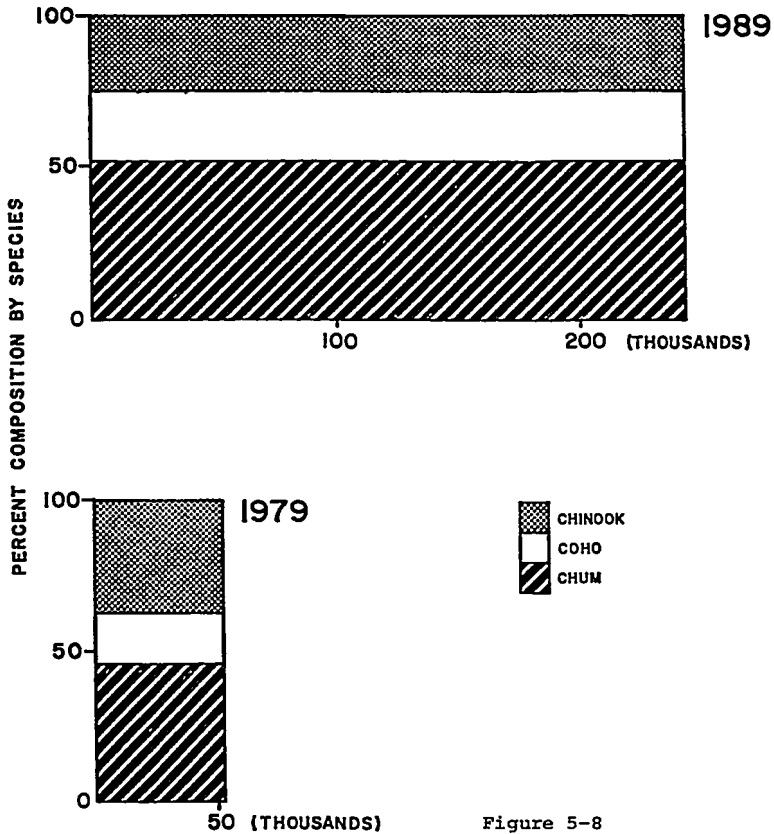


Figure 5-8

TROLL AND OCEAN SPORT SALMON HARVEST

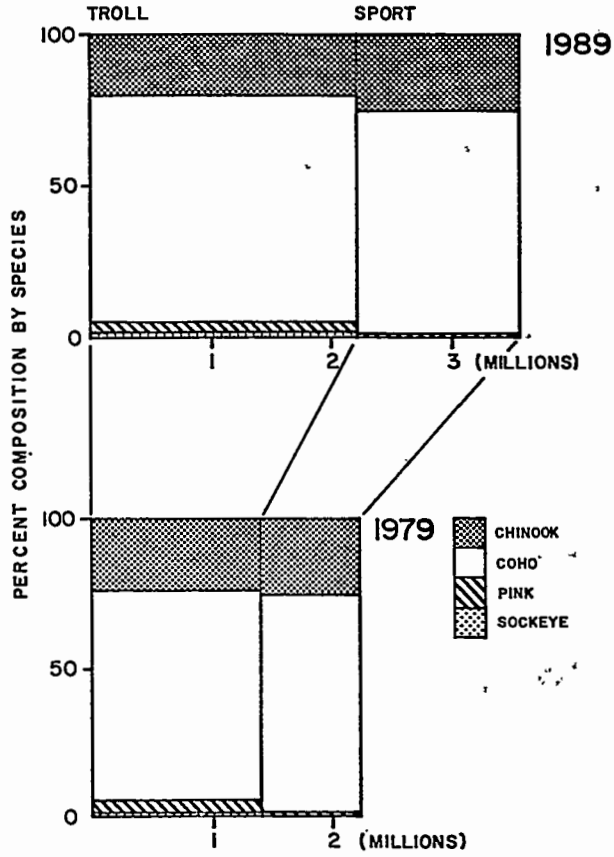


Figure 5-9

COASTAL RIVERS SALMON HARVEST

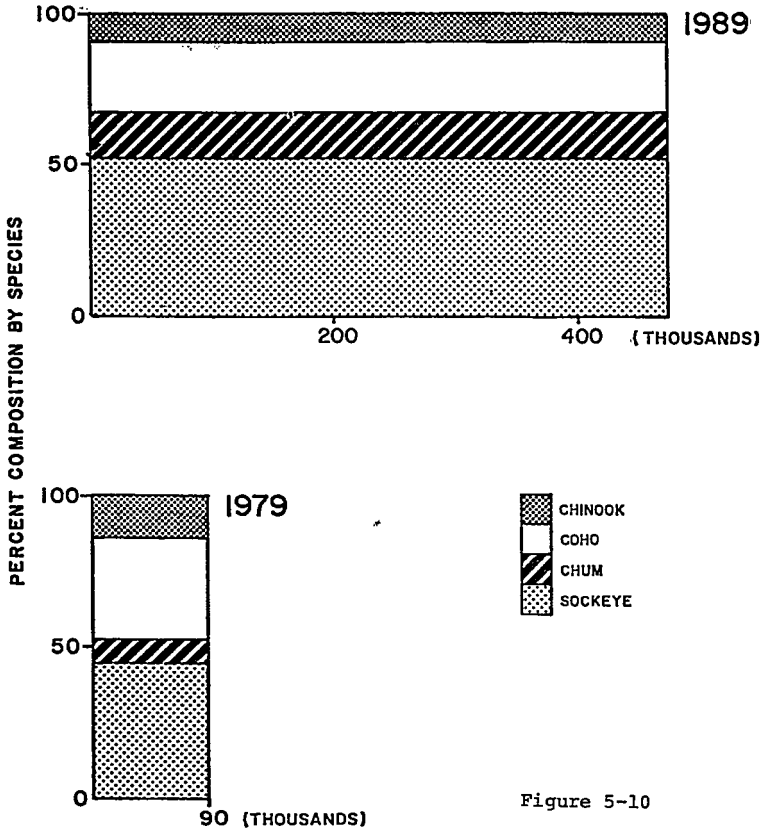


Figure 5-10

In summary, when all of the elements of this resource distribution plan are taken into consideration, it is designed so that groups participating in the salmon fishery, both sport and commercial, are provided with a greatly expanded harvesting opportunity.

III. SPECIFIC PROVISIONS

This section sets forth the specific terms of the recommendations of the Regional Team with regard to each sector of the salmon fishery.

A. Columbia River

The Regional Team accepted the in-river sharing plan in the Columbia River Agreement, of February, 1977 signed by the States of Washington and Oregon, and the Yakima, Warm Springs, Umatilla and Nez Perce Tribes as an established fact and as a realistic sharing plan. As regards salmon and steelhead, the agreement provides:

1. Fall Chinook Salmon

a. Escapement of 100,000 fish above Bonneville Dam shall be subtracted from total in-river run size.^{1/}

b. Additional fish above escapement are available for harvest and shall be shared 60% by treaty fishermen and 40% by non-treaty fishermen.

^{1/} All run sizes are based on the number of fish entering the Columbia River which are destined to pass Bonneville Dam.

c. The States' goal is to manage the fisheries to provide and maintain a minimum average harvestable run size of 200,000 upriver fall chinook to the Columbia River.

d. The 60% treaty share shall include mainstem ceremonial, subsistence, and commercial harvest as allocated by the Indian tribes. The 40% non-treaty share shall include in-river commercial and sport harvest as allocated by the appropriate agencies.

2. Spring Chinook

a. Spawning escapement goals shall be a minimum of 120,000 and 30,000 fish above Bonneville and Lower Granite Dams respectively.

b. The States' goal is to manage the fisheries to provide and maintain a minimum average run size of 250,000 upriver spring chinook to the Columbia River.

c. Treaty ceremonial and subsistence catch shall have first priority. These fisheries shall not exceed a catch of 2,000 fish on a run size of less than 100,000 fish; 5,000 on a run size of between 100,000 and 120,000 fish; and 7,500 fish on a run size of between 120,000 and 150,000 fish.

d. On a run size of between 120,000 and 150,000 fish passing Bonneville Dam, the non-treaty fisheries are limited to the Snake River system and may harvest fish which are in excess of the 30,000 spawning escapement passing Lower Granite Dam.

e. On a run size of more than 150,000 fish passing Bonneville Dam, all allocations as provided for in items c and d shall occur. All additional fish available for harvest below McNary Dam shall be shared 40 percent by treaty fishermen and 60 percent by non-treaty fishermen.

3. Summer Chinook Salmon

Summer chinook salmon runs do not warrant any fishery at the present time, with the exception of a treaty subsistence, ceremonial, and incidental catch not to exceed 2,000 fish.

4. Summer Steelhead

a. The escapement goal to spawning grounds above Lower Granite Dam shall be a minimum of 30,000 fish.

b. The treaty Indian mainstem fishery shall be limited to ceremonial, subsistence and incidental catch to other commercial fisheries.

c. The Indian tribes recognize the importance of the steelhead stocks to recreational users and agree to forgo a target commercial fishery.

5. Sockeye Salmon

Sockeye salmon runs do not warrant any fishery at the present time, with the exception of a treaty subsistence, ceremonial, and incidental catch not to exceed 2,000 fish.

6. Coho Salmon

Parties agree to use their best efforts to develop methods to maximize coho harvest while protecting those other species.

A provision in this settlement plan which affects the Columbia River fishery is that the Quinault Tribe will agree to not pursue the establishment of treaty fishing rights on the Columbia River.

The ocean provisions of the Columbia River agreement can be achieved through the proposed stabilized ocean harvest rates and all Columbia River fishermen will benefit from the resource enhancement programs. The only additional provision of this settlement plan which would affect Columbia River gillnet fishermen is their participation in the license and fleet adjustment program. The terms of that program are set forth in Chapter 7.

B. Willapa Bay

The plan for Willapa Bay provides for a State-licensed equal opportunity fishery in the Harbor. In order to accomplish this recommendation, a provision is included that the Quinault Tribe agree not to pursue establishment of treaty fishing rights in Willapa Harbor.

The only additional provision of this settlement plan which will affect Willapa Harbor commercial fishermen is their participation in the license and fleet adjustment program. The

terms of that program are set forth in Chapter 7. Willapa Bay fishermen will benefit from the stabilized ocean harvesting rates and resource enhancement programs.

Table 5-2 sets forth approximate current harvest by species, and the forecasted harvest which will be available to Willapa Bay gillnet fishermen under this plan.

Table 5-2
Willapa Harvest

<u>Species</u>	<u>Estimated Current Average</u>	<u>1987 Forecast</u>
Chinook	20,000	59,100
Chum	25,000	128,200
Coho	<u>8,400</u>	<u>61,200</u>
Total	53,400	248,500

C. Grays Harbor

The specific provisions of the plan for Grays Harbor are as follows:

1. The following interim resource distribution plan shall remain in effect for five years from the date of adoption of this plan. After this period, the final plan as specified in this section shall take effect.

a. Thirty-five percent (35%) of the salmon resources available for harvest in Grays Harbor shall be available for harvest by treaty fishermen in the Tribal Commercial Management Zone (TCMZ). Sixty-five percent (65%) of the salmon resources available for harvest in Grays Harbor

shall be available for harvest by Grays Harbor marine area fishermen:

b. The increased supply of harvestable salmon resulting from the resource enhancement program or improved harvest opportunities on wild stocks shall be divided in accordance with the formula in point a. above.

c. Beginning with the first fishing season after the adoption of this resource distribution plan, no separate and additional fishing time will be provided to treaty gillnet fishermen in Grays Harbor.

2. The following resource distribution formula shall be implemented immediately after the interim resource distribution plan expires.

a. Twenty-five percent (25%) of the salmon resources available for harvest in Grays Harbor shall be available for harvest by treaty fishermen in the TCMZ.

b. In addition, treaty fishermen who fish in Grays Harbor shall be provided a realistic opportunity through the proposed adjustments in the size of treaty and non-treaty gillnet fleets, to harvest fifteen percent (15%) of the stocks available for harvest in Grays Harbor.

c. A condition of this resource distribution plan is that the Quinault Tribe will not pursue establishment

of treaty fishing rights in Willapa Bay or on the Columbia River.

d. A condition of this resource distribution plan is that the State of Washington will not establish any intercepting net fisheries on the Washington coast north of Grays Harbor.

e. A condition of this resource distribution plan is that Grays Harbor non-treaty gillnet fishermen will participate in the license and fleet adjustment program in accordance with the terms set forth in Chapter 7.

3. Table 5-3 below sets forth the approximate current harvest by species and the forecasted harvest which will be available to Grays Harbor fishermen under this plan.

Table 5-3
Grays Harbor Harvest

<u>Species</u>	<u>Estimated Current Average</u>	<u>1987 Forecast</u>
Chinook	13,300	65,500
Chum	17,100	67,600
Coho	<u>32,700</u>	<u>245,300</u>
Total	63,100	378,400

D. Coastal Rivers

The specific provisions of the resource distribution plan for the coastal rivers and the Quinault, Hoh and Quileute Tribes are as follows:

1. The following interim resource distribution plan shall remain in effect for five years from the date of adoption of this plan.

The interim plan shall consist of the following steps which shall be taken by the Pacific Fishery Management Council, Washington State Department of Fisheries (WDF), and the Tribal Commission to ensure that significant progress is achieved toward meeting the specified goals during the interim plan..

a. Ocean sport and commercial harvesting rates will be stabilized as specified in the ocean section of this plan so that the declining number of harvestable coastal river salmon stocks in their respective terminal areas will be reversed and the harvestable numbers increased.

b. Funding of the proposed Quinault, Hoh and Quileute tribal research and enhancement programs will be guaranteed, subject to the review processes described in Chapter 2.

c. A comprehensive resource management policy (harvest, enhancement, environmental) for the coastal river stocks of salmon and steelhead will be developed. Preparation of the plan will be conducted by the three coastal tribes, State Fisheries and Game agencies, National Park Service (for rivers within the Olympic National Park), United States Fish and Wildlife Service (because of its concern for its hatcheries

and the environment), United States Forest Service, and the Pacific Council, and the National Marine Fisheries Service (because of the effect the plan may have on ocean harvesting).

d. Returns from the reduced ocean harvest rates and resource enhancement programs must provide substantial progress toward the salmon harvest goals as specified in the final plan.

e. There shall be an area in the ocean inside of a three-mile radius, originating from the center of the river, designated as a commercial fishery protection area on the Quinault, Queets, Raft, Hoh and Quileute Rivers. Within these areas, no commercial fishing by anyone shall be permitted. These protective areas will assist in the protection of stocks returning to these rivers. This protection zone may be lifted at such time as the State and Tribal Commission agree it is no longer necessary or when the river harvest goals have been reached.

2. Final Plan - Annual minimum harvest goals for the Quinault, Queets, Hoh and Quileute Rivers to provide the following minimum harvestable numbers of salmon to these terminal tribal fisheries:

a. Quinault River

10,000 fall chinook
30,000 coho
25,000 chum
100,000 sockeye

b. Queets River

10,000 fall chinook
 15,000 coho
 5,000 chum
 3,000 spring chinook

c. Hoh River

2,500 spring and summer chinook
 3,700 fall chinook
 3,000 early run coho
 15,000 chum

d. Quileute River

10,000 spring chinook
 5,000 summer chinook
 10,000 fall chinook
 40,000 fall coho

Specific goals for chum, pink and sockeye salmon, as may be appropriate for the Quileute River, shall be established by the Tribal Commission for consideration by the Fisheries Review Board.

e. While no specific annual minimum salmon harvest goals have been established for other coastal rivers within the Quinault, Hoh and Quileute TCMZ and reservations, salmon runs to other rivers will also benefit from the stabilization of ocean harvest rates, improved opportunity for wild stocks to be replenished and such enhancement projects as may be undertaken by the tribes on other rivers.

f. The Pacific Council, WDF, and the Tribal Commission shall cooperate in the development of ocean regulations which will implement the measures in the ocean

section of this plan as one of the measures necessary to achieve these goals.

g. A limitation on Canadian interceptions of coastal coho and chinook, in the context of the overall United States-Canadian interception treaty, is critical if these goals are to be reached in the near future.

3. The coastal tribal fishermen will benefit from the stabilized ocean harvest rates, increased protection and enhancement of wild stocks, and resource development through propagation programs. Table 5-4 sets forth the current approximate harvest rates by species and the forecasted harvests which will be available to coastal tribal fishermen under this plan.

Table 5-4
Coastal Harvest

<u>Species</u>	<u>Estimated Current Average</u>	<u>1987 Forecast</u>
Chinook	12,900	42,600
Chum	6,000	75,000
Coho	30,400	109,000
Sockeye	<u>40,300</u>	<u>248,780</u>
Total	89,600	475,380

E. Ocean

The ocean harvest rates of both the troll and sport fishery have increased substantially over the last ten years. In January, the plan called for stabilization of ocean harvest

rates. The Regional Team recommended that the effort levels in both the ocean troll and charter boat fleets be reduced and stabilized.

Since January these concepts and the relationship of effort to harvest rate have been more fully explored on a technical level and in discussions with the WDF biologists, representatives of the trollers, kelpers, charter boat operators and tribal biologists.

1. A consensus has been developed on a number of points:

a. Effort and thus harvest rates in the sport and troll fisheries have increased significantly. Thus, there needs to be a reduction and capping of the present ocean fishing effort.

b. Coastal natural stocks are being heavily impacted by the ocean fisheries. The Canadian ocean fishing is heavily impacting coastal chinook. The U.S. ocean fishery is heavily impacting the coastal coho.

c. The ocean fisheries can be more effectively managed by a better understanding of the fishing power of the various classes of vessels and the relationship of such standardized effort to harvest rates.

d. As a result of over harvest and consequent under-escapement many important natural stocks are producing far below optimum. A better understanding and management of

the ocean fisheries could provide the ocean fisheries with stability and increased catch through enhancement and still protect the coastal natural runs.

e. By providing for and achieving higher natural escapement levels, increased spawning production will keep pace with hatchery production and significantly augment the resource to the benefit of all fisheries.

2. Troll Fishery

Our preliminary analysis of the time and area patterns of stock recruitment and effort distribution indicates that a management strategy could be devised utilizing the enhancement programs and the concentration and disbursement of effort to protect critically depressed coastal stocks. The goal is to stabilize the Washington troll harvest rate at approximately the averages of the late 1960's. Managing for this goal would provide a standard for both inside fisheries and the trollers. It is only with such a standard that the trollers can look forward to any long term stability in their fishery. However this is only a very preliminary analysis and further analysis with all the affected parties participating will be required.

This reduction would be achieved through the following measures:

a. The first steps have already been taken by the Pacific Council through increased size limits and cuts in the troll seasons.

b. A State license reduction program which would withdraw all Washington troll licenses where the present owner had failed to average approximately 1,000 pounds per year over a five year base period (1973-77). This would remove approximately 1600 licenses.

c. A voluntary buy-back program available to all other Washington licensed trollers. It is our estimate that approximately 500 to 600 license holders will decide to sell their license and/or vessel, gear and license to the buy-back program.

d. The State should establish a troll licensing system by length of vessel, or such other effort measures as may be relevant in order to provide a more effective overall effort limitation.

(1) From the information presently available, our preliminary analysis indicates that the fishing effort necessary to achieve the target harvest rates is the equivalent of 900 boats with a mean length of 36 feet. The actual number of boats may exceed 900 so long as the total fleet fishing power does not exceed that of 900 boats of 36 foot length. Within this licensing system and license goal of approximately 1,000 licenses, the troll fishermen would be free to trade up or down within the authorized total fleet capacity. Thus, the private market would be available for

younger fishermen who desired a larger vessel or older fishermen who desire to sell a larger vessel for a smaller one.

(2) The second step is the development of a better information system for managing the ocean and additional effort controls for trollers from other states.

(3) The Pacific Council must regulate the troll effort from other states so that those trollers do not negate the reductions in the Washington troll effort. There are a number of alternatives available including a coastwide license reduction program or, if the other states wish to continue depleting their natural coho runs, then the establishment of separate entry for Washington and southern fisheries based on past landings in each zone.

The above steps should satisfy the troll stabilization goals. Hence, no further major adjustments should be made in the next four years.

But more sophisticated management of the ocean fisheries could lead to higher troll catches, and, at the same time, provide increased protection of critical stocks. Therefore:

e. We recommend to the Pacific Council, WDF, the IPSEFC, the Tribal Commission and the trollers that they begin immediately to investigate the need for a time and area effort management system which could replace or modify the present Pacific Council harvest management plan. From the

research that we have been able to conduct in the last two months, it appears that the information exists or can be obtained to adjust effort and thereby harvest rates on major (e.g., Puget Sound, Washington coast, Columbia River) stocks of coho and chinook. In the future, it should be possible to protect critical stocks with minimal impacts on the over-all opportunity of the remaining troller fleet.

f. The full returns in increased escapement and opportunity for inside fishermen will not be achieved until a similar program or some form of limitation is placed on the Canadian troll effort. This must be a top goal in the present United States-Canadian fisheries negotiations.

g. The troll catch which is based on a fixed harvest rate will grow with enhancement in chinook and coho in the Columbia River, Willapa Bay and Grays Harbor, the north coast of Washington and Puget Sound.

The answer to the mixed stock problems in the ocean is not to call for the elimination of the troll fleet. The answer is to reduce the overall fishing effort and develop a better management system.

3. Charter Boats

The approach to the charter fleet is essentially the same as the approach outlined above for the troll fleet.

The first step is to achieve a reduction in the fishing effort capability of the present charter boat fleet.

There are presently 558 licensed charter boats and an estimated additional 100 contracts for charter boats under the Washington State moratorium with the capacity to carry 6100 anglers per day under present Coast Guard certification. (This does not include the unknown capacity of the 100 contracts.)

In order to reduce the present fishing effort it is proposed that:

a. WDF, through regulations, give notice and pass strict regulations regarding the construction permits.

b. That the number of charter boat licenses be reduced to a total of 435 through a voluntary buy-back program if possible.

c. WDF require the charter boat operators to begin immediately filing fish tickets with the following information: (1) date, (2) number of anglers, (3) catch by species, (4) area fished, and (5) number of trips per day.

d. The State of Washington would institute a new licensing system for charter boats which would establish a formula tying the angler capacity to the size of the vessel. This formula when combined with the license reduction would limit the angler capacity to no more than 4100 per day.

e. If the voluntary buy-back has not achieved its goal in two years then the State of Washington and the charter boat representatives, in part utilizing the data in c.

above, plus other relevant factors, will institute an involuntary program.

g. The Pacific Council and the WDF should monitor the angler effort by the charter fleet. If the average daily charter angler effort for any given month exceeds the average daily charter angling effort for 1975, as shown in Figure 5-11, by more than 10%, or if in any two consecutive seasons the average annual cumulative effort exceeds 270,000 angler trips (this is the 1975 total charter angler trips), then the Pacific Council and/or WDF should take measures to require the previous harvest rates.

WDF and the Pacific Council should determine the 1975 charter boat harvest rate. The above ceiling should be raised if necessary to maintain that harvest rate. The increase in authorized angler trips should retain the 1975 proportional monthly distribution of effort.

h. The charter boat industry will benefit from the substantial enhancement in the Columbia River, Willapa Bay, Grays Harbor, Puget Sound and the north coast of Washington.

The above steps should satisfy the ocean charter stabilization goals. Hence, no further major adjustments should be made in the next four years.

F. Strait of Juan de Fuca

The Strait fishery at present is almost entirely an intercepting fishery much like the ocean troll and sport

fisheries. Under the settlement it would be managed on the same concepts as the ocean fishery.

The amount of fishing power currently operating in the Strait does not harvest large numbers of salmon nor does it appear that any one stock is being seriously impacted. Thus, maximum harvest and effort limitation are proposed to prevent significant stock impacts in the future. However, it is critical to the resource sharing and the enhancement plan that the fishing effort in the Strait be limited and controlled. Thus, harvest rates should be determined on the Puget Sound, coastal and Columbia River stocks. We are proposing to limit the gillnet (treaty and non-treaty), set net and beach seines and winter troll fishery (treaty) at or near their present levels for the next four to five years.

After five years the rate of harvest will stay the same but the catch should grow commensurate with the growth in stocks. However, by this time there will be sufficient information to manage more specifically on a time and area basis to avoid any substantial impact on natural stocks. If the rate of harvest after five years is not being achieved under the proposed constraints listed below, then the following measures should be considered: increasing the number of licensed fishermen, expanding the Strait licensing area to include all or part of Area 6C or adding additional days.

1. Licensing Areas

The State of Washington and the Makah and Klallam Tribes (through the Tribal Commission) shall establish a gillnet license for what is presently the saltwater areas of State reporting Areas 4B and 5. The Tribal Commission may set up a license for set nets in Areas 4B, 5, and 6C, and a troll license for Area 4B.

2. License Limitations

- a. Tribally licensed gillnet vessels - 35
- b. State licensed gillnet vessels - 35
- c. Tribally licensed set nets - 55
- d. Tribally licensed trollers - 20
- e. Purse seine gear is prohibited within these reporting areas.

3. Limitation on Days per Week

a. Gillnets - the State of Washington and the IPSFC shall establish a four day per week fishery in this licensing area subject only to the following two exceptions:

- (1) The need for a conservation closure, or;
- (2) the gillnet (State and tribally licensed) fishery having harvested 7,000 chinook.

b. Set nets - the Tribal Commission may authorize up to a four day per week set net fishery from mid-June through mid-October subject to the following two exceptions:

(1) The need for a conservation closure for stocks of Strait origin, or;

(2) The set net fishery having harvested 5,000 chinook.

4. The Tribal Commission may authorize the traditional winter troll fishery in area 4B subject to the following provisions:

a. The fleet size shall be limited to 20 vessels;

b. The size limits shall be 20" for coho and 22" for chinook;

c. The season may extend from December 1st to April 30th. The weather during this period will serve to limit the per week efforts in this fishery;

d. The troll fishery in this area having harvested a total of 12,000 chinook. (We recognize the Makah and Klallam arguments that many, if not a majority, of these chinook may not be Washington origin fish, but we still believe a ceiling is required.)

There are a limited number of State licensed fishermen who live and/or have historically fished in this area. This area is part of the historic fishing areas of the Makahs and Klallams. For many years, long before the Boldt decision, the Makahs have had set net fisheries, a winter troll fishery and a four day per week IPSFC fishery and fall fishery to compensate

for the rough water, weather, dogfish, etc., which make their fishery particularly difficult and unpredictable.

G. Puget Sound and International Pacific Salmon Fisheries Commission

For harvestable salmon of Puget Sound origin and Canadian stocks caught under the jurisdiction of the IPSFC, the Regional Team recommends the following resource distribution plan:

1. The following interim resource distribution plan shall remain in effect for five years from the date of adoption of this plan for Puget Sound-origin salmon.

a. Forty percent (40%) of Puget Sound-origin harvestable salmon shall be available for harvest by treaty fishermen in the TCMZ. Sixty percent (60%) of Puget Sound-origin harvestable salmon shall be available for harvest by Puget Sound marine area fishermen.

b. Any increased supply of salmon resulting from stabilization of ocean harvest rates, enhancement or other factors increasing the supply shall be divided in accordance with the sharing arrangement set forth in a.

c. Beginning with the first fishing season after the adoption of the resource distribution plan, the provision of separate and additional treaty fishing time in Puget Sound SCMZ shall be discontinued. (For purposes of this

provision, the areas included are all areas of the SCMZ, except those waters managed by the IPSFC and the Convention waters after the IPSFC relinquishes jurisdiction.)

d. It is estimated that initially, under this interim plan, treaty marine fishermen will catch an estimated three to five percent of the Puget Sound-origin salmon in the marine areas.

2. The following interim resource distribution plan shall remain in effect for five years from the date of adoption of this plan for Canadian-origin salmon harvested under the jurisdiction of the IPSFC in Convention waters.

a. Separate and additional fishing time shall be provided for treaty fishermen fishing in Convention waters under the jurisdiction of the IPSFC in order to provide them with the opportunity to maintain their percentage of the 1977 United States harvest. Current estimates indicate treaty fishermen in the IPSFC fishery harvested eighteen percent of the sockeye, eight percent of the pinks, and thirteen percent of other species. More specific catch percentages may be established based upon actual catch statistics to be agreed upon by the Tribal Commission and the WDF.

The United States Departments of Commerce and Interior shall determine the amount of additional fishing time for treaty fishermen which would be appropriate during the time that the composition of the treaty and non-treaty fleets

are undergoing changes as set forth in Chapters 7 and 8 of this plan. (As the number of treaty fishing vessels increases in proportion to the total fleet size, the amount of separate and additional fishing time may be reduced, provided that treaty fishermen are provided the opportunity to maintain their 1977 percentage share of the United States harvest.)

b. Notwithstanding the provisions of a., no separate or additional fishing time will be provided to treaty fishermen after five years from the date of adoption of this plan.

3. The following resource distribution plan shall be implemented immediately following the termination of the interim plan for Puget Sound-origin salmon.

a. Thirty-three percent (33%) of Puget Sound-origin harvestable salmon shall be available for harvest by treaty fishermen in TCMZ. This commitment of thirty-three percent of the harvestable run is a guarantee of the opportunity to harvest thirty-three percent of the total harvestable run. (See definitions.)

(1) This guarantee does not mean that the tribal fishermen are guaranteed thirty-three percent of the catch. Given the efficiency of terminal gear, catch should equal opportunity. However, if, for some reason (i.e., weather, or lack of effort), the opportunity exists but is not

utilized, the terms of the guaranteed opportunity would be fulfilled.

(2) In order to monitor excess escapements to hatcheries (surpluses), the Fisheries Review Board shall annually evaluate the number of surplus salmon at each hatchery and catch records to determine if such surpluses resulted in harvest management closures necessary to protect other stocks, or are the consequences of denial or forfeiture (salmon available but not caught) of opportunity and must be accounted for in the following seasons. Tolerance limits must be considered for reasonable management error' (see Section H, under General Terms).

(3) Hatchery surpluses at State, tribal or Federal hatcheries should be treated in the same way in terms of resource distribution determinations. We, therefore, recommend that hatchery surpluses not be counted against the opportunity provided to either treaty or non-treaty fishermen. Further, we recommend that the money from the sale of hatchery surplus salmon from State facilities continue to be placed in the State of Washington General Fund; the sale of hatchery-surplus salmon from tribal and Federal hatcheries be placed in the Federal treasury. These recommendations will ensure there are no incentives to any party managing hatcheries to have unnecessary hatchery fish surpluses.

(4) The thirty-three percent opportunity shall be determined on a region of origin (see definitions in Section IV of this chapter) and species-by-species basis. It is recognized that the regions of origin are broad geographic areas (especially South Puget Sound) which have a number of terminal area fisheries. It is the intent of this plan that each of these terminal areas have approximately the opportunity set forth above.

It is recognized that there are a number of overlapping runs (e.g., coho and chum) and other localized area harvesting problems. The Tribal Commission and WDF may take these localized problems into consideration in making adjustments to the general region of origin, species-by-species basis as necessary to achieve the overall intent of this plan.

(5) The thirty-three percent opportunity applies to all harvestable salmon, including natural production, and all salmon from existing and future artificial propagation projects.

(6) The opportunity to harvest thirty-three percent of the harvestable salmon shall include salmon taken on-reservation and for ceremonial purposes.

(7) It is the intent of this plan that salmon taken for subsistence or personal use by both treaty and non-treaty fishermen be fully accounted for by both groups of

fishermen. It is recommended that the Tribal Commission and WDF institute measures which would account for all salmon harvested so those used for subsistence or personal use can be counted for all fishermen within the terms of this resource distribution plan.

b. Treaty fishermen fishing in the marine areas of Puget Sound, which includes those waters of North Puget Sound after the IPSFC relinquishes jurisdiction, exclusive of the TCMZ, will be provided with a realistic opportunity to harvest in these marine areas fifteen percent (15%) of the harvestable Puget Sound-origin salmon. This fifteen percent is not a guaranteed opportunity, but is an estimate based upon the recommended adjustments in the number of treaty and non-treaty purse seine and gillnet vessels and the projected sport and troll catch.

c. Non-treaty fishermen shall be provided with a realistic opportunity to harvest fifty-two percent (52%) of the harvestable Puget Sound-origin salmon. This fifty-two percent is not a guarantee, but is an estimate based upon the recommended adjustments in the number of treaty and non-treaty Puget Sound purse seine and gillnet vessels and the projected sport and troll catch.

4. The following resource distribution plan shall be implemented immediately following the termination of the interim plan for the area under the jurisdiction of the IPSFC.

a. Marine area treaty fishermen, fishing in Convention waters under the jurisdiction of the IPSFC, shall be provided with a realistic opportunity to harvest twenty-five percent (25%) of the salmon stocks under the jurisdiction of the IPSFC. This twenty-five percent is not a guaranteed opportunity, but is an estimate based upon the recommended adjustments in the number of treaty and non-treaty Puget Sound purse seine and gillnet vessels.

b. Non-treaty fishermen fishing in Convention waters under the jurisdiction of the IPSFC shall be provided with a realistic opportunity to harvest seventy-five percent (75%) of the salmon stocks under the jurisdiction of the IPSEFC. This seventy-five percent is not a guaranteed opportunity, but is an estimate based upon the recommended adjustments in the number of treaty and non-treaty Puget Sound purse seine and gillnet vessels.

5. Table 5-5 illustrates the projected results of the resource distribution plan for the Puget Sound and IPSFC fishery. For comparative purposes, included in the table are estimated treaty and non-treaty catches for the 1977 season, as well as what the treaty share would have been had the Federal Court formula been fully implemented during the 1977 season.

The 1989 season, as set forth in the table, reflects estimates of the salmon which will be available for

harvest. The above provisions of the resource distribution plan would be as follows:

a. For Canadian stocks under the jurisdiction of the IPSFC, non-treaty fishermen will have the opportunity to harvest seventy-five percent of the allowable catch, and treaty fishermen will have a similar opportunity to catch twenty-five percent of the allowable catch.

b. For Puget Sound origin stocks in the river and terminal areas of the TCMZ, treaty fishermen will have the guaranteed opportunity to catch thirty-three percent of the harvestable surplus. In addition, treaty fishermen will be provided the opportunity, but not a guarantee, to harvest an estimated fifteen percent of the harvestable Puget Sound-origin stocks in the marine areas.

c. Non-treaty fishermen will be provided the opportunity, but not a guarantee, to harvest an estimated fifty-two percent of Puget Sound-origin harvestable stocks.

d. In aggregating both the Puget Sound and IPSFC, the resource distribution plan provides an opportunity for non-treaty fishermen to harvest approximately sixty percent of the harvestable numbers of salmon, with approximately forty percent to treaty fishermen.

Table 5-5
 APPLICATION OF PROPOSED FORMULA^{1/}
 ALL SPECIES

	1977 Season		1989 Forecast
	Est. Catch	Est. Fed. Ct. Formula	Proposed Formula
Canadian Stocks - IPSFC**			
Est. Non-Treaty Catch	2,369,000	1,371,000	2,250,000 75%
Est. Treaty Catch	373,900	1,371,000	750,000 25%
Subtotal IPSFC	2,742,000	2,742,000	3,000,000 100%
Puget Sound-Origin Stocks			
Marine Areas (Equal Opportunity)***			
Est. Non-Treaty Catch	843,000	433,000	3,607,000 52%
Est. Treaty Catch	120,000	530,000	998,000 15%
Subtotal	963,000	963,000	4,605,000 67%
River and Terminal Areas			
Non-Treaty Catch	--	279,000	--
Treaty Catch	621	342,000	2,259,000 33%
Subtotal	621,000	621,000	2,259,000
Subtotal Puget Sound	1,584,000	1,584,000	6,864,000 100%
Total IPSFC and Puget Sound	4,326,000	4,326,000	9,864,000
Total Non-Treaty Catch	3,212,000	2,083,000	5,812,000
%	74%	48%	60%*
Total Treaty Catch	1,114,000	2,243,000	4,052,000
%	26%	52%	40%*

* These percentages are estimates based upon the guaranteed opportunity in the river and terminal areas and projected treaty and non-treaty catches in the Puget Sound and Strait marine and IPSFC areas.

** These numbers include harvest by 35 non-treaty and 35 treaty boats fishing in the Strait licensing area.

*** Includes interceptions, expressed as adult equivalents in the troll, sport and Strait fisheries.

1/

Formula Footnotes

- a. 1977 estimated catch information from WDF soft data system.
- b. Pink salmon averaged over four years to reduce distortion (even years included in average).
- c. Freshwater catch of jack salmon not included in sport catch.
- d. Outcome of United States/Canadian talks and possible changes in catch levels of IPSFC and Puget Sound stocks not reflected in the forecast.
- e. Specific river and terminal areas are defined in Chapter 3.
- f. The 1989 forecast based upon planned State and proposed Federal resource enhancement programs.
- g. Federal Court formula used in the table is an estimate of how the salmon resource would have been distributed during the 1977 season had full implementation been in effect.

IV. GENERAL TERMS - RESOURCE DISTRIBUTION PLAN

The following additional terms are included as a part of the overall resource distribution plan.

A. Sport Fishing - Ocean and Marine Areas (non-charter)

WDF and the Pacific Council shall manage the private sport fisheries so as to stabilize their harvest rate as a percent at the 1976 levels.

B. Sport Fishing - Freshwater Sport

In order to ensure that freshwater sport fishing on mature salmon that have reached their destination and are ready to spawn is not detrimental to rebuilding wild runs, the following recommendations should be placed into effect.

Where a terminal or net fishery has been precluded from fishing for conservation purposes, and/or where ocean harvest rates are being reduced to allow the necessary escapement to rebuild wild runs, then freshwater sport fishing on these mature spawning fish should also be precluded or curtailed.

This general recommendation need not generally limit sport fisheries for jack salmon in the same river systems, except in areas where salmon are spawning.

C. Sport Fishing in the TCMZ

Elsewhere in these recommendations, sports fishing is provided for in the TCMZ. In order to properly account for this harvest, so it does not reduce the guaranteed opportunity to the TCMZ, an estimate of sport-caught fish in the Tribal Commercial Management Zones shall be included in WDF plans to ensure the TCMZ opportunity.

D. Delayed Release Chinook and Tribal Fishing on Immature Chinook

The tribes, particularly in South Sound, are concerned about the decreasing numbers of normal-release mode chinook presently being released from State hatcheries. They do not want to target on delayed release chinook. However, if the present trend of releases continues, these will soon be the only chinook available.

The sportsmen do not want the tribes fishing on delayed release chinook which are primarily a sport fish.

WDF is caught in the middle of these two competing needs.

The answer is for the tribes, WDF and the sportsmen to agree on a ratio of normal and delayed releases in return for the Tribal Commission not authorizing any tribal commercial fisheries in Puget Sound to target on delayed release fish.

Given the proposed enhancement programs, it will be possible to increase the number of delayed-release chinook available to the sportsmen, provide for the 33% terminal fishery on mature chinook and probably provide a mature chinook sport fishery as well.

E. Regional Commercial Licenses Within Puget Sound

As a supplemental management tool, particularly if the fleet adjustment program does not result in the projected reduction of the overall fleet size, and if the harvestable numbers of fish to meet the guaranteed opportunity or the realistic opportunity for treaty fishermen are not provided, it may be necessary to implement a regional commercial licensing system within Puget Sound. Under this system, the total number of licenses for each region would be determined by assessing the contribution of each region to the total Puget Sound marine net fishery harvest and the potential economic return per unit of gear. This regional licensing system (where fishermen might

have two or more regions to fish, e.g., Hood Canal and IPSFC) appears to have a number of advantages over the present licensing system:

1. The mobility of the total treaty and non-treaty "mixed stock" fleet would be limited, thus preventing the entire fleet from concentrating effort in one region to harvest a specific run. The risk of overharvesting viable natural stocks would be reduced.

2. Smaller fleets within each region would allow for more fishing days per season and would increase the accuracy of management decisions. The result should be to maximize the harvesting opportunities in that fishery, thus reducing hatchery surpluses and insuring terminal area escapement.

3. More precision in management decisions should reduce the likelihood of corrective adjustments in future years.

4. Fixed licenses could incorporate a constant fishing power ratio between the treaty and non-treaty fleets within each region. This will prevent either the treaty or non-treaty fleets from completely dominating the other in any area. Therefore, both fleets should be able to realize their share of the harvest.

5. This does not restrict adjustment of the total fishing power with changes in run size.

While a decision requiring implementation has not been made at this time, the WDF and the Tribal Commission shall

start immediately to evolve such a regional licensing plan in the event such a plan is required. This planning must include early and substantial participation by the affected groups of commercial fishermen. This plan must be completed within two years after the adoption of this settlement. At any time during the two years following the completion of the plan, the Fisheries Review Board may order the plan implemented only on the condition that the Board finds that implementation is a necessary means for achieving the terms of this settlement plan.

It is apparent already that a special area license should be instituted for State Areas 4B and 5 of the Strait of Juan de Fuca. The State and the Tribal Commission can each issue thirty-five gillnet licenses for this area. From the reported landings it is estimated that slightly less than this number currently actively fish this area. The State and Tribal Commission are free to adopt any entry scheme but we recommend that individuals who have historically fished in this area be given first preference.

F. Harvest Management Regulations

WDF shall establish the regulations in the SCMZ to ensure that the terms of this resource distribution plan are met. These regulations may include, but not be limited to: closing catch Areas 6, 6A and 6C to marine fishing after September 1st each year as a means of ensuring that sufficient returning Puget Sound stocks have the opportunity to reach the

terminal areas to meet escapement goals and provide harvestable numbers of salmon as required by the resource distribution plan; managing mixed stock catch Areas 6B, 9, 10, 11 and 12 so as to ensure that the weakest viable stock is protected, and to meet the terms of the resource distribution formula.

G. Treaty Marine and TCMZ Fishery Areas

1. In order to provide equal fishing opportunities for treaty gillnet and purse seine fishermen who fish in marine areas, the Tribal Commission may license tribal fishermen to fish anywhere in Puget Sound and IPSFC Convention waters regardless of present judicially determined usual and accustomed fishing grounds. These decisions should be made by the tribes. Under the settlement plan the Commission may authorize a total tribal fleet size in the SCMZ of:

- a. Puget Sound gillnet - 28% of the total fleet
- b. Puget Sound purse seine - 28% of the total fleet
- c. Troll - 10% of the total fleet
- d. Grays Harbor gillnet - 20%

2. Within two years of the adoption of this settlement, the tribes, through the Tribal Commission, shall develop a limited entry plan for each terminal fishery. Such a plan shall be implemented no later than the third year following the adoption of this settlement.

3. The Tribal Commission will set fishing regulations for tribal harvesting in the TCMZ^o. The Tribal Commission shall determine which areas of the TCMZ shall be open to the various tribal fishermen. The tribes have expressed a preference for maintaining a separation of their fisheries according to the Court-determined usual and accustomed grounds. There is nothing in the settlement to prevent this. We believe this is a matter for the tribes to decide and to change if they desire to do so in the future.

4. The Tribal Commission may, at the request of a tribe or tribes, license non-treaty fishermen to fish in the TCMZ. But this must be a tribal decision and the tribe or tribes must retain control of the licenses.

5. Transfer of effort from TCMZ to the SCMZ

The State and a tribe or tribes (through the Tribal Commission) fishing in a particular TCMZ may agree to an increase in the number of tribal gillnet and/or purse seine licenses for that tribe or tribes which would result in an increased marine fishing opportunity. This increased opportunity would be matched by a comparable decrease in the guaranteed opportunity in the relevant portion of the TCMZ.

6. Definition of Terminal Area Gear

a. Permissible tribal terminal gear shall include stake nets, set nets, drift gillnet skiff fisheries, beach seines, pole nets and other hand held gear. A skiff

fishery shall include boats up to 24 feet in length and may use nets up to 1,200 feet in length.

b. During the interim five year plan the tribes may authorize their gillnet fishermen to fish in the TCMZ.

c. The Tribal Commission may authorize a tribe to operate a fish trap in the TCMZ for the benefit of the tribe. It should be noted that the timely use of this device could reduce mixed stock fisheries problems and reduce the incidental catch of non-target species. The steelhead and chum overlapping harvest is a good example. This should be a tribal decision.

H. Resource Distribution Adjustments

If the conditions of either the final or interim resource distribution plans are not met in any one year, deficiencies in numbers of fish shall be made up during the next succeeding run of the same species in the same area whenever practicable. If necessary, the deficiency for each year shall be distributed and made up over a series of years or species, not exceeding five years. A 1% margin of error should be allowed in evaluating the effectiveness of the management system provided there are not chronic discrepancies in favor of one fishery or one area. For example, the 33% guaranteed opportunity will be 33% plus or minus 1% (32-34%) with no make-up required. However, continuing errors of 1% in favor of

one group (to be assessed every three years) will require an adjustment.

At the end of six years the percentage of the total harvest (harvest here includes relinquished opportunity) in adult equivalents taken inside the TCMZ will be computed for each species and region. The comparisons of these percentages to the settlement provisions will constitute primary tests of settlement compliance of the agencies responsible for management of Washington fisheries: WDF, WDG, Tribal Commission and the Pacific Council.

I. Unrecognized Tribes

The provisions of this resource distribution plan shall apply to any tribes in the case area which subsequently establish treaty fishing rights.

J. General Powers

WDF and the Tribal Commission may formulate additional regulations regarding the sharing of species and other matters as may be necessary to meet the intent of the resource distribution formula.

DEFINITIONS OF TERMS AS USED IN THIS REPORTRegion of Origin

Region of origin refers to the specific geographic area where a salmon (or steelhead) first entered saltwater and where it would be expected to return upon maturation.

The regions of origin in the State of Washington are:

1. The Upper Columbia River, the waters of the Columbia and tributaries above the Bonneville Dam.
2. Lower Columbia River, waters below the Bonneville Dam inside the river mouth.
3. Willapa Harbor
4. Grays Harbor
5. North coastal rivers, streams and tributaries of the Washington coast north of Grays Harbor and south of Cape Flattery.

The six regions of origin in Puget Sound are:

6. The Strait of Juan de Fuca, referred to elsewhere as the Strait region, consists of WDF statistical areas 4B, 5 and 6 (with streams and tributaries).
7. Bellingham and Samish Bays, WDF areas 7B and 7C with streams and tributaries.
8. Skagit Bay, WDF area 8 with streams and tributaries.
9. Port Gardiner-Port Susan, WDF areas 8B and 8C with streams and tributaries.

10. South Puget Sound, WDF area 10 and all contiguous waters south thereof.

11. Hood Canal, the contiguous waters south and west of the Hood Canal Bridge.

Washington Fishery

A Washington fishery is one conducted by an individual or a vessel licensed to catch or land salmon in the State of Washington.

Run

Those fish of the same species that would have entered their regions of origin at a similar time in the absence of all prior Washington fisheries constitute a run.

Harvest Rate

The harvest rate of any fishery on a run is the percentage of that run that is caught or killed as a consequence of that fishery. This may be referred to as the fraction of adult equivalents removed by the fishery from the run.

Adult Equivalents

The adult equivalents of a fishery are those fish which are caught or killed as a consequence of the fishery and which would have survived to enter their regions of origin in the absence of all Washington fisheries.

Puget Sound Origin Harvestable

Puget Sound origin harvestable refers to the portion of the Puget Sound runs which may be harvested without adversely impacting escapement requirements.

Available for Harvest in Grays Harbor

Available for harvest in Grays Harbor are those fish in excess of escapement needs entering the Grays Harbor net fisheries whether or not of Grays Harbor origin.

Wild (or Natural) Stocks

Wild or natural stocks are salmonids spawned 'naturally' in the watersheds of their ancestral descent.

Viable Stock

A viable stock is one for which an escapement goal has been determined and agreed upon by the Tribal Commission and the Washington Departments of Fisheries or Game.

Chapter 6

STEELHEAD RESOURCE DISTRIBUTION PLANI. INTRODUCTION

This plan is predicated upon the terms of reference established for the Regional Team which recognizes treaty fishing rights. The plan recognizes tribal rights to fish steelhead, but requires many tribes to either not exercise these rights, or limit the exercise of these rights, and instead fish on other species of anadromous fish.

From another perspective, sportsmen who highly prize steelhead as a game fish, want to see it de-commercialized. They argue that the economic value of sport-caught steelhead far exceeds its commercial value, hence steelhead should not be commercially sold. This plan recognizes the highly desirable game fish characteristics of steelhead, and provides for an immediate cessation of commercial steelhead fishing by all but five tribes. Given the current income dependence of these five tribes which do not currently have other adequate fishing alternatives, the plan provides for a phase-out and limitation of the steelhead commercial fishing. The phase-out is designed to occur in stages as alternative species become available to these tribes.

The proposed steelhead plan, taken in the context of the overall settlement plan, would provide treaty fishermen with other species of fish for income. For sportsmen it, for all practical purposes, restores steelhead to its status as a sports fish. In addition, through the proposed steelhead enhancement program, additional steelhead will be made available for sports fishermen.

II. STEELHEAD CATCH STATISTICS

During the period 1974-1977, the annual average harvest of steelhead amounted to 89,295 fish (as shown in Table 6-1). Of this amount, sportsmen harvested 34,894 (thirty-nine percent), and the tribes harvested 54,401 (sixty-one percent) of the steelhead. The percentage of sports versus commercial harvest ranges from a low of seven percent commercial harvest on North Hood Canal, to a high of ninety-six percent on the Queets/Clearwater River system.

Under the proposed steelhead resource distribution plan, when implemented, treaty fishing on steelhead would be limited to two rivers (Puyallup and Nisqually) which, because of mixed stock harvesting and other factors, would continue to have a limited commercial steelhead fishery.

The implementation of the proposed steelhead settlement plan would limit the annual commercial sale of steelhead to a maximum of 6,500 fish. Given the proposed steelhead

Table 6-1

AVERAGE TREATY AND NON-TREATY STEELHEAD CATCHES
FROM WATERSHEDS WITHIN THE USUAL AND ACCUSTOMED AREAS

Based on 1974/75 - 1976-77 Catch Data^{1/}

Major Watersheds	1974/75 - 1976/77 Season					
	Current Av. Sport Catch		Current Av. Tribal Catch		Current Total Av. Harvest	
	#	%	#	%	#	
W. Juan de Fuca	486	40	724	60	1,219	
E. Juan de Fuca	2,603	82	585	18	3,188	
N. Hood Canal	640	93	51	7	691	
S. Hood Canal	680	65	371	35	1,051	
Snohomish/Stillaguamish	13,461	81	3,159	19	16,620	
Lake Washington	1,007	36	1,816	64	2,823	
Green/Duwamish	2,771	33	5,622	67	8,393	
Skagit	2,810	25	8,273	75	11,083	
Nooksack/Samish	1,099	24	3,397	76	4,496	
Grays Harbor ^{2/}	3,071	43	4,108	57	7,179	
Quinault	195	6	3,200	94	3,395	
Queets/Clearwater	183	4	4,240	96	4,423	
Hoh	829	20	3,395	80	4,224	
Quileute	2,556	22	8,981	78	11,537	
Puyallup	1,856	41	2,706	59	4,562	
Nisqually	647	15	3,773	85	4,420	
TOTALS	34,894	39	54,401	61	89,295	

^{1/} Amended harvest numbers (non-treaty sport and treaty commercial), provided by Mr. C. Millenbach, Washington State Department of Game.

^{2/} Includes the Chehalis Tribe's catch within the Chehalis System.

enhancement program (Table 6-2) which would annually add 58,000 steelhead^{1/} to the 1974-77 average catch of 89,295. The sport steelhead catch will increase from approximately 34,894, to an estimated annual catch of 140,000: over a 400% increase over the 1974-1977 average steelhead sports harvest.

III. TERMS OF THE STEELHEAD DISTRIBUTION PLAN

A. The tribes would retain their treaty right to steelhead, but this settlement would require the following tribes to forgo exercising their treaty right to fish for steelhead. In addition, steelhead caught incidentally to salmon fishing could not be sold commercially. While efforts shall be made to keep incidental harvest of steelhead to a minimum, enhancement of late chum stocks shall not be precluded because of its potential importance to some tribes as a source of late season income. Potential impact on steelhead by harvest of late chum shall be evaluated jointly by WDG and the Tribal Commission.

^{1/} After reviewing this plan, some or all of the tribes which have proposed steelhead enhancement might prefer to shift into other species. If all of the tribal projects were dropped, the number of additional steelhead would drop to 30,000.

Table 6-2
 ASSIGNMENT AND ESTIMATION OF ADULT RETURNS
 PER STEELHEAD PLANTS
 FROM PROPOSED ENHANCEMENT PROJECTS

	Total Smolt Release	Watershed of Release	Estimated Adult Return
Snoqualmie Steelhead Hatchery and Rearing Facility (WDG)	500,000	Snohomish/ Stillaguamish	10,000
Green River Rearing Pond (WDG)	150,000	Green/Duwamish	3,000
Puyallup Hatchery Rearing Pond (WDG)	150,000	Puyallup	3,000
Lake Whatcom Rearing Pens (WDG)	300,000	Nooksack/Samish	6,000
Lake Sutherland Rearing Pens (WDG)	300,000	E. Juan de Fuca W. Juan de Fuca	3,000 3,000
Sauk River Rearing Ponds (WDG)	100,000	Skagit	2,000
Quinalt Rearing Pens (Quinalt Tribe)	100,000 400,000	Grays Harbor Quinalt, Queets and Raft Rivers	2,000 8,000
Makah Hatchery (Makah Tribe)	400,000	W. Juan de Fuca	8,000
Lower Elwha Hatchery (Elwha Tribe)	100,000	E. Juan de Fuca	2,000
Hoh	100,000	Hoh River	2,000
Quileute Rehabilitation Project (Quileute Tribe)	250,000	Quileute	5,000
Lummi	50,000	Nooksack	10,000
TOTAL	2,900,000		58,000

Suquamish	Lummi
Squaxin	Skokomish
Tulalip	Port Gamble
Swinomish	Makah
Sauk-Suiattle	Stillaguamish
Nooksack	

B. This settlement plan requires the following tribes, should their treaty fishing rights be judicially established, to meet the same conditions as stated in point A above.

Snoqualmie	Steilacoom
Duwamish	Snohomish
Samish	

C. The plan requires the following tribes to forgo exercising their treaty right to fish for steelhead or to commercially sell steelhead caught incidentally during salmon fishing.

It is recognized that these tribes currently have a high economic dependency on steelhead and have expressed a willingness to not exercise their treaty rights if alternative resources of equivalent value are available to them.

Given the five or more years which will likely elapse before sufficient salmon enhancement results have been achieved to provide an economically viable replacement for steelhead, this plan recommends that the following tribes be provided with an annual steelhead income replacement grant. These grants would be continued until such time as the salmon enhancement program provides sufficient alternative resources.

Muckleshoot
Upper Skagit
Lower Elwha

In order to determine the amount of payment which would be made, the Washington State Department of Game and the Tribal Commission, with the assistance of the Harvest Management Committee, would develop run size estimates and such other factors as may be necessary for the appropriate compensation of these tribes. The Fisheries Review Board would review the results of the salmon enhancement program and/or other management measures and make the determination of when sufficient numbers of economically viable replacement species are available so that the payments can be discontinued.

D. This plan recognizes the traditional steelhead fishery and the mixed harvest problems (chum salmon and steelhead currently enter the Nisqually River at the same time) of the following Puget Sound tribes. Because of these conditions, separate plans are set forth for each tribe.

1. Puyallup Tribe

This plan will limit the commercial sale of steelhead to twenty percent of the total harvestable number of steelhead entering the Puyallup River, or 2,500 steelhead, with the 2,500 steelhead being the maximum number which could be sold.

2. Nisqually Tribe

This plan will limit the commercial sale of steelhead by the tribe to steelhead caught incidentally as a part of the chum fishery. Beginning November 1, each year, and ending February 10th of the following year (approximately three

consecutive months), the tribe could sell steelhead caught during the chum fishery, not to exceed 4,000 steelhead. During the period February 11 through October 30 of each year, no commercial sale of steelhead could occur.

E. Coastal Tribes

The following overall plan is proposed for the Quinault, Hoh and Quileute Tribes. The goal of this plan is to phase out commercial fishing of coastal steelhead over time as alternative fisheries and other resources become available to these tribes. In addition to these general provisions of the coastal steelhead plan, there are additional specific provisions relating to the Quinault Tribe which are set forth in the following section.

1. The phase out of the coastal commercial steelhead fishery is proposed in four phases. These are:

Phase I: Reduction of tribal commercial steelhead fishing to sixty percent of each year's harvestable number of winter run steelhead. Any steelhead caught by treaty fishermen in Grays Harbor after December 10th could not be commercially sold. There would be no commercial sale of Grays Harbor steelhead when Phase IV expected returns are achieved.

Phase II: Reduction of tribal commercial steelhead fishing to forty percent of each year's harvestable number of winter run steelhead.

Phase III: Reduction of the tribal commercial steelhead fishing to twenty percent of each year's harvestable number of winter run steelhead.

Phase IV: Treaty rights exercised only for subsistence and ceremonial steelhead fishing. No commercial sale of steelhead after the Phase IV guarantees have been achieved.

The following guarantees correspond with each of the four phases (i.e., phase I of the phase-out plan requires that phase I guarantees be accomplished).

Phase I-A: Stabilization of the ocean sport and commercial fishing rates at the rates specified in the salmon resource distribution plan so that the declining trend of escapement of coastal salmon stocks to their respective terminal areas can be halted.

Phase I-B: Funding of research and enhancement projects for the Quinault, Hoh and Quileute Tribes as proposed in the resource enhancement plan (subject to the review process described in Chapter 4). Upon approval of the plan, the funds would be deposited in an account where the tribes could receive interest income and use it to improve their fishery. Interest income from these deposits could be used for a five year period and the planning, implementation, completion of the project/projects designed to enhance

propagation (natural and/or artificial) of salmon within a tribe's watershed must be completed within ten years of the date of approval of this plan.

Phase I-C: Designation of an area in the ocean inside of a three mile radius from the center of the river mouth as an area closed to commercial fishing on the Quinault, Queets, Raft, Hoh and Quileute Rivers. This protective area would preclude commercial fishing in these waters and assist in the protection of stocks returning to these rivers.

Phase II-A: A comprehensive resource management plan (harvest, enhancement, environmental) as a part of a long term master plan for the coast would be developed. The planning activity for the coast, in addition to the three tribes and State agencies, should include the United States Fish and Wildlife Service, because of its hatcheries and environmental concerns, the United States National Park Service, United States Forest Service, as well as Pacific Fisheries Management Council and the National Marine Fisheries Service because of the ocean harvesting concerns. This area plan would also take into consideration the enhancement program on the Columbia River.

Phase II-B: Sport steelhead fishing rates within watersheds of the treaty areas would be stabilized so as to assure viable natural production. Decline of natural steelhead stocks resulting from the differential harvesting of artificially propagated fish at the expense of naturally propagated fish must be minimized to provide the necessary tribal assurance that harvestable numbers of steelhead will be available to the tribe and to the sportsmen in the event that the opportunity for an increased salmon harvest (Phase II-C) is not accomplished.

Phase II-C: Returns from enhancement programs, Canadian interception limitations and reduced ocean and sports fishing rates which show twenty-five percent progress towards the coastal river salmon harvest goals proposed in the salmon resource distribution plan for the coastal tribes.

Phase III: Returns from enhancement programs, Canadian interception limitations and reduced ocean and sport fishing rates which show fifty percent progress towards the coastal river salmon harvest goals proposed in the salmon resource distribution plan for the coastal tribes.

Phase IV: Returns from enhancement programs, Canadian interception limitations, reduced ocean and sports

fishing rates which meet the specified goals in the salmon resource distribution plan for the coastal tribes.

Achievement of coastal river salmon harvest goals for the purpose of meeting the guarantees set forth above is defined as follows:

Definition #1: Full achievement is accomplished when the most current three-year averages of harvest available for each of the sixteen stocks named in the salmon resource distribution plan exceeds the stated goals.

Definition #2: Partial achievement, expressed above as percent progress, shall mean that either of the following two statements, a. or b., is true.

a. Full achievement is attained for the given percentage of the sixteen stocks named (i.e., twenty-five percent progress implies that four out of sixteen stocks have reached full achievement), or;

b. The average harvest available to the tribes, computed over the three most recent years, has increased over the 1974 to 1977 average harvest for each stock by the given percentage of the difference between the 1974 to 1977 average harvest and the stated goal.

2. The Quinault Tribe will assume the primary responsibility for managing salmon and steelhead enhancement and enforcement planning on the Quinault, Raft and Queets Rivers. The tribe will be required to present their enhancement and harvesting plans for salmon and steelhead for annual review and comment to the Washington Department of Fisheries and the Washington Department of Game, respectively. The State agencies would retain the power to manage State licensed sportsmen off-reservation within the pre-season plans and to close for conservation. Further, the State agencies would have the review processes available under the settlement if any differences are unresolved at a working level.

3. The Quinault Tribe, the State of Washington, The Department of Interior (National Park Service), and Department of Agriculture (United States Forest Service) will develop a habitat protection plan which will ensure the long term protection of the Quinault, Raft and Queets Rivers from environmental degradation.

Chapter 7

Washington State License And
Fleet Adjustment Program

I. INTRODUCTION

The license and fleet adjustment program is critical to the success of the overall settlement. Fleet size and the fishing effort, both actual and potential, represented by the fleet will in large part determine the performance of the resource management and distribution programs and may impact the biological performance of the stocks of fish available for harvest in the future. The program involves limitation on effort in all of the State's salmon fisheries. Chapter 7 discusses effort limitation in the non-tribal fisheries. Chapter 8 sets out effort limitation in the tribal fisheries.

Control over fleet size is not a novel concept in Washington; the State Legislature has repeatedly enacted statutes which regulate the number of licenses in both the commercial and charter salmon fleets. The Regional Team paid careful attention to the history of licensing in the State and to local efforts to manage fleet size. The

comprehensive program which the Task Force developed has three parts: first, commercial salmon license reduction, second, salmon charter license reduction, and third, "buy-back" of vessels, gear and licenses.

Section II. COMMERCIAL SALMON LICENSE REDUCTION

The Regional Team conducted a year-long investigation of licensing in Washington's commercial salmon fleets. In the course of its investigation the Regional Team reviewed the history of licensing and allowable fishing time in the State for the past 15 years, analyzed the Washington catch records for every salmon fishing vessel, studied licensing programs in other States of the United States and in foreign nations, and discussed the merits and characteristics of fleet adjustment programs with fishermen, fishermen representatives, and fisheries managers. In addition, the Regional Team reviewed the work of the ad hoc Limited Entry Committee created at the direction of the Washington State Legislature to analyze the license limitation programs enacted by the State legislature. The Committee, composed of representatives of the commercial fishing, processing, and charter boat industries from every section of the state, reported its findings and recommendations to the Legislature on December 29, 1976. Finally, a two-day workshop was convened for commercial fishermen in the fall of 1977 in cooperation

with the Washington Department of Fisheries, "WDF", to identify the current status of State salmon licensing programs.

These studies, reviews, and discussions have led us to the following four conclusions, most of which have been drawn repeatedly by fishermen, industry representatives, academics, and others in the recent past.

A. Conclusions

1. The number of licenses in each of the State's commercial salmon fleets (with the exception of the reef net fleet) has grown substantially since 1965. In most instances, the number of licenses has doubled or tripled. The impact of the commercial license moratorium enacted by the State Legislature in 1974 and re-enacted in 1977 has been to stabilize the level of licensing in each fleet.

2. In each commercial fleet a large portion of the licenses are issued to license holders whose boats account for a very small portion of each fleet's production. Although these license holders do not contribute significantly to the fleet landings, they do represent a large potential for growth in each fleet's fishing effort and in the aggregate they diminish the opportunity for professional fishermen to make a living. Delivery of benefits to the more active fishermen based on enhancement or better management of the resource will be difficult and perhaps not possible so long as this potential for increased fishing effort remains.

3. In each commercial fleet the major portion of the total catch is produced by individuals who are dependent to a significant degree upon the fishery and who have demonstrated an involvement as professional commercial fishermen.

4. In each commercial fishing fleet the available effort has reached a level which if unrestricted, would lead to overharvesting and hence has required significant reductions in authorized fishing opportunity.

With these four conclusions in mind, the Regional Team developed a program designed to return fleet size to levels which are expected to permit continued operation by professional fishermen and allow for sufficient salmon fishing seasons as one part of an overall program leading to economically healthy fisheries.

In order to achieve this goal it is proposed that each current holder of a commercial salmon license at the time the program goes into effect would be ranked according to the average annual Washington salmon landings made by that licensee's vessel or vessels in the respective fisheries during the base period 1973-1977 (or the portion of the period during which each licensee was licensed). After the ordering in each fleet was accomplished, an "inactive" fisherman category would be identified commencing with license holders showing no average annual landings whatsoever and progressing upward through the list toward "active"

fishermen. The category of inactive fishermen as a whole would be composed of the group of individuals whose cumulative average catch (starting with the lowest catches and progressing to larger catches) accounted for a combined total of five percent of each fleet's average annual production. These individuals would not be eligible for renewal of their commercial salmon fishing licenses.

If this ordering and categorizing procedure were utilized, the following estimated number of inactive licenses would be retired in the designated fleets. The estimated dividing line between inactive and active fishermen in each fishery is also shown. The dividing line was calculated on the basis of average annual Washington salmon landings during the 1973-1977 period.

<u>Fishery</u>	<u>1977 Fleet Size</u>	<u>Inactive Licenses Retired</u>	<u>Poundage Break Between Active and Inactive Fishermen</u>
Troll	3,232	1,699	986
Puget Sound Gillnet	1,507	542	3,342
Coastal Bays/ Columbia River Gillnet	710	336	1,870
Purse Seine	398	130	21,038
Reef Net	<u>78</u>	<u>--</u>	<u>--</u>
TOTALS	<u>5,925</u>	<u>2,707</u>	

All license holders falling above the five percent dividing line in each fishery would be entitled to renew their licenses. Each such license would be fully

transferrable including upon death or retirement of the license holder. No additional landing standards would be required in the future as a part of this settlement. The only continuing obligations for retention of salmon licenses would be those currently found in State law, i.e., annual purchase of each license and at least one salmon landing in Washington each year.

The commercial salmon license reduction program has a number of additional features. In large part, these features are the result of comments made by individual fishermen and fishermen associations.

B. Features

1. Senior Citizen License: Sixty-five Year Old Exemption Individuals who are sixty-five years of age or older on the date on which the license reduction program goes into effect would be exempt from the requirements of the program. To the extent such individuals fall in the inactive fishermen category by virtue of their landings during the base period 1973-1977, they would be entitled to continue fishing for the balance of their life pursuant to a special senior citizen's license. The license would not be transferrable. The license would only be valid while the exempted individual was actually on board and operating the vessel. Individuals of sixty-five years of age or older who fell in the active fishermen category would of course have a fully transferable and unrestricted license.

2. Growth in Number of Salmon Licenses The

Regional Team is not proposing that salmon licensing be fixed for all time at the levels achieved by the license reduction program. The success of the voluntary buy-back program described in Section IV of this Chapter will have a tremendous effect on fleet size in the future. In addition, the settlement provides for a series of enhancement programs designed to approximately double the number of harvestable salmon over the course of the next 10 years. As a consequence, the WDF and the Tribal Commission should have the authority to consider changes in fleet size in the future. Any such changes, of course, would necessarily be consistent with resource distribution goals and with other fisheries management factors. To the extent that the Tribal Commission and WDF should determine that a growth in fleet size was appropriate in the future, it would be the responsibility of those two agencies to agree on the method and levels for the growth. In addition, the views of each commercial gear type should be given great weight when considering any possible changes in the size of their fleet. The Regional Team suggests that if an increase in licenses is appropriate in the future that first priority be given to young fishermen attempting to obtain their first license.

3. Multiple Licenses In each commercial fishery, a small number of individuals and firms own more than one vessel which operated in that fishery at the same

time during the base period. The individuals or firms involved possessed a separate salmon license for each vessel. License holders owning more than one vessel operating at the same time in a particular fishery during any one or more years of the base period would be required to qualify separately for each license. For example, if a fisherman owned two Puget Sound gillnet vessels and two Puget Sound gillnet licenses simultaneously during the base period, his name would appear twice on the list of Puget Sound gillnet license holders. He would be required to qualify independently for each license.

This situation would normally present itself if the owner himself operated one of his vessels and hired an operator to run his second vessel. This subsection does not apply to the situation in which a license holder owns a single license and uses it to operate a series of vessels in a particular fishing area. In that case the owner's name would only appear once on the list for that fishery and he or she would be credited with all salmon landings made by the various vessels while operating pursuant to the license.

Each individual vessel in a particular fishery would in the future, however, operate pursuant to a single license for that fishery. For example, if a fisherman owned one Puget Sound gillnet vessel operating during the base period but two Puget Sound gillnet licenses, his name would appear only once on the ranking list for the Puget Sound

gillnet fishery and he would be entitled to renew only one of his Puget Sound gillnet licenses.

4. Multiple Fisheries Many salmon fishermen own vessels which are entitled to operate in more than one salmon fishery. For example, a fisherman may own a combination troll/gillnet vessel together with a troll license and a license to operate in one of the State's gillnet fisheries. Such a fisherman would appear on the troll qualification list and be credited with his vessel's landings on the troll license during the base period and on the appropriate gillnet list where he would be credited with his gillnet landings. He would qualify for each license separately. Individuals would not be prohibited from operating in more than one of the State's salmon fisheries.

5. Columbia River/Coastal Bays Gillnet Licenses The Columbia River/Willapa Bay and Columbia River/Grays Harbor gillnet licenses present a special problem requiring detailed consideration because each license entitles the holder to fish in two geographical areas. The special treatment set out here, however, does not involve a suggestion that separate licensing districts be established for Willapa Bay, Grays Harbor, and the Columbia River. Rather, the existing licensing system would be retained.

The lists of the past performance of fishermen would be developed as follows. A separate list would be developed for Columbia River/Willapa Bay and for Columbia

River/Grays Harbor license holders in precisely the same fashion as for other State salmon fisheries. Three additional lists would be prepared as well, however, showing Washington salmon landings in Grays Harbor, Willapa Bay, and the Columbia River, respectively. A fisherman's rights to renew a salmon license would be determined by the list on which his position was highest. Thus, for example, a fisherman would be entitled to renew his or her Columbia River/Willapa Bay license if the fisherman fell above the five per cent ranking on any one or more of the Columbia River/Willapa Bay, Columbia River, or Willapa Bay lists.

6. Appeals Boards The Regional Team is mindful of the fact that a wide variety of special circumstances exist which must be taken into account before any individual's place on the qualification lists is finalized. These special circumstances should be considered by Appeals Boards composed of fishermen themselves. In the past, Appeals Boards composed of fishermen from each of the various fisheries have been very successful in dealing fairly with other fishermen who are impacted by extenuating circumstances. The Boards created by the State license moratorium in 1974 were particularly outstanding. To that end, the Task Force proposes that in each of the State's fisheries three-member Appeals Boards be appointed by the Director of Fisheries. Members of Appeals Boards should be reimbursed for expenses, paid a per diem, and would consider

cases arising in the following categories.

a. Illness, injury, mechanical breakdown, or involuntary military service To the extent an individual is prejudiced because of insufficient landings due to illness, injury, mechanical breakdown or involuntary military service, that individual can bring his or her case before the Appeals Board for the appropriate fishery. That Appeals Board may recommend that the individual receive a higher position on the list.

b. Change in Fishing Pattern To the extent a licensed individual can demonstrate that his or her fishing pattern changed due to the impact of the decision in U.S. v. Washington such that the individual shifted to salmon fisheries in other States or to Washington fisheries other than for salmon, the Appeals Board for his or her fishery can recommend that a different ranking be granted. It will, however, be incumbent on the fishermen to show that the shift occurred and to document the participation in the other fisheries.

c. Recent Entrants Individuals who first entered the Washington salmon fishery during the base period but after 1973 and who can demonstrate a substantial upward trend in salmon landings, together with good faith evidence of intention

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c. Recent Entrants Individuals who first entered the Washington salmon fishery during the base period but after 1973 and who can demonstrate a substantial upward trend in salmon landings, together with good faith evidence of intention

to develop as a professional commercial Washington salmon fisherman, would be entitled to bring their case before the appropriate Board. The Board could recommend a higher ranking.

d. Columbia River Landings in Oregon For purposes of the Columbia River qualification list referred to above on Page 238 , (one of the five lists proposed for the Coastal Bays/Columbia River area), Washington licensed fishermen would be entitled to present evidence to the Board concerning salmon landings in Oregon. Based on those landings the Board would be entitled to recommend a higher position on the Columbia River list.

e. Aggregate Production Certain fishermen may have fished in several of the State's salmon fisheries in the base period without qualifying in any individual fishery. They may, nevertheless, have substantial landings if their total salmon landings in all Washington State salmon fisheries were combined. For example, a fisherman may have been licensed for both purse seine and Puget Sound gillnet during the base period but failed to average landings at the 5 per cent level in either fishery. The Regional Team proposes that these individuals be able to document their aggregate Washington salmon landings to an Appeals Board.

The Appeals Board may recommend that one or more licenses be issued.

f. Entrants After 1977 Certain individuals have become license holders for the first time after 1977. These individuals have no base period landing record upon which to determine a rank in any of the fisheries. The Task Force proposes that the Appeals Board in each of the fisheries be authorized to recommend that these individuals obtain licenses if the Appeals Board determines that the license holder acted reasonably in acquiring his or her license, without knowledge of the terms of the Task Force proposal, in good faith, and not with intent to subvert the purposes of the license reduction program. If all those conditions are met, the new entrants would be entitled to a two-year provisional qualification period, 1979-1981, during which their average annual Washington salmon landings would be determined. At the conclusion of that period, the individuals would be entitled to renew their license provided they fell above the five per cent production level as determined at that time. No participation by these individuals in the buy-back program summarized in Section IV of this Chapter would be possible until 1981.

7. Troll Licenses In analyzing the level of

fishing effort in the troll fleet licensed by the State of Washington, it became clear to the Regional Team that two avenues of potential growth existed apart from the largely inactive licenses which would be retired by the license reduction program. The first avenue of additional potential existed by virtue of the fact that troll licenses are freely transferable from vessel to vessel. Consequently, owners of smaller less mobile vessels may sell their licenses to owners of larger more efficient vessels. Thus, although the number of licenses would remain the same, fishing effort would increase. A comparable problem does not exist in other fisheries because larger boats are not necessarily more efficient.

The Regional Team proposes that the problem be dealt with by WDF which should license troll vessels by length beginning with the implementation of the license reduction program. This proposal is made because the best available evidence suggests that the length of each vessel is proportional to fishing effort. WDF would develop rules for transfer of troll licenses in the future which will permit free transferability and upgrading of vessels and gear while stabilizing actual fishing effort in the troll fleet. The number of vessels in the troll fleet over time will necessarily be more flexible than in other fleets because the size of individual vessels in the fleet will be determined by the choices of each vessel's owner.

The second avenue of potential increase in troll fishing effort is represented by troll license holders from other jurisdictions who have not traditionally fished in ocean waters off the coast of Washington and from the inactive Washington license holders eliminated by the license reduction program. As Washington's fleet becomes subject to a license reduction program, overall fishing effort in the Washington area should be stabilized. The Regional Team therefore proposes that the federal settlement legislation require the Pacific Fishery Management Council to promptly take steps to insure that fishing effort off the Washington coast not increase above the levels achieved by the fleet adjustment program. The most practical method of achieving this goal is to require that troll fishermen who have not demonstrated substantial historical participation in the fishery off the Washington coast be prohibited from commencing operations in that area other than by purchase of an existing license owned by a fisherman who has demonstrated the required participation. The Regional Team does not suggest the geographical bounds of the north coast or Washington coastal area leaving the precise definition of that area to the Pacific Council consistent with the overall terms of the settlement legislation. The Regional Team also points out that individuals who have shown historical participation in the fishing off the Washington coast may have extinguished

the record of that participation through voluntary sale to the buy-back program.

8. Buy-Back Program An important feature of the Task Force's license reduction proposal is the availability of a limited buy-back and license fee reimbursement program for license holders falling in the inactive category together with a full buy-back program for the active fishermen. The details of that program are contained in Section IV of this Chapter.

9. Extension of Commercial Moratorium A final portion of the Regional Team's recommendation for the commercial industry involves a long-term extension of the commercial salmon license moratorium. The existing moratorium is scheduled to expire in 1980. The State Legislature should extend the moratorium for at least 10 years beyond that date.

III. SALMON CHARTER BOAT LICENSE REDUCTION

A comprehensive investigation of licensing in the salmon charter boat industry comparable to the investigation of the commercial fishery was undertaken. The study involved discussions with many charter boat owners and operators and an analysis of the history of charter boat licensing in Washington. In addition, charter representatives participated with the ad hoc Limited Entry Committee between 1974 and 1976 and in the two-day license symposium in the fall of

1977. After completing its investigation, the Task Force drew three conclusions.

A. Conclusions

1. The number of charter boat licenses grew rapidly between 1971 and the present time. The growth in the number of licenses was particularly pronounced in the last several years. The 1977 license moratorium for the charter boat fleet stabilized license fleet size at levels equal to approximately twice the licensing level of 1971.

2. The fishing effort of the salmon charter fleet has a large potential for growth even with the existing license moratorium because State charter licenses do not specify angler carrying capacity for each vessel and license holders are free to increase fishing effort without restriction by carrying more passengers or transferring their license to a bigger boat.

3. The 1977 salmon charter license moratorium contains an additional potential avenue for growth in charter fishing effort in that it provides that charter boats under construction before May 28, 1977 will be entitled to charter licenses upon completion. It is impossible to discover the precise number of boats under construction but the best current estimate is that 100 such construction projects exist.

With these three conclusions in mind the Task Force developed a charter license reduction program designed

to stabilize salmon charter fishing effort and to control potential future growth. The proposal has four aspects.

B. Aspects

1. Angler Carrying Capacity In the future each charter boat license issued by WDF should specify the number of anglers which the charter boat is authorized to carry consistent with Federal law relating to carrying passengers for hire. In each case the State authorized angler carrying capacity should be closely related to the length of each of the boats. To that end, the following guidelines were developed by the Washington State Commercial Passenger Fishing Vessel Association in consultation with mathematicians at the University of Washington and are adopted by the Regional Team. The licensed angler carrying capacity for vessels of less than 60 feet of overall length would be equal to $.594 \text{ times the length minus } 9.98$ or carrying capacity = $.594L - 9.98$. The licensed angler carrying capacity for vessels in excess of 60 feet would be equal to $1.38 \text{ times length minus } 55.66$ or carrying capacity = $1.38L - 55.66$.

All charter licenses would be fully transferrable in the future and any charter boat owner wishing to upgrade a vessel or to carry more anglers would be entitled to do so provided that he or she purchased or possessed licenses sufficient to authorize the expanded angler capacity. For example, if a charter boat owner owned a boat licensed by

WDF to carry 16 anglers and wished to upgrade his or her boat to carry 21 anglers, the owner would need to purchase an additional 5 angler-capacity from some other existing charter boat owner.

2. Construction Contracts The problem of speculative construction contracts must also be resolved and the potential increase in the charter fleet caused by the "under construction" provision in the 1977 charter license moratorium regulated. As indicated above, it is estimated that there are approximately 100 such construction contracts in existence for new charter boats.

WDF would take the following regulatory steps to verify the authenticity of construction contracts and to prevent substantial unwarranted increases in the size of the Washington charter fleet. The Department would require all owners of contracts for the construction of charter boats to register such contracts with the State. Failure to register a contract would automatically cancel the charter boat license privilege contained in the 1977 charter moratorium. The Department should also promulgate a regulation defining the meaning of "under construction." The definition, which would in part require an inspection of each project by WDF would serve as the basis for determining the validity of registered contracts for new construction of charter boats. All owners of construction projects failing to meet the "under construction" standard would immediately be informed

that their boat would not be entitled to a license. The Task Force estimates that approximately 25 of the 100 contracts would be eliminated with these standards.

3. Appeals Board A three member Appeals Board would be instituted similar to that which is authorized by the 1977 charter moratorium which would be directed to consider charter licensing questions brought before the Board by aggrieved persons. The Board would be able to make recommendations to the Director.

4. Buy-Back Program The Task Force proposes a substantial buy-back program for the charter fleet which would be available to those individuals who voluntarily decided to participate. The details of the charter buy-back program appear in Section IV.

5. License Reduction The reduction in charter boat licenses which are projected as a result of the construction contract provisions discussed above and the voluntary buy-back program discussed in Section IV are expected to reduce licensed charter boat fleet size to 435 licenses at the conclusion of the three-year buy-back program. If these reductions are not achieved, the Regional Team proposes that a further program of salmon charter license reduction be implemented by WDF such that charter boat licenses promptly reach the 435 target level.

6. Extension of Charter Moratorium
A final portion of the Regional Team's recommendation for the charter fishery involves a long-term extension of

the salmon charter license moratorium. The existing moratorium is scheduled to expire in 1980. The State Legislature should extend the moratorium for at least 10 years beyond that date.

IV. BUY-BACK PROGRAM

The commercial and charter license reduction programs set out in the preceding two sections of this Chapter are directed primarily at potential increases in fishing effort. It is recognized that it will be difficult to improve the economic well-being of Washington's salmon fisheries if this potential is not brought under control. A substantial Federal commitment will be necessary to compensate inactive individuals displaced by the commercial license reduction program. It is also recognized, however, that a further commitment will be necessary to provide an attractive avenue for exit by active commercial fishermen and by charter fishermen who voluntarily choose to leave the salmon fishing industry.

As a result, a \$60 million buy-back program would be available to all of the State's commercial and charter fishermen and would be administered by WDF. The buy-back program would go into effect in the same year as the charter and commercial license reduction programs described in Sections II and III became effective and would extend for three years thereafter.

In developing its buy-back proposal, the Task

Force reviewed buy-back programs in other jurisdictions, sponsored a workshop with representatives of the commercial fishing industry, held weekly follow-up meetings, held numerous meetings on the subject with commercial and charter fishermen, and analyzed the operation of the pilot buy-back program which has been in effect in Washington State since 1976. After completing these investigations, the Regional Team decided that three general principles should underlie the buy-back program.

A. Principles

1. The buy-back program should be available to all the fishermen who landed 95 percent of the salmon in each of the commercial fisheries and to all charter fishermen. The program should purchase vessels, gear, and licenses. All vessels and gear should be purchased at fair market value. All purchases and sales, however, should be entirely voluntary. No fisherman should be obligated to sell any aspect of his or her investment to the government.

2. A higher price for licenses should be paid to commercial fishermen who have demonstrated a significant commitment to salmon fishing than to individuals who own licenses but who have demonstrated little past participation in the fishery. Thus, a schedule of payments for licenses is provided such that individuals who have demonstrated a greater dependence on the commercial salmon fishery would receive higher payments for licenses than individuals who have shown lesser dependence on the fishery.

3. The period for determining dependence and participation by applicants to the buy-back program should extend over a number of years and should include a variety of representative fishing seasons from both before and after the decision in U.S. v. Washington.

The balance of this Section IV describes the buy-back program in general terms and with respect to each specific fishery. The concluding Sections set out the total buy-back budget in full detail, the full projected impact on non-tribal fleet size and a recommendation for a gear exchange program.

B. General Program Description

1. Inactive License Holders In each of the State's commercial salmon fisheries other than the reef net fishery, the group of inactive license holders falling below the five per cent production level would not be eligible for renewal of their salmon licenses. Each of these individuals would, however, be entitled to apply to the buy-back program for reimbursement for the license fees paid to WDF during the base period 1973-1977 by the individual concerned for the cancelled license or licenses.

The inactive fishermen who suffer cancellation of their licenses would also have access to a buy-back program for their vessels and gear to the extent those vessels and gear are not readily saleable on the open market. To that end, the buy-back program will pay fair market value for the

vessels and gear owned by individuals in the inactive fisherman category if the appropriate Appeals Board determines that the vessel was designed or substantially reconstructed primarily for commercial salmon fishing and would not be readily saleable for any other purpose.

2. Active Commercial Fishermen Most license holders would fall above the 5% cut-off line in each of the commercial fleets and would thus be entitled to renew their licenses without further restriction. The Task Force proposes that every active commercial fisherman in the State, including the entire reef net fleet, have access to a voluntary buy-back program which will purchase vessels and gear at fair market value and which will retire active licenses at a bonus price. A graduated bonus system is proposed in keeping with the Task Force's philosophy that fishermen who have committed more of their professional effort to the salmon fishery should receive a greater license bonus upon withdrawal. Consequently, the bonus price will vary depending on the average annual production of each applicant during the base period 1973-1977.

Individuals who appear higher on the qualification lists used for license reduction purposes (see Section II of this Chapter) will be entitled to higher bonuses than individuals who appeared lower on those lists. Two bonuses will be offered in each fishery. The highest bonus will be available for those who fall above the 12% level on the

qualification lists. Lower bonuses will be paid for those falling between 5% and 12% on the lists (or below 12% on the reef net list). As an incentive to fishermen to participate in the buy-back program, higher bonuses would be paid to fishermen in the first year of the three year program than in the second and third years. The bonus schedule is set out below.

<u>Fishery</u>	<u>Production Category 1973-1977</u>	<u>1st Year</u>	<u>2nd Year</u>	<u>3rd Year</u>
Troll	12-100%	\$15,000	\$11,000	\$ 9,000
	5-12%	9,000	7,000	5,000
Puget Sound Gillnet	12-100%	30,000	21,000	18,000
	5-12%	16,000	12,000	10,000
Coastal Bays/ Columbia River Gillnet	12-100%	30,000	21,000	18,000
	5-12%	16,000	12,000	10,000
Purse Seine	12-100%	70,000	50,000	45,000
	5-12%	45,000	36,000	31,000
Reef Net	12-100%	30,000	21,000	18,000
	0-12%	16,000	12,000	10,000

3. Salmon Charter Fishermen The buy-back program which the Task Force proposes for the charter industry has two aspects. These relate respectively to: a. the construction contract signatories who will be entitled to license their charter boats pursuant to the under-construction provisions of the 1977 charter moratorium upon completion of construction and whose rights survive the WDF regulations designed to identify authentic construction

projects, see Section III of this Chapter, and b. the owners of existing charter boats.

a. Construction Contracts The buy-back program would be available on a voluntary basis to any holder of a construction contract for a charter boat who would qualify for a charter boat license upon completion of the construction project. The program would pay \$1,500.00 per angler carrying capacity for which the boat would be licensed upon completion or the amount of the owner's investment in the construction project to the date of sale to the buy-back program, whichever was greater.

b. Existing Charter Boats The buy-back program would be available for all owners of existing charter boats. The program would purchase each vessel and appurtenant gear at fair market value. In addition, the program would purchase each license at a set bonus amount for each angler for which the vessel was licensed by WDF. As an incentive to participate in the program, the bonus price for each angler-capacity would be higher in the first year of the buy-back program than in the second or third years. The bonus schedule for charter boat owners would be as follows:

	<u>1st</u> <u>Year</u>	<u>2nd</u> <u>Year</u>	<u>3rd</u> <u>Year</u>
Charter boat bonus price per licensed angler-capacity	\$2,000	\$1,500	\$1,000

4. Other Buy-Back Program Details The buy-back program has a number of other administrative aspects which are of importance.

a. Columbia River Buy-Back Program

The State of Oregon has no license moratorium program affecting Oregon fishermen fishing in the Columbia River. Thus, it makes little sense to retire commercial vessels and licenses fishing primarily in the Columbia River area because those licensees would be free to obtain Oregon commercial licenses and return to the same fishery from which they had exited. The Task Force does, however, recognize the need for a buy-back program for the Willapa Bay and Grays Harbor fishermen. Consequently, the Task Force proposes that the buy-back program for the Columbia River/Willapa Bay and Columbia River/Grays Harbor licensing districts be available for those fishermen who concentrate their effort in one of the coastal bays rather than in the Columbia River. Eligibility to participate in the buy-back and bonus programs for the two licensing districts will be determined by each fisherman's rank on the Willapa Bay or Grays Harbor lists rather than on the Columbia River/Willapa Bay, Columbia River/Grays Harbor, or Columbia River lists. For example, a fisherman owning a Columbia River/Grays Harbor license would be eligible to participate in the Grays Harbor buy-back program if he was above the five per cent level on the Grays Harbor list. The bonus he would receive for his license

would depend on whether he fell between five and twelve per cent or above twelve per cent on that Grays Harbor list.

b. Separate Funds During the first three years of the buy-back program, the funds budgeted for each of the State's commercial and charter fisheries would be kept separate and would be administered separately. At the end of the first three years of the program, all monies remaining unspent in any of the funds would be consolidated into one general state-wide fund. This money would then be administered by WDF and would be utilized by the Department to purchase additional vessels and licenses as necessary. These additional purchases would be strictly at fair market value. No further bonuses would be paid. The Task Force recommends that the consolidated fund be available on a priority basis to Washington gillnetters fishing in the Columbia River if and when Oregon institutes a license moratorium.

c. Operation and Evaluation The buy-back program would be funded primarily by the Federal government. State funding would amount to \$5 million. The program would be administered by the State of Washington. Audits would be performed twice yearly by the Federal agency providing the Federal funds. The program manager would report annually on the status of the program. The report would be made available to all interested parties. In addition to administering the expenditure of the funds provided in the

program, the program manager would also be authorized to arrange for the resale of all vessels and gear purchased by the program from fishermen. The resale of vessels could occur either individually or in bulk. Finally, the manager would also attempt to obtain maximum value for the charter boat construction contracts purchased by the program. All money obtained by the program manager from the resale of vessels, gear and construction contracts would be deposited in each fund respectively. The funds would thus each be revolving funds.

d. Repurchase by Owner Every fisherman selling a vessel and/or gear to the buy-back program would be required to guarantee that neither he, she, nor any member of his/her immediate family would repurchase the same vessel from the buy-back program. This guarantee would be contained in the original sale agreement between the buy-back program and the fisherman. This provision is required to prevent abuse of the program. In the absence of the provision, a fisherman could sell his vessel to the buy-back program at fair market value and then repurchase the same vessel at a buy-back auction for less than fair market value. This would amount to a windfall gain for that fisherman.

e. Installment Payments and Tax Questions
The buy-back program would be authorized to make installment

payments to fishermen. These payments would be made at the fisherman's option, depending on his or her individual tax situation. In addition, the Task Force offers the recommendation that Congress provide special exemption from the payment of capital gains tax with respect to vessels and gear sold to the buy-back program.

f. Purchase of Licenses. The buy-back program would be authorized to purchase a license independently of a vessel. The price would be the indicated bonus price. The program could of course purchase a vessel and license but would not be authorized to purchase vessels without also purchasing all relevant licenses.

C. Specific Program Operation

The Task Force's buy-back proposal would create a separate fund ear-marked for each of the State's commercial and charter salmon fisheries during the three years of the buy-back program. It is difficult to predict how much of each fund will be used by each fishery because participation is voluntary and because fair market values for vessels and gear will vary from boat to boat.

The Task Force researched the operation of the existing pilot buy-back program for the Puget Sound net fishermen and estimated participation on a state-wide basis in the future. The funding which the Task Force proposes for each fund is sufficient to service each fishery fully. The following table sets out the initial funding for each

fishery together with the total payments to fishermen. Payments to fishermen are higher than initial funding because the revolving nature of each fund will permit deposits into each fund of the proceeds of resale of vessels, gear, and charter construction contracts.

<u>Fishery</u>	<u>Initial Funding</u>	<u>Payments Fishermen</u>
Troll	\$15,157,000	\$19,544,500
Puget Sound Gillnet	9,772,750	11,629,000
Coastal Bays/Columbia River Gillnet	4,744,500	5,602,000
Purse Seine	7,788,000	9,318,000
Reef Net	289,000	299,000
Charter	<u>9,117,000</u>	<u>13,602,000</u>
	\$46,868,250	\$59,994,500
Administrative Budget	<u>787,041</u>	<u>--</u>
TOTAL	\$47,655,291	\$59,994,500

Given the initial funding proposed and given the revolving nature of each fund, the buy-back program for each fishery could have the following impacts on each of the fisheries. Complete breakdowns of the budget for each fishery are found in the concluding Section of this Chapter.

1. Troll 1977 Licenses: 3,232
 - a. Reimburse 1,699 inactive trollers up to \$500 each

for all troll license purchases during the period 1973-1977.

b. Purchase 170 otherwise unsaleable vessels from inactive trollers at an estimated average purchase price of \$25,000.00 each.

c. Pay bonuses to 269 active trollers wishing to sell their troll license only to the buy-back program.

d. Purchase 362 vessels and licenses from active trollers. Each vessel would be purchased at an estimated average fair market value of \$25,000.00 each and each license would be purchased at the indicated bonus prices.

2. Puget Sound Gillnet 1977 Licenses: 1,507

a. Reimburse 542 inactive license holders up to \$500 each for their license purchases during the period 1973-1977.

b. Purchase 54 otherwise unsaleable gillnet vessels from inactive fishermen at an estimated average price of \$25,000.00 per vessel.

c. Purchase 120 licenses from active fishermen wishing to sell their license only at the indicated bonus prices.

d. Purchase 189 vessels and licenses from active fishermen. The vessels would be purchased at fair market value estimated at \$25,000.00 per boat. The licenses would be purchased at the indicated bonus prices.

3. Coastal Bays/Columbia River Gillnet

1977 Licenses: 710

a. Reimburse 336 inactive license holders up to \$5 00 each for license purchases during the 1973-1977 base period.

b. Purchase 33 otherwise unsaleable vessels at fair market value from inactive fishermen at an estimated average price of \$25,000.00.

c. Purchase 74 licenses from active fishermen willing to sell their licenses only at the stated bonus values.

d. Purchase 98 vessels and licenses from active fishermen. The vessels would be purchased at fair market value estimated at between \$20,000.00 and \$25,000.00. The licenses would be purchased at the stated bonus values.

4. Purse Seine 1977 Licenses: 398

a. Reimburse 130 inactive purse seine license holders up to \$1,000 each for license purchases during the 1973-1977 base period.

b. Purchase 13 otherwise unsaleable vessels from inactive fishermen at an average purchase price of \$60,000.00 each.

c. Purchase 34 licenses only from active purse seine fishermen at stated bonus values.

d. Purchase 52 licenses and vessels from active fishermen. The vessels would be purchased at estimated fair market values of between \$60,000.00 and \$120,000.00 each. The licenses would be purchased at the stated bonus values.

5. Reef Net 1977 Licenses: 78

Purchase licenses and vessels from 10 reef net

fishermen. The vessels would be purchased at fair market value of approximately \$10,000.00 each. The licenses would be purchased at the stated bonus values.

6. Charter 1977 Licenses: 558

a. Purchase 30 construction contracts at an average price of \$20,000.00 per contract.

b. Purchase 30 charter licenses alone at the stated bonus values.

c. Purchase 138 charter vessels and licenses. The vessels would be purchased at fair market value estimated at \$65,000.00 per vessel. The licenses would be sold at the stated bonus values.

V. BUDGET

Tables 7-1 through 7-8 contain the budgetary details for the entire buy-back program. Tables 7-1 through 7-6 relate to each of the State's fisheries individually. Tables 7-7 and 7-8 set out the total budget in the aggregate in Grays Harbor.

Second, fishing effort conversion factors need to be defined and agreed to so that total fishing effort will remain unchanged as transfers occur. For example, the fishing effort represented by a purse seine vessel and by a Puget Sound gillnet vessel need to be identified so that the conversion rate can be set.

The transfer program would then operate along the

Table 7-1 TROLL

PRODUCTION CATEGORY	ENTITIES	LICENSE COST	GROSS VESSEL PURCHASE COST	LESS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	NET TOTAL BY ENTITY	NET TOTAL BY PERCENT PRODUCTION CATEGORIES
0 to 5% of TOTAL PRODUCTION Cancelled licenses	LICENSE'S REIMBURSEMENT 1699 @ \$ 500	\$ 849,500				\$ 849,500	
	VESSEL PURCHASE PROGRAM 170 @ \$ 25,000		\$ 4,250,000	\$ 2,125,000	\$ 2,125,000	\$ 2,125,000	\$ 2,974,500
5% to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 118 @ \$9,000	\$1,062,000				\$1,062,000	
	PURCHASE (2nd year) 59 @ \$7,000	\$ 413,000				\$ 413,000	
	ONLY (3rd year) 59 @ \$5,000	\$ 295,000				\$ 295,000	
	SUB-TOTAL	\$1,770,000				\$1,770,000	
5% to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 118 @ \$9,000 118 @ \$25,000	\$1,062,000	\$ 2,950,000	\$ 737,500	\$ 2,212,500	\$3,274,500	
	& VESSEL (2nd year) 59 @ \$7,000 59 @ \$25,000	\$ 413,000	\$ 1,475,000	\$ 368,750	\$ 1,106,250	\$1,519,250	
	PURCHASE (3rd year) 59 @ \$5,000 59 @ \$25,000	\$ 295,000	\$ 1,475,000	\$ 368,750	\$ 1,106,250	\$1,401,250	\$ 7,965,000
	SUB-TOTAL	\$1,770,000	\$ 5,900,000	\$1,475,000	\$ 4,425,000	\$6,195,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 11 @ \$15,000	\$ 165,000				\$ 165,000	
	PURCHASE (2nd year) 11 @ \$11,000	\$ 121,000				\$ 121,000	
	ONLY (3rd year) 11 @ \$9,000	\$ 99,000				\$ 99,000	
	SUB-TOTAL	\$ 385,000				\$ 385,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 42 @ \$15,000 42 @ \$25,000	\$ 630,000	\$ 1,050,000	\$ 262,500	\$ 787,500	\$1,417,500	
	& VESSEL (2nd year) 42 @ \$11,000 42 @ \$25,000	\$ 462,000	\$ 1,050,000	\$ 262,500	\$ 787,500	\$1,249,500	
	PURCHASE (3rd year) 42 @ \$9,000 42 @ \$25,000	\$ 378,000	\$ 1,050,000	\$ 262,500	\$ 787,500	\$1,165,500	\$ 4,217,500
	SUB-TOTAL	\$1,470,000	\$ 3,150,000	\$ 787,500	\$ 2,362,500	\$3,832,500	
TOTAL		\$6,244,500	\$ 13,300,000	\$4,387,500	\$ 8,912,500	\$15,157,000	\$ 15,157,000

Table 7-2 PUGET SOUND GILL NET

PRODUCTION CATEGORY	ENTITIES	LICENSE COST	GROSS VESSEL PURCHASE COST	LESS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	NET TOTAL BY ENTITY	NET TOTAL BY PERCENT PRODUCTION CATEGORIES
0 to 5% of TOTAL PRODUCTION Cancelled Licenses	LICENSE'S REIMBURSEMENT 542 @ \$500	\$ 271,000				\$ 271,000	
	VESSEL PURCHASE PROGRAM 54 @ \$25,000		\$1,350,000	\$ 675,000	\$ 675,000	\$ 675,000	\$ 946,000
5% to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE PURCHASE ONLY	(1st year) 48 @ \$16,000 \$ 768,000				\$ 768,000	
		(2nd year) 24 @ \$12,000 \$ 288,000				\$ 288,000	
		(3rd year) 24 @ \$10,000 \$ 240,000				\$ 240,000	
		SUB-TOTAL \$1,296,000				\$1,296,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE & VESSEL PURCHASE	(1st year) 48 @ \$16,000 48 @ \$25,000 \$ 786,000	\$1,200,000	\$ 300,000	\$ 900,000	\$1,668,000	\$ 4,392,000
		(2nd year) 24 @ \$12,000 24 @ \$25,000 \$ 288,000	\$ 600,000	\$ 150,000	\$ 450,000	\$ 738,000	
		(3rd year) 24 @ \$10,000 24 @ \$25,000 \$ 240,000	\$ 600,000	\$ 150,000	\$ 450,000	\$ 690,000	
		SUB-TOTAL \$1,296,000	\$2,400,000	\$ 600,000	\$1,800,000	\$3,096,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE PURCHASE ONLY	(1st year) 8 @ \$30,000 \$ 240,000				\$ 240,000	\$ 4,434,750
		(2nd year) 8 @ \$21,000 \$ 168,000				\$ 168,000	
		(3rd year) 8 @ \$18,000 \$ 144,000				\$ 144,000	
		SUB-TOTAL \$ 552,000				\$ 552,000	
TOTAL	LICENSE & VESSEL PURCHASE	(1st year) 31 @ \$30,000 31 @ \$25,000 \$ 930,000	\$775,000	\$ 193,750	\$ 581,250	\$1,511,250	\$ 9,772,750
		(2nd year) 31 @ \$21,000 31 @ \$25,000 \$ 651,000	\$775,000	\$ 193,750	\$ 581,250	\$1,232,250	
		(3rd year) 31 @ \$18,000 31 @ \$25,000 \$ 558,000	\$775,000	\$ 193,750	\$ 581,250	\$1,139,250	
		SUB-TOTAL \$2,139,000	\$2,325,000	\$ 581,250	\$1,743,750	\$3,882,750	
TOTAL		\$5,554,000	\$6,075,000	\$1,856,250	\$4,218,750	\$9,772,750	

Table 7-3 COASTAL BAYS COLUMBIA RIVER GILLNET

PRODUCTION CATEGORY	ENTITIES	LICENSE COST	GROSS VESSEL PURCHASE COST	LESS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	NET TOTAL BY ENTITY	NET TOTAL BY PERCENT PRODUCTION CATEGORIES
0 to 5% of TOTAL PRODUCTION Cancelled Licenses	LICENSE'S REIMBURSEMENT 33 @ \$500	\$ 168,000				\$ 168,000	
	VESSEL PURCHASE PROGRAM 33 @ \$20,000		\$ 660,000	\$ 330,000	\$ 330,000	\$ 330,000	\$ 498,000
5% to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 34 @ \$16,000	\$ 544,000				\$ 544,000	
	PURCHASE (2nd year) 17 @ \$12,000	\$ 204,000				\$ 204,000	
	ONLY (3rd year) 17 @ \$10,000	\$ 170,000				\$ 170,000	
	SUB-TOTAL	\$ 918,000				\$ 918,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 34 @ \$16,000 34 @ \$20,000	\$ 544,000	\$ 680,000	\$ 170,000	\$ 510,000	\$1,054,000	
	& VESSEL (2nd year) 17 @ \$12,000 17 @ \$20,000	\$ 204,000	\$ 340,000	\$ 85,000	\$ 255,000	\$ 459,000	
	PURCHASE (3rd year) 17 @ \$10,000 17 @ \$20,000	\$ 170,000	\$ 340,000	\$ 85,000	\$ 255,000	\$ 425,000	\$ 2,856,000
	SUB-TOTAL	\$ 918,000	\$1,360,000	\$ 340,000	\$1,020,000	\$1,938,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 2 @ \$30,000	\$ 60,000				\$ 60,000	
	PURCHASE (2nd year) 2 @ \$21,000	\$ 42,000				\$ 42,000	
	ONLY (3rd year) 2 @ \$18,000	\$ 36,000				\$ 36,000	
	SUB-TOTAL	\$ 138,000				\$ 138,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 10 @ \$30,000 10 @ \$25,000	\$ 300,000	\$ 250,000	\$ 62,500	\$ 187,500	\$ 487,500	
	& VESSEL (2nd year) 10 @ \$21,000 10 @ \$25,000	\$ 210,000	\$ 250,000	\$ 62,500	\$ 187,500	\$ 397,500	
	PURCHASE (3rd year) 10 @ \$18,000 10 @ \$25,000	\$ 180,000	\$ 250,000	\$ 62,500	\$ 187,500	\$ 367,500	\$ 1,390,500
	SUB-TOTAL	\$ 690,000	\$ 750,000	\$ 187,500	\$ 562,500	\$1,252,500	
TOTAL		\$2,832,000	\$2,770,000	\$ 857,500	\$1,912,500	\$4,744,500	\$ 4,744,500

Table 7-4 PURSE SEINE

PRODUCTION CATEGORY	ENTITIES	LICENSE COST	GROSS VESSEL PURCHASE COST	LFSS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	NET TOTAL BY ENTITY	NET TOTAL BY PERCENT PRODUCTION CATEGORIES
0 to 5% of TOTAL PRODUCTION Cancelled Licenses	LICENSE'S REIMBURSEMENT 130 @ \$1,000	\$ 130,000				\$ 130,000	
	VESSEL PURCHASE PROGRAM 13 @ \$60,000		\$ 780,000	\$ 390,000	\$ 390,000	\$ 390,000	\$ 520,000
5% to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 14 @ \$45,000	\$ 630,000				\$ 630,000	
	PURCHASE (2nd year) 7 @ \$36,000	\$ 252,000				\$ 252,000	
	ONLY (3rd year) 7 @ \$31,000	\$ 217,000				\$ 217,000	
	SUB-TOTAL	\$1,099,000				\$1,099,000	
(VOLUNTARY)	LICENSE (1st year) 14 @ \$45,000 14 @ \$60,000	\$ 630,000	\$ 840,000	\$ 210,000	\$ 630,000	\$1,260,000	
	& VESSEL (2nd year) 7 @ \$36,000 7 @ \$60,000	\$ 252,000	\$ 420,000	\$ 105,000	\$ 315,000	\$ 567,000	
	PURCHASE (3rd year) 7 @ \$31,000 7 @ \$60,000	\$ 217,000	\$ 420,000	\$ 105,000	\$ 315,000	\$ 532,000	\$3,458,000
	SUB-TOTAL	\$1,099,000	\$1,680,000	\$ 420,000	\$1,260,000	\$2,359,000	
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE (1st year) 2 @ \$70,000	\$ 140,000				\$ 140,000	
	PURCHASE (2nd year) 2 @ \$50,000	\$ 100,000				\$ 100,000	
	ONLY (3rd year) 2 @ \$45,000	\$ 90,000				\$ 90,000	
	SUB-TOTAL	\$ 330,000				\$ 330,000	
(VOLUNTARY)	LICENSE (1st year) 8 @ \$70,000 8 @ \$120,000	\$ 560,000	\$ 960,000	\$ 240,000	\$ 720,000	\$1,280,000	
	& VESSEL (2nd year) 8 @ \$50,000 8 @ \$120,000	\$ 400,000	\$ 960,000	\$ 240,000	\$ 720,000	\$1,120,000	
	PURCHASE (3rd year) 8 @ \$45,000 8 @ \$120,000	\$ 360,000	\$ 960,000	\$ 240,000	\$ 720,000	\$1,080,000	\$3,810,000
	SUB-TOTAL	\$1,320,000	\$2,880,000	\$ 720,000	\$2,160,000	\$3,480,000	
TOTAL		\$3,978,000	\$5,340,000	\$1,530,000	\$3,810,000	\$7,788,000	\$7,788,000

Table 7-5 REEF NET

PRODUCTION CATEGORY	ENTITIES	LICENSE COST	GROSS VESSEL PURCHASE COST	LESS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	NET TOTAL BY ENTITY	NET TOTAL BY PERCENT PRODUCTION CATEGORIES
0 to 5% of TOTAL PRODUCTION	LICENSE'S REIMBURSEMENT	N/A	N/A	N/A	N/A	N/A	N/A
	VESSEL PURCHASE PROGRAM	N/A	N/A	N/A	N/A	N/A	N/A
0 to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE PURCHASE ONLY	(1st year)					
		(2nd year)					
		(3rd year)					
		SUB-TOTAL					
0 to 12% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE & VESSEL PURCHASE	3 @ \$16,000 3 @ \$10,000 (1st year)	\$ 48,000	\$ 30,000	\$ 3,000	\$ 27,000	\$ 75,000
		1 @ \$12,000 1 @ \$10,000 (2nd year)	\$ 12,000	\$ 10,000	\$ 1,000	\$ 9,000	\$ 21,000
		1 @ \$10,000 1 @ \$10,000 (3rd year)	\$ 10,000	\$ 10,000	\$ 1,000	\$ 9,000	\$ 19,000
		SUB-TOTAL	\$ 70,000	\$ 50,000	\$ 5,000	\$ 45,000	\$ 115,000
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE PURCHASE ONLY	(1st year)					
		(2nd year)					
		(3rd year)					
		SUB-TOTAL					
12% to 100% of TOTAL PRODUCTION (VOLUNTARY)	LICENSE & VESSEL PURCHASE	3 @ \$30,000 3 @ \$10,000 (1st year)	\$ 90,000	\$ 30,000	\$ 3,000	\$ 27,000	\$ 117,000
		1 @ \$21,000 1 @ \$10,000 (2nd year)	\$ 21,000	\$ 10,000	\$ 1,000	\$ 9,000	\$ 30,000
		1 @ \$18,000 1 @ \$10,000 (3rd year)	\$ 18,000	\$ 10,000	\$ 1,000	\$ 9,000	\$ 27,000
		SUB-TOTAL	\$ 129,000	\$ 50,000	\$ 5,000	\$ 45,000	\$ 174,000
TOTAL		\$ 199,000	\$ 100,000	\$ 10,000	\$ 90,000	\$ 289,000	\$ 289,000

Table 7-6 CHARTER BOATS

ENTITIES		LICENSE COST	GROSS VESSEL PURCHASE COST	LESS RECOVERY COST ON RESALE OF VESSEL	NET VESSEL COST	CONSTRUCTION CONTRACT COST	NET TOTAL
CONSTRUCTION CONTRACT PURCHASE	30 @ \$20,000					\$ 600,000	\$ 600,000
LICENSE PURCHASE ONLY	(1st year) 10 @ \$32,000	\$ 320,000					\$ 320,000
	(2nd year) 10 @ \$24,000	\$ 240,000					\$ 240,000
	(3rd year) 10 @ \$16,000	\$ 160,000					\$ 160,000
	SUB-TOTAL	\$ 720,000					\$ 720,000
LICENSE & VESSEL PURCHASE	(1st year) 46 @ \$32,000 46 @ \$65,000	\$1,472,000	\$2,990,000	\$1,495,000	\$1,495,000		\$2,967,000
	(2nd year) 46 @ \$24,000 46 @ \$65,000	\$1,104,000	\$2,990,000	\$1,495,000	\$1,495,000		\$2,599,000
	(3rd year) 46 @ \$16,000 46 @ \$65,000	\$ 736,000	\$2,990,000	\$1,495,000	\$1,495,000		\$2,231,000
	SUB-TOTAL	\$3,312,000	\$8,970,000	\$4,485,000	\$4,485,000	\$ 600,000	\$8,397,000
TOTAL		\$4,032,000	\$8,970,000	\$4,485,000	\$4,485,000	\$ 600,000	\$9,117,000

Table 7-8 COMBINED 3 YEAR TOTAL PROGRAM COST

	ADMINISTRATIVE COSTS	LICENSE PURCHASE	GROSS VESSEL PURCHASE	RECOVERY COST OF VESSEL RESALE	NET VESSEL COST	CONSTRUCTION CONTRACT PURCHASE	NET TOTAL
1st YEAR	\$ 262,347	\$ 12,381,500	\$ 18,795,000	\$ 7,197,250	\$ 11,597,750	\$ 600,000	\$ 24,841,597
2nd YEAR	\$ 262,347	\$ 5,845,000	\$ 8,880,000	\$ 2,964,500	\$ 5,915,500		\$ 12,022,847
3rd YEAR	\$ 262,347	\$ 4,613,000	\$ 8,880,000	\$ 2,964,500	\$ 5,915,500		\$ 10,790,847
TOTAL	\$ 787,041	\$22,839,500	\$ 36,555,000	\$13,126,250	\$ 23,428,750	\$ 600,000	\$ 47,655,291

Table 7-7 3 YEAR PROGRAM ENTITY TOTALS

By Fishery

	PUGET SOUND GILL NET	COASTAL BAYS COLUMBIA RIVER GILL NET	PURSE SEIN	TROLL	REEF NET	CHARTER BOATS	ADMINISTRATIVE COSTS	TOTAL
1st YEAR	\$ 5,133,250	\$ 2,643,500	\$ 3,830,000	\$ 8,893,500	\$ 192,000	\$ 3,887,000	\$ 262,347	\$ 24,841,597
2nd YEAR	\$ 2,426,250	\$ 1,102,500	\$ 2,039,000	\$ 3,302,750	\$ 51,000	\$ 2,839,000	\$ 262,347	\$ 12,022,847
3rd YEAR	\$ 2,213,250	\$ 998,500	\$ 1,919,000	\$ 2,960,750	\$ 46,000	\$ 2,391,000	\$ 262,347	\$ 10,790,847
TOTAL	\$ 9,772,750	\$ 4,744,500	\$ 7,788,000	\$15,157,000	\$ 289,000	\$ 9,117,000	\$ 787,041	\$ 47,655,291

following lines. If, for example, a Puget Sound gillnet license holder wished to discontinue operating gillnet gear and commence operating purse seine gear, he would be able to retire a specified number of Puget Sound gillnet licenses in exchange for a purse seine license. If, on the other hand, a purse seiner wished to retire his purse seine license and commence operations as a Puget Sound gillnet fisherman he could do so and would receive the appropriate number of Puget Sound gillnet licenses.

A similar program would permit fishermen operating in the TCMZ to convert to marine net fisheries. If that occurred, however, the resource distribution plan would be altered so that a smaller share of the resource was taken in the TCMZ and a greater share in the SCMZ.

VI. IMPACT ON FLEET SIZE

The combined impact of the license reduction programs and the buy-back programs on Washington licensed fleet size in the State's commercial and charter salmon fleets will not be known with certainty until the conclusion of each of the programs due in part to the fact that the buy-back programs are voluntary and predictions about participation are estimates only. Nevertheless, if the program estimates are fulfilled significant changes will occur in licensed fleet size. Figures 7-1 through 7-6 set out projected State licensed fleet size over the period 1977 through 1981.

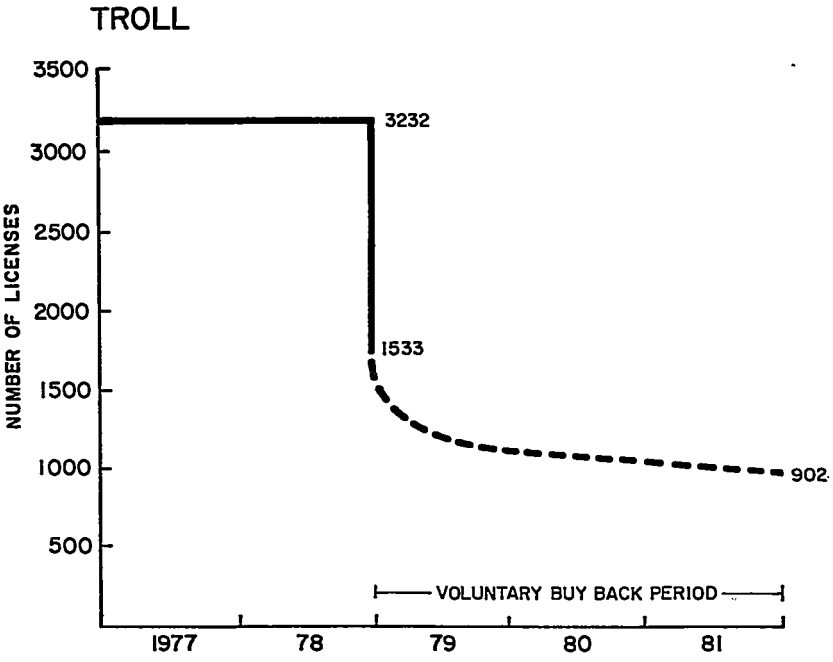


Figure 7-1

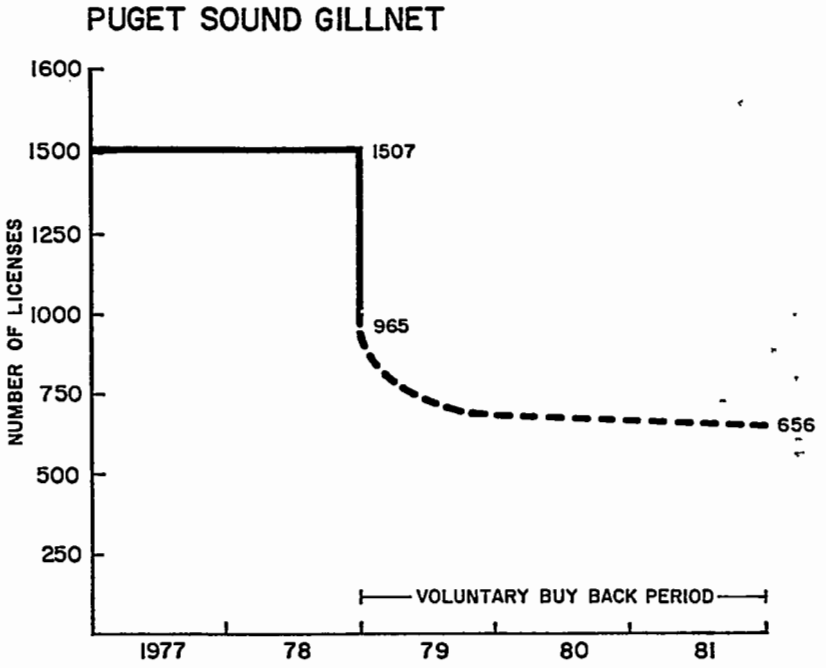


Figure 7-2

COLUMBIA RIVER / COASTAL BAYS GILLNET

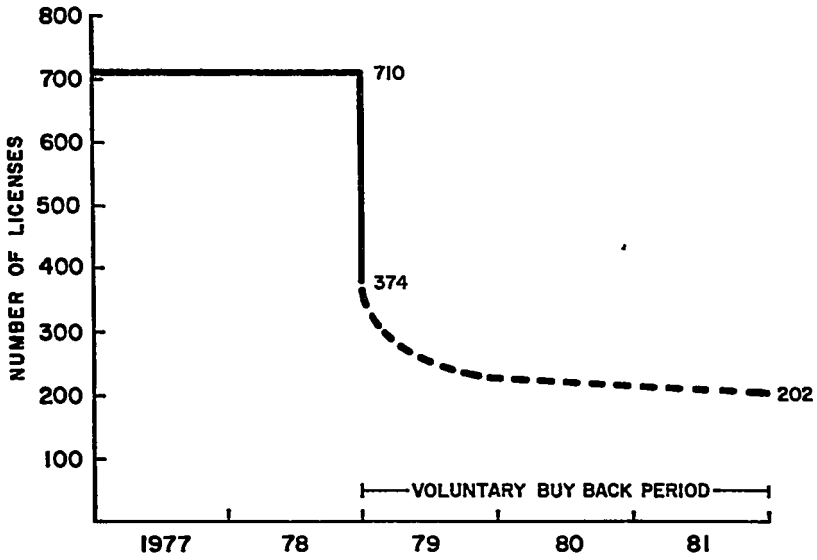


Figure 7-3

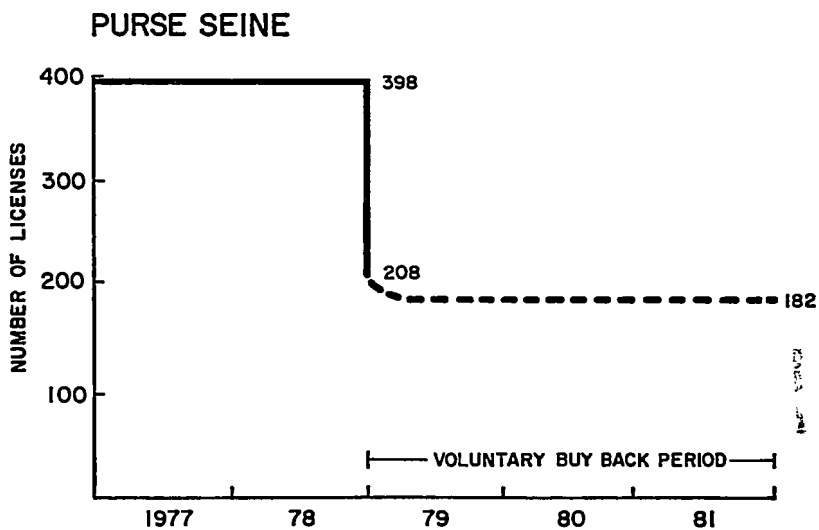


Figure 7-4

REEF NET

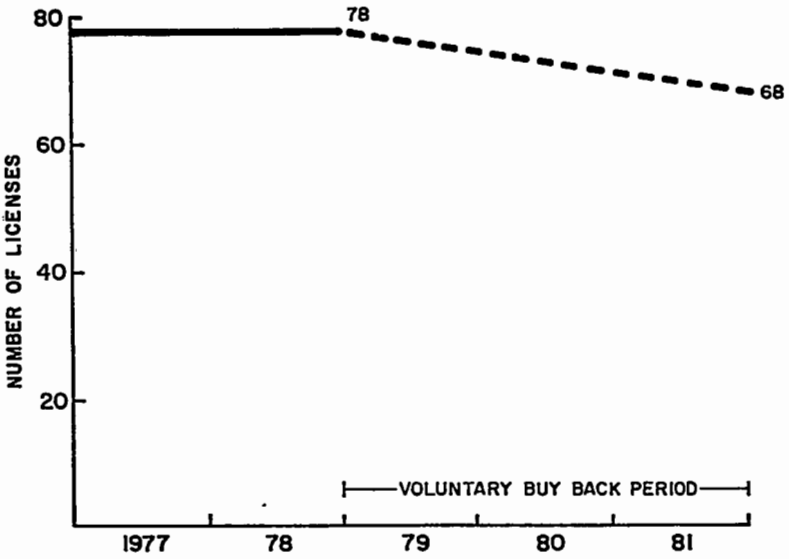


Figure 7-5

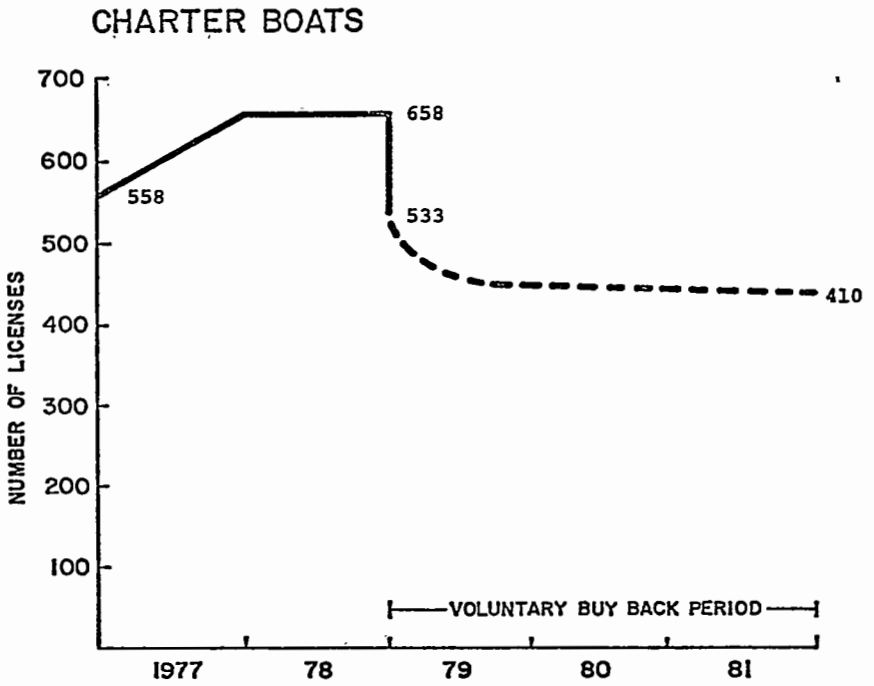


Figure 7-6

VII. GEAR EXCHANGE

Many fishermen and fisheries managers recommended that the Regional Team consider a program which would permit voluntary transfer of gear across gear lines. The concept would permit a fisherman licensed to fish one particular type of gear to convert to another gear while withdrawing his existing gear from the fishery. The transfers would be accomplished in a fashion which would not increase total fishing effect on any particular stock of fish. The Regional Team investigated the question and is convinced that this is a promising concept. As a consequence, the Regional Team strongly recommends that the State, the Tribal Commission, and the Pacific Council investigate, develop, and implement a program which would allow for the voluntary conversion and transfer of one type of gear into another.

Two points appear to be critical to the success of the gear exchange program. First, transfers should only be permitted between gear types fishing on the same stocks of fish. For example, the troll and charter fisheries operate on the same stocks of salmon in the ocean. Similarly, purse seiners, reef net, Puget Sound gillnet, and TCMZ fisheries of the Puget Sound area fish on the same stocks in Puget Sound. Finally, Grays Harbor gillnet and the TCMZ fisheries in the Grays Harbor area operate on the same stocks of

fish in Grays Harbor.

Second, fishing effort conversion factors need to be defined and agreed to so that total fishing effort will remain unchanged as transfers occur. For example, the fishing effort represented by a purse seine vessel and by a Puget Sound gillnet vessel need to be identified so that the conversion rate can be set.

The transfer program would then operate along the following lines. If, for example, a Puget Sound gillnet license holder wished to discontinue operating gillnet gear and commence operating purse seine gear, he would be able to retire a specified number of Puget Sound gillnet licenses in exchange for a purse seine license. If, on the other hand, a purse seiner wished to retire his purse seine license and commence operations as a Puget Sound gillnet fisherman he could do so and would receive the appropriate number of Puget Sound gillnet licenses.

A similar program would permit fishermen operating in the TCMZ to convert to marine net fisheries. If that occurred, however, the resource distribution plan would be altered so that a smaller share of the resource was taken in the TCMZ and a greater share in the SCMZ.

Chapter 8

Tribal CommissionLicense and Fleet Adjustment ProgramI. INTRODUCTION

The size and composition of the State's tribal salmon fleets are important components of the overall settlement plan. Tribal fisheries, both in the marine areas of the SCMZ and in the rivers and river mouth areas of the TCMZ, must be properly planned to coordinate with the resource distribution and non-tribal license and fleet adjustment programs. Although the tribal fleets in general are not yet over-capitalized, steps should be taken at the present time to prevent the type of excessive growth which could lead to poor economic performance in those fisheries and could defeat the purpose of the resource distribution program. The tribal commercial fleet program provides for a substantial \$15 million dollar program of Federal economic assistance for modernization of the overall tribal fleet and for specified growth in tribal fleets fishing within the SCMZ consistent with the comprehensive terms of the settlement plan.

II. CURRENT TRIBAL FLEETS

The composition of Washington's tribal fishing fleet remained fairly constant until the 1974 ruling in United States v. Washington. Before 1974, traditional tribal fisheries occurred within reservation boundaries and in the major rivers and terminal areas of Puget Sound and the Washington coast. The bulk of the fishing effort was by skiff, set net, or hand-operated drift net, although traditional marine fisheries using modern gillnet and purse seine vessels operated in Bellingham Bay, Skagit Bay, Port Susan and the Strait of Juan de Fuca.

After the 1974 ruling in United States v. Washington, tribal fisheries were initiated on most Puget Sound and coastal rivers which contained harvestable numbers of salmon and steelhead. There was also a shift by some fishermen from traditional river fisheries into marine areas in Puget Sound, the Strait of Juan de Fuca, and Grays Harbor.

In its report entitled, "Tribal Report to the Presidential Task Force on Treaty Fishing Rights in the Northwest," Volume II dated November 14, 1977, the Northwest Indian Fish Commission compiled a listing of fishing gear by tribe prior to the 1977 fishing season, Table 8-1. A review of this Table indicates that the bulk of the fishing effort by tribal fishermen has remained in the river fisheries and terminal marine areas using set nets, skiffs, and hand-operated drift nets.

Table 8-1

ANTICIPATED EFFORT IN THE UNITED STATES V. WASHINGTON CASE AREA
BY TREATY INDIANS FOR 1977^{1/}

Tribe	Troll	Marine Gillnet	Purse Seine	Marine Skiffs	River Fishermen	Beach Seines	Beach Set Nets
Hoh	0	0	0	0	12	0	0
Lower Elwha	3	1	0	18	22	0	0
Lummi	0	60	4	90	70	0	0
Makah	37	11	0	0	65	0	35
Muckleshoot	0	10	0	0	30	0	0
Nooksack	0	5	0	0	20	0	0
Nisqually	0	5	0	15	40	0	0
Port Gamble	0	8	0	0	12	0	0
Puyallup	0	30	0	0	36	0	0
Quileute	8	0	0	0	23	0	0
Quinault	3	6	0	0	110	0	0
Sauk Suiattle	0	0	0	0	6	0	0
Skokomish	0	8	0	80	20	0	0
Squaxin	0	0	0	75	0	0	0
Steilacoom	0	8	1	10	0	0	0
Stillaguamish	0	0	0	0	6	0	0
Suquamish	0	10	4	0	6	0	0
Swinomish	0	30	1	0	0	0	0
Tulalip	0	47	0	35	0	6	0
Upper Skagit	0	5	0	0	70	0	0
TOTAL	51	244	10	323	548	6	35

^{1/} These data are pre-season estimates based on a survey of all tribes, conducted by the Northwest Indian Fish Commission prior to the 1977 fishing season. Actual fleet size and effort may vary. Totals for the various classes of fishermen are not additive in that an individual fisherman may fish more than one gear type at various times of the year and would, therefore, be counted in more than one column. Effort data were not available for the Duwamish, Snohomish, Snoqualmie, and Samish Tribes.

III. RELATIONSHIP TO RESOURCE DISTRIBUTION PROGRAM

The tribal fleet program is specifically tailored to mesh with the resource distribution plan and with the non-tribal license and fleet adjustment program set out in Chapters 5 and 7, respectively. The resource distribution plan contemplates that a specified balance (percentage) be achieved between the tribal and non-tribal purse seine, gillnet and troll fleets fishing in the SCMZ. In the future, these fleets in the aggregate will be composed in part by vessels licensed by the Tribal Commission and in part by vessels licensed by WDF. The harvesting activities of all vessels in those fleets, however, will be regulated by the Washington Department of Fisheries, "WDF", the International Pacific Salmon Fisheries Commission, "IPSFC", and the Pacific Fishery Management Council. In contrast, tribal fleets utilizing traditional terminal gear in the TCMZ will be licensed and regulated by the Tribal Commission, and will be limited in size by the tribes and the Tribal Commission no later than two years after the settlement is instituted.

IV. RELATIONSHIP TO NON-TREATY GEAR PROGRAM

In order to achieve a healthy commercial fishery, the existing non-tribal commercial fleet will be eligible for the terms of a substantial buy-back program. This buy-back program is designed to achieve fleet sizes in the respective non-tribal marine fleets, which, when added to

the tribal marine fleet sizes, will result in economic well-being for the entire commercial fishery.

V. TRIBAL GEAR DEVELOPMENT PROGRAM

The tribal fleets are in need of modernization so that tribal fishermen may conduct efficient operations. In addition, a small increase in the tribal marine fleets is necessary so that the tribal fleets reach the relationship to the non-tribal fleets specified in the resource distribution plan. As a consequence, tribal marine fleets will grow to the ceiling specified below, at which point a moratorium on further fleet size increase, identical in detail to the current State moratorium, will take effect. Thus, there will be a ceiling on the total size of the commercial fleet in Washington State waters.

A. Tribal Moratorium Levels

The approximate moratorium levels for the tribal marine fleets are as follows:

Purse Seine	70
Puget Sound Gillnet	257
Troll	100
Grays Harbor Gillnet	20

No target goals for fleet size are presently specified for skiff and river fisheries. The Tribal Commission and the tribes are required to take the initiative in encouraging or discouraging growth in those fisheries, as

the case may be, to reach the levels which will be contained in the TCMZ limited entry system.

The tribal gear modernization program will offer low down payment and low interest loans to eligible licensed tribal applicants to purchase, replace, or modernize their fishing vessels or gear. The loans will be available to individual fishermen and/or tribal fishing corporations to purchase fishing vessels and equipment retired by the State under the buy-back program, or to buy new or used equipment in the private market.

The specified levels for the various tribal fisheries are closely related to the requests for increased gear or modernized gear made to the Task Force by the tribes.

Funds for the loan program would be provided by the Economic Development Administration in the form of a grant to the Tribal Commission pursuant to Title IX of the Economic Development Administration Act. The loan program could be administered by the Commission or for the Commission by an organization familiar with commercial lending. The Commission's administrator could, for example, be the American Indian Bank.

The Tribal Commission or its administrator would make loans subject to the following basic rules:

B. Loan Program Rules

1. Five percent down, 95% financing for the refurbishment and/or purchase of vessels and gear other than

purse seine and troll vessels. In the purse seine and troll fisheries three percent down, 97% financing would be available.

2. Five percent interest per year.

3. Up to twenty year repayment schedules, depending on the purpose and amount of each loan.

4. A loan fee of $3/4$ of 1% of the outstanding balance on each loan to cover the administrator's expenses.

5. Eligibility and collateral requirements would be established by the Commission.

6. The administrator would have flexibility in negotiating repayment schedules which would allow for smaller payments at the beginning of the term and larger payments at the end of the term, if the borrower should so desire.

All repaid loan funds, plus interest, would be placed in a revolving fund under the ownership and control of the Tribal Commission for reinvestment in a manner consistent with Title IX of EDA's Act.

The budget contained in Tables 8-2 through 8-4 allows for specified increases in the number of Indian vessels in the troll, gillnet, purse seine and traditional terminal gear classes and the upgrading or modernization for the vessels and gear in all classes. The total program budget for a four-year period is \$15,366,750.00.

TRIBAL GEAR MODERNIZATION PROGRAM BUDGET BY ELEMENTMarine Fisheries:Gillnet Class:

Replacement	100 vessels at \$25,000/vessel	\$ 2,500,000
Modernization	50 vessels at \$10,000/vessel	500,000
New	75 vessels at \$25,000/vessel	<u>1,875,000</u>
	Subtotal	\$ 4,875,000
	Minus 5% down payment	<u>243,750</u>
	TOTAL Gillnet Class	\$ 4,631,250

Troll Class:

Replacement	20 vessels at \$25,000/vessel	\$ 500,000
New	40 vessels at \$25,000/vessel	<u>1,000,000</u>
	Subtotal	\$ 1,500,000
	Minus 3% down payment	<u>45,000</u>
	TOTAL Troll Class	\$ 1,455,000

Purse Seine Class:

Replacement	3 vessels at \$120,000/vessel	\$ 360,000
New	60 vessels at \$120,000/vessel	7,200,000
Modernization	3 vessels at \$ 30,000/vessel	<u>90,000</u>
	Subtotal	\$ 7,650,000
	Minus 3% down payment	<u>229,500</u>
	TOTAL Purse Seine Class	\$ 7,420,500

Table 8-2 Tribal Gear Modernization Program Budget -
Marine Fisheries

Traditional Terminal Gear

Skiff Class:

Modernization	160 vessels at \$5,000/vessel	\$	800,000
	Minus 5% down payment		<u>40,000</u>
	TOTAL	\$	760,000

Others, including river fishermen:

Modernization and increase			
	500 individuals at \$1,000/individual	\$	500,000
	Minus 5% down payment		<u>25,000</u>
	Subtotal	\$	475,000
	Total Marine and Traditional Gear	\$15,325,000	
	Less down payments		<u>583,250</u>
	Subtotal	\$14,741,750	
	Administration (Four Years)		<u>625,000</u>
	TOTAL		<u><u>\$15,366,750</u></u>

Table 8-3 Tribal Gear Modernization Program Budget -
Traditional Terminal Gear

ADMINISTRATION BUDGET (FOUR YEARS)

Personnel:		
Program Director	\$30,000	\$120,000
Secretary	12,000	48,000
Steno	10,000	40,000
Accountant	18,000	72,000
Attorney	20,000	80,000
Loan Officer	14,000	56,000
		<u>Subtotal</u> \$416,000
Travel		\$ 20,000
Per Diem		10,000
Office Space		24,000
Other Costs		75,000
Personnel Burden		<u>80,000</u>
		<u>TOTAL</u> <u>\$625,000</u>

Table 8-4 Tribal Gear Modernization Program Budget -
Administration

VI. OVERALL IMPACT ON FLEET SIZE

The size of the overall commercial salmon fleet fishing in the SCMZ will be the product of the license and fleet adjustment program for the non-tribal fishery described in Chapter 7 and the tribal commercial fleet program described in this Chapter. If both programs operate as intended, overall fleet size in 1982 at the ending of the three year buy-back program and four year tribal loan program will be as indicated in Table 8-5.

<u>Fishery</u>	<u>Tribal</u>	<u>Non-Tribal</u>	<u>Total</u>
Troll	100	902	1002
Puget Sound Gillnet	257	656	913
Coastal Bays/Columbia River Gillnet	20	202	222
Purse Seine	70	182	252
Reef Net	--	68	68

Table 8-5 Projected SCMZ Commercial Fleet Size in 1982

Chapter 9

ENFORCEMENTI. INTRODUCTION

Enforcement of salmon harvesting laws and regulations is one of the most critical elements in the development of a healthy salmon commercial and sport fishery. Excessive harvesting can result in the depletion of salmon stocks needed to spawn and maintain the runs. Without an effective enforcement program, it would be virtually impossible to implement the terms of this settlement plan.

The Regional Team, Washington Department of Fisheries (WDF), and the tribes conducted an extensive review of current enforcement activities. This review has centered on the six key elements needed for effective enforcement of the fishery laws and regulations. These elements are:

A. A body of law and regulations that is clear and well understood by the general public, fishermen, and enforcement personnel.

B. An informed public that is generally supportive of the basic purposes of the law and regulations.

C. Competent, professional enforcement personnel whose qualifications, training and professional demeanor engenders respect.

D. An enforcement system that has the confidence and respect of all fishermen.

E. An adequate level of manpower and materiel to support the enforcement effort.

F. An active and supportive judiciary which is responsive in a timely and even-handed manner with violators; and willing to apply a penalty system adequate to provide deterrence.

The following is a brief assessment of each of these elements.

II. GENERAL ASSESSMENT

A. Body of Law and Regulations

In sum, confusion currently exists. Conflicting orders of State and Federal Court regarding season regulations set by WDF and numerous tribal regulations have created confusion among the parties and enforcement officers. Traditional attitudes and behavior toward fishery laws and regulations have been radically altered. The number and frequency of emergency regulations to control the fishery have served to heighten the confusion.

In summary, the present situation is so unstable that it cannot provide the support necessary to meet the terms of this plan or protect the fishery resource.

B. Public Support

Given the conditions described above and all of the charges and countercharges which have been publicly aired, the public has become confused and no longer knows what or whom to believe. With the majority of the non-treaty fishermen opposed to the Federal Court decisions, there is little sympathy for the role of enforcement.

In addition, there appears to be little public understanding of the precarious nature of the resource, and the economic implications of the continued illegal fishing. The public is not aware of the extent or implications of the breakdown in fisheries enforcement.

C. Professional Enforcement

State and tribal enforcement officers are unhappy with the present enforcement system. While State and tribal enforcement personnel are sensitive to their lack of training and professional development, they are proud of many of their accomplishments in the difficult circumstances that have confronted them. The State's enforcement officers have become frustrated with the imposition of Federal control over their activities. Tribal enforcement officers have made substantial strides in improving their capabilities. However, they face difficulties in properly enforcing against tribal fishermen given the substantial and almost continuous illegal fishing of non-treaty commercial fishermen.

D. Fishermen Confidence

Fishermen on all sides of the controversy have lost respect for law enforcement and the Courts under the present circumstances. Increasingly, the attitude has become, "If everyone else is going to break the rules and make money, then I will do the same." There is also a feeling by tribal fishermen that the State fisheries patrolmen will not arrest and the State Courts will not convict non-treaty fishermen who are illegally fishing, but will arrest and convict treaty fishermen. From the point of view of non-treaty fishermen, there is a belief that the tribal police and tribal courts will not arrest and convict tribal fishermen who are illegally fishing. A new system must also address these perceptions if it is to be successful.

E. Manpower and Materiel

All enforcement entities lack adequate resources to conduct an effective enforcement program. Violators often have better and faster boats, a better communications network, and a willingness to confront law enforcement officers that underscores the inferior position of the enforcement personnel. Superior knowledge of the fishery and the ability to use darkness and other natural elements further enhance the position of the violator over the enforcement officer.

F. Judiciary

A judiciary system that responds in a timely, even-handed fashion is critical to the success of an effective enforcement program. The present system is ineffective. It is characterized by an uneven response to violations, delays in trying cases - thus allowing fishermen to continue fishing even after many violations - and the imposition of small penalties quite out of relationship with the economic benefit of violating the law.

In summary, based upon a general assessment of the six elements needed for an effective enforcement program, it is apparent there are serious and critical shortcomings in each area of the present system.

III. STATE/TRIBAL NEGOTIATIONS AGREEMENT ON ENFORCEMENT

Both WDF and the treaty area tribes fully recognize the need for an effective fishery enforcement program. During the past several months, the State and tribal negotiators have developed a joint fisheries law enforcement plan,^{1/} the main provisions of which are set forth in this overall settlement

^{1/} The following represent the views of the State and tribal negotiators only and in no way commit or bind the tribes or State of Washington until this tentative document has been ratified.

plan. While the more specific details of the plan are being developed, implementation of these major points should provide the framework for a vastly improved fisheries enforcement program.

A. Major Provisions of State/Tribal Enforcement Plan
Joint Enforcement Committee

It is recognized that each of the following sections is a necessary component of a joint enforcement plan. To make the plan effective and efficient, there needs to be a central coordinating body.

It is understood that the overall fisheries management plan will include advisory groups in the areas of fisheries enhancement and management, as well as enforcement. It is recommended that the enforcement advisory body also be the enforcement coordinating body over the joint enforcement plan. The Joint Enforcement Committee (JEC) would be in a position to provide regular reports to management bodies concerning the enforcement situation. Conversely, management and its other advisory groups could communicate directly to the main enforcement coordinating body.

After considerable review, the State-tribal negotiating teams recommend the following:

1. Establishment

That a joint tribal/State joint enforcement committee be immediately established. That the duties and authority of this committee consist of the following:

a. Provide advice to the joint tribal and State fisheries management entities, however defined by the settlement plan.

b. Monitor, evaluate and report on enforcement efforts, developments and settlement plan compliance.

c. Develop and coordinate case area enforcement plans.

d. Review and work to resolve both present and long-range enforcement problems. Specific problems at the field area-district level should be resolved at that level and only attended to by the JEC upon request of the parties concerned.

e. Regularly compile and distribute to the management entities management information concerning enforcement issues and developments.

f. Regularly convene to conduct the business of the committee.

g. Work with cooperative enforcement entities and independent agencies inside and outside the case area, including Federal enforcement agencies.

2. Representation

That the JEC be composed of tribal and State fisheries enforcement representatives.

a. Voice or Vote

That representation be equal for both tribes and State (e.g., tribes will be represented by one enforcement coordinator from each of the five treaty areas), but whether or not they are equal in number, there will be but one voice or vote by the tribes, and but one voice or vote by the State.

b. Appointment

That the representatives appointed to the committee will be the decision of the respective enforcement entities.

c. Procedures

That the chairperson, other committee officers, their term in office, and the manner of conducting business be determined by the members themselves upon the establishment of the committee.

d. Coordination With Federal Enforcement

That the committee will work with Federal fisheries enforcement groups to coordinate the overall enforcement effort in the area where the Federal government has an enforcement responsibility.

B. Authority: Laws and Penalties

Tribal and State fisheries enforcement entities are simply branches of their respective governments. Their function is to preserve the resource by enforcing laws established by their respective legislators. It is the job of the respective governments to establish the necessary laws

which facilitate effective enforcement and provide sufficient penalties to deter violations. It is the responsibility of the courts to uphold these laws and levy penalties commensurate with the offense and damage to the resource, and severe enough to deter repeated offenses.

The State and tribal law enforcement representatives as a group feel that the present penalty systems of both the State and the tribes are inadequate to deter illegal fishing, and that the penalties now imposed in no way reflect the damage done to the resource by illegal fishing.

Specifically, the negotiating team acknowledges:

1. Existing Sentences

Maximum sentences available under current law may be adequate to deter illegal fishing, but because they are virtually never imposed, they have no deterrent effect.

2. Existing Fines

Maximum fines available under current State and tribal law are inadequate to deter illegal fishing. Furthermore, even these maximums are seldom, if ever, imposed. Present fines amount to little more than a "license" to fish illegally.

3. Minimum Sentences

The State and the tribes, through their respective legislative processes, should investigate the possibility of mandatory minimum jail sentences for illegal

fishing which are non-deferrable and non-suspendable, and which are adequate to deter illegal fishing.

4. Minimum Fines

The State and the tribes should seek mandatory minimum fines (which may include the value of forfeited gear) for illegal fishing which are non-deferrable and non-suspendable, adequate to deter illegal fishing, and which reflect the damage to the resource and the economic impact of the illegal fishing.

5. Comparable Procedures

If cross-deputization of State and tribal officers becomes a reality, it would be highly desirable for both the State and the tribes to seek, through their respective processes, arrest and seizure procedures which are the same, or as nearly the same as possible.

6. Civil Suit

The State and the tribes should investigate the possibility and practicality of legislating for civil proceedings brought by the State or the tribes against their respective illegal fishermen. The damages in these suits would include:

- a. The value of the fish illegally taken.
- b. The damage to the resource.
- c. The loss to the State/tribal economy as a whole.
- d. Possible punitive damages.

C. Joint Fisheries Enforcement Training

There is a direct relationship between the quality of enforcement training and performance capability.

Traditionally, the tribes and the State have trained their own enforcement personnel through whatever program(s) were available or were provided for them. The Washington Departments of Fisheries and Game have instituted their programs, and the tribes have tried to find applicable programs for their personnel.

A common training program designed to meet the specific needs of fisheries enforcement would be of mutual benefit.

Personnel would be afforded the opportunity to learn the operations and limitations of the respective enforcement entities, about the governmental relationships of each, their laws and legal procedures, as well as numerous other topics. This common knowledge would facilitate an understanding of the total effort, the entities involved, their capabilities, and their restraints.

Joint training of personnel would also begin to develop inter-agency liaisons, communications, and understanding from the very beginning of the enforcement officer's career. Further, a relationship of trust could begin, based upon common experience, knowledge and status.

Common and joint training would provide a solid foundation from which joint enforcement efforts could be logically expanded, and would be of considerable value to any form of cross-deputization that might ultimately be desired.

In light of these considerations, the negotiation team agrees to the following points:

1. Basic Training Program

Common basic fisheries enforcement training programs should be developed which meet the needs of both tribal and State fisheries enforcement personnel.

2. Advanced and In-Service Training

There should be provisions for both advanced and in-service training programs for joint tribal and State participation. In-service training should concentrate on review of key enforcement functions, new or revised enforcement procedures, and laws or other related subjects, local enforcement or related issues. Advanced training should deal with specialized enforcement functions such as supervision, instructor development, fisheries investigations, and others as needed and developed by the training staff and as identified by the enforcement entities themselves.

3. Training Board of Directors

There should be a joint body established to oversee the development and application of basic, advanced, and in-service fisheries enforcement training programs. This body

would consist of equal representatives by tribal and State officials.

4. Qualifications of Enforcement Officers

Acceptance of individuals into the approved accredited basic fisheries enforcement training program should be based upon commonly agreed-upon standards.

a. Personnel

(1) The State will require two years of college in related subjects, or a high school diploma (or G.E.D. equivalency), with two years' fulltime law enforcement, or two years' fulltime commercial fishing experience. The tribes will require a minimum of a high school diploma or G.E.D., and successful completion of all other entrance and program requirements.

(2) Must be a United States citizen.

(3) Must possess a valid Washington State driver's license at time of employment.

(4) Must be insurable.

(5) Must be willing to submit to a background check.

(6) Must be at least 21 years of age.

b. Testing

(1) Written examination.

(2) Oral examination.

(2) A physical examination by doctor.

(3) A physical agility test.

(4) Background check.

c. Common hiring register

(1) State use may be unchanged, although an unranked register is possible.

(2) Tribes will have the register, but it will be presented to them as unranked.

d. Employment

No fisheries enforcement officer shall retain any interest in any aspect of commercial fishing.

D. Joint Enforcement

A cooperative, coordinated, joint State/tribal enforcement would provide the most effective and efficient means for protecting the resource.

Joint enforcement would have numerous field advantages, including: allow deployment of more enforcement personnel to fisheries areas; provide greater mobility of manpower and equipment; improve response capability to problem areas; increase coverage of fishing areas; provide planned, strategical use of field resources (buyer control, patrol intercepts, etc.).

Joint enforcement would also provide improved communications between agencies, and increase data input into

the enforcement system which, in turn, would enhance area and overall planning capabilities. Through joint planning, costs can be reduced in areas such as equipment, materiel and communications and data systems development and operations.

Through joint enforcement efforts there would be a greater likelihood of apprehending violators, less likelihood of meeting with resistance or violence, and more equal application of the law, at least at the enforcement level. These factors would go far in re-establishing respect for law and order, not only with fishermen, but by the general public as well. This would greatly aid in re-establishing effective law enforcement and serve to unify the enforcement entities and personnel. However, it is recognized by the parties that in the early post-settlement years, sensitivity to the climate on the waters may mean limited use of joint patrols and other devices which present potential conflict among Indians and non-Indians.

The following is mutually acceptable:

1. Joint Protection

There is great value in tribal and State enforcement personnel working jointly to preserve the fisheries resource.

2. Joint Planning and Operations

The joint enforcement effort will be instituted at the field (area-district) level - with administrative

approval - and at the administrative level by joint planning and operations.

a. At the field level there will be established common patrol area-districts with designated tribal and State enforcement representatives to plan and coordinate approved activities with the manpower and resources available.

b. At the administrative level there will be established a joint enforcement committee to plan and coordinate fisheries enforcement throughout the case area.

3. Evolving Mechanisms

The extent and mechanisms (e.g., joint patrols) of joint action will evolve naturally through the joint efforts at both the field and administrative levels.

E. Equipment Materiel

All fisheries enforcement entities are in need of additional and better equipment. Through joint planning it is hoped that equipment requirements can be reduced by considering and recognizing the equipment capability of each. By planning equipment needs complementary to one another, gross duplication can be avoided.

Standardization of equipment, where possible, will facilitate joint efforts and provide for improved safety during such activity.

Improved radio communication is perhaps one of the most immediate needs. Field personnel need to locate one another during patrol and to coordinate their efforts. This is best accomplished when radio frequencies are not shared with other user groups.

Joint patrols, deployment of personnel and equipment, data compilation and extrapolation, and overall coordination are enhanced by commonly defined patrol districts. The establishment of such districts is also conducive to the area coordination concept discussed in negotiations, wherein each defined area (treaty area) would have one tribal and one State enforcement coordinator assigned to develop and implement area enforcement strategies.

With these thoughts in mind, the following is mutually acceptable:

1. Districts

That an area-district enforcement plan be developed to facilitate effective patrol, resource deployment, and enforcement coordination.

2. Needs Assessment

Manpower and equipment needs should be assessed by area and district.

3. Joint Planning

Joint planning to meet manpower and equipment needs should occur at both the area and JEC level to facilitate comprehensive and complementary budgeting.

4. Equipment Standardization

Equipment should be standardized when and where possible, and joint purchasing be considered when practical.

5. Radio Frequency

There should be a special radio frequency for communications between State and tribal enforcement units.

6. Uniforms

While on patrol personnel should wear uniforms that clearly identify them as enforcement personnel.

Tribal and State enforcement uniforms should be clearly distinguishable. And, further, there should be some mechanism to identify individuals that have been cross-deputized, i.e., shoulder patch.

F. Data Systems

Effective enforcement depends heavily upon good information. To be useful, information must be accurate and timely. Accurate data are generally a product of good training and good supervision. Timely data are a product of a good data system.

To facilitate the flow of information, it is agreed there should be frequent contacts among field supervisors at the area level and regular meetings of the JEC for the purpose of exchanging enforcement information. Further, key information from field reports should be extracted and

organized in such a manner as to be useful to enforcement for developing plans, strategies, statistics, etc. It is anticipated that the JEC would work out these matters after being commissioned as an authorized body.

In addition to the transfer of information between agencies and agents, there is a pressing need for an automated data system to directly assist field personnel in the performance of their duties. This information is critical to determine proper course of action, confirm the identity and status of fishermen, their equipment, licenses, previous records, outstanding citations or warrants, etc.

After an analysis of enforcement needs by the JEC, and discussion between tribal and State systems personnel, the following agreements were reached by the State/tribal negotiating team:

1. Design

The parties shall cooperatively design, develop and implement an information system to facilitate enforcement. The State will maintain the central record depository for the fish ticket and enforcement information systems. Both parties shall have equal rights of access to data contained in the enforcement system operational files (i.e., non-error files) subject to legal constraints as determined by the Washington State Attorney General and tribal legal counsel. Data to be contained within the information system shall be determined

through consultative agreement. Both parties shall have access to system program documentation.

2. Imprinter Cards

It is clear that overall system efficiency and effectiveness dictate the use of imprinter cards by buyers and fishermen. Therefore, both parties agree that the use of imprinter cards for fishermen and buyer identification will be required and enforced.

3. Forms

Both parties will use the citation forms presently provided for under the statewide uniform complaint and citation system.

4. Long-Term

The proposed long-term system configuration would provide officers on the water the same type of information about boats and fishermen as officers on land have about cars and drivers. A central data base will be maintained by WDF, and access will be available either through the Washington State Patrol network or the WDF-tribal network. The data base would reside in the State's computers.

5. Interim

In the interim, the regulation files will reside on both the University of Washington's and the State's computers. The enforcement file is being brought up on the State's computer system and should be available shortly. Both parties agree that they will work together to satisfy each

other's enforcement information needs throughout the interim period.

6. Improvements

Both parties agree to jointly explore potential improvements in the enforcement system in the long-term (e.g., distributed processing, WDF's stand-alone computer, etc).

G. Buyer Level Enforcement

There is no doubt as to the value of buyer level enforcement. Illegal fishing is supported, if not encouraged, by an illegal market. The WDF will submit a buyer enforcement plan to the JEC for its review and approval. This proposal is supported by the negotiators, and implementation is recommended.

1. Tribal Cooperation

Tribal enforcement representatives recommend that tribal enforcement entities cooperate with State on-reservation enforcement efforts by:

- a. Providing on-reservation buyer information to State enforcement personnel as appropriate.
- b. Acting within the full extent of their powers on information regarding illegal on-reservation buying.
- c. Conducting cooperative investigations to build cases against illegal buyers.

2. Tribal Legislation - Those tribes which have not already done so through their respective legislative processes, should enact tribal ordinances providing for:

- a. Regulation and licensing of on-reservation buyers.
- b. Revocation of licenses of on-reservation buyers buying illegal fish.
- c. Expulsion or exclusion of unlicensed buyers.

CHAPTER 10

CANADIAN INTERCEPTIONSI. COHO AND CHINOOK SALMON INTERCEPTIONSA. Introduction

The Canadian catch of Puget Sound origin coho and chinook and Columbia River chinook currently ranges between 35% and 60% of the total harvest for specific stocks. The Canadian catch of certain stocks of Washington coastal wild chinook may be as high as 70%. These high interception rates indicate that virtually all Washington State fishermen would benefit from limitations and reductions in the Canadian catch of Washington bound salmon.

All Columbia River sport, gillnet, and tribal fishermen depend heavily on Columbia River coho and chinook stocks. All Grays Harbor fishermen, sport, gillnet, and tribal, have a substantial dependence on chinook and coho runs, both from the coastal area and from the Columbia River. In addition, the enhancement program proposed for the Grays Harbor area would enhance Grays Harbor origin coho and chinook stocks. Fishermen fishing in the north coast area of Washington and in the South Sound area of Puget Sound depend to a substantial extent on coho and chinook

stocks and have no access to pink or sockeye salmon fisheries. Of all Washington fishermen, they are the most severely impacted by Canadian interceptions.

The conclusion which can be drawn from these facts is that a satisfactory Canadian interception limitation is critical to improvement in Washington State's sport, troll, net, and tribal fisheries for coho and chinook. The proposed U.S. enhancement programs for coho and chinook will contribute as much to the Canadian fisheries as to U.S. fisheries until a limitation is established. Full returns for escapement and to the inside U.S. fisheries from the Regional Team's plan for controlling U.S. fishing effort in the ocean off the Washington coast will not be fully achieved if no interception treaty is in place. The Regional Team makes the following specific recommendations with respect to the Canadian interception scheme for coho and chinook.

B. Recommendations

1. The Federal government and the State should undertake a joint State-Federal effort to insure that the present negotiating position of the United States government will adequately limit Canadian interceptions of Washington bound coho and chinook stocks. In particular, the joint effort should continue and improve the analysis performed by the Regional Team relating to Canadian harvest rates over time on specific stocks of Washington bound salmon. A special effort should be made to assess the impact of the

presently proposed 1971-1974 base period on major Washington stocks of coho and chinook to determine whether additional measures are needed to protect heavily impacted stocks. The information concerning historical Canadian catch rates should be made available to commercial fishermen and to the tribes.

2. The on-going U.S.-Canadian Pacific coast fisheries negotiations should be maintained strictly separate from all other aspects of the U.S.-Canadian relationship. These west coast fisheries problems should be resolved promptly and without regard to the outcome of negotiations between the two countries on unrelated topics.

3. Interim U.S.-Canadian bilateral agreements in effect pending resolution of the overall west coast fisheries treaty should in no circumstances lead to an expansion of Canadian interceptions of U.S. bound fisheries. In particular, interim agreements should specify that Canadian troll effort both within the U.S. reciprocal fishing zone and beyond be limited to historical levels. No expansion of the U.S. reciprocal fishing zone would be appropriate until such time as the interception treaty is in place unless it is clear that Canadian interceptions and catch of U.S. bound salmon will not increase.

II. SOCKEYE AND PINK SALMON INTERCEPTIONS

U.S. net fishermen operating in Puget Sound have historically participated in the harvest of sockeye and pink

salmon bound for the Fraser River in Canada pursuant to the terms of the International Pacific Salmon Fisheries Convention first signed in 1930. Pursuant to the terms of that Convention the United States has contributed substantial sums of money to enhance the Fraser River stocks for the benefit of both U.S. and Canadian fishermen.

In all likelihood the treaty which the U.S. and Canada ultimately sign resolving west coast fisheries matters will involve an interception limit with respect to U.S. harvest of Fraser River stocks. If this is the case the limitation level should clearly reflect U.S. investment in enhancement activities in the Fraser River. To that end, it appears to the Regional Team that the base period for assessing permissible U.S. interceptions should be set ten to twelve years in the future. If this is not the result of the negotiations, the moneys which the U.S. has authorized but not appropriated in the past for capital projects in the Fraser River should be made available once again for that purpose. If the investment is not accepted by the Canadians, an equivalent amount of money should be appropriated and utilized to further enhance Washington State stocks which can serve as a substitute for Fraser River stocks for those U.S. fishermen who depend heavily on the Fraser River salmon.

CHAPTER 11

ENVIRONMENTAL AND HATCHERY LEGAL ISSUES: PHASE II

Phase II is a shorthand reference to two issues which were raised in the original United States v. Washington trial and segregated for later hearing. The issues are whether the Stevens treaty right provides the tribes with the ability to protect the fisheries habitat from "substantial and adverse" impacts and whether the treaty right includes the right to hatchery fish.

The Regional Team was originally directed by the National Task Force to not attempt a settlement of Phase II. Subsequent instructions, however, required the Regional Team to look at the issues of habitat protection and enhancement when it became clear that no settlement proposal could be made without addressing the hatchery issue. Therefore, this proposal includes a settlement of the Phase II hatchery question.

It was abundantly clear that a combined Federal, State and tribal enhancement program could not be successfully designed and operated with the catch opportunity being largely a question of who planted the fish in the first place. The State of Washington, the tribes, and the Federal

government would never agree to give preference to each other's hatchery stocks versus a natural run or their own hatchery plans. Even if a stream classification plan could be developed, there would be continuous disagreements over who should plant which species and what percentage of the returning runs resulted from which hatchery program.

The Regional Team understands the sentiments of the non-Indian commercial and sport fishermen who wonder if they alone should help sustain the level of fish for everyone including the tribal fishermen. The Regional Team's answer to this difficult problem is not to provide opportunity based on whether a fish is State released, Federally released or tribally released. Rather, the Federal government should provide a better than 2 to 1 dollar expenditure for new enhancement in the State of Washington as part of this settlement. Our enhancement program contained in Chapter 4 will adequately meet this guideline. Thus, we are recommending that all fishermen fish on hatchery and wild stocks without regard to the source of the harvestable surplus.

As to the environmental portion of Phase II, we pointed out in our January, 1978 proposal that the climate existed for an out of Court settlement. This assessment has been born out by the events of the succeeding months. First the State of Washington and the tribes through the Northwest Indian Fish Commission began direct face-to-face negotiations. Later they were joined by representatives of the commercial

and sport fishing industry. Then Governor Ray appointed a cabinet level task force and hired a full time staff co-ordinator to negotiate on Phase II. The tribes and the Federal government have also been at work analyzing settlement alternatives.

We also indicated that Phase II could be settled in two months. This did not happen but it is important to understand the reasons why it did not happen. First the parties' primary attention has been focused on reaching a settlement on the issues contained in the January proposed settlement. Second, it takes some time to shift gears from a long history of bitter courtroom confrontation to a strategy of negotiation and compromise. Governor Ray deserves much of the credit for providing the leadership to bring about this change.

Finally, we indicated that a program to restore and protect the habitat was critical to rebuilding the wild runs and insuring the success fo the proposed multi-million dollar State, Tribal and Federal enhancement program. . Nothing has happened since January to in any way change or modify our views.

APPENDIX I

DESCRIPTION OF THE PACIFIC SALMON AND STEELHEAD FISHERY

The life cycles of all Pacific salmon are basically similar. Differences in life cycles largely lie in the amount of time spent in the freshwater and marine stages of their lives. Young Pacific salmon hatch in about two to four months in freshwater streams and rivers. Some of the young migrate immediately to the ocean upon emergence from the gravel, while others remain in the freshwater for a year or more before beginning their journey to the saltwater. Salmon remain in the ocean until reaching maturity, about two to seven years, depending upon the species. At maturity, the spawning urge brings the salmon back to their streams and rivers of origin. Adult female salmon deposit their eggs in depressions dug into the gravelled stream bed. After the eggs are deposited, a male fertilizes them with milt. Spawning completes the life cycle of Pacific salmon.

The five species of Pacific salmon are briefly described as follows:

Chinook Salmon (*Oncorhynchus tshawytscha*) - This is the largest of all of the salmon native to the Pacific Coast. It typically weighs from ten to forty-five pounds, and is an important species for sport and commercial fisheries. Chinook

generally mature in their fourth or fifth year. Presently, spawning primarily occurs in late fall, although some stocks will enter rivers in the spring or summer. This characteristic has led to the differentiation of spring, summer and fall chinook in the fishery.

Coho Salmon (Oncorhynchus kisutch) - Coho salmon are an important sport and commercial fish. They weigh an average of eight to ten pounds when mature in saltwater. Coho salmon normally mature in three years, but a few may be two to four years old. Coho, like the chinook, can be harvested by hook and line and net fisheries.

Chum Salmon (Oncorhynchus keta) - Chum salmon are the most widely distributed of all of the Pacific salmon; from California to Alaska on the North American Coast, and from Japan to Russia along the Asian Coast to the Arctic Ocean. Chum are primarily caught in the commercial net fishery, and have an average weight of six to ten pounds. Most spawning occurs when the fish are three to four years of age, during the September-January time period.

Pink Salmon (Oncorhynchus gorbuscha) - Pink salmon are distinct from other Pacific salmon in that they all have a maximum life span of two years. In Washington State waters, the runs occur

almost exclusively during odd-numbered years. Pink salmon are harvested primarily in the commercial net fishery, and range in size from three to ten pounds. Spawning normally occurs during August through October, depending upon the origin of the run.

Sockeye Salmon (*Oncorhynchus nerka*) - The sockeye salmon is especially important commercially due to its high quality for canning purposes. It is also increasing in importance as a sport fish. Young sockeye remain in freshwater (lakes) from two to five years, then spend two to three years in the marine environment before returning to spawn. Their average weight at return is between five and eight pounds. The majority of sockeye harvested by Washington State fishermen in United States waters are of Fraser River (Canadian) origin.

Steelhead (*Salmo gairdnerii*) - The steelhead is an anadromous variety of the rainbow trout. Anadromous fish spend part of their life in saltwater, but, when approaching maturity, return to freshwater to spawn. Steelhead enter the river systems of Western Washington during all months of the year. Two "races" of steelhead occur in Washington. Winter-run fish are found in almost all streams west of the Cascade Mountains which empty into the saltwater. Summer-run steelhead occur in the Columbia River and its tributaries, and in about twenty percent of the major steelhead streams of Western Washington. Winter-runs

move upstream from November to June, and spawn in early spring. Summer-run fish generally travel upstream during summer and remain in the river until the following spring, at which time they, too, spawn. Steelhead usually spawn at the age of four years and at an average weight of eight to ten pounds. Unlike salmon, steelhead may live to spawn several times. Steelhead are a highly-prized sport fish, and are also an important source of food and income to treaty fishermen.

FIGURE 1

Geographic Character of the Washington State Salmon Fishery

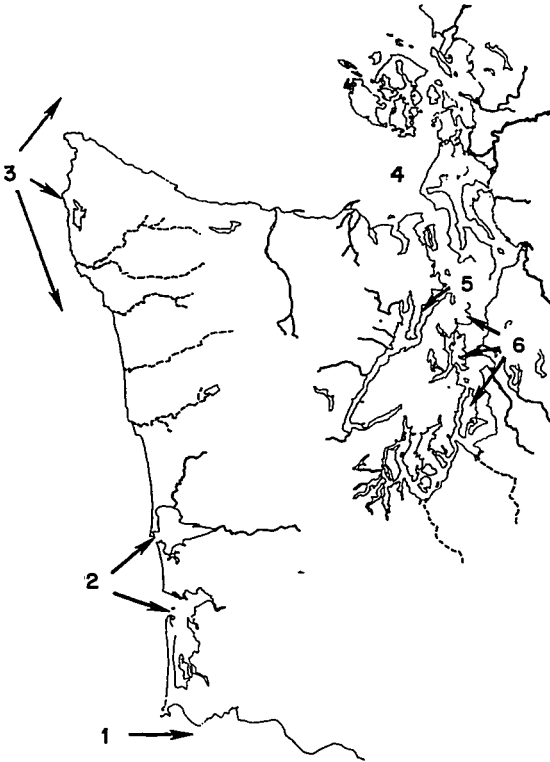


Figure 1 indicates the geographic character of the salmon fisheries in Western Washington.

(1) Columbia River - The Columbia River is a major spawning ground for Pacific Northwest salmon and steelhead. Figure 2 shows the total commercial catch of salmon and steelhead in the Columbia River for the period 1865 to 1975.^{2/} The Columbia River is an important contributor to the coastal sport and troll fisheries and to treaty and non-treaty river net and sport fishermen.

(2) Willapa Harbor and Grays Harbor - These two natural coastal harbors also contribute to the ocean sport and troll fishery and provide protected waters for the coastal gillnet fishery. (Figures 3-7 are expressed in thousands of fish.)

(3) Ocean Troll, Charter and Sport Fishery - The troll, charter and sports fishery harvest Columbia River, Puget Sound, coastal rivers and other stocks off the North American coast from Northern California to Alaska. Coastal treaty fishermen

^{2/} Prior to 1935, catch data was recorded in pounds only, not numbers of fish. In order to reflect the early catch history for the Columbia River, the catch data shown for the Columbia River is in millions of pounds of fish caught.

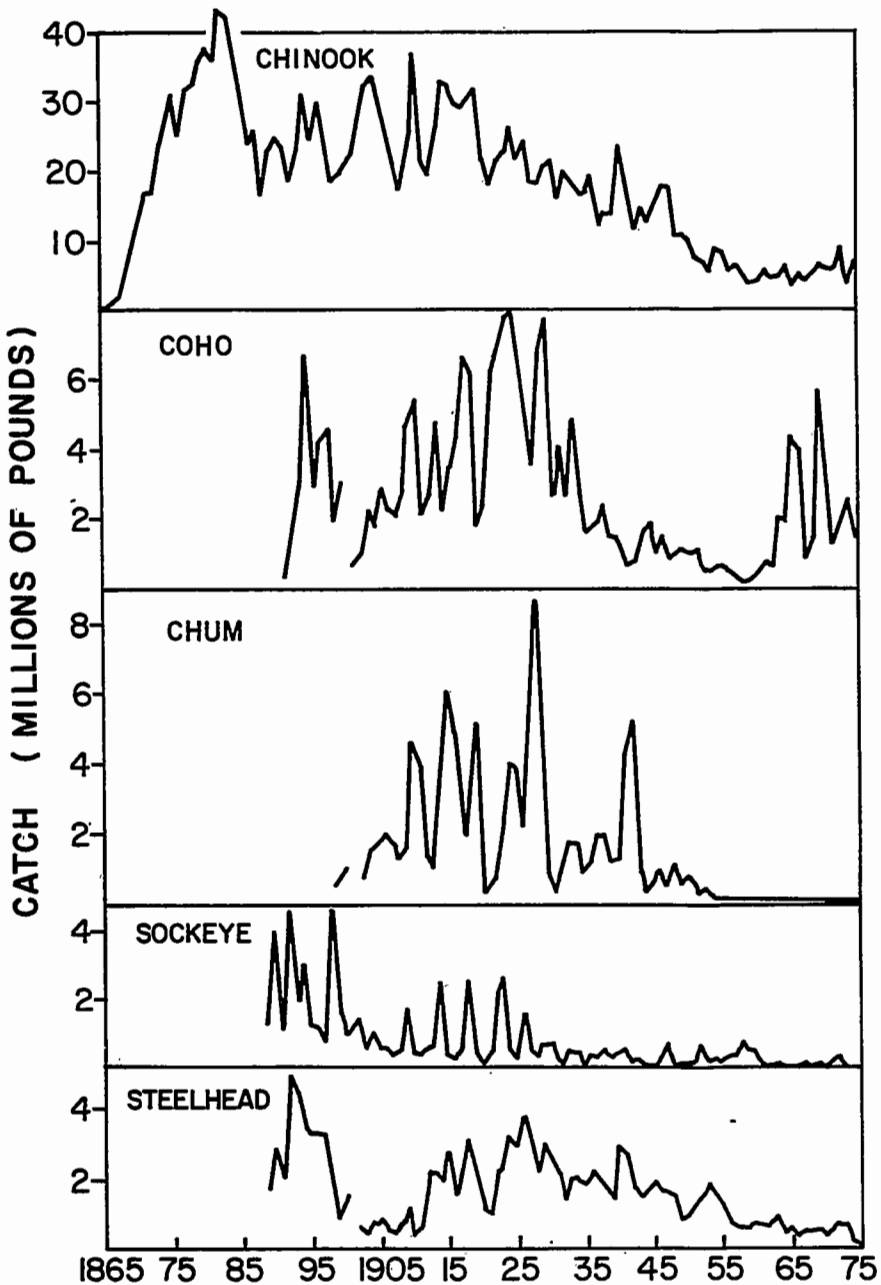


Figure A-2. Total commercial catch of salmon and steelhead in the Columbia River, 1865-1975.

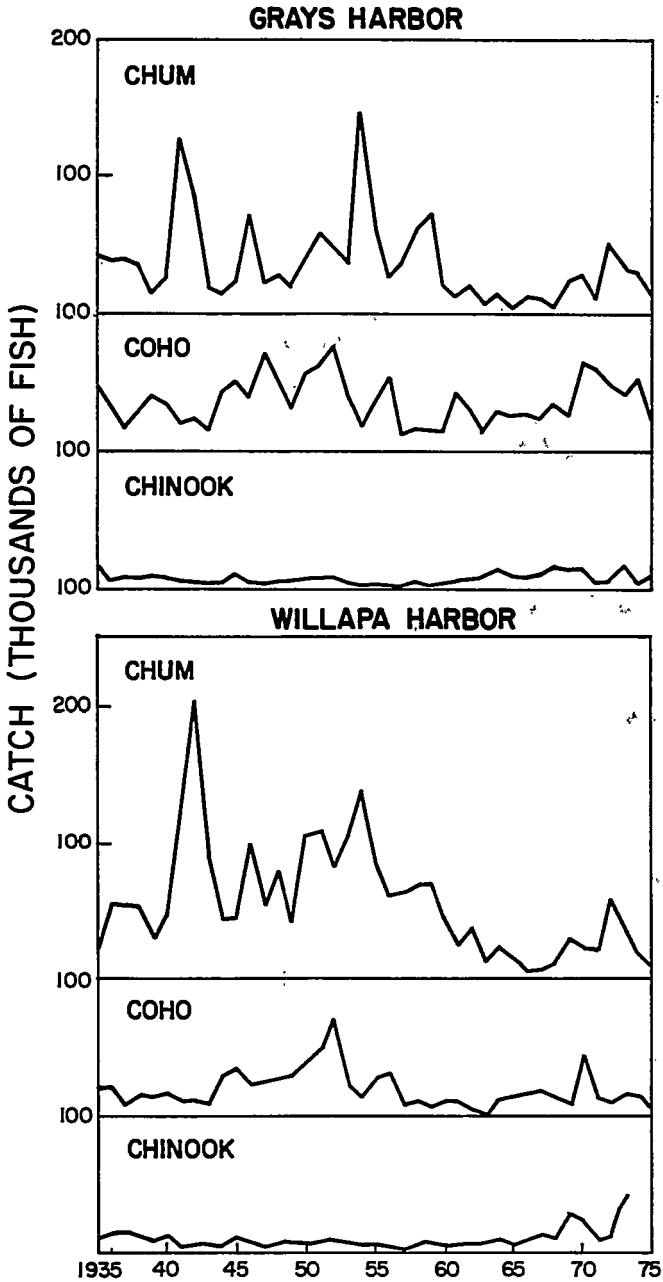


Figure A-3. Catch of salmon by gillnet fisheries in Grays Harbor and Willapa Harbor, 1935-1975.

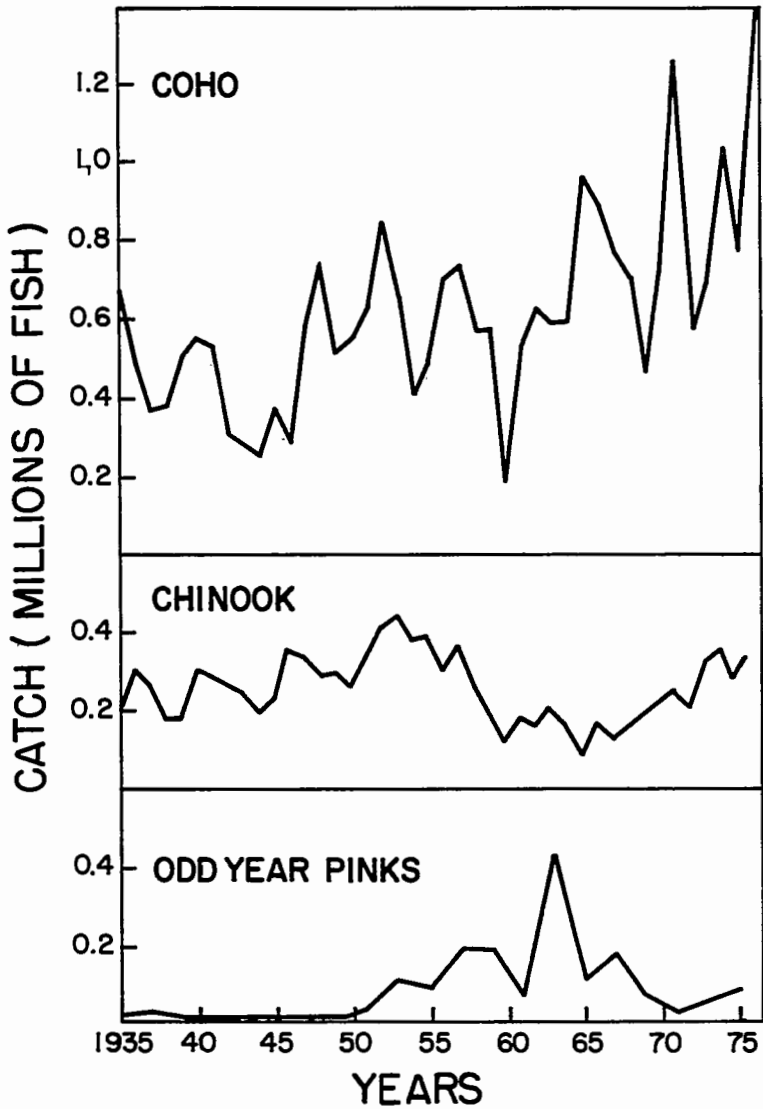


Figure A-4. Washington troll salmon catches, 1935-1976.

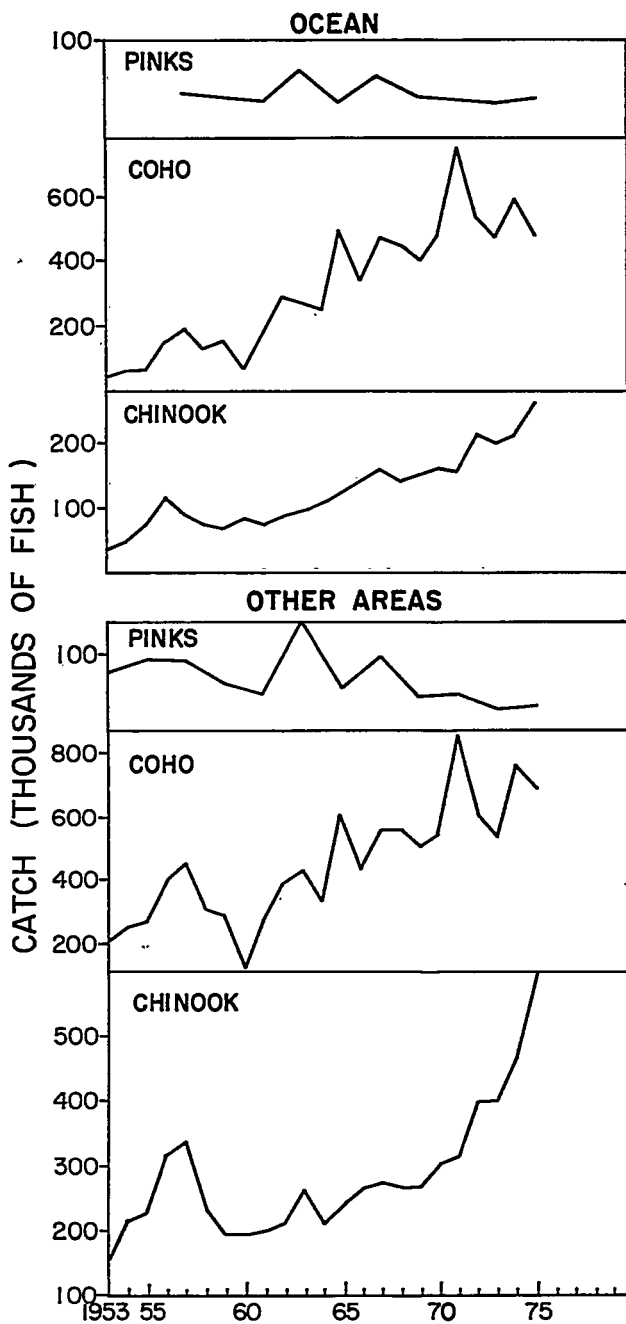


Figure A-5. Washington State sport catch of salmon in marine waters, 1953-1975.

participate in the marine fishery, as well as harvest fish in the coastal rivers. Figures 4 and 5 indicate the growing significance of troll and sport catches of salmon.

(4) North Puget Sound - The International Pacific Salmon Fisheries Commission (IPSPC) is an international agency which was established by convention between the United States and Canada. Under the terms of the Convention, the IPSPC has extensive power to manage the sockeye and pink salmon fisheries of the Fraser River. Specifically, Convention waters are located within the State of Washington in Northern Puget Sound, as well as within the Province of British Columbia. The IPSPC fishery is of primary importance to commercial purse seiners, gillnet and reef net fishermen. Treaty fishermen from the Strait of Juan de Fuca and North Puget Sound also participate in this marine net fishery. Catches of pink and sockeye salmon from this fishery are included in Figure 6.

(5) Hood Canal - Hood Canal is a long, narrow body of marine water in Western Washington. It is an important producer of several salmon species, and provides a fishery for commercial net and sports fishermen.

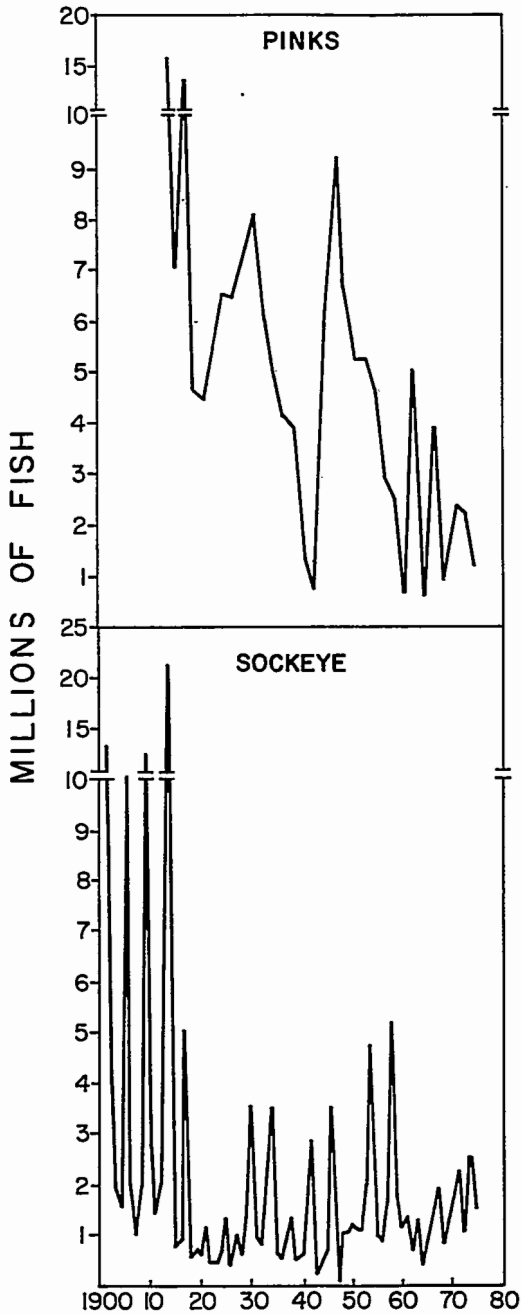


Figure A-6. Annual catch of sockeye salmon and catch of pink salmon in odd numbered years on Puget Sound, 1900-1975.

(6) South Puget Sound - South Puget Sound generally describes those marine waters within Washington State south of the Convention waters. Because of the large river systems in South Puget Sound, it is an important producer of chum, chinook and coho salmon for marine and river fishermen. Catches of these salmon from this fishery are included in Figure 7.

Figure 8 indicates the geographic location of the primary steelhead rivers and streams within the State which are affected by the decision in United States v. Washington, otherwise known as the "case area." It should also be noted that many of the steelhead streams and rivers pass through Indian reservations or empty into the saltwater on reservations. Because sport-caught steelhead are taken in the river, tribal fishermen often have the first opportunity to harvest these fish at the mouth of the river. While river treaty fishermen may have the first opportunity to harvest steelhead, they are last in line to harvest salmon because of the prior interceptions by marine sport and commercial fishermen.

METHODS OF HARVESTING SALMON

Purse Seine Fishing Vessels - These fishing vessels deploy a net in a circular pattern. The net is pulled aboard the vessel in a manner similar to tightening the strings of a

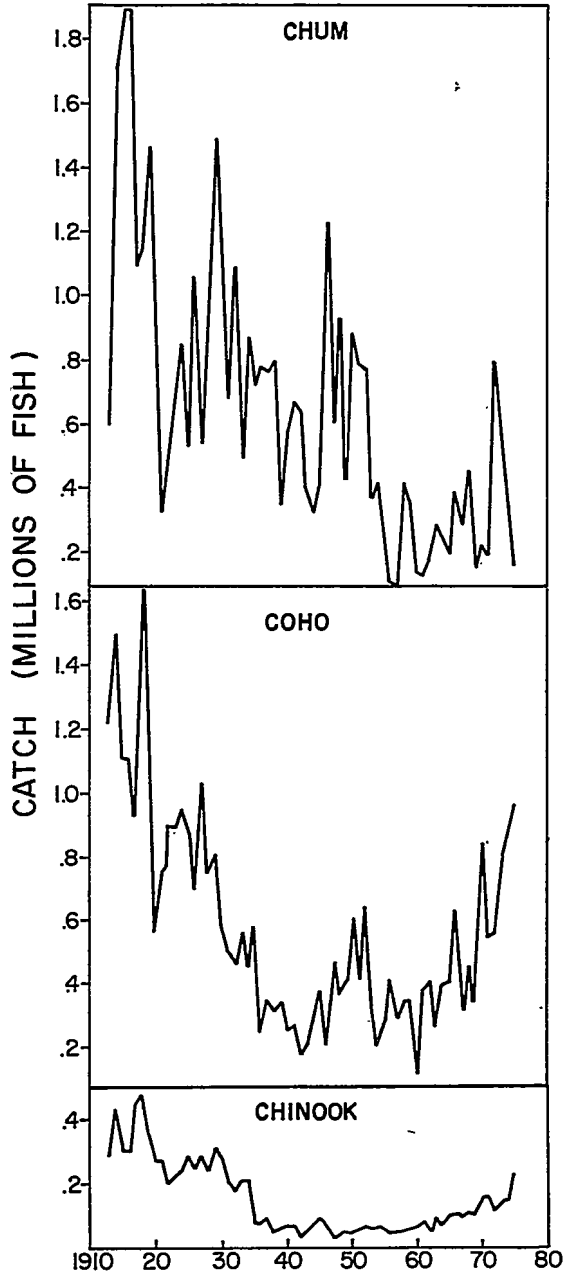


Figure A-7. Catch of chinook, chum and coho salmon on Puget Sound, 1913-1975.

purse, hence the name. Presently, purse seine fishermen predominately fish in North Puget Sound on sockeye and pink salmon, although this method of fishing can be effectively used on other species in South Puget Sound.

Reef Net Fishing Vessels - These fishing vessels use an artificially-constructed reef strung between two vessels to assist in the harvest of salmon. The salmon swim over the reef and into a net behind the reef. There are a small number of harvesters using the method in North Puget Sound.

Gillnet Fishing Vessels - These fishing vessels set their net in a straight line. The net varies in length from several hundred feet to eighteen hundred feet. The depth of the net also varies, but usually exceeds 200 feet. When the salmon swim into the net, their gills become entangled in the mesh. Gillnet fishing vessels operate during darkness. This helps reduce the salmon's ability to see the net and avoid capture. Gillnet fishermen fish in North and South Puget Sound, Grays Harbor, Willapa Harbor and the Columbia River.

Troll Fishing Vessels - These fishing vessels use a hook-and-line method of harvesting. These vessels have rapidly evolved from small boats limited to one-day trips, to where many boats can stay at sea for extended periods of time. The

development of power girdles and steel line has significantly improved the harvesting capability of even the smaller vessels. Improved electronic devices allow these vessels to remain in good fishing areas under conditions of poor visibility or in heavy seas. Troll fishing vessels operate off the coastal waters of Alaska, Canada and the States of California, Oregon and Washington.

Charter Fishing Vessels - These fishing vessels are generally designed to carry from six to twenty hook-and-line sport fishermen. These vessels operate primarily out of the coastal ports of Ilwaco, Westport and LaPush. Some charter vessels operate out of Neah Bay and other coastal and Puget Sound ports.

River and Terminal Area Fishing Gear - Many treaty fishermen prefer to fish in a traditional manner in or near the mouths of rivers. The fishing gear may include gillnets strung across a portion of the river, small gillnet boats, beach seines, float nets, dip nets, and a variety of hand-held devices.

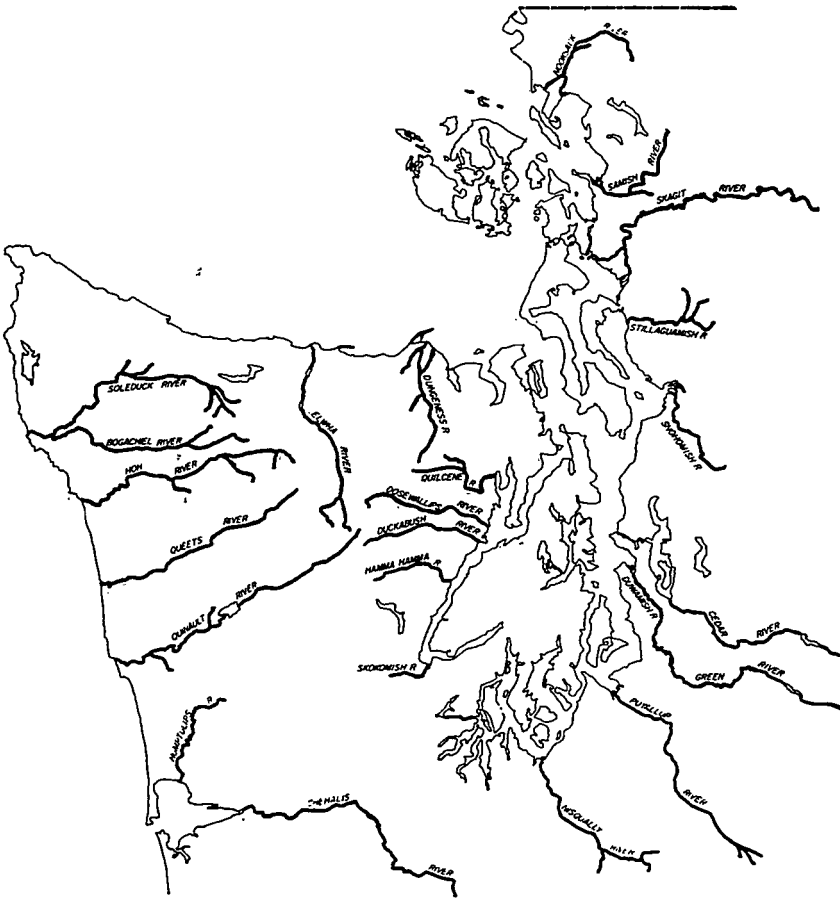


Figure A-8. Geographic location of the primary steelhead rivers and streams within the State of Washington.

APPENDIX II

PROPAGATION MANAGEMENT

The quality of the State, tribal and Federal management of present and proposed hatcheries will be the major factor in meeting the proposed goal of doubling the number of salmon available for harvest by Washington State fishermen. There are a number of actions which can be taken to improve hatchery management.

The most important is instituting high uniform standards for hatchery managers. The settlement would require instituting the measures contained in the following statement which have been agreed to by the State and tribal negotiators although not yet ratified by either the State or the tribes.

Minimum Uniform Standards of Personnel Responsible
For the Propagation of Anadromous Salmonid Fishes

The success of all enhancement activities involving the propagation of anadromous salmonid fishes is directly linked to the quality of the personnel entrusted with the care of these valuable fish. Not only is it important for a station to produce at a maximum level, but the fish liberated from the facility must be capable of surviving the rigors of the environment, contribute to the fisheries, and successfully return to the station for perpetuation of the program. Emphasis must, therefore, be given to ensuring that the custodians of these

programs be adequately qualified to care for these fish, whether it be for an egg-box project, spawning channel, or a full-scale hatchery with several satellite stations.

Certainly, the minimum qualifications of station managers will be subject to the complexities and operational capabilities of the facility(s) which they supervise. The experience and training of these individuals should, therefore, meet the needs of that station.

The following are minimum standards for entry into the fish cultural classification:

A high school diploma (or G.E.D. equivalent) with satisfactory completion of an approved, formal fish cultural training program.

The following are the minimum standards for a manager at the beginning managerial level:

Qualifications: A Bachelor's degree with two years of fish culture experience, which includes on-the-job managerial training.

Or, a high school diploma (or G.E.D. equivalent) with six years of fish culture experience, which includes the formal training program required for initial employment and on-the-job managerial training.

It is recommended that the formal training program and the level of responsibilities for a beginning manager be established through the direction or guidance of the proposed enhancement committee. Also, the committee should recommend salaries commensurate with the responsibility of this program in order to attract capable personnel.

The minimum standards described above should provide the framework from which to work in upgrading the quality of personnel to be used at all stations.

It is understood that persons presently within the relevant employment systems would conform to current qualification standards. The new standards stated here would be instituted upon a settlement [and apply to all new management personnel, hired or promoted, in the future]. The bracketed language was added by the Regional Team.

The Regional Team also endorses the concept of centralized support services and facilities developed by the State and tribal negotiators though not yet satisfied by the State nor the tribes.

Support Services and Facilities

There are certain services and facilities which are essential to the overall success of this enhancement effort [which were not broken out of the individual proposals in] the April 12, 1978 draft of the enhancement report of the Regional Team. For example, these include the increased need for pathological services, fish hauling tankers, training programs, and fish marking equipment. (The bracketed material are changes or additions by the Regional Team.)

It is recommended that a cooperative system be developed which will basically centralize facilities and services that

would provide the necessary support to the enhancement component. As a consequence, it is imperative that a mechanism be established for centralized personnel training, supplies distribution, pathological protection, and equipment for marking and transporting fish.

It is important to centralize such support services in order to coordinate efforts and to significantly reduce total costs of the enhancement program. In order to secure the greatest well-being of fish in production, it is essential that training be consistent, that pathological review be available, and that equipment needs be coordinated. The precise form of the centralized support services and facilities is to be more fully determined by the parties as the enhancement program becomes a reality.

[The funds for these centralized services should be available through cost savings in the approved projects which did not assume such centralized services.]

We also recommend that the following additional hatchery management measures be considered in the implementation of the settlement:

(1) Standards for Evaluating Propagation Units - With the increased use and increasing returns for wire tag data, the standards for evaluating propagation should be shifted, where possible, from output evaluation to return (e.g., what are the survival and contribution rates?) evaluation. If data on

returns and contributions are not readily available, then more qualitative output evaluation analyses should be used.

Perhaps the most useful and reliable criteria used is the percentage of the fish surviving from the total numbers of each species released from the facility. This indicates the actual contribution of the facility in terms of the number of adult fish harvested in the various fisheries and those contributing to escapement goals. This data can be developed through marking programs and stream surveys or actual counts of adult fish returning to hatchery racks or propagation facilities. Once this information has been developed, it can be compared to historical data for similar facilities in the area to evaluate the operating efficiency of the hatchery. It is also possible to calculate a cost-benefit ratio for a facility once the total number of fish it is contributing is known.

Another useful, but less reliable, criteria used to evaluate the performance of artificial propagation facilities is the percentage of the hatchery produced fish escaping harvest to return to hatchery facilities or native spawning areas. This criteria is generally used when adult harvest is unknown or cannot be readily obtained. Once information has been compiled on escapement, it can be compared to historical data for similar facilities in the area to evaluate the operating efficiency of the hatchery.

Most successful propagation programs are able to produce an optimum size smolt for release at a time when downstream migrations

of wild fish are occurring. Performance of a facility can be judged to some extent therefore on the size of the fish being released. Optimum sizes for different species vary but generally fish production facilities strive to produce fall chinook at 90/lb. or larger; coho at 15/lb., chum at 150-400/lb.; spring chinook at 8-30/lb.; steelhead at 6-8/lb.

(2) The State, federal and tribal hatchery plans should require a mandatory rotation plan for hatchery managers with a very limited exception clause.

(3) In order to facilitate number (2), the State, federal and tribal agencies should utilize their various personnel exchange laws to permit rotation between state, federal and tribal programs as well as within each separate system.

APPENDIX III

BUDGET SUMMARY OF FEDERAL COSTS

I.	Enhancement ^{1/}		
	Capital	\$ 61,100,000	
	Operation & Maintenance (5 year total)	35,500,000	
	Reserve Fund	<u>25,000,000</u>	
	Total		\$ 121,600,000
II.	Research ^{2/}		20,000,000
III.	Buy Back program ^{3/}		41,868,250
IV.	Tribal year and vessel program ^{4/}		15,366,750
V.	Steelhead replacement income for Upper Skagits, Muckleshoot and Lower Elwha tribes ^{5/}		1,300,000
VI.	Estimated administrative enforcement and training money for staff and tribes ^{6/}		8,000,000
	<u>GRAND TOTAL</u>		<u>\$208,135,000</u>

1/ The detailed breakdown of enhancement costs can be found in Chapter 4, in Tables 4-1 and 4-9.

2/ The detailed breakdown of research costs can be found in Chapter 4, in Tables 4-7 and 4-8.

3/ The details of the buy back program and payment schedules can be found in Chapter 7. The additional state funding of \$5 million, the resale of vessels and the revolving fund aspects of the program mean that the payments to the fishermen of \$59,994,500, will be approximately \$18,000,000 more than the federal funds.

4/ For the details of the tribal and vessel program, see Chapter 8.

5/ Since the size of the runs will vary from year-to-year we can only estimate the cost based on past averages. The estimate assumes an average catch of 13,000 steelhead for the three tribes and a price to the fishermen of approximately \$10 per steelhead with the program potentially lasting for 10 years. We further assumed that any increase in the price or number of steelhead will be off-set by increasing opportunities in salmon.

6/ Neither the State agencies nor the tribes have had an adequate opportunity to carefully assess the settlement requirements and costs (either increases or decreases). We received a number of last minute requests which appeared to be based on straight projections of the present into post settlement operations. For example, the WDF and WDG requested a combined increase of one hundred and seventy additional personnel in the area of enforcement. While some additional personnel and training will be required, it is unclear that the same substantial present enforcement problems will still exist after a settlement. Therefore, we have proposed that a total of eight million dollars be available to the State and the tribes for improvements in management and enforcement.

RECOMMENDATION FOR
FUNDING PROCEDURES

1. Approximately \$750,000 should be made available immediately to the State and tribal commission for the long term enhancement planning requirements. In addition the State agencies, and the tribes should develop an interim funding package for management, enforcement, and present O&M costs.

2. A settlement plan funding schedule should be worked out with the State and tribal commission. The initial stage of funding should include most of the Category I research money, A&E planning money for enhancement, and sufficient money to provide for the first year of the buy back and tribal gear modernization program. Management, training and enforcement funds will also be required at this stage.

The second stage will involve substantial funds for hatchery construction and stream rehabilitation, additional funds for both gear programs and continuing funding of the management, training and enforcement programs.

The amounts in the subsequent stages of funding will be determined by how quickly the goals contained in the first two

stages are accomplished and how much of the settlement remains to be funded.

There are several reasons why it is imperative that the enhancement programs be brought on-line as quickly as possible. The first concern is the rate of inflation and rising construction costs. The second is the two to five year delay between outmigration and the return of adults available for harvest. Finally the program will necessarily be limited by the need to phase in the egg-take requirements but the enhancement program should be funded and developed so that this is the only major constraint.

3. We recommend that the State managed buy back program and enhancement monies be funded through the Department of Commerce. The tribal gear program, enhancement and steelhead replacement monies be funded through the Department of Interior. The research, management, and enforcement monies be funded through both the Department of Commerce and the Department of Interior. Finally we recommend that a joint regional committee with representatives from both federal agencies be established to monitor the expenditure of settlement funds.

COMMENTS ON SETTLEMENT PLAN
FOR WASHINGTON STATE SALMON AND STEELHEAD FISHERIES AND
ALTERNATIVE FISHERY MANAGEMENT PLAN

State of Washington

Gordon Sandison, Director
Washington Department of Fisheries

Ralph Larson, Director
Washington Department of Game

Presented to the Federal Task Force on Washington State Fisheries

August 22, 1978



STATE OF
WASHINGTON

Dixy Lee Ray
Governor

DEPARTMENT OF FISHERIES

116 General Administration Building, Olympia, Washington 98504 206/753 6600

August 22, 1978

TO THE FEDERAL TASK FORCE ON WASHINGTON STATE FISHERIES

We and our staffs have reviewed in detail the proposed settlement plan developed by the Northwest Regional Fisheries Task Force. We would first like to thank the members of the Regional Task Force and their staff for their considerable efforts during the past year to attempt to bring the parties to the fisheries controversy together in order to reach a settlement of this difficult problem. We are satisfied that the Regional Team has presented a reasonable framework for settlement, although it is clear that most parties to the dispute, including the State of Washington, do not agree with many of the details of the proposed plan. We remain totally committed, however, to the development of a fair and equitable settlement to the northwest fisheries conflict.

As you know, over the past year the Departments of Fisheries and Game have committed massive resources to developing a reasonable short-term and long-term solution. We have participated in serious negotiations with the Northwest Indian Fisheries Commission, with the Regional Task Force, and with many fishing groups interested in future conservation and enhancement of the salmon and steelhead trout resources. This detailed state response to the Regional Task Force proposal, and the proposed alternative plan for management of the resource, reflect this effort as well as reasonable compromise from original positions taken. These documents suggest critical amendments to the Regional Task Force proposal which we believe must occur if there is to be a fair and equitable settlement.

You will note that the state has not proposed an alternative resource distribution plan or an alternative steelhead de-commercialization plan in this document. This is in no way to indicate our satisfaction with these plans as presented by the Regional Task Force. Rather, we have reviewed in detail an alternative resource distribution plan and a proposed steelhead de-commercialization plan which have been developed by the Commercial-Recreational Fisheries Delegation. We think it is significant that the many participating recreational and commercial fisheries groups have worked together in the development of a settlement proposal. The Delegation plan is workable from a management standpoint, provides considerable benefits to all parties and assures long-term enhancement of the resource. We commend the participants for their effort and diligence in the development of a fisheries solution, as well as for their willingness to compromise basic principles in developing a settlement proposal.

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August 22, 1978

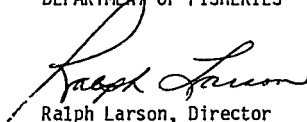
The staffs of the Washington Departments of Fisheries and Game will continue to work closely with the National Task Force, appropriate federal agencies, the Washington State Legislature, the tribes, recreational and commercial users, and the Congress of the United States in seeking resolution of this dispute as quickly as possible. Hopefully, the positive efforts undertaken by the many parties will not be wasted and a reasonable solution can be developed.

We very much appreciate the opportunity to present our views to the Federal Task Force and will appreciate your consideration of proposed amendments to the Regional Task Force plan. We will look forward to further communications on this important matter.

Sincerely,



Gordon Sandison, Director
DEPARTMENT OF FISHERIES



Ralph Larson, Director
DEPARTMENT OF GAME

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INTRODUCTION TO STATE COMMENTS ON TASK FORCE PROPOSAL

The State of Washington has reviewed in detail the proposed settlement plan developed by the Northwest Regional Fisheries Task Force. During the past year, the state has worked very closely with members of the regional task force, and provided considerable technical input into the development of a settlement plan. We would first like to articulate our appreciation for the considerable effort expended by the members of the regional task force, and for the opportunity given affected state agencies to offer their views regarding the appropriate components to be included in any settlement plan. The State remains absolutely committed to the achievement of a full and complete settlement of all issues contained in the litigation entitled U.S. v. Washington. However, although we are satisfied with the basic framework for settlement established by the task force, it is our present view that the terms of the settlement plan ~~offered do not offer a fair and equitable solution to the fisheries dispute~~. Therefore, this response, together with a proposed alternative management plan, constitutes our disapproval of the regional task force proposal as drafted, and suggests amendments to the plan which we believe are necessary to achieve a manageable and fair settlement.

We fully recognize that the settlement of a problem of this magnitude necessarily means that all parties cannot be completely satisfied with all terms. Hopefully, the national task force and the U.S. Congress will recognize that the solutions proposed by the State constitute considerable movement and compromise from initial positions taken. Moreover, the state has made every effort to coalesce support for a reasonable alternative plan which provides considerable benefits to all parties. Alternative plans are being proposed by the Commercial-Recreational Fisheries Delegation which address the difficult questions of salmon resource distribution and the de-commercialization of steelhead. We will be reviewing these plans once they are available and will comment on their validity as professional resource managers as quickly as possible. The state proposed management system attached to this report (Appendix B) offers a cost effective system which emphasizes State-tribal cooperation in the management of this important local resource, while minimizing the involvement of the federal government

in the future management of the resource. Finally, the state proposed alternative plan maintains state and tribal lines of jurisdictional control over the salmon resource consistent with recent U.S. Supreme Court decisions, the U.S. Constitution, and the Constitution of the State of Washington.

This report outlines in detail a number of problems which the State has regarding the task force settlement proposal. These comments and proposed alternatives will reflect the considerable study and effort undertaken by the state, as well as a good faith effort to compromise basic principles and arrive at a solution satisfactory and beneficial to all parties.

Briefly, our major concerns with the task force settlement plan can be outlined as follows:

A. Management

1. The task force plan provides the federal government authority to suspend state or tribal management authority for "substantial non-compliance" with the settlement plan without adequate standards for review and procedural safeguards.
2. The proposed management system, and particularly the authority prescribed for the Fisheries Review Board, constitutes considerable federal involvement in the day-to-day management of the state's salmon resource.
3. The task force plan constitutes a clear infringement on state jurisdiction and control, both on- and off-reservation, over the salmon resource and fisheries.
4. The task force management system is cumbersome in its process, requires unnecessary administrative technical discussions and record-keeping sessions on matters traditionally resolved by staff phone calls or informal meetings, and does not adequately deter frivolous disputes among state and tribal management entities (i.e., the procedural burdens of the plan are unnecessary in light of previously agreed to state-tribal cooperative management plans, and cost-inefficient when compared with the alternative state proposal).

5. The role of state courts in fisheries management is completely abrogated by the task force proposal, with provision of an exclusive federal cause of action for all settlement related judicial challenges (a separate but important jurisdictional issue).

B. Resource Distribution

1. The task force proposal in no way significantly alters the resource plan established by Federal District Court in U.S. v. Washington. The proposed sharing plan provides treaty Indians a greater share than the purported 60-40 split advertised by the task force. Moreover, the significant contribution of state hatcheries, both existing and proposed, is not reflected in the proposed resource distribution plan. The interim plan proposed by the task force does not allow for continuation of existing viable sport or commercial salmon fisheries in Puget Sound during the early years of settlement (e.g., limited fishing pressure by commercial and sport fisheries on chinook and coho in all of Puget Sound, and on other species in certain selected areas).
2. The task force plan provides treaty Indians a number of special fisheries which are antithetical to the "equal opportunity fisheries" concept.
3. The task force proposal is difficult, if not impossible, to implement from a management standpoint and presents a number of technical problems which are unnecessary to any reasonable settlement.
4. Again, it is the expectation of the citizens of this state that any settlement which involves the expenditure of large amounts of federal and state dollars will necessarily affect significant revision in the sharing formula as contained in U.S. v. Washington, but with fair assurances of economically viable commercial salmon fisheries for all treaty and non-treaty fisheries.

C. Steelhead

1. The task force plan fails to ever de-commercialize steelhead despite provision for considerable economic offset to the tribes in exchange for de-commercialization.
2. The task force proposal for management of steelhead in certain coastal rivers provides coastal tribes off-reservation management authority far beyond that ever authorized by the U.S. Supreme Court, or as provided by the U.S. Constitution and the Constitution of the State of Washington.

D. Gear-up, Gear-down

1. The task force plan for gear reduction in the non-Indian fleet is far more ambitious than necessary and than in any of the management plans previously submitted to the State Legislature (a review of state legislative history indicates that far less ambitious plans have been rejected outright by the Legislature; the proposed plan is likely politically impossible to enact and implement in Washington).
2. Most commercial and sports groups support less gear reduction than proposed by the task force. It is also their view that a voluntary buy-back program should be utilized to achieve the bulk of cuts proposed for the non-Indian fleet (both points are feasible even under the task force plan, but especially if the resource distribution plan is to be altered away from full implementation).

E. Phase II

1. The task force plan suggests that its resource distribution proposal is a settlement of the hatchery fish issue, although not a settlement of the environmental issues. Separating these issues in such manner is not satisfactory.
2. Again, the settlement plan in no way takes into account the significant state hatchery contribution to the resource (in excess of 40%

of the projected Washington-origin resource base may come from state hatcheries).

3. It has long been the State's position that a settlement must encompass all issues pertaining to the litigation entitled U.S. v. Washington. The task force proposal is incomplete.

F. Canadian Interceptions

While the task force is correct in indicating the need to settle the Canadian interception problem, many of its proposals run counter to achievement of that objective. Therefore, revision of those elements of the plan which in fact stand in the way of a Canadian settlement must occur.

G. Enhancement

The State has reviewed many of the enhancement proposals and the proposed research and development plan contained in the task force report. While we are satisfied that none of these projects are "cast in stone" (the task force has agreed with the state and tribal negotiators that this be the case), we believe that significant cuts in the overall budget can be made in these areas. This is particularly true with regard to the enhancement package. The task force plan provides that the state and tribes will ultimately bear the operation and maintenance costs for those projects contained in the settlement. The State cannot approve a plan which provides for projects which will ultimately significantly impact the state budget, unless such projects can assuredly contribute to the enhancement of the resource. Therefore, unless projects identified as low priority by the state can be replaced by projects fitting into a higher category, the task force budget should be revised. This suggestion also pertains to the task force proposal for research and development.

H. U.S. Supreme Court Review

Finally, the task force acknowledges that if a settlement is not to occur, then U.S. Supreme Court review of the so-called Boldt decision will be appropriate. However, they conclude that both cannot occur.

We disagree. The State of Washington has filed a petition for certiorari with regard to decisions issued by the Washington Supreme Court and the Ninth Circuit Court of Appeals. It is our position that these decisions should be reviewed by the U.S. Supreme Court, but also that a settlement can and should be reached, with final interpretation of the treaties and development of a settlement evolving in Congress. It is suggested that the atmosphere for settlement of this dispute has never been better, but also that without review by the highest court in the land, this positive atmosphere cannot be maintained.

State comments are organized on a chapter by chapter basis. Included as Appendix B is the alternate management plan proposed by the state.

CHAPTER 2
MANAGEMENT SYSTEM FOR WASHINGTON STATE SALMON AND STEELHEAD FISHERIES

Introduction

The task force proposes a comprehensive management system in which change would occur "in the manner in which the state and tribes exercise their authority in the future". The proposed management system is aimed at achieving five goals. These are:

1. The use of existing fisheries management expertise in a coordinated fashion which delegates authority to the agencies which are best suited to perform specific management functions.
2. The avoidance of unnecessary duplication in management functions among the various agencies.
3. The involvement to the greatest possible extent of commercial, charter, sport, and tribal fishermen in the on-going fisheries management process.
4. The achievement of a smoothly functional management structure which results in compliance with the terms of the settlement legislation.
5. The emphasis upon involvement of state citizens, both tribal and non-tribal, rather than federal agencies, in fisheries management matters within Washington.

The State of Washington has few problems with this statement of goals, but finds much lacking in achievement after reviewing the proposed management plan. Moreover, it is our view that the single most important principle of any management plan for the Washington fishery resource is not stated as a goal, nor is it evident in the plan. The Governor and Directors of the Washington Departments of Fisheries and Game are bound by the Washington Constitution to exercise full management authority over the natural resources within boundaries of the state of Washington. The State opposes any element of settlement which would serve to abrogate clearly established state authority and jurisdiction over the fishery resource. Thus, while we consider it feasible to establish a cooperative management system consistent with the above stated goals, such system must not alter basic jurisdictional authority of the State of Washington as established in the

Washington Constitution, numerous decisions by the U.S. Supreme Court, and the laws and Constitution of the United States. It should further be noted that this basic jurisdictional authority cannot be "given up" in any binding fashion by any officer of the state of Washington.

In assessing the efficacy of any management system, it is important to point out the wide variety of government management entities which currently exercise jurisdiction over Washington produced salmon. A list of these agencies includes the U.S. Departments of Interior and Commerce, Pacific Fisheries Management Council (PFMC), North Pacific Fisheries Management Council (NPFMC), International Pacific Salmon Fisheries Commission (IPSFC), Columbia River Compact, states of Alaska, Oregon and California, and the State of Washington. Additionally, as many as 19 individual treaty tribes and two treaty area groups exercise jurisdictional authority over tribal fishermen. Each species of salmon crosses some or all of these jurisdictional boundaries before returning to spawning areas. Obviously, this settlement can only begin to resolve the morass of problems that has evolved from this multiplicity of jurisdiction over Washington produced salmon; it must not add to those problems.

In evaluating the management plan proposed by the task force, as well as the proposed resource distribution plan, it is clear that the State, as defendant in U.S. v. Washington, has been placed in a position by the Federal District Court to deliver salmon to the tribes despite lack of authority over most interception fisheries which affect the number of salmon available for harvest in State waters. In building a settlement plan, the relative authority and capabilities of involved management entities must be taken into account.

Finally, in recent negotiations between the State of Washington and the Northwest Indian Fisheries Commission, all parties have clearly understood the need for cooperation and sharing of responsibilities, to the extent practicable, in order to preserve and enhance the salmon resource over time. Such cooperation is not limited to the state-tribal relationship, but must include the wide variety of federal, foreign, and other established management entities responsible for this resource. Therefore, we endorse any management system which provides for expanded cooperation among various management entities, so long as the relative jurisdictional authority of such entities is not altered. The task force plan falls short of its own stated goals, and improperly alters the

jurisdictional authority of state management agencies. The attached alternative management proposal addresses these and other shortcomings of the task force plan.

Specific Comments on the Task Force Proposal

The following is a page by page listing of problems which the State of Washington has regarding the management proposal by the regional task force.

Introduction

Page 13, paragraph 1: The report provides for Tribal Commission management of commercial fisheries in the TCMZ. This provision of extra-reservation authority in the Tribal Commission is inconsistent with the jurisdictional authority provided the State by the U.S. Constitution and the Washington Constitution as interpreted by the U.S. Supreme Court.

Page 14, paragraph 2: The proposal provides that the Tribal Commission licenses and manages all sport fisheries on-reservation. The recent Oliphant decision by the U.S. Supreme Court raises serious questions regarding on-reservation authority by the tribes over non-Indians. Because the state has jurisdiction over its citizens even on-reservation, utilization of a state license for sport fishing on-reservation is required.

Pages 15-17: Comments on proposed State and Tribal Management Zones (SCMZ & TCMZ) are contained in the response to Chapter 3.

Page 18, last paragraph: The Pacific Fishery Management Council will play a major role in determining if the settlement plan is successfully implemented. Are they subjected to the suspension of their functions if they do not perform as required?

Page 19, paragraph 1: The report suggests that if a management agency was suspended because of "substantial non-compliance" with the settlement document, an appropriate federal agency would perform necessary management functions during the suspension. We strongly believe that there will be instances where it is more appropriate for state or tribal management agencies to perform functions of the suspended agency. To further minimize the role of federal government in management of state and tribal fisheries, provision for other than federal agencies to perform management functions is necessary.

Pages 19 and 20: The recommendation for participation of tribal representatives on both PFMC and IPSFC may be appropriate over time. However, the suggestion that a tribal member immediately replace the Director of the Department of Fisheries on the IPSFC is wholly inappropriate. The Director has never been contacted on this matter and we find the assumption that tribal representation on the IPSFC as being more appropriate than state representation, even for an interim period, does not begin to reflect the relative management capabilities, responsibilities (e.g., state's role in implementing IPSFC regulations), and constitutional authorities of the state and tribes.

Page 20, paragraph 2: It is suggested by the task force that many characteristics of its proposed management system clearly reflect procedures and accommodations the state and tribes have achieved since the decision in U.S. v. Washington. The report says: "In fact, much of the task force's system merely formalizes the principles which the state and tribes have informally worked out." As will be indicated below, much of the task force plan places formal requirements on the state and tribes which have historically been worked out on an informal basis by staff. The result is a most cumbersome management system, which in no way reflects positive steps taken by the state and tribes in recent years to coordinate management activities.

Page 21, paragraph 2: We would agree with the task force that the management agencies must be able to concentrate their energy on managing the resource, leaving jurisdictional battles behind. However, as we have indicated above, the settlement must clearly establish lines of jurisdiction. Again, those lines of jurisdiction must reflect the basic principles enunciated in the U.S. Constitution, the Constitution of the State of Washington, and the many decisions regarding state-tribal jurisdiction enunciated by the U.S. Supreme Court.

Fisheries Management Institutions, Authorities and Functions

1. General Operations

Page 24, paragraph 1: The task force report indicates that the Tribal Commission and state agencies are free to modify the exact descriptions of the TCMZ and the SCMZ if they should so agree. It is essential that these boundaries can easily be modified to assure effective management in conformity with settlement objectives. It is clear that the nature of certain

runs will require that participants in the "equal opportunity fishery" occasionally be allowed to harvest inside the TCMZ (particularly if drawn in accordance with the task force proposal) in order to accomplish resource distribution objectives.

2. Structure and Authority of Fisheries Review Board

Page 25, paragraph 3: The task force proposes that the state and the Tribal Commission will be responsible for reviewing the success of the Fisheries Review Board (FRB) in the ninth year of its existence, or earlier (if all three agencies agree). We suggest that this mandatory review occur much sooner than is proposed. The task force does not provide for "sunset" of the FRB. We are concerned that if its performance is imbalanced in favor of one, there is no provision which assures the evaluation of the FRB's performance. Thus, we would recommend that it be mandatory that the tribes and the state perform a detailed review of performance of the total management system at least every three years.

Pages 26 and 27: The task force proposes that the FRB be composed of seven members. We are very much concerned that the provision for an at-large member places far greater authority and responsibility in a single board member than is appropriate. We have noted to the task force in the past a number of fisheries management entities which have operated effectively with a balanced board. Thus we have recommended in the attached alternative management proposal that there be a six man board, with three members named each by the State of Washington and the Tribal Commission. While it has been argued that there is a need to assure a tie breaking vote on the board, it is our view that the potential existence of such a vote, with resultant non-action by the board, imposes greater responsibility upon board members to act responsibly than does a system in which a single person is given the authority to break ties. Please note the alternative management proposal developed by the State of Washington for further discussion of the organization and procedures by which the FRB should operate.

Page 28, paragraph 1: The task force proposes that the FRB be able to draw upon technical and legal assistance from any federal agency. The state and tribes have long indicated their concern that the FRB would in

fact operate as a federal entity. Thus, we have recommended that the Board rely primarily on staff assistance of state and tribal agencies as well as the private sector, as necessary to perform its functions. We are opposed to utilization of federal staff assistance by the FRB.

Page 29, paragraph 2: The task force proposal regarding authority of the FRB again presents problems for the state. While it may be that these problems are largely a matter of lack of clarity of language describing the system, on its face the system is far too cumbersome and costly to be justified. We would require some clear limits in the authority of the FRB.

First, we would limit the review of harvest management and hatchery plans to disputes brought before it by one of the management agencies regarding the pre-season statewide forecast and ensuing regulations and the annual hatchery permit plan developed consistent with the hatchery operations process described in the WDF response to the regional task force dated February 15, 1978. Such review would occur on a one-time basis each year if a management agency so requested. Second, we would not convene the FRB to review any in-season harvest or hatchery management decision other than those regarding disputes for emergency conservation closures to attain spawning objectives as provided in the settlement plan. Third, we would seek clarification in the settlement document that the sole authority of the Board, other than with regard to conservation closures, will be to recommend a particular course of action to the management agencies. Agencies responsible for promulgating regulations, developing data and information, and the like which are subject of dispute would not be required to comply with the FRB recommendation, but would be accountable for its actions or non-actions pursuant to the FRB's post-season audit function. Fourth, the FRB's authority to issue orders should clearly be limited to those cases where it agrees with the moving party that an emergency conservation closure should occur. Finally, except with respect to its annual report, the settlement document should clearly indicate that the FRB will not be convened except to resolve disputes and that it may not recommend management agency actions or issue orders on its own initiative. (In fact, the annual report might not be required if the State or Tribal Commission did not so request.)

Page 31, paragraph 1: The task force proposal regarding "substantial non-compliance" which might lead to suspension by the "federal government of all or part of state or Tribal Commission fisheries management function", presents a number of problems. First, the task force confirms that the suspension process is essentially "federal" by its language and established procedures. The proposal suggests federal agency involvement in FRB activities pertaining to suspension and that federal agencies will be responsible for performing management functions of a suspended agency. The final determination whether agency functions should be suspended is to be made by a three judge federal court panel, a point with which we agree when compared with the original plan which allowed for federal preemption by federal agencies. Again, the suspension system contemplated is essentially a federal system.

A second major problem presented by the proposal is that no clear standards for suspension are established which define the type of activities which would lead to this extreme remedy. In our proposed alternative management plan, we have suggested the kinds of factors which might serve as indices of "substantial non-compliance". Although we are not necessarily committed to those particular standards, we believe strongly that suspension must occur only pursuant to clearly established substantive criteria. Thus, we again suggest that the standards for suspension be a part of any settlement legislation.

Thirdly, we have described in detail in our alternative proposal on management the procedural steps which should be necessary for an agency's functions to be suspended. We are in agreement with the "cooling-off" provisions suggested by the task force, and we also agree that a three judge panel is a more appropriate entity than federal agencies to render a suspension decision. We see no reason for participation by the federal government in the hearings process conducted by the FRB, or for federal participation in hearings before the three judge panel. (The federal government would not be an eligible "moving party".)

The procedures recommended in our alternative proposal regarding suspension should assure a limited federal role in the decision making process, they inhibit frivolous appeals for suspension by state and tribal agencies,

they place limits on the term of suspension and procedures for reinstating management authority, and they establish a clear burden of proof on the moving party and the FRB in any suspension hearing.

Pages 33-35: The task force proposes that the FRB have the authority to make binding decisions regarding hatchery permits separately issued by the state and the Tribal Commission. This provision is wholly inconsistent with previous statements made by the task force that its only authority to issue orders would be when it deemed an emergency conservation closure appropriate. The state suggested a detailed hatchery management plan in its comments dated February 15 on the original regional task force proposed settlement plan. That proposal suggested a single permit process for all hatcheries in the state, with state and Tribal Commission participation in the decision making process. The role of the FRB in this process was significantly limited. In negotiations with the tribes, it was widely recognized that the development of a comprehensive hatchery plan for the state of Washington would be necessary. Yet the task force suggests that the FRB have the power "to arrive at a resolution of hatchery management issues based on wise fishery management principles". We believe that FRB members will not have the technical capability to arrive at sound decisions regarding complex hatchery questions, and that the state and tribes through coordinated effort can do so. This is particularly true if the guidelines for enhancement are clearly established in the settlement document and if all permits regarding hatchery operations are the subject of a single permit process and consistent with a comprehensive management plan.

The task force also proposes that the FRB have the residual authority to adopt as federal regulations unenforced or unenforcable regulations of WDF, WDG, or the Tribal Commission. The Board's regulations would then be enforced by the National Marine Fisheries Service, the U.S. Coast Guard, or other federal agencies and would bear criminal penalties. Again, this provision is further indication of the federal role to be assumed by the Board. We have suggested that some federal involvement in enforcement of the settlement plan may be necessary for the first two to three years of the settlement plan, but that after a coordinated enforcement program is developed between the state and tribes as described in the agreement between

negotiators, which is generally included in the task force proposal, there will be no need whatsoever for the Board to adopt state and tribal regulations. Thus, we have suggested in our alternative plan that authority of the FRB to adopt state and tribal regulations be clearly limited to a three year period, with the state and tribes having authority to agree within that period that the FRB no longer operate under such authority.

Page 35, paragraph 1: The task force proposal provides that decisions by the FRB, other than those regarding a recommendation for suspension, would be appealable to Federal District Court. This is a substantial abrogation of the role of state courts in fisheries management and establishes a federal cause of action for any settlement related claim. Again, this subtle usurpation of state jurisdiction is wholly unacceptable to the state. The Governor and the Directors of WDF and WDG are not empowered, nor would they agree to this significant alteration of state courts role in resource management. We have pointed out in our alternative proposal the many instances in which state court review of an FRB decision is appropriate.

3. Authority of Washington Department of Fisheries

Page 35, paragraph 3: The task force proposes that WDF have authority to license non-tribal commercial salmon fishermen, salmon charter boat owners, and salmon sport fishermen. Apparently, no state license will be required for tribal fishermen fishing in any "equal opportunity fisheries" or TCMZ's. Again, such provision (and this extends to state licenses in off-reservation TCMZ's) is wholly inconsistent with the state's established jurisdictional authority over the salmon resource. Moreover, this limitation of the state's licensing authority presents enforcement problems, in as much as violators of state regulations have historically been subject to the threat of suspension of their licenses. State courts would not have this remedy available to them against treaty Indian violators if a state license is not required to fish in waters where the state has primary jurisdiction. Finally, this limit on the state's licensing authority raises questions as to whether treaty Indians will be eligible to participate in the proposed buy-back program and license limitation program. Moreover, the loss of state control

over proposed ceilings on tribal gear in the "equal opportunity fisheries" is antithetical to the basic goals of the gear-up, gear-down program.

Page 35, paragraph 3, number 2: The task force suggests that WDF would be the central depository for licensing and regulatory information, yet it does not suggest state control over the types of information to be elicited, assurances that such information will in fact be provided by the tribes, or that there will be a common format for such information consistent with established system needs. Moreover, the task force does not arrange for sharing of costs by the state and tribes pertaining to this data collection and storage system.

Pages 36 and 37: The task force proposes that WDF will be responsible for collecting and correcting necessary catch and effort data and for providing central data service to the Tribal Commission and other state agencies. Again, there are no assurances that the information to be provided by the various parties will be in a common form, that the information will be corrected pursuant to traditional practices, or that the data collected will be received by the state in timely fashion. Clear procedures must be established to assure that the data collection service provided by the state is workable and as cost efficient as possible. Finally, the cost of this central data collection system must be shared by the state and tribes to a reasonable degree.

Page 38, paragraph 3, number 10: The task force suggests that the Tribal Commission and the tribes will have concurrent emergency conservation authority with respect to commercial fishing within TCMZ. Again, this is a clear extension of tribal jurisdiction beyond its reservation boundaries, and is wholly inconsistent with the authorities provided the state of Washington by the U.S. Constitution, the Washington Constitution, and recent decisions by the U.S. Supreme Court.

Page 39, paragraph 1, number 11: The task force proposes a dual permit system for salmon enhancement projects (apparently this pertains both to construction and operation permits) and for salmon research projects affecting fish habitat. This dual permit system is wholly inconsistent with the coordinated enhancement planning procedures agreed to by state and tribal

negotiators, it creates a cumbersome and duplicative hatchery management process, and creates the potential for state and tribal hatcheries being operated at cross purposes. To provide the FRB authority to resolve disputes on such matters is an unnecessary extension of its authority. We believe that the existing enhancement process, as reflected in WAC 220-20-040 and in the enhancement proposal agreed to by state and tribal negotiators, provides a unified hatchery management system which assures management of all hatcheries in accordance with a comprehensive statewide plan.

4. Authority of Washington Department of Game

Page 39, paragraph 4: Again, the licensing authority provision suggested by the task force for WDG presents jurisdictional and enforcement questions exactly as discussed above with regard to WDF licensing authority. Additionally, the comments pertaining to the data collection system for WDF apply equally to the proposal for WDG authority. Finally, we would point out that the so-called jurisdictional authority of WDG described in the task force management plan is somewhat inconsistent with the proposal relating to management authority of steelhead in the coastal rivers contained in the task force plan at pages 50-52. Again, we wholly oppose any abrogation of traditional state jurisdiction and management authority on- or off-reservation.

The provisions in the task force plan relating to steelhead enhancement projects present the same problems as described above for salmon enhancement projects. Moreover, the task force plan is not clear as to whether the permit process for steelhead is to be separate from permit processes for salmon. We think it is important that a single salmon and steelhead hatchery permit process be established pursuant to the terms of the settlement in order to assure sound management of all such resources.

5. Authority of the Tribal Commission

Pages 43, paragraph 1: The task force suggests that the case area in U.S. v. Washington be expanded to include Grays Harbor. Any expansion of the case area beyond the boundaries established in the original decision in 1974 is not deemed appropriate by the State.

Page 43-48: The State has indicated in negotiations with the tribes, it supports establishment of a Tribal Commission which is accountable for insuring terms of the settlement plan will be met. A centralized management system for the tribes is essential to effective management of the fishery, particularly where coordination between the state and the tribes is emphasized. The task force suggests that the Tribal Commission would be funded initially by the federal government. Yet, in its budget submission, the task force provides only limited funds for administration of the settlement plan. Moreover, this limit on funds for administration applies to state agencies as well. We strongly believe that the administrative impact of settlement must be borne equally by the state and tribes and that federal responsibility for such add-on costs be paramount.

Again, authority of the Tribal Commission to license tribal fishermen wherever they fish, all non-tribal commercial fishermen in the TCMZ, and sport fishermen on-reservation, is wholly inconsistent with the jurisdictional authority of the state to manage the salmon resource.

Procedures for collecting and correcting catch and effort data and licensing information suggested by the task force means unnecessary duplication and fails to assure collection and correction of information in timely fashion and in accordance with set format. Sharing of cost burdens must also be provided for.

The state can accept a harvest management system that provides for development of pre-season harvest plans for commercial salmon and steelhead fisheries in TCMZ by the Tribal Commission, as long as it is clearly established that WDF or WDG regulations in such areas clearly supercede tribal regulations. This is consistent with the management plan approved by the Federal District Court and developed by the state and tribes.

The task force proposal suggests that the Tribal Commission have emergency conservation closure authority in the TCMZ and on-reservation. It must be clarified that the Tribal Commission authority to order closures in such areas off-reservation can be superceded by the state, and that the state is authorized to reopen such fisheries. Moreover, we strongly believe that

emergency conservation closures affecting tribal fisheries be the exclusive prerogative of the Tribal Commission and that individual tribes should not have such authority. This would eliminate potential problems that might arise in areas where more than one tribe is fishing and one tribe orders the closure with which other tribes do not disagree (see comments relating to, page 50).

The task force suggests the Tribal Commission would have the authority to institute a unified court and enforcement system to deal with violations of Tribal Commission regulations by tribal fishermen. This proposal would remove all tribal members, no matter where they were fishing, from state court jurisdiction for all violations of state regulations, it provides no adequate assurances that tribal violators will in fact be prosecuted in a manner which deters illegal fishing by tribal members. Finally, it is not clear if establishment of common penalties and a system in which equality of prosecution for state and tribal violators is in fact a term of settlement. We believe that the goal of equality of process and prosecution on-reservation and off-reservation should be established in the settlement document. Moreover, any assumption of exclusive tribal court jurisdiction over tribal members off-reservation must be at the mutual agreement of the state and the tribes.

During the course of negotiations between the state and the tribes, it was clear that costs of long-term enhancement of the salmon resource must be borne by state and tribal citizens in a manner which reflects the proportionate share of the resource. It was recognized by the negotiators that the establishment of a funding system for future conservation and enhancement would involve considerable study and effort by state and tribal officials, but the principle that all benefactors of the resource bear a fair burden as related to benefits derived must be established. The task force proposal infers that a separate tax system for state licensed and tribally licensed fishermen will be necessary. We would hope that the settlement would establish as a requirement that the parties develop a unified approach to funding necessary for the perpetuation and enhancement of the resource long into the future which reflects the principles enunciated by state and tribal negotiators.

6. Authority of the Tribes

Pages 49-50: While we do not presume to suggest how the tribes organize themselves, we would again emphasize that any settlement plan must provide for primary responsibility and authority in the Tribal Commission with only those functions being delegable to the tribes which will render the tribal management system more efficient and effective. Again, we have indicated our concern that authority to individual tribes to order emergency conservation closure can mean considerable disputes between individual tribes regarding when such closures should occur.

7. Authority of the Quinault Tribe

Pages 50-52: As noted above, the task force proposal provides an expansion of management jurisdiction over certain coastal rivers off-reservation. Provision of primary management authority to the Quinault Tribe in the Quinault, Queets, and Raft River watersheds is again violative of the jurisdictional principles outlined above. The state opposes any special provision for management of coastal rivers (as suggested by the task force) which differs from the treatment of other watersheds within the state.

8. Court Enforcement

Page 52, paragraph 1: The task force proposal for court enforcement is wholly inconsistent with the recent U.S. Supreme Court decision commonly referred to as the Olyphant decision. Moreover, Tribal Commission and tribal jurisdiction in the TCMZ is inconsistent with provisions of the U.S. Constitution and Washington State Constitution. The task force suggests that the cross deputization of tribal enforcement officers would occur to assure enforcement of state regulations in the TCMZ. This provision for cross deputization is antithetical to agreements between state and tribal negotiators regarding a long-term cooperative enforcement plan. In that agreement, it was concluded that cross deputization would be employed only upon agreement by state and tribal officials and was perceived as viable only well into the future, if at all.

Page 52, paragraph 2: With regard to sport regulations on-reservation, the task force provides that state court would obtain jurisdiction over violations only if Tribal Commission regulations were incorporated in state law and through utilization of cross deputization process. By virtue of the Oliphant-decision, state officers clearly have arresting authority and state courts have jurisdiction over non-Indian violators of state or tribal law on-reservation. Thus, cross deputization is not necessary. We oppose any expansion of tribal jurisdiction over non-Indians on-reservation beyond the Oliphant decision.

Authority of the Joint Technical Committee

Page 53, paragraph 1: In establishing a Joint Technical Committee, the task force suggests a relatively flexible membership depending upon the nature of the subject before such committee. However, the proposal provides that the state delegation be comprised of a member of WDG, even if salmon matters are the primary issue before the committee, or the inclusion of a WDF scientist even if the primary matters being discussed involve steelhead. This inflexibility does not apply to the members to be appointed by the Tribal Commission. In our alternative proposal, we suggest that the flexibility in membership would go so far as to assure that in matters pertaining to steelhead all scientists on the committee would be from WDG; in matters pertaining to salmon all scientists would be from WDF. However, if it was determined by either Director that it appeared in the agency's interest, either Director would be able to send a non-voting member to the meeting of the committee. This system is acknowledgment that in most instances salmon and steelhead issues can clearly be delineated and it is most appropriate for the experts from the respective state agencies to be primarily involved in decision making with regard to such issues. This has been the experience with the present Fisheries Advisory Board established by the Federal District Court.

Page 53, paragraphs 2 and 3: With regard to authority of the Joint Technical Committee, the task force proposal suggests a system which provides for considerable duplication of effort, formalization of processes which heretofore have been operated and performed successfully on an informal staff to staff basis; further the proposal provides for a system which requires massive record keeping

and documentation of activities at significant cost which have historically been dealt with by a phone call or direct discussions between staff. Thus, the goal articulated by the task force of establishing a smoothly functioning management structure is perhaps most abused by the failings of the system as it relates to the proposed authority and role of the Joint Technical Committee.

The state has long suggested that the Joint Technical Committee be convened in a manner consistent with that of the Fisheries Advisory Board. The Fisheries Advisory Board is convened only where informal staff work indicates agreement between the state and tribes cannot be reached on a technical matter pertaining to the settlement. Thus, a first and significant limitation of the role of the Joint Technical Committee must be that it be convened only where significant staff level discussions and effort have failed to resolve an issue to the satisfaction of either party. The committee would then be convened to attempt resolution of the dispute.

The task force provides that this committee would be the initial point for technical review of annual run size forecasts, harvest plans, escapement goals, procedures for in-season change in harvest, and conservation openings or closures. The committee would also be responsible for technical review of all case area salmon and steelhead salmon proposals and research projects which affect anadromous fish habitat in the case area. (See comments on pages 54 and 55. Note: We still do not know what is meant by "research projects which affect anadromous fish habitat".) Again, state and tribal negotiators were in general agreement (and this general agreement was presented to the task force) that primary emphasis in any management system should be on coordination of state and tribal staff efforts, and in assuring that the management entities themselves serve as the primary managers of the resource. As described, the efforts of the Joint Technical Committee would significantly duplicate the efforts performed on a daily basis by tribal and state managers. Moreover, to function as described by the task force, the Joint Technical Committee would be meeting on an almost daily basis on matters where there is little or no disagreement. The record keeping requirement and the inefficient use of staff time dictated by this system would add significant cost to the administration of state and tribal agencies.

In lieu of the task force plan for operation of the technical committee we would suggest a system which is much more consistent with the existing management plan approved by the Federal District Court. The features of our alternative proposal with regard to the operation and authority of this committee are as follows:

- The settlement plan should first indicate that it be the objective of the Tribal Commission and the state to work closely and cooperatively at the staff level on all matters relating to harvest management and to work out whatever differences at these levels that may arise.
- The Director of any of the three management entities will have authority to convene the Joint Technical Committee only when disputes as to pre-season regulations and in-season regulations arise.
- The Technical Committee will be convened by any Director only to resolve disputes relating to data and predictive models, and the committee will not review all annual run forecasts, harvest plans, escapement goals, or predictive models unless there is a dispute.
- The Joint Technical Committee would be convened to review all enhancement construction permit proposals by federal, state, and tribal agencies. This would include development of a comprehensive state hatchery plan as per the agreement between state and tribal negotiations. For federal project review (not settlement related), federal membership on the Joint Technical Committee would be authorized.
- The committee would be convened by any Director to deal only with disputes regarding the statewide annual plans, or disputes regarding a particular operations permit, or where a hatchery manager proposes to change the terms of his operations permit during the year and there is a dispute among staffs.
- The recommendations of the committee would in no way be binding against the Directors of state agencies or the Tribal Commission; but such recommendations would be available to the FRB if disputes were not settled regarding the statewide plan by the Directors, and a complaint was filed by any management agency to the FRB. Only under these circumstances would written recommendations be required, unless requested by state or tribal management entities.

Again, we emphasize that there is little point in convening the Technical Committee if matters can be worked out between tribal and state staffs (where the real technical work can and should be performed). Additionally, and particularly with regard to in-season management problems, a requirement that the committee be involved in all matters of review, regardless of whether there was a major dispute or not, places an unnecessary and dangerous burden on the management process.

The settlement should be clear that Technical Committee review will be required before the FRB is convened, i.e., "exhaustion of remedies".

An excellent common data system is already in place. The Technical Committee could be convened to recommend means to resolve disputes regarding expansion of existing capabilities and facilities as consistent with settlement objectives in the early stages of the settlement. It might also recommend cost sharing plans to management agency directors. However, in the future, the committee should not be involved in the day-to-day review of data problems unless a major dispute regarding data quality occurs.

The settlement plan should recognize that scope of review of the Technical Committee is not necessarily specifically limited to the issue of conformity with the settlement plan. The committee can and should be convened to settle disputes regarding a wide variety of technical issues that evolve in the management of the fishery.

Again, the task force proposed system relating to the activities of the Joint Technical Committee are so cumbersome and out of touch with the realities of fisheries management or the respective interests of either the State or the tribes, that we will not comment specifically on a page by page basis any further regarding the deficiencies in this system. Rather, we point to the alternative management system proposed by the State. The formalization of a process which is effectively operating on an informal basis 99% of the time is a complete waste of resources and the time of fisheries managers.

Pages 60-63: The task force proposal would provide for Joint Technical Committee recommendations to first go to Directors of the affected management agencies if the dispute is not resolved at the Technical Committee level. Before being transmitted to the FRB, state and tribal policy makers would then be

responsible for attempting to resolve the dispute. However, the task force has suggested that, in disputes relating to predictive models or plan formulation, the management agency Director would be required to ask for an assessment of a knowledgeable but disinterested third party to assist in resolution of the matter at the policy level. While we agree that there is a need to have state and tribal policy makers attempt to work out disputed matters before formal appeals are made to the FRB, it is absolutely ridiculous that these policy makers be required to obtain an opinion from some third party. Merely getting the Directors to agree as to who an unbiased third party might be would be difficult, and waiting for an opinion by such party may create unnecessary delays in negotiations with resultant dangers to the resource. Finally, placement of a tie breaking vote in some third party is an abrogation of the management authority of both state and tribal officials, and is in no way justified given the considerable level of technical consideration at staff and Joint Technical Committee levels.

Additional Fisheries Management Programs

Page 64, paragraph 2: The task force report suggests that the FRB can order closure of any salmon or steelhead fishery in the state for emergency conservation reasons. It is not clear from this statement whether the FRB can do so on its own volition. The state will not endorse any settlement plan which allows an appeals board the authority to act on management issues on its own, as opposed to the State or tribes specifically raising the issue.

We pointed out in our February 15 response to the first draft task force report that the use of weekly conservation closures in both SCMZ and TCMZ are a mandatory management tool and that it should be made clear that such closures are included in the definition of "conservation closure". This clarification is needed as a common definition of "conservation closure" is a closure established after the entire allowable harvest has been taken and the remainder of the run is needed for spawning. The present task force plan has failed to make this clear and we re-emphasize such need.

Pages 64-68: The system outlined for development of harvest management regulations raises a number of issues, described above, relating to the relative management authority and jurisdiction of state and tribal agencies. Moreover,

our concerns regarding the role of the Joint Technical Committee in the development of such regulations have already been articulated. The formalization of the process as described by the task force for establishment of harvest regulations is not satisfactory in that it alters the basic jurisdiction of the state, it formalizes at high cost processes which can be conducted informally by state and tribal staff, and it provides far too much authority and control over management operations in the FRB. Thus, we would again refer you to our alternative management proposal for a far less cumbersome process and one which takes into account the positive steps made by the state and tribes in the establishment of a comparatively reasonable management process resulting through negotiations since the original Boldt decision.

12. Complaints by Individuals

Page 69, paragraph 1: The task force proposal suggests that FRB be responsible for reviewing, through an administrative process, complaints concerning the settlement only by individuals which are unresolved after going through the internal administrative procedures of state and tribal agencies. The State of Washington has expressed concern that individual complaints might tie the hands of state and tribal managers through frivolous challenges to management activities in state, tribal, or federal courts. Thus, in our alternative proposal, we have suggested a system whereby individual complaints pertaining to the settlement (and not necessarily exclusively to the settlement), be the subject of an administrative procedure outside the traditional review procedures of the FRB. State and tribal citizen's complaints would pass through the proposed administrative process before state, tribal, or federal court jurisdiction could be obtained. Review of the courts upon exhaustion of remedies through this administrative process would be limited as pursuant to traditional administrative law doctrine.

Page 70, paragraph 1: Again, the task force proposal provides that exhaustion of administrative remedies in the case of individual challenges would be appealable to Federal District Court only. This is a complete abrogation of the role of state courts in the fisheries management process and is totally inappropriate.

13. Licensing and Scientific Research

Page 70, paragraph 3: The task force proposal suggests that individual tribes would issue licenses to tribal fishermen. On page 44 of the task force proposal, it is suggested that this may be the case only if such responsibilities are delegated by the Tribal Commission. We have previously articulated our concerns with regard to the licensing system proposed by the task force.

CHAPTER 3
STATE AND TRIBAL COMMERCIAL MANAGEMENT ZONES

The task force proposal provides for establishment of two types of management zones: State Commercial Management Zones (SCMZ) and Tribal Commercial Management Zones (TCMZ). WDF would have primary responsibility for all harvesting activities in the SCMZ and for sport fishing regulations in the TCMZ, except on-reservation. The SCMZ is designed to exclude most of these areas in the state in which purse seine, gill net, reef net, and troll fisheries generally have been conducted. The Tribal Commission would have responsibility for management of commercial management activities in the TCMZ. The TCMZ generally includes those areas in which set net, beach seine, and skiff fisheries have occurred. WDG would have responsibility for all steelhead sport fishing regulations and licensing in the TCMZ, except for coastal rivers and on-reservation.

The state alternative proposal in Appendix B refers to tribal fishing areas (TFA's) rather than TCMZ's. The state plan would authorize TFA's as outlined herein and in Appendix A.

Specific Comments on the Task Force Proposal

Introduction

Page 72, paragraph 1: "The concept of establishing separate commercial management zones for the Washington Department of Fisheries (WDF) and the tribal licensed commercial fisheries is a keystone of the plan. It is a means to reduce the present overlapping management and jurisdiction of the State and tribes. It is also tied to the resource distribution plan."

This is an important section to reference directly since subsequent sections of the plan, such as special tribal fisheries in the ocean and the Strait of Juan de Fuca, compromise this so-called "keystone of the plan".

Page 72, paragraph 2: Most of the broader TCMZ areas proposed by treaty Indians were based on tribal assumption that larger tribal gill net boats and purse seines would be able to fish in both the SCMZ and TCMZ . The TCMZ areas

involved are, in fact, much more suitable for this type of gear, than the terminal fishing gear types specified later in the plan. Since the plan does not provide the ability to switch between management zones, except on an interim basis, proposals by treaty Indians for larger, deep-water areas no longer have a valid basis. The ability of individual boats to switch between the two types of management zones would of course make the whole resource distribution and gear adjustment packages technically unworkable and preclude achievement of economic opportunity goals expressed for treaty Indians. For example, were a tribal gillnetter to elect to harvest salmon in the TCMZ rather than in the marine areas, he would reduce the proportionate share available to tribal fishermen limited by gear or personal interest to the TCMZ area. This would cause unnecessary conflict among and within tribes. The state has carefully examined the terminal area fishing concept and found that definite criteria must first be established, from which the proper areas automatically fall out. These criteria are as follows:

1. SCMZ and TCMZ should include as much of the so-called "traditional" fishing areas of both groups of fishermen as possible, but must provide each the opportunity to harvest their specified share of the resources under various types of salmon and steelhead run management situations which might reasonably be expected now and in the future..
2. Physical characteristics of the two types of management areas must match gear characteristics of the distinctly different types of fishing apparatus specified.
3. Terminal fishing areas must be for harvesting salmon stocks destined for upstream areas and/or nearby streams, not for intercepting mixed stocks destined for several distant river systems.
4. Terminal fishing areas must include on-reservation waters.

Puget Sound tribal fishing zones which match these criteria are specified in detail in Appendix A.

Tribal Commercial Management Zone (also see Appendix A)

Regardless of the details of the ultimate settlement plan, tribal zones as proposed by the task force are technically unsound and must be adopted as proposed by the state. Only a few examples are given here to demonstrate the nature of the problems with the task force's proposed zones.

Page 76, Duwamish Bay, Shilshole Bay and Lake Washington: This is only one example of an area boundary which would make it possible for the equal opportunity net fishermen to harvest their share of south Puget Sound coho during years when poor native runs required maximum protection. In this instance, all fishing would be restricted to a few "terminal" areas, and Elliott Bay would be one required for equal opportunity net fishing.

Page 78, Strait of Juan de Fuca: This is primarily an interception area for stocks destined elsewhere in Puget Sound and is unnecessary for harvesting local stocks.

Page 78, Washington North Coast and Grays Harbor: Numbers 1 through 4 would provide interception fisheries for salmon stocks destined for other distant river systems, including the Columbia River, and are not needed to harvest local stocks under any conceivable future fishery management situations. Furthermore, net fishing in this area will be contrary to the U.S.-Canadian "surf line" agreement.

The small area of less than one mile in length in the Chehalis River was needed in the past by non-Indians to fully harvest exceptionally large hatchery coho runs. It can be a milling or delay area under certain river flow conditions and must be closed when these circumstances prevail. Non-Indian fleet increases, addition of a treaty Indian fishery, and salmon run size declines of recent years, however, make it unnecessary for that purpose at the present time. For example, in 1977, non-Indians had a total of only five fishing days for local salmon stocks between mid-August and early December. Further, large freighters load logs in most of this area, and it contains only a few good fishing sites for treaty Indians. There are many excellent set and drift net sites in the 10 to 12 miles of main Chehalis River are above this zone, thus the only conceivable "special situation" requiring resolution would be personal concerns of one or two individual fishermen.

CHAPTER 4
ENHANCEMENT

Introduction

The task force proposes specific resource enhancement projects to meet the resource distribution plan presented elsewhere in the proposal. The projects are expected to approximately double statewide salmon production and increase steelhead production by about 30%. Included also are enhancement guidelines, related research requirements, projected costs and a statement on aquaculture and sea ranching in Washington.

Specific Comments on the Task Force Proposal

Introduction; Background

Pages 80-90: The introduction and background in this section contains misleading generalities about declining catch rates associated with increased hatchery production. For example (page 86), there has not been a decline in catch from hatchery coho production in the Puget Sound area, as implied by the broad statements of the report. The potential for increased production is thus somewhat more optimistic than portrayed. The statement, "given the sharp decline in production of wild fish" (coho), cannot be applied generally to the state. We also question what is meant by "suspected less than optimum hatchery operations" as we are not aware that this statement is applicable to state hatcheries.

General Considerations and Guidelines; Future Planning Requirements

Pages 90-103: The enhancement guidelines assembled and developed in this report are generally consistent with those agreed to by state and tribal negotiators and staff. We have a major concern with only one portion. The "Genetic Integrity" section beginning on page 92 could promote a non-productive backlash against historic mistakes. It may be that some hatchery practices in the past may have impacted some valuable wild stocks, i.e., gene-pools. The section on page 98, "Future Planning Requirements", contains specific guidelines for dealing with this problem on a day-to-day basis, which we believe will provide a

mechanism for adequately protecting valuable genetic types. However, if these specific guidelines are interpreted in the context of statements on pages 92 and 93, the emphasis could shift to an extreme where all identifiable wild genetic types are protected whether or not the policy results in benefit to the fisheries. The nature of the problem can be seen, for example, by considering the statement (page 92) "...Regional Team will not recommend proposals which threaten to diminish desirable natural genetic variations...". We can hardly imagine any stock--including the native fish in a given stream--where used in an artificial enhancement project that doesn't in some way "threaten to diminish" natural gene-pools. Our point is that this section should make clear that the goal is maximum salmon in the catch with minimum destruction of future potential due to poor genetic policies. As written, this policy offers opportunities parallel to the Endangered Species Act where a few obscure and unimportant fish are reported to have stopped construction of a \$100 million dam.

Projects Selected

Pages 103-130: We participated with other agencies and organizations (federal, state, and tribal) in a preliminary review of all enhancement projects listed in this document in terms of whether they could be expected to fit into an overall state salmon management plan to be developed later from the guidelines. This, however, should in no way imply that individual proposals are equal in economic efficiency or in solving the various social and cultural problems. In fact, it is our view that certain projects with low economic return potential should be eliminated unless they can be replaced by presently undescribed medium or high priority projects (see below). This is particularly important if the state or tribes are to ultimately bear O&M and administrative costs for what are essentially non-productive hatcheries.

An assumption used by task force technical staff for simplicity was that all fish of a given species and release size in a general area would produce adults at the same rate in the catch. This, of course, would rarely be true on a case-by-case basis. For example, the sites selected for the major Washington state enhancement package already underway (the primary component of "other" projects, page 131) would reasonably be the best sites available, all aspects

considered, in a given area. Because of this, more than one-half of the task force projected increase in production will result from new state funded enhancement projects (HB-1188). Clearly, as more and more sites are selected, the quality will decrease on the average, given only that selection criteria are consistent (and they have been). Therefore, the projection that the task force projects will contribute at the same rate per unit of output as the "other" projects is not likely to be true. Further, within the task force projects there will also be an ordering from best to worst in terms of ability to produce fish (or of benefit:cost ratio). We submit the following list of individual projects with a general ordering in terms of efficiency in producing fish and solving socio-political problems.

WDF SALMON CULTURE PROJECTS

Category I (High Priority)

<u>Project number</u> ^{1/}	<u>Site</u>	<u>Proposal</u>
5	Skokomish Valley	Hatchery complex
6	Cedar River	Egg box/channel
10	Willapa Harbor Area	Rearing ponds
12	Cowlitz River Hatchery	Rearing ponds
44	Skagit Hatchery ^{2/}	Rearing ponds

Category II (Medium Priority)

<u>Project number</u> ^{1/}	<u>Site</u>	<u>Proposal</u>
3	Skykomish River	Rearing ponds
4 ^{3/}	Cedar River	Hatchery
7	Puget Sound/Coastal Area	Fish passage improvement
8	Wynoochee River	Hatchery
11	Kalama River	Rearing pond

Category III (Low Priority)

<u>Project number</u> ^{1/}	<u>Site</u>	<u>Proposal</u>
1	Skagit Valley	Hatchery complex
3	Skykomish Slough	Flow control channel
9	Grays River	Rearing pond and egg incubation facilities
13	Toutle River Hatchery	Rearing pond/adult trap
14	Klickitat Hatchery	Hatchery expansion

^{1/}Refers to numbering system used in Table 4-1 of the Settlement Plan.

^{2/}Proposal submitted by Skagit System Cooperative.

^{3/}Priority would be higher except for concern for coho and chinook portion of program.

WDG STEELHEAD CULTURAL PROJECTS

The following comments refer to projects listed in Table 4-1, page 106, which are essentially the same as listed in the task force report dated April 17, 1978.

These should be modified to reflect the intent of the Task Force Steelhead Distribution Plan outlined in Chapter 6, page 221.

In the plan, the tribes north of the Puyallup River have indicated that they will not fish commercially for steelhead. The Puyallup and Nisqually Tribes will have a fishery not to exceed 6,500 steelhead. The coastal tribes will reduce their commercial catch, phased out over time, as salmon enhancement projects provide replacement species.

The steelhead enhancement projects needed to reflect the task force plan should be modified as follows:

<u>Project Number</u>	<u>Site</u>	<u>Proposal</u>	<u>Smolt release</u>
27 - C&E (WDG)	Snoqualmie	Hatchery, rearing facilities	500,000
Quinault Tribe	Quinault	Rearing pens	500,000
Hoh Tribe	Hoh	Not stated	100,000
Quileute Tribe	Quileute	Rehab. project	<u>250,000</u>
			1,350,000

Tribal projects listed below are not necessary or needed as the tribes have indicated that are not exercising their right to fish for steelhead.

Makah Hatchery	400,000
Lower Elwha Hatchery	100,000
Lummi	<u>50,000</u>
	550,000

With the alternative plan, the tribal steelhead enhancement projects would not be needed and only the following project would be required to compensate for the incidental catch of steelhead occurring from increased salmon enhancement.

<u>Project Number</u>	<u>Site</u>	<u>Proposal</u>	<u>Smolts</u>
27 - C&E	Snoqualmie	Hatchery, complex	250,000

TRIBAL SALMON CULTURE PROJECTS^{1/}Category I (High Priority)

<u>Project number</u> ^{2/}	<u>Organization</u>	<u>Proposal</u>
36	Lummi	Skookum Creek Hatchery improvements
43	Skagit System Cooperative	Skagit River spawning channel
48	Nisqually	Reservation hatchery
49	Nisqually	Muck Creek rearing pond
51	Squaxin Island	Elson Creek Hatchery expansion
56	Point No Point	Skokomish Hatchery completion
57	Point No Point	Port Gamble Hatchery completion
58	Point No Point	Lower Elwha Hatchery completion
69	Quinalt	National Hatchery expansion

Category II (Medium Priority)

<u>Project number</u> ^{2/}	<u>Organization</u>	<u>Proposal</u>
39	Nooksack	Incubation and rearing facilities on Nooksack tributaries
40	Nooksack	Hill/Clear Creek Hatchery
41	Nooksack	Additional saltwater pens
47	Nisqually	Hoh River Hatchery
53	Squaxin Island	
68	Hoh	

Category III (Low Priority)

<u>Project number</u> ^{2/}	<u>Organization</u>	<u>Proposal</u>
37	Lummi	Lummi sea pond improvement
52	Squaxin Island	Hatchery (to be selected)
59	Point No Point	Hood Canal Hatchery complex
60	Point No Point	Straits & stream rehabilitation
63	Suquamish	Miller Bay Hatchery complex
65	Makah	Design satellite hatchery
66	Makah	Satellite hatchery
70	Quinalt	Lake Quinalt rearing pens
71	Quinalt	Queets River Hatchery
72	Quinalt	Raft River ocean ranching facility
73	Quinalt	Quinalt River spawning channel
80	Puyallup	Hatchery (to be selected)
81	Puyallup	Hatchery (to be selected)
82	Puyallup	South Prairie Creek side channel

^{1/} Project submitted by Skagit System Cooperative, Project No. 44 included in WDF project list.

^{2/} Refers to numbering system used in Table 4-1 of the task force proposal.

In regards to overall benefits, Category I projects would appear on their face to offer the highest production benefits and would provide most of the federal contribution to the long-term enhancement of the resource (same weight is attached to the social impact of high priority tribal projects). Category II projects offer more limited economic and social benefits. We have many concerns with those projects listed in Category III. For example, these projects are either:

1. unnecessary,
2. show low contributions,
3. present potential harvest management problems, or
4. are subject to a great deal of difficulty in finding project sites which will meet the goals of the proposal.

Funding for the Category III projects should therefore be at the very lowest level of priority and subject to thorough investigation.

Mention should be made that certain project proposals listed in Table 4-1 were natural production in nature and are being discouraged pending further study results. The ability of these proposals to increase production through habitat rehabilitation is questionable at this time. Although with emphasis on habitat restoration and protection as it pertains to a Phase II settlement, considerable effort in this area is necessary. The Department of Fisheries has, therefore, proposed a 5-year study (Project No. 22 in Table 4-1, p. 105) to assess the value of this kind of enhancement activity. The proposals which fall under this activity are:

1. Project No. 38, submitted by the Nooksack Tribe on eight tributaries to the Nooksack River.
2. Project No. 54, submitted by the Squaxin Island Tribe for southern Puget Sound streams west of the Nisqually River.

Subject to the results of the habitat improvement study, the above-mentioned projects may be funded, depending upon the suitability to a salmon management plan in which the specific river is managed. For example, if the Nooksack River is to be managed solely on the basis of hatchery returns, it would make little sense to spend large sums of money to improve the natural spawning area since the high harvest rate suitable for hatchery returns would leave few natural spawners to utilize the area.

Three project proposals listed in Table 4-1 fall into a funding category other than "Enhancement" or "Research and Development" and that is "Supportive Services and Facilities":

1. Project No. 74 submitted by the Quinault Tribe for support facilities;
2. Project No. 75 submitted by the Quinault Tribe for dietary studies; and
3. Project No. 76 also submitted by the Quinault Tribe for disease diagnostics.

The need for supportive services was identified by the plan, but the plan failed to stress the real importance of this need, specifically, the need for pathological services on a statewide basis. Funding for this should be on an initial basis. The need is real, because the success of the tribal projects in particular will be subject to their having adequate pathological services. Additionally, the State needs more trained personnel and facilities to handle the oncoming load of task force proposed enhancement activities. A joint sharing of this activity is not only feasible, but certainly should be a cost-effective way of resolving this potential problem. This need must, therefore, have higher emphasis in the settlement plan. Much consideration of these elements is reflected in the enhancement proposals agreed to by state and tribal negotiators.

Research Requirements Associated with Enhancement Projects; Costs and Rationalization

Pages 130-147: On page 146, a research budget is laid out as follows:

Category I studies -----	\$ 14.0 million
Category II studies -----	2.5 million
Category III studies -----	<u>3.5 million</u>
	\$ 20.0 million

Category I appears to be directed toward site evaluations and determining the characteristics of wild populations and of the environment that can limit the effectiveness of enhancement or where enhancement might negatively affect natural

fish populations. Category II involves the improvement of fish cultural techniques in order to increase survival or otherwise improve performance of enhancement. Category III is a general evaluation of performance with whatever procedures are currently being used, to answer the basic question of whether the investments are effective. The descriptions of Categories II and III seem to imply efforts that have typically yielded practical results, although a continued overview should certainly be maintained.

While all of these categories are relevant, the task force report appropriately states that the purpose of this research is to assure that enhancement effectively occurs and total salmon needs for the settlement actually show up in the catches. Accordingly, it is critical that this research is prioritized and monitored in terms of practicality and real-world effectiveness.

¹ As set forth in Tables 4-7 and 4-8 as well as the one on page 146, Category I contains a number of topics that could easily consume a great deal of time, money, and effort, and yield very little of use for assuring this settlement. For example, the biological studies required to determine the capacity of the environment could easily involve extensive measurements of all kinds and levels of organisms in terms of standing crops, productivity, and computations about what this means for predicting capacity to produce salmon. This kind of study apparently has great attractiveness to theoreticians and academicians who hope to learn basic truths and relationships which just might someday yield something significant, which could well mean another theoretical volume for the shelves. We do not intend to demean such efforts, because they are fundamental to the long-term advancement of science. However, we feel strongly that they have no place in what should be a practical, applied effort to produce more salmon. Our view of the way to learn the capacity of the environment is to spend perhaps thousands--certainly not millions--of dollars reviewing what is now known about estimating capacity, and then actually adding, on a planned schedule, more and more salmon to directly see what the results are. In fact, we assert that the most elegant and thoughtful theoretical prediction would only be proven ultimately by such a direct test anyway, and in this case it would be counter-productive to await the development of adequate theory.

Likewise, concerns about inter- and intra-specific interactions deserve some low level of theoretical review and study, but common sense with measured results from production situations seems to us the practical approach needed

here. We further note, even in the absence of details, that a great deal of redundancy clearly exists between the many proposals placed in Category I which must be rationalized before serious funding allocations can be made. In addition, some of these proposals appear to be direct enhancement rather than research, whereas others are in direct conflict with basic principles stated elsewhere in the report.

The allocation of \$14 million from a total of \$20 million to Category I in our view is inappropriate; specifically, we feel Category II is more important than Category I. Based on this premise, proposals dealing with specific Category II problems must be developed for future funding.

It should be thoroughly recognized by all parties at the onset that the evaluation role set forth as Category III will require greater funding than indicated on page 146. Also, while clearly stated as a research role in the body of the report, funding and responsibility for evaluation activity becomes somewhat clouded on pages 341-343 in Appendix II. The intent of the task force on this issue must be made more explicit before rational planning and implementation can be achieved.

The task force document gives the appearance of having allocated funds to the research categories merely by summing the funds requested by the various entities. Certainly, neither the task force nor its technical advisors were capable under the time and technical resource constraints of appropriately allocating these research funds. The stated fund distribution and proposed projects should be viewed merely as a suggestion, based on requests received, and the funds should be reallocated under an overall prioritized plan that will achieve the goals set forth. The obvious mechanism to assure proper planning, prioritization, and use of these funds is to charge the technical committee (with the possible representation of academics for this limited purpose) with this responsibility, and to make it clear that specific projects and allocations named in the document can and will be changed based on need and the most up-to-date information. Because the proposed management system could accomplish proposed goals, we question the need for a special research council as outlined beginning at the bottom of page 136.

With the above comments in mind, we submit the following analysis of the 24 proposals listed in Table 4-7, followed by a revised research funding proposal based on our analysis (revised Table 4-8). In making this analysis we

consulted the guidelines provided on pages 133-136 of the report and evaluated each proposal on the basis of first, whether it was either relevant to, or consistent with, the guidelines; second, whether it had sufficient merit, duplicated other efforts, or was consistent with certain basic principles set forth in the report; and third, whether it had been placed in the proper category (I, II, or III). We further took the liberty to flushing out the "undetermined category" in Table 4-8 to more realistically reflect the requirements for proper evaluation.

Project numbers 1-12, 18, 19, and 21 were judged as clearly appropriate projects. The costs associated with 9, 11, and 17 seemed somewhat excessive and 15 and 16 seemed to be mixing harvest methods and harvest management procedures with research needs. However, they were deemed acceptable under the criteria. Project 13 seemed to clearly be production related; furthermore, it appears unnecessary as past studies by Squaxin Island Tribe, WDF, NMFS, the Quinault Tribe, and private fish culturists should provide more than adequate study results on which to proceed. Project 14 clearly falls under the development of a comprehensive management plan and is funded elsewhere. Proposal 20 was rejected as set forth and the need it addressed incorporated in the "undetermined category" discussed below on a unit cost basis. Proposal 22 has very little direct relationship to the guidelines established and even if redirected toward the stated needs would be far less cost effective than that proposed in Project 4. Project 23 is a repeat of similar work carried out during the late 1950's and 1960's and has only limited merit in addressing the current problems. Project 24 should not be considered viable until the results of many similar studies initiated in the past five years have been accumulated and analyzed. Of the 18 projects considered to reasonably meet the criteria set forth, 13 fall in Category I, 2 in Category II, and 3 in Category III. Revised Table 4-8 summarizes our analysis (next page).

In approaching the problem of facility evaluation costs--namely tagging, sampling, and tag recovery--the following assumptions have been made:

1. Of the approximately 60 production units considered, about 2/3 will be different enough due to location, facility type, capacity, etc., to merit major evaluation efforts.
2. Each facility will deal with two species.
3. Each facility will require that three brood years be evaluated.

4. Facilities will be evaluated by logical (geographic) blocks rather than all at once.
5. Chinook evaluations will require tagging of 100,000 fish/year and coho 50,000/year.
6. Chinook survival will average .5% and coho 8%.
7. Tagging costs will be \$60/thousand fish.
8. Sampling level at 20%.
9. Sampling costs for tagged fish, \$300,000/year.
10. Tag dissection and reading, \$3/head.

Following these assumptions, a coho/chinook facility evaluation would cost: (3) years x [(50 x 60) + (50,000 x .08 x .20 x 3)] + [(100 x 60) + (100,000 x .005 x .20 x 3)] = 3 x (5,400 + 6,300) = 35,100. Costs for chum salmon are assumed to be somewhat similar to chinook, sockeye would be similar to coho. Spread over a 10-12 year period for evaluation, tag sampling will cost about \$4 million. Therefore, the total initial facility evaluations, exclusive of any generated in the future by Category II projects, are anticipated to be (40 x \$35,000) + (\$4,000,000 sampling) = \$5,404,000. This is the figure entered in Table 4-8 as "undetermined" for future allocation from Category III funds.

Table 4-8. (as revised by Washington Department of Fisheries) Preliminary cost summary of research projects related to the settlement (in thousands of dollars).

Organization	Research Category			Total
	I (projects)	II (projects)	III (projects)	
Wash. Dept. Fish.	3,854 (1,2,3,5,6,7,8)	390 (4)	--	4,244
Wash. Dept. Game	3,030 (9,10,11)	--	--	2,000
Nooksack Tribe	5 (12)	--	--	5
Pt. No Pt. Treaty	--	--	302 (15)	302
Suquamish Tribe	426 (16)	--	--	426
Quileute Tribe	1,260 (17)	--	--	1,260
Quinault Tribe	--	385 (19)	325 (18)	710
Skagit Tribe ^{1/}	--	--	315 (21)	315
Undetermined ^{1/}	--	--	5,404	5,404
Total	8,575	775	6,346	13,666

^{1/}A joint Washington State agencies-Indian tribes' effort is recommended.

We call attention to the stated R&D budget of \$20 million in the task force proposal. The reduced total of \$13.7 million in our table results principally from our reassessment of proposed projects. At a minimum, the difference between these figures, \$6.3 million, should be placed in the undetermined category principally for Category II projects.

The research role identified on pages 70-71 of the task force report does not appear to relate to the activities discussed above. The relationship of this research to the rest of the proposal should be clarified.

Finally, we would point out that all research pertaining to the environment, and specifically directed at salmon habitat, are appropriately to be considered as part of any Phase II settlement. Moreover, we would emphasize that research funds can and must be directed at salmon food enhancement (e.g., herring) and protection. It is believed that there are adequate funds (i.e., \$13.7 million) in the proposed state budget to address these concerns without detriment to other proposed category budgets.

Aquaculture and Sea Ranching in State of Washington

Page 151, last paragraph: This statement follows closely our suggestion in response to the previous draft of the task force plan. We support the concept wholeheartedly.

CHAPTER 5
SALMON RESOURCE DISTRIBUTION PLAN

Introduction

The task force presents a salmon resource distribution proposal with the stated goal of providing "commercial and recreational fisheries with a better opportunity to share in the harvesting of productive salmon runs". The plan is based on seven principles.

- A. The need to protect and develop the salmon resource.
- B. Each group of fisheries must have a fair opportunity to participate in harvesting the surplus fish.
- C. The right to participate and harvest the surplus production should be based on equal opportunity fishery.
- D. The guarantee of the opportunity for harvest in the treaty terminal or special fisheries.
- E. The need for increased stability and resource balance in the opportunity to fish.
- F. Recognition of historic fisheries.
- G. Minimize conflicts.

General Comments on the Task Force Proposal

A major disappointment with the task force plan was its failure to recommend that the Federal District Court immediately adopt the interim resource distribution plan, similar to these recommendations for 1977 season. The result will be continued depressed non-treaty fishing opportunity, further expanded tribal opportunity that may have to be subsequently reduced in following years, and the likely loss of support for the plan that might otherwise have been forthcoming. We believe the task force may have done this as a tactical maneuver to make things as bad as possible for 1978 to blackmail support for their settlement plan.

Specific Comments on the Task Force ProposalIntroduction

Page 154, paragraph 2: It is important to note the following for future reference: "In the Puget Sound and Grays Harbor net fisheries, disparate fishing times have existed since the Boldt Decision in order to provide treaty fishermen an opportunity to share in the resource. Our proposal would eliminate the disparate fishing time so that fishermen, fishing in the same area, would fish at the same time and with the same gear." This basic cornerstone of the task force plan is violated in a number of cases.

Page 154, last paragraph: The "certain areas in the Strait of Juan de Fuca" are obviously not at the "end of the line" since they are the first net fishing location, for all incoming Puget Sound and Canadian salmon runs.

Page 160, last paragraph: The general statement that "currently, Puget Sound and coastal wild runs are overfished" is incorrect. The statement can only be applied with any degree of accuracy to the present overall status of Washington coastal native coho runs. Spawning escapement goals have generally been achieved for most other case area salmon stocks since 1974 except when entire returning runs were below escapement requirements and any fishing was banned. Data provided in the Pacific Fishery Management Council's (PFMC) "Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California Commencing in 1978" clearly documents that, with the exception of Puget Sound and a portion of the south Washington coast, chinook and coho escapements along the Pacific Coast are below expressed goals. The depressed Washington coastal coho escapements are mainly a product of rapidly accelerating ocean fishing rates under PFMC plus overfishing by Indian-managed on-reservation commercial net fisheries. For short-term management considerations, effective control of in-river net fishing rates is the most practical tool available for quickly bringing natural spawning ground escapements back to required levels, although projected controls over ocean fisheries are essential and will be helpful over the long-term.

Page 165, Table 5-1: It is important to note that the task force's own example correctly expresses true fishing opportunity in the "Area/Days" format. This has direct application to technical feasibility of subsequent proposals

involving equal opportunity fisheries, and especially in assessing the validity of the task force proposed interim plan, which will mean significant further cuts in fishing time for non-Indian fisheries. It should also be noted that the decline continued through 1976 and 1977 and that other Puget Sound net gear types mirrored this trend, as has the Grays Harbor gill net fishery.

Special Provisions

Page 175, A. Columbia River: In this instance, the plan endorses a Columbia River agreement which allocates approximately two-thirds of upper-river-origin salmon to non-Indian troll, sport, and net fishermen. Subsequent proposals involving increased Indian participation in the equal opportunity troll fishery, however, would probably shift the overall allocation 3 or 4 percentage points in the Indians' favor and could cause a situation requiring renegotiation of this agreement. In addition, the Columbia River plan correctly recognizes that any practical, workable catch allocations must be based on division of actual returning salmon runs--a fact ignored by the task force in their own proposals for Puget Sound. Finally, it should be noted that certain of the proposed enhancement projects will benefit Columbia River fisheries, including treaty Indians, despite being outside the case area. We would agree that such projects will be necessary to assure reasonable enhancement results for ocean and coastal fisheries in the case area.

Page 179, c., 1.: The previous task force plan draft provided that the interim resource distribution plans would end after no more than 5 years, with the possibility of earlier transition to the long-term plan if enhancement, gear level adjustments, etc. were completed sooner. That possibility no longer exists in the present plan and the more liberal tribal harvest may continue longer than justified. This same comment applies to resource distribution plans for other areas.

Page 180, 2., b.: Were the task force plan is to be implemented, the equal opportunity proposal apparently envisions that treaty Indians will have 20 of about 100 boats allowed to fish Grays Harbor and take 15% of the fish returning for harvest (i.e., 20% of 75%). In actual practice, this is not workable. The

80 non-Indians will have the flexibility to fish Grays Harbor, Willapa Bay, and the Columbia River in varying degrees while the 20 Indians will be "forced" to fish only in Grays Harbor. Since fishing seasons for the three areas overlap to a high degree, the entire non-Indian fleet would then have to remain in Grays Harbor to truly take their stated equal opportunity fishery "share". Past data clearly show that fishing effort in Grays Harbor can be extremely low when more attractive fishing opportunities are concurrently available in other coastal areas. Note: The state supports elimination of any special treaty fisheries in Grays Harbor, as they are wholly unjustified in light of the overall distribution of salmon on the coast (see below). Moreover, we object to this expansion of the case area from the original boundaries.

Page 181, d.: It also should be specified that treaty Indians not establish intercepting net fisheries such as those implied in Nos. 1 through 4 on page 78. Again, there is no biological or economic justification for such fisheries, and they would be counter to the U.S.-Canada "surf line" agreement.

Page 181, Table 5-3, Grays Harbor Harvest: The estimated current averages of 13,300 chinook, 17,100 chum, and 32,700 coho total 63,100 fish and would be shared inside Grays Harbor on a 60:40 basis favoring non-treaty fishermen. Prior interceptions in adult equivalents by Washington non-treaty troll and sport fishermen would add about 25,000 chinook and coho to these stocks, however, and the actual division would approximate a 71:29 split favoring non-treaty fishermen (i.e., the treaty Indian share would be 40% of the 63,100 fish returning to Grays Harbor, but this would translate into 29% of the total stock size of 88,100). Similarly, the 1987 forecast totaling 378,400 fish would be divided on a 73:27 basis favoring non-treaty fishermen if 178,300 adult equivalent chinook and coho from prior interceptions were added to produce a total stock size of 556,700. To reiterate, these figures clearly support a conclusion that no special treaty Indian fisheries in Grays Harbor are justified.

Page 182 (continuing on top of Page 183), C. Coastal Rivers:

"A comprehensive resource management policy (harvest, enhancement, environmental) for the coastal river stocks of salmon and steelhead will be developed."

The paragraph goes on to list no less than 10 different agencies which would be responsible for developing this plan. No one with any practical experience in salmon fishery management would propose such a solution since the views of only two parties have often been extremely difficult to resolve in such forums as the Columbia River Compact, IPSFC, and the present Fisheries Advisory Board of the Federal Court. Subsequent proposals for development of multi-agency "plans" present a far greater problem. Any such plan should be developed pursuant to the management process established by settlement, with emphasis on state-tribal cooperation as provided for other portions of the case area.

Page 183, e.: Zones of this size would do little if anything to protect coastal salmon stocks with the exception of late-season ocean fishing at the mouth of the Quillayute River. In reality, every Pacific coastal chinook and coho salmon stock studied to date through use of marked fish experimental groups has demonstrated the common characteristic of being harvested over a wide range in time, fishery, and geographic location. The river mouth closure concept is an antiquated one which has been proven to be of no measurable value except in limited special circumstances. The only "value" normally is that river fishermen cannot actually "see" a competing ocean fisherman in close proximity.

Page 183, 2. Final Plan: Overall management for the minimum harvest goals specified is an unworkable, textbook-type approach that does not mesh with other proposed elements of the plan. Chinook and coho salmon runs from the four coastal river systems listed are inseparably mixed with each other and with many large Pacific coastal runs when available to the ocean fisheries. The ocean fisheries can, in practice, be managed to raise or lower overall fishing rates on a single species over a broad geographical range but it is completely unrealistic to propose such a scheme for closely adjacent, individual Washington coastal rivers.

The goals could only be met by exactly matching artificial production between river systems to common ocean fishing rates. Even if this could be done, most Indian fisheries would then have to be managed to fully harvest returning hatchery stocks to the detriment (i.e., overfishing) of overlapping natural runs--a policy clearly opposed in other sections of the plan. Apparently, the task force has been unwilling to accept the fact that natural and

artificially produced salmon runs simply cannot withstand equal fishing rates. The latter is afforded full protection during all egg incubation and freshwater rearing stages, providing an advantage never experienced in natural production and can, therefore, be harvested at a much higher rate.

Page 184, e.: This would allow private- or tribally-sponsored aquaculture (i.e., "sea ranching") programs on small coastal streams to coincidentally benefit from reduced ocean fishing rates needed to meet minimum harvest requirements on the four larger rivers.

Page 185, Table 5-4, Coastal Harvest: The 1987 forecast and minimum harvest goals stated previously in the "final plan" (pages 183-184) do not agree. For example:

<u>"Final Plan"</u>	<u>1987 Forecast</u>
54,200 chinook	42,600 chinook
45,000 chum	75,000 chum
88,000 coho	109,000 coho
<u>100,000 sockeye</u>	<u>248,780 sockeye</u>
287,200 total	475,380 total

The term "minimum" for harvest goals might explain the discrepancy for three species (chum, coho, and sockeye) but the 1987 forecast for chinook is over 20% below the minimum specified. Moreover, the establishment of a minimum goal infers a guarantee. This "pledge" does not provide accountability for potential hatchery production failures that may be the fault of the tribes. It places the entire burden of weak runs on equal opportunity fisheries rather than being shared by tribal fisheries. This type of guarantee is not justified by the task force, and raises false hopes and inequities in the management system.

If estimated current averages in Table 5-4 are corrected by adding 14,700 chinook and coho to account for prior adult equivalent interceptions by non-treaty troll and sport fishermen, total stock size is 104,300 fish and the catch division is 86:14 favoring treaty Indians. If total current stock sizes for Grays Harbor and coastal rivers are added together, results are as follows:

	<u>Grays Harbor</u>	<u>Coastal Rivers</u>	<u>Total</u>
Non-treaty catch	62,900	14,700	77,600
Treaty Indian catch	<u>25,200</u>	<u>89,600</u>	<u>114,800</u>
Total	88,100	104,300	192,400

The cumulative catch division for Washington coastal salmon stocks is therefore 60:40 favoring treaty Indians.

With the 1987 forecast for north coastal rivers (474,380 fish), total stock size can be computed by adding an estimated 52,000 chinook and coho to account for prior interceptions in adult equivalents by Washington non-treaty troll and sport fishermen. Division of catch from this basis (527,380 fish) would be 90:10 favoring treaty Indians.

If total 1987 forecasted stock sizes for Grays Harbor and coastal rivers are added together, results are as follows:

	<u>Grays Harbor</u>	<u>Coastal Rivers</u>	<u>Total</u>
Non-treaty catch	405,340	52,000	457,340
Treaty Indian catch	<u>151,360</u>	<u>475,380</u>	<u>626,740</u>
Total	556,700	527,380	1,084,080

In this projection, treaty Indians are favored in catch division by 58:42. Again, this argues against continued special Indian fisheries in Grays Harbor.

Page 186, E. Ocean, d.: Again, this general statement is incorrect and can only be applied with a factual basis to certain Washington coastal coho runs.

Page 187, e.: This general statement is an unworkable, theoretical approach. In reality, natural stocks must consistently be fished at a much lower overall rate than hatchery stocks or overfishing will occur. Therefore, hatchery stocks cannot be fully harvested when the two categories are mixed. Full harvest of hatchery stocks must be accomplished by actively managing terminal fisheries to take advantage of physical stock separation and/or differences in run timing. If this cannot be accomplished, then natural rearing losses must be "mitigated for" by releases of fed fry in unused natural rearing areas. Estuarine rearing pens and off-station plants of hatchery smolts can also be utilized in some situations to provide returning adults spawners where needed.

Page 187, 2. Troll Fishery, paragraph 1: This type of statement, particularly "concentration and disbursement of effort", offers a great deal of false hope for a supposed solution which in fact has very limited practical application since most individual salmon stocks are inseparably mixed in the ocean. It could easily frustrate ongoing efforts to effectively control the same fishery by more technically feasible means. The practical applications of this theory are already well-known after years of study and appear in the 1978 salmon management plan of the Pacific Fishery Management Council.

The "stabilization" of troll fishing rates to late 1960's levels would entail an overall rate reduction of about 50% for Puget Sound coho stocks.

Page 189, (2): Adequate information systems for managing the Washington ocean salmon fisheries are already established and ongoing at the present time.

Page 189 (continued on page 190), last paragraph: Again, this statement merely offers false hope and detracts from currently feasible alternatives. The multi-agency approach proposed makes it totally ridiculous. More than adequate data are already available and have been thoroughly analyzed for far more than "the last two months" by experienced WDF salmon fishery managers.

Page 191, Charter Boats: The estimate of 558 licensed charter boats is too high since the statistic apparently includes river guide licenses. Thus, the number limits on angler capacity and licenses are also inaccurate.

Page 191, c.: This represents a completely unnecessary duplication of existing data systems. Real time in-season projections are currently provided for both charter and private boats by application of field sample data to U.S. Coast Guard and WDF boat counts. Final statistics are developed from salmon punch card returns. The third system proposed would be too slow and unwieldy to provide usable catch and effort projections for in-season management needs and would add nothing of benefit in terms of final statistics. In any case, no fisherman or charter boat operator should ever be the person directly responsible for providing basic data which decides whether or not his own activities are eventually restricted.

Page 192, g.: The 270,000 statistic given for 1975 total charter angler trips is incorrect, falling more than 30,000 trips too low. With several incorrect numbers, this entire section cannot be analyzed further.

Page 192, F. Strait of Juan de Fuca: The conclusion comparing this fishery to an ocean fishery is incorrect with respect to any salmon net fishing. For any such fishery, the Strait is merely the first location where incoming salmon runs of Puget Sound- and Canadian-origin (not coastal and Columbia River) are subject to net harvest.

Page 193, paragraph 1: Fisheries in the Strait take significant numbers of fish from salmon runs with no harvestable surpluses. Inside net fishery management for Puget Sound and Canadian salmon runs should begin where net fishing begins (i.e., the Bonilla Point-Tatoosh Island line) and should not be compromised solely for the convenience of a few Indian fishermen. Further, there is no point in establishing any allowable harvest rates for Columbia River or coastal runs in this area, with the possible exception of the winter troll fishery, as pointed out earlier some of these runs are already overharvested. The settlement plan continually emphasizes "equal opportunity" fisheries and their benefits, then proceeds to place special treaty Indian troll, set net, and beach seine fisheries right between the major ocean troll and Puget Sound net equal opportunity fisheries. The tribes and fishermen involved can receive more than ample total opportunity via participation in equal opportunity troll fishing, equal opportunity net fishing on sockeye and pink salmon, and special terminal area tribal fisheries on enhanced stocks in a number of north coastal and Strait tributary streams.

Page 194, 1. Licensing Areas: Again, this whole section is completely unnecessary and compromises basic objections of the overall settlement proposal. Furthermore, high net "drop-out" rates and chronic problems with immature chinook salmon (i.e., "blackmouth) are biological arguments against any commercial net fishery in this area. Also, harvest rates in this area apply equally to weak, intermixed Puget Sound runs that may require complete protection. Finally, were special tribal licenses to be authorized, basic jurisdictional issues raised in Chapter 2 are again in evidence.

Page 194, 2. License limitations: The units of gear specified are significantly higher than average daily numbers of landings currently being reported for this area. The prohibition of purse seines further compromises the basic "equal opportunity" objectives of the overall proposal and was probably added simply because Indians did not wish to use purse seines in this area.

Page 194, 3. Limitation on days per week: A 4-day week with the units of gear specified can significantly impact the whole resource distribution plan and make it impossible to implement the basic interception limitation system currently being developed in U.S.-Canadian salmon negotiations. In recent years, the State has not allowed non-Indian net fishing in the Strait outside IPSFC jurisdiction.

Page 195, (1): The set net fishery to be allowed would impact conservation needs of any chinook stock which happens to be present, except Strait runs.

Page 195, 4.: The winter troll fishery proposed would lie at the very bottom in any listing of Pacific coastal salmon fisheries ranked on the basis of the broader "wise use" connotation of conservation. The salmon harvested would average only about one-fourth to one-third of their final growth potential and would be harvested with high hooking mortality losses to many fish smaller than the size limits specified. The chinook minimum size limit would be even smaller than that currently allowed recreational sport anglers in the same area (24 inches). The data are conclusive that a large majority of fish taken are of Washington and Columbia River-origin. Again, the task force has violated its basic principle of eliminating special fishing seasons. Additionally, provision of Tribal Commission jurisdiction over this fishery contravenes clear lines of state and federal jurisdiction.

Page 196, G. Puget Sound and International Pacific Salmon Fisheries Commission, a.: This statement is misleading in light of other parts of the plan. The 40% going to the TCMZ will be considerably more for salmon actually returning to Puget Sound since the term "Puget Sound marine area fishermen" apparently means prior troll, special treaty troll and Strait fisheries, and sport interceptions plus catches made by both treaty and non-treaty net fishermen in Puget Sound equal opportunity fisheries. The overall interim Puget Sound share for Indians would be 43 to 45% (40% plus 3 to 5% for the above inclusions), or 7 to 9% less than the 52:48 division favoring Indians that the task force predicted for full implementation of the Boldt Decision.

If north coastal salmon are added to Puget Sound predictions, the various interim plans proposed would provide a case area allocation of 46 to 48% of all fish to treaty Indians. This would come to within 4 to 6% of the letter of the

Boldt Decision for the first five years of the proposed settlement, and result in restrictive SCMZ equal opportunity fisheries very similar to, or more restrictive than, those which existed for non-Indians during the 1974-77 period.

Page 197, a.: The "thirteen percent of other species" is approximately correct in the case of chinook salmon but is nearly double the Indians' actual harvest of much larger coho and chum salmon runs of Canadian origin. Most of the harvest of these latter two species occurs during periods of state management control, not IPSFC jurisdiction. The shares specified could only be achieved by continuation of special Indian-only fishing time for portions of the SCMZ, another conflict with stated goals of the plan.

Page 198, a.: Again, the 33% stated would translate into a considerably higher percentage of salmon runs actually returning to Puget Sound. The actual percentage of incoming salmon runs which would have to be "passed through" to the TCMZ's is approximately 45% for all species combined. By species and region, it would range from a high of nearly 60% for some chinook salmon runs to a low of 33% for some chum salmon runs.

Page 199, (2): Surplus escapements of naturally-spawning salmon are also a distinct possibility and must be taken into account.

Page 200, (4)--This paragraph states: "It is the intent of this plan that each of these terminal areas have approximately the opportunity set forth above." Sharing is technically feasible on a species-region basis if based directly on incoming salmon runs but becomes impossible with the latter stipulation. First, all salmon runs entering a region would have to be of identical strength (i.e., same allowable fishing rates for all), which is uncommon. The same strength between regions is even rarer, thus net fisheries on salmon stocks from more than a single region could seldom be allowed. (This would apply to the Straits, Discovery Bay, and Admiralty Inlet fisheries or Areas 4B, 5, 6, 6A, 6B, 6C, and 9.) Even if stocks entering a region were of identical strength, then the only geographical locations where marine area net fishing could be allowed is where all regional stocks were still present. For example, Area 10 (South Puget Sound) begins at a line from Apple Cove Point to Edwards Point. A marine net fishery could be allowed immediately south of this line since all south Puget Sound stocks would still be present. As soon as Kitsap Peninsula and/or Lake

Washington stocks began to leave the area, however, any fishery further south would be impossible to justify since the mixture of stocks changes. The overall impact would be that equal opportunity marine fisheries could not really be allowed in over 90% of the south Puget Sound SCMZ area. Clearly, the task force resource distribution plan and the gear-up - gear-down programs are rendered ineffectual by these factors.

Page 201, b.: This goal is impossible to achieve on a species by species basis. For example, in the case of south Puget Sound chum salmon, where no prior troll or sport interceptions occur, the SCMZ would have to be managed to take two-thirds of the allowable harvest with the remaining one-third being passed through to the TCMZ. Indians would have 28% of the gear in the SCMZ and take nearly 19% of the overall harvest here (i.e., 28% of two-thirds of the fish). The treaty share would then be 52% (33% plus 19%). In the case of south Puget Sound chinook, however, prior non-treaty troll and sport interceptions would make it necessary to pass 58% of the incoming chinook runs through to the TCMZ. Again, Indians would have 28% of the SCMZ gear but in this instance could realize only about 7% of the total harvest in the equal opportunity fishery (28% of 24% of the total harvest). Their overall share would be only 40% (i.e., the 58% of the inside run representing one-third overall plus 7%), or 12 percentage points less than in the case of chum salmon for the same region. Each species-region combination will have a different proportion that can be harvested in the SCMZ due to differences in prior interceptions. The Indian SCMZ fleet would remain a constant 28%, thus their true share will vary by species and region. The only theoretical solution to achieve consistent shares by species would be to vary fleet mix in the SCMZ zones by region and species--a totally impossible technical approach that also clashes with several other parts of the plan.

Additionally, if sharing is not done equally by species, then any overall combined percentage becomes meaningless. At typical commercial fish prices, for example, each pink salmon is only 15% of the value of one chinook salmon and the three other species fall in-between at various points.

To conclude, there is absolutely no way to manage salmon in accordance with the task force plan so long as prior interceptions are included in a sharing plan for inside fisheries (witness again the Columbia River plan which recognized this impossibility).

Page 201, C.: The next to last paragraph makes clear the intent to share Puget Sound-origin salmon on an overall 52:48 basis favoring non-Indian troll, net, and sport fishermen. in aggregate. The actual Puget Sound commercial net fishery harvest would be shared on about a 60:40 basis favoring treaty Indians for all species combined (45% TCMZ catch plus 15% in equal opportunity areas for treaty Indians).

Page 202, a.: As in the Puget Sound section, the proposal again states that Indians will be provided with a 25% share in the equal opportunity fishery. Table 8-5 on page 293 provides the Indians with 28% of the Puget Sound purse seine and gill net gear. Since reef nets do not even operate on Puget Sound-origin stocks to any significant degree, the Indians will actually be accorded a 28% fishing opportunity on Puget Sound runs, not 25%.

Page 202, b.: The task force has included prior troll and sport fishery interceptions in their sharing formulas for Puget Sound-origin salmon but has treated the sharing of Canadian salmon in the opposite manner by excluding prior troll and sport interceptions. Actually, both sharing formulas need to be done by this latter method unless the "fleet mix" is changed for each species. Any allocations plus final adjustments in overall harvest rates must occur on actual runs returning to Puget Sound and Canada regardless of the statistical manipulations involving prior troll and sport catches. Accurate in-season run size predictions must be made for these incoming runs and harvest objectives plus any catch allocations must be achieved through intense, day-to-day management of the aggregate of treaty and/or non-treaty commercial net fisheries. It must still be done in this manner regardless of the starting point of any sharing formula.

Page 203, d.: The 60:40 conclusion is only valid for the specific mix of Puget Sound and Canadian salmon forecasted since it is achieved by a certain weighting of 52:48 and 75:25 catch divisions. As enhancement proceeds, the 60:40 would move much closer to 52:48 because the U.S. is unlikely to share in Canadian enhancement under proposed terms of U.S.-Canada agreement.

Page 204, Table 5-5: This provides some of the numbers needed to evaluate overall case area results against the the Boldt Decision. For current catches, results would be as follows:

	<u>Coastal Rivers</u>	<u>Puget Sound</u>	<u>Total</u>
Non-treaty catch	14,700	843,000	857,700
Treaty Indian catch	<u>89,600</u>	<u>741,000</u>	<u>830,600</u>
Total	104,300	1,584,000	1,688,300

This gives a cumulative 51:49 catch division favoring non-treaty fishermen for all Washington-origin salmon stocks in the "case area". Since treaty Indian catches for the special Straits troll, set net, and beach seine fisheries plus their increased participation in the equal opportunity troll fishery do not appear to be reflected in these tables, the true division proposed is probably 50:50 or 51:49 favoring treaty Indians. The stated, but unquantified, exclusion of prior interceptions for Canadian salmon (likely a non-growth fishery for U.S. fisheries) favors non-Indians but the 28% gear opportunity for Indians counterbalances it to some degree. In any case, the division proposed for all Washington-origin stocks at current production levels is within 1 or 2 percentage points of the letter of the Boldt Decision. (The settlement predicts this "Estimated Federal Court Formula" as 52:48 favoring treaty Indians. This is composed of a 50:50 division of Canadian fish and a 55% share of Puget Sound salmon for Indians. This is unrealistic, however, since the 50:50 balance for Canadian salmon cannot include any Boldt Decision exclusions for on-reservation, ceremonial, and subsistence catches. These were probably lumped with the Puget Sound statistic. Further, calculations for both Canadian- and Puget Sound-origin catches in 1977, as well as the 1989 forecasts, were done incorrectly in spite of the task force's supposed reliance upon statistics from and/or agreed to by WDF. Additionally, the 50:50 catch division in the Straits' net fishery does not mesh with the overall division of Canadian fish. However, sufficient details are not provided to detect and evaluate any of the specific sources of error. For this reason, their predicted 52:48 overall division is used for comparisons to the Boldt Decision.)

The only thing which causes a shift from the Boldt formula is a proposed 75:25 division of Canadian salmon favoring non-Indians. (Again, this is really not 75:25 due to exclusion of prior interceptions and the variations in gear which do not reflect true opportunities.)

For 1987 forecasts of the task force, actual results would be as follows:

	<u>Coastal Rivers</u>	<u>Puget Sound</u>	<u>Total</u>
Non-treaty catch	52,000	3,607,000	3,659,000
Treaty Indian catch	<u>475,380</u>	<u>3,257,000</u>	<u>3,732,380</u>
Total	527,380	6,864,000	7,391,380

With these forecasts, results for Washington-origin stocks would be an exact 50:50 catch division. The unquantified additional Indian catches listed previously would probably be sufficient to shift the balance to a 52:48 sharing favoring treaty Indians--complete implementation of the Boldt Decision.

General Terms

Page 205, Sport fishing-ocean and marine areas (non-charter): There is no valid reason to make any artificial separation in recreational fishery management between anglers fishing from charter versus private boats. Charter boats are merely a support service, not a direct "user group" in the same context as trollers, seiners, and gillnetters, and should not be treated as such. The fishery must be managed as a recreational fishery, not by type of boat utilized. Further, the plan is made unworkable by establishing a 1975 base for charters and a 1976 base for private boats participating in the same fishery. Any management scheme must be based on angler participation by both groups combined, with base year levels the same.

Page 206, paragraph 1: This statement is badly worded since it will be interpreted as meaning that sport fisheries should be closed wherever net fisheries are closed for conservation purposes. It is impossible to manage both fisheries on the same basis and more than adequate data on past attempts are available to conclusively prove this point. Moreover, the peculiar nature of this fishery demands relative stability for obvious economic reasons. River sport fishing regulations should be developed well in advance of each season and provided to the public in regulation pamphlets. Any in-season adjustments on an emergency basis should be held to a minimum. They should only be used when actually needed to accomplish a significant savings of fish, not when net fishermen think sport anglers should be curtailed. In any case, they are only appropriate when net fishing has been closed for conservation throughout the entire run. Further, river sport fisheries should not be closed merely because ocean fishing rates are being reduced somewhat. The proposal on jack salmon is also poorly worded since it should only apply where there is a definite problem actually created with respect to adult spawners.

Page 206 (continued on page 207), D.: This section is incorrect and its fallacies can be documented through review of marked fish experimental group

results, including the task force's own data base. Delayed-release chinook provide better returns per pound released in many situations for both non-treaty and treaty fishermen. The types of rearing utilized are those producing best overall yields to all Washington fisheries (treaty and otherwise). It would be ridiculous to produce poor adult returns for Indians just to "get even" by also reducing the numbers of salmon available to sport anglers. Further, a viable sport fishery in Puget Sound must be based primarily upon an abundance of immature, feeding fish, not increased returns of adult spawners which do not bite well and are only available for a brief period.

Page 207, E.: The primary reason for this entire section is that many tribes are opposed to any fishing outside Court-specified usual and accustomed areas. Much of this pressure is from several tribes fortunate enough to have broad treaty fishing areas at the present time. While some of the other aspects listed have merit, the true reason for this section is missing.

In actual practice, each group must have identical opportunity in terms of "area/days" (see Table 5-1, page 165) or the whole concept is unworkable. For example, if Area A is open for coho fishing in September but closed for chum in October while Area B is closed for coho but open for chum, an individual boat which can fish both areas obviously has a much better total "opportunity" (i.e., more area/days) than any other boat which could only fish a single area. Unless area/days are identical, some boats will eventually have to be tied up while others are fishing, and the basic equal opportunity concept will not be fulfilled. Treaty Indians must be able to fish throughout Puget Sound or both Indians and non-Indians must have an identical system of area licenses. The wishes of the tribes to limit their fisheries without good reason in no way provides adequate justification for the State Legislature to adopt a similar system for state licensed fishermen.

Page 209, paragraph 2: The apparent need for a special Strait license is not valid and certainly has no place in the justification for an overall area licensing system. The 35 non-Indian Strait licenses represents a tremendous jump in potential fishing effort since the State has not allowed any non-treaty Strait fishing under State regulations in recent years (i.e., outside IPSFC jurisdiction). NOTE: Also, see comments under heading, Page 194, 1. Licensing Areas:

Page 209 (continuing on page 210), F.: It is totally inconsistent to propose closures of Areas 6, 6A, and 6C (inner Strait) after proposing major, guaranteed fisheries in the outer Strait (Areas 4B and 5). Further, Areas 6B and 9 are mixed-stock catch areas, but Areas 10, 11, and 12 are not by the task force's own definitions (see Nos. 7 through 11 in "Definition of Terms as Used in this Report" on pages 214-215).

Page 210, G.: Unless tribal fishermen have exactly the same flexibility of non-treaty fishermen, the entire equal opportunity concept cannot succeed as proposed. Therefore, the tribes must provide this opportunity and it cannot be an "option". Tribal participation in the troll fishery would be allowed to increase significantly over current levels and this proposal does not appear to have been analyzed in any detail with respect to altered resource distribution. Again, the 28% of the Puget Sound fleet proposed for Indians does not mesh with their stated 25% catch opportunity.

Page 211, 4.: Any non-treaty fishery in the TCMZ would merely take a portion of the tribal share. No tribe would support this without some compensating adjustment in the resource distribution proposal. Further, all of the terminal gear types specified except drift gill nets are illegal under current State laws. Thus, the task force provision is a shallow one at best.

Page 211, 5.: This would be unworkable unless area licenses were in effect and the shift applied identically to all TCMZ's in a production region. Non-Indian fisheries are concerned that federal funds may be utilized in the future to build tribal fleets beyond settlement capacity limits, promoting unfair competitive advantage.

Page 212, C.: The primary benefit to be derived from a fish trap would be its ability to allow the selective harvest of male salmon surplus to spawning escapement requirements. The concept that such traps would be utilized at a tribes discretion and without assurances of state jurisdictional control (except on-reservation) renders this proposal a political impossibility in the state.

Page 212, H.: The proposal for a 1% margin of error is totally unrealistic. For example, in 30 years (1946-1975) of managing Fraser River sockeye runs, a

less complex management problem than Puget Sound, IPSFC has missed the 50:50 allocation by more than plus or minus 1% on 18 different occasions. During 16 odd-year pink salmon runs (1945-1975), their catch ~~division~~ has been within one percent only twice. To hold management agencies to an impossible standard, where no clear malice or mismanagement is involved, and without assurances that such errors will not lead to a federal takeover (suspension), makes us wonder if the ultimate goal of the task force settlement is in fact removal of state jurisdiction over the salmon resource.

Page 216: There is no valid reason for including early season catches of non-local chinook in the Grays Harbor allocation since treaty fishermen have consistently shown little interest in this fishery, the catch in any given year has no correlation to strength of local salmon runs and the fish involved do not even reach or pass through the specified TCMZ. Again, special tribal fisheries are not justified for Grays Harbor.

CHAPTER 6
STEELHEAD RESOURCE DISTRIBUTION PLAN

Introduction

The task force proposal concerning steelhead trout ignores the considerable controversy and highly emotional atmosphere surrounding this resource. Although the steelhead is a relatively small part of the total anadromous fish resource, the recreational fishermen in the State of Washington view this species with almost religious fervor as a champion trophy fish most wisely and economically used for sports fishing. We have presented considerable information to the task force which indicates clearly that the economic value of sport-caught steelhead far exceeds the commercial value. However, so long as markets in the state exist for the commercial sale of steelhead, it is clear that this more less wise use of the resource will be perpetuated.

The task force plan in no way puts an end to commercial harvest of steelhead. The plan provides for considerable salmon enhancement in streams in which commercial steelhead fishing is to be perpetuated. The commercial sale of steelhead will continue for the term of the settlement on the Nisqually and Puyallup Rivers. Yet, salmon enhancement projects and other economic assistance aspects of the settlement plan more than offset any losses by the tribes if these fish were to be treated as an exclusive game fish now. The task force has not shown economic dependence on the annual commercial sale of steelhead for the tribes on those watersheds, nor has it addressed the potential for illegal sale of steelhead which necessarily evolves from a failure to close off all markets in the state.

The task force plan for coastal streams indicates that de-commercialization on the coastal rivers might occur over time, once certain criteria have been met. However, it is our view that the criteria established by the task force are so stringent and out of touch with realistic economic offset goals that de-commercialization on these rivers is likely never to occur, thus assuring even larger commercial markets for the sale of steelhead long into the future.

Specific Comments on the Task Force Proposal

Page 219, Table 6-1: In the case of steelhead, the task force includes catches by the Chehalis Indian Tribe on their reservation at Oakville on the Chehalis River. This tribe appears to be a third category party, a "non-treaty" Indian. In any case, they also take significant numbers of chinook, coho, and chum salmon, but the task force failed to acknowledge their occurrence in the previous chapter on salmon resource distribution.

Page 223, paragraph 3: The task force plan would allow the Puyallup Tribe to harvest for commercial sale 20% of the total harvestable number of steelhead entering the Puyallup River up to a ceiling of 2,500 steelhead. It is the state's position that the Puyallup Tribe's economic dependence on steelhead is no greater than the many other tribes who have agreed to refrain from fishing for steelhead in exchange for other adequate fishing alternatives. Moreover, a compensation plan to offset any economic loss to the tribes has been developed in draft form by the Commercial-Recreational Fisheries Delegation. This type of plan, together with enhancement projects, gearing-up programs for commercial salmon harvest, expanded tribal research and enforcement operations, and the like more than offset expected economic losses. We will comment on the plan in detail on its availability. Again, the detriment of having any commercial markets in the state, with potential inducements for illegal sale of steelhead from other watersheds, in no way justifies a continuation of this minimal commercial fishery.

Page 223, last paragraph: The task force plan allows for the commercial sale of incidentally caught steelhead on the Nisqually River not to exceed 4,000 steelhead per year. We recognize the present factors causing incidental catch which result from the unique late chum fishery on the Nisqually River. Obviously, until such time as appropriate management decisions are agreed upon between the tribes, WDG, and WDF to eliminate such conflicts, it would be impossible to totally preclude incidental catch of steelhead in this watershed (this is true to much lesser extent on some other rivers as well). It is our view that the fact of incidental catch does not justify the commercial sale of such steelhead. In lieu of maintaining commercial markets, the Commercial-Recreational Fisheries Delegation will suggest provision of an income replacement grant to offset the

benefits of such commercial sale and a plan which would provide for the distribution of incidentally caught steelhead by the Tribal Commission to various tribes in the case area for ceremonial and subsistence purposes. We support this plan as the most appropriate means of dealing with tribal incidental catch, and for eliminating undesirable commercial markets within the state. Further, we agree that ceilings on the level of incidental catch on a tribe-by-tribe basis should be imposed to further inhibit unreasonable incidental harvest of steelhead.

Pages 224 to 229: A number of comments on the north coastal Washington salmon resource distribution plan (Chapter 5) dealt with the impossible nature of such elements as minimum harvest goals, three mile river mouth closures, and getting ten different agencies to agree on a "management plan". The task force proposal now takes these unachievable goals and holds them "hostage" for the phasing-out of commercial steelhead fishery.

The so-called "phase out" plan for coastal rivers presents a number of other problems. For instance, Phase I(b) (page 225) would require the federal government to provide funding for research and enhancement projects for the Quinault, Hoh, and Quileute Tribes as a condition precedent to the phasing-out of commercial steelhead harvest on the coastal rivers. On the other hand, state and tribal negotiators have agreed that no research and enhancement projects are to be approved unless they fit within a comprehensive statewide enhancement plan. In essence, the Phase I(b) condition amounts to a requirement that enhancement projects for steelhead on coastal rivers be approved regardless of their merit, if de-commercialization is ever to occur. This amounts to little more than open blackmail to secure federal funds and is inconsistent for three of the projects with the task force's stated support of centralized support facilities (Chapter 4).

Phase I(c) (page 226) would require the establishment of coastal zones to be closed to commercial fishing. We have indicated in Chapter 5 our disapproval of such a system and its limited value from a management perspective.

Phase II(a) (page 226) provides for the development of a long-term master plan for resource management on the coast. It is not clear whether this management plan is to be applied to both salmon and steelhead. In essence, the task

force is calling for special resource planning for coastal rivers apart from that called for for the rest of the case area. There is no justification for treating this part of the state as separate from all other areas. In fact, it would be impossible to develop a comprehensive statewide plan along the lines suggested by state and tribal negotiators, and as described by the task force in its enhancement plan were the coastal areas to be managed pursuant to a separate plan. Additionally, the task force calls for as many as ten agencies, many with a long history of never reaching agreement with regard to salmon or steelhead management, to be involved in the development of this master plan. Not only is this process cumbersome, not to mention the potential for duplication of effort or operation at cross-purposes with the total management plan, but it is most idealistic to assume that it is workable. Finally, Phase II(a) would involve the same ten agencies in "consideration of the enhancement program on the Columbia River". Are the ten agencies to be responsible for coordinating a coastwide management plan among federal, state, and compact management entities? If so, this management plan significantly abrogates the jurisdictional authority of the tribes on-reservation and the state off-reservation, not to mention the management system contained in the settlement plan!

Phase II(b) provides that sport steelhead fishing rates in all watersheds of the five treaty areas would have to be stabilized to assure "viable natural production". On the one hand, the task force has separated out the management of coastal rivers by providing special jurisdiction to the coastal tribes off-reservation and by providing for a separate long-term master plan to be developed by ten state, federal, and tribal agencies; on the other hand, the plan ties de-commercialization of steelhead on the coastal rivers to the achievement of management objectives in other treaty areas. What is the justification for this "schizoid" approach to management? Finally, what is the task force's definition of "viable natural production"?

Phases II, III, and IV of the task force plan necessitate significant reduction or limitation on Canadian interceptions consistent with goals proposed in the salmon resource distribution plan. Can the task force truly promise that this goal is attainable in the near future (we support the goal, but do not believe this settlement should be tied to the success of Canadian negotiations). We reiterate our concerns regarding the involvement of a Canadian-U.S. agreement and emphasize that many aspects of the task force plan will make

it most difficult to reach such an agreement. Clearly, the significant enhancement projects for salmon contemplated in the coastal rivers will be far more effective if the Canadian interception agreement is reached. Yet, the task force seems to be suggesting that to compensate the tribes for "getting off" steelhead, the minimum goals established in the salmon plan must be met. We would point out that those goals provide an expansion of the salmon resource of almost 400,000 salmon per year. When compared with the actual commercial harvest levels of steelhead in the coastal rivers, the task force criteria appear all the more ridiculous (in an economic sense).

Finally, the task force provides primary management responsibility for both salmon and steelhead management, as well as enhancement and enforcement planning, on the Quinault, Raft, and Queets Rivers, to the Quinault Tribe. As indicated in Chapter 2, this is a considerable abrogation of state jurisdiction off-reservation and is totally unacceptable to the State of Washington.

CHAPTER 7
WASHINGTON STATE LICENSE AND FLEET ADJUSTMENT PROGRAM

General Comments

The State of Washington has long maintained that the only effective manner in which to realize a fair and equitable settlement is to develop a rational system of resource enhancement coupled with a fleet adjustment program which would result in an equal opportunity fishery. It is agreed by all parties that too much fishing gear currently exists to harvest the present level of what has been a diminishing natural resource. This problem has been exacerbated by conditions evolving since U.S. v. Washington, resulting in an industry that has experienced significant losses in total annual harvest.

As a consequence of the existing situation, the State fully endorses a settlement plan which will continue at considerably expanded levels the vessel, gear, and license "buy-back" program which it initiated more than three years ago. Fortunately, the State, the Federal Government, and the industry had enough foresight at that particular time to recognize that such a program would be an important element in preserving a viable commercial fishing fleet. We agree with the task force that gear reduction through what is essentially a voluntary program is a critical element of any settlement.

We would, of course, prefer to institute such a program exclusively on a voluntary basis. However, we recognize that there are a number of salmon fishing licenses issued each year to parties who have no serious desire to participate in a given fishery. Moreover, the cost of eliminating inactive licenses through the voluntary program is not justified because of the lack of true dependence of such fishers on the resource. Thus, we are willing to endorse the mandatory retirement of certain licenses for a reasonable retirement remuneration.

A reasonable, cautious approach to fishing gear reduction should be followed. One concern is that the plan avoid a situation where the salmon resource reaches a point at which existing gear power would not be sufficient to capture all of the harvestable fish, or where only a few wealthy fishers benefit from the plan. This is certainly a possibility if a massive state and federal enhancement program reaches or surpasses anticipated production

levels. Additionally, the proposed plan must be realistic from the standpoint of acceptability to users whose interests are primary with regard to anticipated program results. As a consequence, the State is considerably more comfortable in recommending a fleet reduction program which seeks to eliminate on a non-voluntary basis only those who are not serious about commercial salmon fishing.

It is our position that those fishermen who are truly "inactive" could be retired from the various fleets if the bottom three percent of each commercial gear type were used as the level for mandatory license retirement. This is particularly true if an alternate resource distribution plan, as is proposed by non-treaty user groups, is approved. The concept proposed for reimbursement for licenses made by the regional task force seems satisfactory.

It must be remembered that an adequate protection standard to accomplish equal opportunity levels for treaty and non-treaty fleets is built into the program in two distinct ways. In the first place, the threat of withdrawal of significant federal funds virtually guarantees sufficient effort to accomplish objectives within the settlement time frame. Secondly, if the objectives are not met by either party, any dispute could be resolved by the Fisheries Review Board and/or other courses of action outlined in the management portion of the settlement plan. The State's position is that with the mandatory license retirement of those falling at three percent and below for each of the commercial gear types, and voluntary "selling" of licenses at levels described by the task force (with their proposed bonus plan), the goal of reducing the non-treaty commercial fleet to our proposed adjusted gear levels would be reached. Perhaps as important, the State will have a wide variety of additional devices available to it to achieve such results if the proposed program fails. These devices are being studied at this time to determine whether certain of them can be utilized to improve the effectiveness of the proposed plan or minimize costs over time. (This suggests that reasonable flexibility be built into the settlement plan and budget.)

Specific Comments on the Task Force Proposal

Pages 244 & 245: Two potential problems regarding the troll fleet are identified. Difficulty in securing adequate stabilization of the troll fleet can be created if owners of small vessels can purchase larger vessels with greater capacity to harvest salmon. The second problem is associated with the

potential for troll license holders from other jurisdictions who have not traditionally fished in Washington coastal waters to take advantage of the situation. Any such increases would defeat the very objective of the settlement plan. We believe that it is the intent of the task force that these matters be resolved, but such terms of settlement must be articulated with greater emphasis and clarity.

Pages 246 - 251: Some concern is generated by the conclusions reached in the Charter Boat License Reduction section. It should be noted that freshwater fishing guides are licensed under the same program as the ocean-going charter vessels. As a consequence, the total number of ocean charter boats as stated in the plan is not correct. Given that fact, it is questionable that the reduction figure established by the settlement document is necessary in order to accomplish the stated goal. An appropriate remedy to these defects is articulated in the latest draft of the Commercial-Recreational Fisheries Delegation proposal.

Page 258: The task force calls for the provision of \$5 million in State funds for the buy-back program. With the considerable administrative burdens attached to the proposed settlement, largely unfunded, with the obvious benefit of this program to the tribes, and with this settlement in large part evolving from federally instituted litigation and Federal court decisions, we are concerned that this budget requirement may not be acceptable to the State Legislature. This is particularly true in light of the \$33 million state enhancement program which was enacted by the Legislature as enticement to resolve the fisheries conflict, and the considerable administrative budget requirements which have been funded by the state to date relating to this conflict.

Page 261: The administrative budget for a \$60 million program (\$700,000 plus) is far too low. We would suggest that all budget proposals include a standard provision for transfer of funds among budget classes and from program to program.

Pages 273 - 280: The projected impact of the program articulated in the text differs from those articulated in the various charts (see comments in Chapter 8 for proposed gear ceilings based on the above proposed amendments).

CHAPTER 8
TRIBAL COMMISSION LICENSE AND FLEET ADJUSTMENT PROGRAM

General Comments

Pages 282-293: The State has generally indicated that the program to gear-up the tribes is essentially the business of the tribes and the federal government. However, we must comment on two issues associated with the regional task force proposal to increase the treaty fleet. In order to accomplish reasonable gear reduction and to implement the goal of an "equal opportunity fishery" pursuant to a fair and equitable resource distribution plan along the lines described in recent user group draft positions, it appears that the following balance in commercial gear would accomplish the desired end:

Purse seines - 60 treaty and 240 non-treaty
Gill net - 240 treaty and 960 non-treaty

The Columbia River agreement is based on the expectation of a continued low treaty Indian ocean interception rate on Columbia River stocks. Adjustments are already built into the in-river catch sharing formula to account for substantial prior non-treaty ocean interceptions. A significant buildup of treaty Indian ocean catches would necessitate renegotiation of the Columbia River agreement with some subsequent downward revisions in the in-river catch shares allocated to treaty Indians above Bonneville Dam. Thus, while we support a plan for a ten percent opportunity fishery in the ocean, it must be recognized that implementation of such a plan necessarily means revision of the Columbia River plan. The proposed gear balance in the ocean would be: 100 treaty vessels and 900 non-treaty vessels. Limits imposed on the non-treaty vessel size to restrict gear power by the task force plan must be equally applied to the treaty fleet. There is no need for specification of relative fleet sizes in Grays Harbor for reasons stated throughout this report.

The second issue of concern is the fact that moratorium levels for the treaty marine skiff and river fisheries must also be established. The State acknowledges that the Tribal Commission is the logical entity to assume that responsibility. However, it must be articulated that the gear ceilings to be established must conform with sound management principles and in no way impinge on the settlement goals. The plan would be appealable to the FRB in the event of a disagreement between the State and the Tribal Commission regarding its terms.

CHAPTER 9
ENFORCEMENT

Introduction

The task force has recommended an enforcement program that incorporates most of the basic elements of a plan agreed to by State and tribal negotiators.

Basically, we accept the general assessment and conclusions reached by the regional task force insofar as enforcement needs are concerned. We would reiterate that the existing confusion on the waters is in no way to be considered as a reflection upon the professional enforcement officers who are seeking to carry out the function which is assigned to them. Obviously, laws and regulations must be stabilized, public understanding improved, professional enforcement increased, fishermen confidence and respect restored, manpower and material made adequate, and a timely, orderly judiciary system maintained.

Listing of Specific Comments on the Task Force Plan

Page 298, General assessment: We feel it necessary to emphasize the footnote observation on page 298. The negotiated agreement on enforcement represents the conclusions of the State and tribal negotiators. The elements presented cannot be considered binding until such time as they are ratified by appropriate tribal, State, and federal entities.

Page 303: The section outlining the purpose and procedure of the Joint Enforcement Committee is acceptable. However, a critical concern emerges in the section dealing with Authority, specifically, under Comparable Procedures, item 5 on page 303, reference is made to "cross-deputization". Mention is made that if it were to occur, standardization of arrest and seizure procedures should be established. On page 52 of the settlement plan, reference is made to the fact that the State would cross-deputize tribal enforcement officers. No such agreement was made by the negotiators. More accurately, it was generally observed that cross-deputization might be a natural evolution to the joint efforts over time. However, no specific mandate for jurisdictional authority regarding cross-deputization would be instituted as part of the settlement; this was deemed inappropriate by both state and tribes.

Pages 304-307, Joint training: We fully endorse the need for an extensive basic training program for all qualifying personnel. In addition, appropriate, advanced and in-service training would be a necessary supplement to an officer's experience. It is important to note that the negotiating teams for the State and tribes were able to develop a training program model which is considerably more detailed than that reflected in the regional task force document. The negotiators agreed to a structure which would include not only a board of directors for training, but a limited full-time administrative staff. The two parties observed that the State community college system might provide an excellent vehicle through which a training program could be delivered. Both entities were concerned that certain minimum qualifications for employment be established and that common hiring practices be utilized.

Pages 307-309, Joint enforcement: The State supports the concept of joint patrol efforts in identified appropriate cases, which would basically be administered through existing State regions and treaty areas. Such joint patrols could serve to increase effectiveness, reduce potential costs, and generate understanding by all parties of the unique problems faced by each entity. Each area or region would establish a planning committee to coordinate efforts within that area. This committee would be responsible for anticipating needs and generating the most appropriate response, with joint patrols one of many potential enforcement devices.

Pages 309-311, Equipment and material: We have long maintained the need for additional and better equipment to fulfill the enforcement function. Standardization of such equipment is a logical methodology to enhance the cooperative working relationship envisioned. A special radio frequency is necessary to provide for private communications between each of the officers. On page 311, mention is made of the need to identify those officers who have been cross-deputized. While the State agrees that State and tribal enforcement officers might wear similar uniforms, no current need exists to identify individuals who have been cross-deputized. Again, it was agreed by State and tribal negotiators that cross-deputization is wholly inappropriate at this time and should not be required by settlement.

Pages 311-314, Data systems: The data system outlined in the document is endorsed by the State. However, cost sharing arrangements must be made.

Pages 314-315, Buyer level enforcement: The limited emphasis given to buyer level enforcement in the regional task force document does not do justice to the concept which has been developed through negotiations. The State has generated and the tribes have agreed to such a proposed effort, knowing that it would serve in the long run to deter illegal fishing in a cost-effective manner. In essence, there is no need to submit a new proposal to a joint enforcement committee since both entities have already agreed to the need and have approved the general terms of a plan.

CHAPTER 10
CANADIAN INTERCEPTIONS

Specific Comments on the Task Force Proposal

Pages 316-319: On the surface, the task force proposal for the U.S.-Canadian salmon interception issue appears to be one which all concerned groups can support. Unfortunately, their proposal neglects to even mention a major element of this issue--U.S. interceptions of Canadian salmon other than Fraser River sockeye and pink salmon runs. The following listing provides the latest agreed-to species, areas, and gears which would come under the 1971-1974 base period numerical interception limitation program.

<u>Species</u>	<u>Area</u>	<u>Gear</u>
Sockeye	4B, 5, 6, 6A, 6C, 7, 7A	All
Chum	Same	All
Odd-year pink	Same	All
Odd-year pink	3, 4	All
Odd-year pink	Off Canada	Troll
Coho	4B, 5, 6, 6A, 6C, 7, 7A	All
Coho	3, 4	All
Coho	Off Canada	Troll
Chinook	4B, 5, 6, 6A, 6C, 7, 7A	All
Chinook	4	All
Chinook	Off Canada	Troll

The important fact to consider is that these involve interception limitations on U.S. fishermen, regardless of their status with respect to treaties. When this fact is equated with a host of other task force recommendations presented earlier in their report, it can be demonstrated that some aspects of the overall task force proposal and a viable U.S.-Canadian agreement on interceptions are incompatible. Elements such as the special Strait fisheries, continued disparate fishing times in northern Puget Sound and task force specified fishing

rates for a number of fisheries simply cannot be reconciled with specific numerical limitations on U.S. fishermen's interceptions of Canadian origin salmon. For example, fishermen in the Straits cannot be "guaranteed" four days per week if the U.S. government has promised the Canadian government that specific limitations will be achieved in that area for five species of salmon. From a practical management standpoint, it is technically feasible to achieve the proper balance between catch and escapement and provide certain types of allocations between various groups of fishermen. It is also possible to achieve the desired catch versus escapement balance as well as to satisfy numerical limitation objectives on Canadian origin salmon. It is not possible to meet all three objectives simultaneously and implementation of task force proposals could spell the death knell to any chances for a satisfactory agreement on U.S.-Canadian salmon interceptions.

CHAPTER 11
.ENVIRONMENTAL AND HATCHERY LEGAL ISSUES: PHASE II

General Comments

Pages 320-322: We have long articulated our position that no settlement is acceptable to the State of Washington unless all issues contained in U.S. v. Washington are resolved. Further, we have stated that the task force effort to separate out the hatchery fish issue contained in Phase II from key environmental issues raised is wholly inappropriate. The rationale articulated in the most recent draft alternative proposal of the Commercial-Recreational Fisheries Delegation for dealing with the hatchery fish issue is appropriate, particularly when compared with that of the task force, i.e., its statement that federal enhancement dollars justify the inclusion of hatchery fish in an allocation formula. The task force ignores the long history of state contributions to the salmon resource and the recently enacted state hatchery program's contribution to its significant expansion. It also ignores the fact that the state will in the long-term bear much of the burden of operation, maintenance and administration of many of the facilities.

The State of Washington has indicated its willingness to initiate and participate in policy level deliberations regarding resolution of environmental issues.

TASK FORCE
APPENDIX I
DESCRIPTION OF THE PACIFIC SALMON AND STEELHEAD FISHERY

General Comments

The task force's generalized life history of Pacific salmon, geographic description of the fishing areas, method of harvesting and catch statistics are generally satisfactory.

Specific Comments on the Task Force Proposal

Page 323, paragraph 1: Coho salmon remain in the ocean just over one year. Rarely does any salmon remain in the ocean more than about 5 years and this pertains only to chinook.

Page 324, Coho salmon: Coho salmon essentially never mature at 4 years of age.

Page 324-325, Pink salmon: Pink salmon don't have a maximum life span of two years, they have a life span of exactly 2 years. Pink salmon also contribute to ocean troll fisheries.

Page 325, Sockeye salmon: In Washington and British Columbia, sockeye rarely spend more than 2 years in freshwater or more than 2 years in marine waters. Most mature at 4 years of age.

TASK FORCE
APPENDIX II
PROPAGATION MANAGEMENT

General Comment

This section basically incorporates elements of agreement reached between state and tribal negotiators and is generally accepted. A few comments are required however.

Specific Comments on the Task Force Proposal

Page 341-342: It should be noted that these projects submitted by the Quinault Tribe are not consistent with the recommendations for centralized facilities and services.

Page 342: The task force proposes that centralized services be funded through cost savings in approved projects which did not assume such centralized services. Since such savings are such a nebulous item, we recommend specific funding as such things as pathological services, etc. which are not included in specific projects.

Page 342-344, (1): Standards for evaluating propagation units: The shift in emphasis from output evaluation to return as suggestive in the first paragraph is confusing since the state has been conducting such evaluation for many years.

The criteria suggested in the second paragraph is hardly unique as, again, we have been using such for many years.

The criteria suggested in the third paragraph is inappropriate. The objective of artificial production is to put fish into the catch, not into the escapement. A hatchery program putting large numbers of fish into the escapement may be doing so because the fish are being lightly exploited and the hatchery has thus failed to meet its objective.

The emphasis in the last paragraph on size of fish is an oversimplification, as it ignores the many other factors that contribute to quality production.

Page 344, (2): We know of no, nor has the task force supplied any, justification for a mandatory rotation plan.

Page 344, (3): Even if mandatory rotation were to occur, it would be administratively awkward to switch, for example, between state and tribal facilities.

TASK FORCE
APPENDIX III
BUDGET SUMMARY AND FUNDING

General Comments

Pages 343-346: We have indicated throughout this report a number of areas in which the task force budget seemed inappropriate. The enhancement plan calls for a number of projects of low priority, which we cannot endorse as cost effective. Resultant budget savings will occur unless such projects can be replaced by others meeting the guidelines proposed for all such projects. The research package can be reduced. We are exploring means of rendering the buy-back plan more cost effective (this does not infer budget cuts). The proposed draft alternative salmon and steelhead plans proposed by the Commercial-Recreational Fisheries Delegation and our own alternative management plan and proposals herein suggest many savings in terms of reduced administrative costs, gear reduction, and the like. However, we also suggest the need for certain salmon and steelhead compensation plans.

The task force budget proposal for administration, enforcement and training is wholly unsatisfactory given the scope and burden to the State and tribes of settlement. It is suggested that the total budget may be appropriate, but that considerable flexibility to transfer funds from one program budget to another must be allowed (this would include newly proposed program elements). Revised estimated budget proposals should be forthcoming from the State once appropriate Congressional committees obtain jurisdiction over settlement proposals.

Finally, the funding procedures outlined by the task force may make sense to federal budget makers, but they present little in the way of assurances to the parties to settlement of a long-term dollar commitment. For example, will the parties be required to fight appropriation battles every year to obtain the funds promised? This is not an idle concern given the history of gaps between authorizations and appropriations for mitigation settlements on the Columbia River and for countless other federal programs.

APPENDIX A
TRIBAL FISHING AREAS PROPOSED BY THE STATE*

The state has carefully examined the SFA and TFA concept and found that definite criteria must first be established from which the proper areas automatically fall out. These criteria are as follows:

1. SFA and TFA should include as much of the so-called "traditional" fishing areas of both groups of fishermen as possible, but must provide each the opportunity to harvest their specified share of the resources under various types of salmon run management situations which might reasonably be expected now and in the future.
2. Physical characteristics of the two types of management areas must match characteristics of the distinctly different types of fishing gear allowed.
3. TFA must be for harvesting salmon stocks destined for upstream areas and/or nearby streams, not for intercepting mixed stocks destined for several distant river systems.
4. TFA must include, on-reservation waters.

Puget Sound TFA which match these criteria follow. Remaining waters should be specified as SFA.

Bellingham Bay and adjacent waters

The proposed zone includes that portion of Lummi Bay from Sandy Point to Gooseberry Point following the zero tide line, that portion of Bellingham Bay north of a line drawn from Point Francis to Treaty Rock, including rivers and tributaries emptying into these waters.

Samish Bay

Includes that portion of Area 7C inside of a line from Oyster Creek 237° true to Washington Department of Fisheries' marker on Samish Island, with the inner portion of this area closed to fishing to protect shellfish; includes Samish River.

NOTE: The State alternative plan calls for establishment of State Fishing Areas (SFA's) and Tribal Fishing Areas (TFA's) in lieu of task force proposed SCMZ's and TCMZ's.

Skagit Bay

Includes that portion of Area 8 east of a line from Brown Point to Goat Island, and continuing to the first prominent point north of Goat Island, and all rivers and tributaries emptying into these waters.

Port Susan

That portion of Area 8C north of a line projected true west from Kayak Point to Camano Island.

Port Gardner

That portion of Area 8C including those waters of Port Gardner Bay and tributaries thereto lying inside and easterly of a line projected from Hermosa Point to Nun Buoy No. 2 off the entrance to Tulalip Bay, thence through the southeasterly point of Gedney Island to a point on the southern shore of Port Gardner 2,800 yards east of Point Elliott Light at latitude 47 degrees 57 minutes and 26 seconds North, longitude 122 degrees 16 minutes and 21 seconds West, as shown on U.S.C.G.S. Chart No. 6448.

East Kitsap Peninsula

Includes Area 10E.

Duwamish Bay, Shilshole Bay, and Lake Washington

Includes that portion of Area 10A inside of a line from Duwamish Head to the Space Needle, Area 10B, except for the Lake Washington Ship Canal and Lake Union, and Areas 10C and 10D, including rivers.

Commencement Bay

Includes that portion of Area 11A inside of a line from the Continental Grain Company elevator to the Standard Oil Company neon sign at the Tyee Marina.

Carr Inlet

That portion of Area 13A north of a line from Raft Island to a point due west on the Kitsap Peninsula.

Nisqually River

That portion of Area 13 lying south and east of lines projected from the Old Atlas Powder Dock to the Dupont Wharf, from the Nisqually Flats black can buoy to the southern tip of Ketron Island, and from the southern tip of Ketron Island east to the mainland shore, including the river.

Case Inlet

That portion of Area 13B lying north of a line drawn from the northern point of Treasure Island easterly to the most westerly point of land between Vaughn Bay and Rocky Bay.

Lower Puget Sound

That portion of Area 13B south and west of a line drawn from Johnson Point northwest to Point Wilson, including rivers and tributaries (except Hammersley Inlet).

Hood Canal

Includes Area 12A, 12E, and that portion of 12D south of a line from Hoodsport due east to the Kitsap Peninsula, including rivers and tributaries.

Port Gamble Bay

That portion of Area 12 inside Port Gamble Bay.

Dungeness River area

That portion of Area 6B lying inside of a line from Dungeness Spit Light southeasterly to Kulo Kala Point, including the river.

Strait of Juan de Fuca

Includes rivers and tributaries which enter marine waters of Areas 5 and 6C.

APPENDIX B
STATE ALTERNATIVE FISHERIES MANAGEMENT PLAN
EXECUTIVE SUMMARY

The State of Washington has expended considerable effort and thought in the last few years to develop a reasonable settlement plan for the management of anadromous fisheries of Washington state. The most important principle to which the State holds is that management of said fishery is primarily a matter of local concern. Washington state people, both tribal and non-tribal, should be principally responsible and accountable for resolving disputes and for the conduct of a cohesive fisheries management system consistent with their government's jurisdictional authority. Consequently, we strongly recommend that any management proposal must emphasize the utilization of institutions at the local level and that Federal management of the fisheries must be significantly de-emphasized. In addition, the management settlement plan must eliminate the involvement of Federal and State courts in day-to-day fisheries management activities except as a last resort, and only after an appropriate administrative review and appeal process has been thoroughly exhausted.

No significant change would be necessary in the institutional structure of the State's management entities. There exists a commitment by the State to integrate its efforts with those other entities which exist and will be created to achieve the management goals of the settlement plan. The State is willing to accept the concept of a State Fishing Area (SFA), as well as a Tribal Fishing Area (TFA), in lieu of the task Force SCMZ's and TCMZ's, so long as they are developed to reflect historic commercial fishing patterns characteristic of the different types of fishing gear and proper fishery management techniques, and so long as jurisdictional authority within such areas must not be altered. Basically, the SFA proposed by the State includes areas in which purse seine, gill net, reef net, and troll fisheries have traditionally been conducted while the TFA includes areas in which set net, beach seine, and skiff fisheries have occurred (for details, see Task Force report and Appendix A of this State response).

In order to facilitate the least cumbersome and inexpensive management system, the State urges that the various entities continue to participate in a management process which builds on working relationships which have developed to date. Most of the management problems can be, and have been, resolved on an

informal staff-to-staff basis. Only when unresolvable disputes arise would a single flexible technical committee be convened to review the data (as is the case today with the Federal Court's "Fisheries Advisory Board"). If the matter was still unresolved after technical review, the respective agency Directors would seek to find a resolution. In the event that a matter remained in dispute, a Fisheries Review Board (FRB) would thoroughly consider the issue, and its findings would become part of the record. However, the board would only have authority to make recommendations. The recommendations of the FRB might be adequate for agency Directors to reach a mutually acceptable resolution. Where one of the management entities believed the other was not in compliance with the settlement terms, it could petition the FRB to review activities of that entity. If the FRB concluded that actions or inactions of either management agency was in "substantial non-compliance" with terms of the settlement when measured against established standards, they could submit their findings to a three-judge panel for resolution. The three-judge panel would have authority to order specific action by a management entity, or it might suspend authority of that entity for a reasonable period of time.

PART I: FISHERIES MANAGEMENT INSTITUTIONS,
AUTHORITIES, AND FUNCTIONS

A. Basic Principles

Fisheries management in Washington does need to be improved, duplication needs to be reduced or eliminated, and authority centralized and removed from the courts. The State is firmly convinced that a mechanism is already in place which can accomplish most of the tasks necessary to appropriately manage the anadromous fishery within the state. We firmly oppose any "indictment" of the entire present system, but rather seek resolution for a few key problem areas. The single-most important additional tool needed for management is creation of a rational structure to resolve disputes between State and tribal managers in the least cumbersome manner, and to annually review progress of efforts to meet terms of the settlement.

Since many, if not most, of the management decisions can presently be reached to the mutual satisfaction of concerned parties, it would be foolhardy to create a mechanism which would subvert what is becoming a better-working professional relationship between the State and tribes. The State can only accept a structure which builds on the positive aspects of what has already evolved between the parties. There is absolutely no need to generate excessive new levels of State and/or Federal bureaucracies to second guess what can best be handled by the parties themselves. The State does recognize the need for a new "review board" to annually investigate the progress of all parties in meeting terms of the settlement. In addition, there is need for an orderly administrative process which can assure resolution of disputes in a timely fashion and without continual judicial intervention. However, it is critical that this process be established to minimize any frivolous attempts to frustrate the system by continuously raising objections. The management process itself must inhibit irresponsible actions by local management entities.

Generally, staffs of all appropriate agencies would perform functions necessary to assure orderly and rational management of the fishery. Timely exchange of data and information would continue to build a system of better-working relationships. We recognize that disagreements can and will continue to occur. In that event, a joint technical committee would be

convened to seek to resolve such disputes. Since some of the disagreements can stem from policy decisions, the appropriate agency Directors could seek resolution if the committee should reach an impasse. Only when the Directors remained unable to reach a mutually satisfactory resolution would the board be empowered to officially consider the matter. The findings of that board would then become part of the record, and it would have the authority to recommend specific action. Board decisions or a management agency's failure to respond to its recommendations would then be appealable to State or Federal court (depending on traditional of established laws of jurisdiction).

B. Authority of Washington Department of Fisheries (WDF)

WDF would remain unchanged in institutional structure; no changes need to be made in WDF's management responsibilities for food fish other than salmon. WDF would seek authority from the State legislature to carry out the settlement agreement. Without this necessary grant of authority from the State legislature, the settlement as proposed could not be implemented.

C. Authority of Washington Department of Game (WDG)

WDG would remain unchanged in basic institutional structure and no significant changes would be made in WDG's management authority for game fish other than steelhead. WDG would be empowered to manage steelhead fisheries under State jurisdiction to achieve terms of the settlement. This may require implementing State legislation.

D. Authority of Tribal Commission

1. Organizational structure: The tribes would organize the Tribal Commission to serve as a unified fisheries management institution for all Federally recognized tribes possessing treaty fishing rights in the U.S. vs. Washington case area. Any tribe which became recognized in the future by the Federal court would automatically become a party to the settlement agreement. The Commission would serve as an intertribal coordinating body as well as a single source of tribal fisheries management authority. The Tribal Commission would be accountable for insuring that commercial fisheries within the TFA were managed in compliance with agreed-upon principles in the settlement.

The Commission would also be responsible for insuring that sport and commercial fisheries on-reservation were managed to conform to the settlement agreement. The Commission could delegate specific management functions to individual tribes but would retain ultimate accountability and responsibility for fulfilling the settlement. The Commission would necessarily be formed before the proposed settlement plan became effective.

The Commission should be an effective unified voice for the tribes. The Commission itself should be composed of a small group of commissioners, in no event more than five. The Commission would be created by Federal and tribal law, would be located in Olympia to facilitate coordination with WDF and WDG, and would be funded by the tribes and the Federal Government. Membership on the Commission would be representative of case area treaty tribes.

We recommend that description of the Tribal Commission entity be clarified within the context of the settlement document. Ultimately, legislation will describe in some detail the new entity, its organizational structure, its authority, and, in appropriations legislation, its staff levels and needs. Consequently, appropriate tribal institutions should prepare and submit such detailed description for inclusion in settlement legislation.

Second, we would urge that Tribal Commission management responsibilities pertaining to hatcheries be phased-in over a reasonable period of time based on proven capability levels. We would emphasize that it should be a clearly stated settlement objective to establish a Tribal Commission which can perform its designated functions as quickly as possible.

2. Delegation of authority: The settlement plan must clearly state the level of actual control the Tribal Commission will have over the various tribes. We believe that individual tribal management functions must be performed more as if they were satellite offices subject to a concept of centralized management rather than as individual tribes performing as comparatively independent entities subject to very little centralized control. Regulations, except on-reservation, must be issued (as a single set) only by the Tribal Commission. On-reservation

regulations must be approved by the Commission. Functions to be delegated to the tribes must be clearly spelled out in the settlement document.

Second, the authority of the individual tribes to order conservation closures within the TFA must not exist. (This would partially be for their own protection since any single tribe cannot be allowed to close a mixed tribal fishery to pass fish through to their own exclusive fishery.) It is acceptable that the tribes have the authority to recommend TFA closures to the Tribal Commission. Individual tribal authority to order closures should be limited to on-reservation fisheries.

Third, we are concerned as to where the tribal authority to order reopening of a fishery lies. This important management function must also be left to the Tribal Commission, with individual tribes again being limited to only recommending such actions. As important, the superceding authority of the State in off-reservation waters must prevail where a re-opening is deemed inappropriate. Again, individual tribes should be limited to ordering special openings only on-reservation.

3. Unified tribal court system: The establishment of a single tribal court process with jurisdiction over all treaty Indian fishing must be clearly established within the settlement agreement. This does not mean "exclusive" tribal court jurisdiction over such violators, e.g., State authority over tribal violators off-reservation will be the rule unless waived by the State.

Second, it should be clearly stated that the process established will, to the greatest extent practicable, assure that the likelihood of prosecution for violations and the imposition of penalties will serve as a relatively equal deterrent to illegal activities within both State and tribal judicial processes. The State judicial process and penalty structure must also be improved within the context of the settlement.

Third, the relative authority of the tribal court over non-Indian citizens and the authority of State courts over tribal citizens who violate State or Tribal Commission regulations should be clarified. WDF would be authorized to arrest non-Indian violators of tribal

regulations off-reservation and obtain jurisdiction over them by incorporating by reference TFA regulations. (The paperwork burden of this effort must be limited by tribal utilization of the State's regulation format.) Non-Indian violators of State law would not be subject to tribal court jurisdiction. Tribal violators of State regulations in the TFA would be subject to State court jurisdiction, unless waived into tribal court by appropriate State officials.

4. Provision of extra-reservation powers to the tribes: The settlement must clearly state that tribal management responsibilities off-reservation are limited as provided in the settlement plan and in no way constitute an extension of tribal reservations. Additionally, it should be made clear in the settlement document that any off-reservation hatcheries managed by the tribes, even if owned by such tribes, will not serve to establish reservations where tribal ownership exists, even if located on former reservation lands.
5. Duplication of efforts: The establishment of management disciplines and principles to assure that duplication is avoided should be emphasized in any settlement document. With regard to the promulgation of regulations, we would suggest that a common format be established for Tribal Commission regulations which satisfactorily informs the public as to content of the regulation and its purpose and justification, but which also reasonably limits the detail and unnecessary information included in such regulations (e.g. State regulation format). Again, all such tribal regulations would be issued by the Tribal Commission.
6. Data collection by Tribal Commission: An improved data collection and sharing system is being implemented and is necessary for all fisheries managers. WDF will collect data from all off-reservation buyers and the Tribal Commission from all on-reservation buyers. All information is to pass to a common data system to be operated by WDF. However, avoidance of multiple entity collection, as in the past, is necessary. Additionally, a monitoring system which allows both the State and Tribal Commission to verify data and collection procedures

by spot-checking both on- and off-reservation should be required by the settlement. The need for this type of data collection system has been recognized by orders of the U.S. District Court subsequent to the original Boldt decision. Finally, a State-Tribal cost-sharing plan must be developed which reflects needs and benefits of each party.

7. Management of the river and skiff fisheries: The specific types of gear to be utilized in SFA versus TFA area fisheries must be clearly identified. The Tribal Commission should be primarily responsible for implementing tribal gear limitation programs, but moratorium levels for the full treaty Indian fleet must be established pursuant to the settlement (see text or State response to the Task Force plan).

E. Authority of Tribes

1. Authority: Primary tribal fisheries management authority would be in the Tribal Commission. The tribes could perform substantial fisheries management functions, particularly of a local nature, when the Tribal Commission delegated such functions to a tribe or tribes. Ultimate accountability for managing fisheries within the jurisdiction of the Tribal Commission would, however, remain with the Tribal Commission. No internal structural change in any tribe would be required by the settlement.
2. Jurisdiction: The jurisdictional authority of the tribes or Tribal Commission would in no way be expanded by this settlement. The U.S. Supreme Court decisions speaking to on- and off-reservation jurisdiction (e.g. Oliphant, Puyallup III, etc.) are not to be altered.
3. Compensation plan for tribes: Because the most controversial aspect of implementation of the Boldt decision has been the provision of special seasons for treaty Indians, it is recommended that a system of cash compensation in lieu of such seasons be instituted during the early years of the settlement to compensate the tribes for deficiencies in IPSFC fishery harvest resulting from an unbalanced distribution of gear power. This form of compensation should be additional to the loan program described in the task force report. Further, we would

suggest that reasonable Federal funds be provided to the tribes to provide special training to treaty Indians not presently in the business of fishing, but who are interested in becoming involved. Finally, a compensation plan to the tribes to offset the economic impact of a complete decommercialization of steelhead (new) should be included in the settlement.

F. Structure and Authority of Fisheries Review Board

The Fisheries Review Board would be created by tribal, State, and Federal legislation; its primary purpose will be to evaluate and recommend compliance by all concerned with the settlement agreement. The Board would only consider compliance issues upon request by the State or Tribal Commission. The actual day-to-day management of the fisheries will be performed by WDF, WDG, and the Tribal Commission, subject to the specified procedural authority and review powers of the Board.

The State and the Tribal Commission will at the conclusion of each three-year period (or earlier if agreed by all these entities), prepare a report on the FRB's role in fisheries management for submission to the Congress, State legislature, and the Board in the following year. The State and the Tribal Commission would also prepare an options document regarding the Board's continued operations to be widely circulated for comment. The report would be prepared in consultation with all affected parties with the goal of reaching the greatest possible agreement among them, but in any event would present any different recommendations of all parties. These recommendations for legislative action might range from requesting that the Board's charter be terminated to reforming the Board with lessened responsibilities, to continuing the Board in its present form for an additional period. Mutual agreement by all management entities will be required for termination to occur.

1. Necessary legislation: Federal, State, and tribal legislation will be required to establish the Board and to empower it with the necessary authority. The settlement agreement will be incorporated by reference within the State, Federal, and tribal legislation. In addition, certain sections of the agreement might be specifically contained in the statutes.

2. Membership: The Fisheries Review Board would be composed of six members. Three members would represent State interests and three would represent tribal interests.
3. Appointment: The three State representatives would be appointed by the Governor. In formulating a list of nominees, the Governor would consult with WDF and WDG, interested groups of fishermen, and members of the public. Similarly, the three tribal representatives would be appointed by a majority of the Tribal Commission. The list would be prepared after consultation with the various tribes.
4. Composition of the Board: All nominees for Board positions would necessarily be reasonably knowledgeable regarding the management or harvest of salmon or steelhead resources in Washington state. No persons relying primarily upon income from fisheries-related activities would be eligible to serve on the Board. Other potential conflicts of interest must be considered in the nominating process as well.

Additionally, members of the Board should be required to have experience in evaluating data and information and in rendering sound professional decisions. While we do not suggest that persons must be experts in fisheries management, we do propose that certain minimum educational or professional experience in matters relating (or of relevance) to natural resource management should be required.
5. Term of office: State and tribal Board members would serve 3-year terms. It would be desirable to include a mechanism for removing any member prior to expiration of a term, in which case (and also in the event of a resignation), the above-described selection process would be used to find a replacement. Initial Board members would serve 1-, 2-, and 3-year terms, respectively, so that a staggered appointment system could be established. Each nominating entity could designate which nominee would fill each term at the outset.

6. Staff: The Fisheries Review Board would have a small clerical staff, perhaps an Executive Secretary, and could contract the State or tribes for any technical assistance. Technical assistance would be provided by individuals loaned from the various State and tribal agencies. The Board could also retain outside legal counsel if necessary.

In developing its annual report, we believe that the Board should appoint a small technical report-drafting group. This might be comprised of one employee of the State and one employee of the Tribal Commission, but in any event, balanced staff representation would be required. Compensation by the FRB for staff time by State and tribal employees would be provided. Draft reports by the group to the FRB would not require unanimity and would include dissenting opinions. No permanent technical staff to the FRB is necessary, nor is it desirable. There is absolutely no reason for creating a potential "third" management agency in this process.

7. Fishermen Advisory Panel: The Board would establish a Fishermen's Advisory Panel. This group would be composed of actual fishermen, both tribal and non-tribal. This Panel would periodically inform the Board how the settlement was working from the fishermen's perspective. The Panel's advice would be valuable for the Board because Panel members would be in a unique position to comment concerning the practical application of the settlement.
8. Location: The Board's office would be in Olympia, Washington, in order to be easily accessible to WDF, WDG, and the Tribal Commission.
9. Funding: Funding for the Board would be provided by the Federal Government for the first three years of existence. Thereafter, funding would be contributed in equal one-third shares by Federal, State, and tribal governments.

10. Procedures of the Fisheries Review Board: With regard to matters involving longer term deliberation by the Board, e.g., development of the annual review report, convening of meetings or hearings to review annual harvest management forecasts, annual hatchery plans, etc., it is recommended that a quorum should be the full Board, with absences being tolerated only for short-term illnesses or injuries or family emergencies. Notice of such meetings would be at least two weeks in advance so as to assure full attendance. Persons serving on the Board would have a priority commitment to be available for such long-term review activities. A pooled or block vote system would be employed in all instances by the FRB, with tribal members casting one vote and State members casting one vote.

With regard to matters which the Board must decide on a short-term or emergency basis, the settlement should assure that procedures will be established which require that members will be convened to act in timely fashion, including telephone conference meetings. Again, a block voting system which would give all tribal representatives one vote and all State representatives one vote is mandatory. The failure to reach a consensus will result in the agency action prevailing, unless overturned by the courts on appeal.

11. Authority of the Fisheries Review Board: We recommend some limits in the authority of the FRB. The review pre-season of harvest management and hatchery plans should be limited to disputes pertaining to the settlement agreement and brought before the Board by either of the management entities. This would constitute a review of the pre-season statewide forecast and ensuing regulations, and the annual statewide hatchery permit plan developed through the JTC process. Such review would occur on a one-time basis and in timely fashion each year if a management agency so requested. The FRB should not be convened to review any in-season harvest or hatchery management decisions other than those regarding disputes for emergency conservation closures to attain spawning escapement objectives as provided in the settlement plan. We would urge that the sole authority of the Board, other than with regard to emergency conservation closures, will be to recommend a particular course of action to the management

agencies. Agencies responsible for the promulgation of regulations, development of data and information, and the like, which are the subject of dispute would not be required to respond to the FRB recommendation, but would be accountable for its actions or non-actions pursuant to the FRB's post-season audit functions. The Board's authority to issue orders should clearly be limited to those cases where it agrees that an emergency conservation closure should occur. With the exception of its annual report, it should be clearly stated that the FRB will not be convened except to resolve disputes and that it may not recommend management agency actions or issue orders on its own initiative.

In the exercise of its primary purpose of reviewing compliance with the settlement agreement and issuing an annual report, the Fisheries Review Board would be expected to develop separate procedures for handling two major categories of compliance questions. For ease of reference, these categories may be labeled "non-compliance" and "substantial non-compliance".

Although procedural details should be left to the Board, certain broad operational guidelines appear appropriate. The Board would have the power to designate the category under which a question brought before it would be addressed, regardless of the label placed on the question by the moving agency. All such questions would be open to public inspection or review upon filing, and the Board would establish procedures for routinely publicizing a summary of pending matters.

- a. Non-compliance - The moving agency would advise the Board of the reason it believed the agency complained against was not in compliance, together with the steps, if any, previously taken to resolve the conflict and its recommendation for action by the Board. The Board would be required to act in a timely fashion to convene an informal "hearing" with interested parties, which could be accomplished by telephone conference if necessary. If the Board found non-compliance, it would fully document its findings and make all of them a part of the record. The Board would recommend means for the non-complying agency to correct its actions.

- b. Substantial non-compliance - A Board finding of substantial non-compliance would be fully documented and the full record could ultimately be submitted to a three-judge panel to determine if suspension or some other remedy might be appropriate. This extraordinary authority of the Board to enter findings which could lead to judicial suspension of an agency's management functions would be used only when a formal evidentiary court procedure established that the agency's activities were substantially and adversely interfering with the implementation of the settlement legislation. Such a case would probably never be made on the basis of a single act of non-compliance, but instead would follow from a pattern of non-complying activity, which, if continued, would seriously undercut implementation of the settlement.

Although administrative procedures leading to a suspension recommendation would be formal given the result they might occasion, the procedure should not be so complex as to discourage valid complaints. Prior to bringing the matter before the Board, the moving agency would be required to advise the agency complained against of its intention to file with the Board a substantial non-compliance complaint. During an automatic "cooling-off" period of 15 days, the agency complained against would be expected to engage in discussions with the moving agency which might lead to a pre-Board resolution of the controversy. If the effort were unsuccessful, the moving agency would bring the issue to the Board for formal administrative hearing, detailing its reasons and previous efforts made to resolve the matter. The Board would determine as a threshold matter whether the complaint had merit and whether the matter involved non-compliance or substantial non-compliance. (The threshold determination by the Board could, in the alternative, lead to dismissal of the complaint.)

The formal hearings would result in compilation of an exhaustive record. If the Board determined that a function or functions should be suspended, then the Board would petition a three-judge Federal Court panel for an order requiring full

or partial suspension of all or a part of the agency's salmon and/or steelhead management functions.

The authority to suspend management authority of the State or tribes must not be left to Federal agencies which stand to gain authority or powers (and budget justification) they presently do not have. Instead, the above-mentioned three-judge panel, to be convened in a manner consistent with Federal Three Judge Court Acts (e.g. 28 U.S.C. 2281]-2284) to review recommendations by the moving agency and the Board that suspension should occur. The three-judge panel (two District Court judges, one from the U.S. Court of Appeals) would operate as consistent with the above-cited laws, and would issue appropriate orders. Included among its orders might be full or partial suspension, direction to the State or tribal commission or an appropriate Federal agency to take over applicable management functions for the suspension period, or specific action to be undertaken by the management entity in lieu of suspension.

12. Standards for suspension: Reasonably clear standards must be established which define the kinds of activities which would lead to this extreme remedy. Because the Board has considerable oversight authority to monitor progress vis a vis the settlement, and because State and tribal management will still be subject to judicial and political accountability for administration of all relevant laws, suspension should occur in only the most extreme cases. Additionally, with the commitment of considerable Federal and State funds to the settlement, the authority to cut off those funds will serve as an additional Federal or State lever over managerial performance.

The following might be viewed as indices of "substantial non-compliance":

- (a) Failure of the State Legislature tribal government to provide management agencies the necessary legal authority to operate in conformity with the terms of the settlement.
- (b) Inability of the management agencies to operate in conformity with the settlement terms due to court interpretations and orders.

(c) Harvest management --

- failure of management agencies to meet established spawning objectives by a significant margin due to management decisions, if evidence exists that such agencies have not developed management practices which will assure proper resource conservation and utilization;
- continued failure to manage to accomplish specific settlement resource distribution requirements;
- continued failure to establish basic management capabilities and technical skills or to manage fisheries pursuant to reasonable biological and settlement standards rather than pursuant to local or regional user group pressures;
- a continued history of frivolous challenges to or non-cooperation with other management institutions, or continued non-compliance with FRB recommendations where subsequent review indicates failure on the part of the management entity to properly manage;
- continued failure of the management entity to control user groups, to prevent illegal fishing, and to otherwise protect the salmon resource in conformity with the settlement.

(d) Hatchery management -

- continued and abject failure by hatchery managers to operate hatcheries in conformity with annual statewide plans and in defiance of court orders might lead to preemption of management of a single hatchery;
- continued failure to operate hatcheries in conformity with permit restrictions;
- a continued history of frivolous challenges to or non-cooperation with other management institutions on hatchery matters;
- continued failure by management agencies to provide adequate disease control, protection of eggs, etc., where such practices have been noted on a continuing basis by the Board;

- continued failure to achieve a reasonable level of catch resulting from hatchery operation.

- (e) Other management issues - For continued practices involving non-cooperation or frivolous challenges to management activities by other agencies and continued non-conformity with established management practices where such non-conformity has been duly noted by the Board over a reasonable period of time.

We do not suggest the above to indicate our final views as to appropriate standards for suspension, but rather offer this language to indicate minimum specificity regarding suspension standards which are required in a final settlement proposal and ensuing legislation. Finally, we do not want the Federal Government or the Board alone drafting implementing suspension regulations. The State and the Tribal Commission must participate in the drafting of all FRB regulations.

13. Suspension procedures: We envision the following process to arrive at a suspension decision. First, the moving agency, after the "cooling off" period, would seek an administrative hearing by the full Board consistent with Federal or State administrative procedures, to obtain a Board recommendation that there be suspension. (Note: the FRB would not have authority to move on its own.) If the Board were satisfied that suspension should occur (a majority vote required with written opinions and dissenting opinions), it would join the moving agency as a party seeking a suspension order from a three-judge tribunal. Again, the three-judge tribunal would be convened in a manner consistent with Federal Three Judge Court Acts. The three-judge panel would be empowered to issue an order requiring full or partial suspension or other action by an appropriate Federal, State, or tribal agency, which order would be for a maximum period of two years. At the end of the prescribed term, the three-judge panel would automatically be reconvened to determine whether the management agency had developed the capability to return to its full management capacity. It would then issue appropriate orders. The suspended

agency would have the authority to file a motion for reconsideration, modification, or lifting of the decision at any time during the term of suspension.

In any presentation to the three-judge panel, the burden of proof that suspension should occur would clearly be on the moving party and the Fisheries Review Board. Testimony would be taken in a manner consistent with all other hearings before three-judge panels. A decision by the three-judge panel would be appealable to the U.S. Court of Appeals of the 9th Circuit by either party. (This is at variance with the Three Judge Court Acts, where appeals go directly to the U.S. Supreme Court.)

14. Fisheries Review Board - appeal of decisions (other than for suspension):

We recommend that an administrative appeals process be established as follows for the resolution of agency disputes:

- (a) It must be clearly stated in the settlement document that the management entities will be required to "exhaust" all administrative remedies with regard to matters pertaining to the settlement document prior to filing an action in State or Federal Court. For example, agency challenges to pre-season regulations would reach the point of FRB recommendation for agency action, and the agency would have to act in violation of that recommendation, before a right of challenge of such regulations could be presented to the judicial process.
- (b) Where the State is seeking an order with regard to a harvest management decision by the Tribal Commission off-reservation, it could file for such an order in State or Federal Court.
- (c) If the Tribal Commission were to seek an order regarding a harvest management decision by WDF, it could seek such action in State or Federal Court (obviously, it is likely that the Tribal Commission will pursue such actions in Federal District Court).
- (d) If the State seeks an order regarding management activities on-reservation, it must do so in Federal District Court.

The scope of review by either the State court or Federal District Court upon "exhaustion of administrative remedies" would be as pursuant to traditional administrative law doctrine, i.e., the court would determine whether or not the State or tribal agency was "arbitrary or capricious" or "clearly erroneous" by its action or decision. Generally, the court's remedy would be limited to an order that the management entity reconsider the matter pursuant to processes which do not affect an "arbitrary or a capricious" or "clearly erroneous" determination.

15. Individual challenges of management action: We recommend an administrative process for individual private citizen complaints pertaining to settlement as follows: an individual would first file a complaint before the appropriate agency. The agency would then have a reasonable period to respond to the complaint. If the matter were not resolved to the satisfaction of the complainant, he would then have the right to appeal the agency decision to an administrative hearing officer appointed by the State and Tribal Commission, which hearing officer would be responsible for conducting a complete administrative hearing in a manner consistent with traditional administrative processes. The FRB would not become involved in the appointment of a hearing officer unless the State and Tribal Commission failed to reach agreement on an acceptable person or "pool" of persons to be available as hearing officers.

Appeals of the decision of the hearing officer would be handled as follows:

- (a) Non-Indian challenges of State management decisions or Tribal Commission management actions off-reservation would be appealable to State court (or Federal District Court if jurisdiction could be obtained);
- (b) Non-Indian challenges of Tribal Commission management actions on-reservation would be appealable to Federal District Court; such challenges could be in Federal or State court in the event that the activities involved off-reservation management;

- (c) Treaty Indian challenges of Tribal Commission management activities would be appealable to Federal District Court only; and
- (d) Treaty Indian challenges of State management decisions off-reservation would be appealable to State court or Federal District Court, if jurisdiction could be obtained.

Once the above process is established, it will not be necessary to define or limit the scope of FRB review relating to individual action (as per task force proposal), as a single administrative hearings process would have been established to deal with individual complaints regarding settlement-related management activities by the State and the Tribal Commission. (It is likely that similar or the same processes should be established by State and tribal governments to resolve non-settlement-related disputes.) This will avoid the problems of duplicative hearings which potentially exist in the task force proposal. The problem of "equality of process" is dealt with by establishment of this type of single administrative process. The role of the FRB is clearly limited, as its only involvement in the handling of individual disputes will be appointment of a hearing officer if the State and Tribal Commission cannot agree on an appropriate pool of hearing officers. This process will be established pursuant to Federal and State law to assure that all State and tribal citizens will be necessary parties.

16. Other powers: The Board would have the general power to establish rules of a procedural nature for its internal operation, and for that of its Fishermen Advisory Panel, in consultation with the State and the Tribal Commission. The Board would not have authority to develop its own management regulations except for conservation closure purposes.

For cases in which State or Tribal Commission management regulations were not being, or could not be, effectively enforced by State or Tribal Commission enforcement officers, the Board would have residual authority to adopt as Federal regulations the unenforced or unenforceable regulations of the State or Tribal Commission. If

the Board adopted such regulations, they would exist simultaneously as Federal/State or Federal/Tribal Commission regulations. The Board's regulations would then be enforced by the National Marine Fisheries Service, the U.S. Coast Guard, or other Federal agencies, and would bear Federal criminal penalties. The Board itself would have no enforcement capability.

It should be noted that State and Tribal Commission regulations need not be adopted by the Board in order to be effective. On the contrary, State and Tribal Commission regulations would be effective apart from Board action.

The authority of the FRB to adopt State and Tribal Commission regulations should not be possible at any time unless one of the two management entities has initiated a request to that end. Additionally, this authority of the FRB to incorporate by reference State or Tribal Commission regulations in order to trigger Federal enforcement should be limited to a maximum period of 3 years ("sunset" provision), with the two management entities having the authority to agree at an earlier date that the FRB or the Federal Government need no longer be involved in enforcement. Finally, the FRB should be able to request Federal enforcement of its own conservation closure regulations only upon a finding that the State and/or the Tribal Commission have not enforced such regulations.

G. Structure and Authority of the Technical Committee

We recommend that a single technical committee with flexible membership depending on the issue at hand be established with clearly defined functions. Where an issue primarily involves salmon management, the state representatives on the Technical Committee should be exclusively from WDF. Where issues primarily involve steelhead management issues, all state members of the technical committee should be from WDG. If it appears to either the Director of WDG or the Director of WDF that the other agency's management responsibilities may be impacted somewhat by the matter before the committee, the Director should invite a representative from the other agency to participate in deliberations. However, the invitee would not participate as a voting member of the technical committee.

It will be the objective of the Tribal Commission and the State to work closely and cooperatively at the staff level on all matters relating to harvest management or hatchery management and to work out whatever differences at these levels that may arise.

1. Either management entity will have authority to convene the Technical Committee only when disputes as to pre-season regulations and in-season regulations arise, and after considerable staff-level discussions have resulted in an impasse.
2. The Technical Committee will be convened by either party only to resolve disputes relating to data and predictive models, and the committee will not review all annual run forecasts, harvest plans, escapement goals, or predictive models unless there is a dispute between State and Tribal Commission staffs.
3. The Technical Committee would be convened to review all enhancement construction permit proposals before or by Federal, State, and tribal agencies.
4. The committee will be convened by either party to deal only with disputes regarding the statewide annual hatchery plans, or disputes regarding a particular operations permit, or where a hatchery manager proposes to change the terms of his operations permit during the year and there is staff-level disagreement.
5. The recommendations of the committee would in no way be binding against the State or the Tribal Commission, but such recommendations would be available to the FRB if disputes were not settled regarding the statewide plan by the parties, and a complaint was filed by either management agency to the Board.

Again, we emphasize that there is little point in convening the Technical Committee if matters can be worked out between tribal and State staffs (where the real technical work can and should be performed). Additionally, and particularly with regard to in-season management problems, a requirement that the committee be involved in all matters of review, regardless of whether there was a major dispute or not, places an unnecessary and dangerous burden on the management process. (This is a major weakness of the task force plan.)

It should be clear that the Technical Committee review will be required before the FRB is convened, i.e., "exhaustion of remedies". Additionally, before appeal is filed with the FRB, the appropriate State director and the Director of the Tribal Commission (or delegated officials) would be required to attempt to resolve the dispute at the policy level.

An excellent common data system is already in place. The Technical Committee could be convened to recommend means to resolve disputes regarding expansion of existing capabilities and facilities as consistent with settlement objectives in the early stages of the settlement. However, in the future, the committee should not be involved in the day-to-day review of data problems unless a dispute settlement-related data quality occurs.

It must be recognized that the scope of review of the Technical Committee is not necessarily specifically limited to the issue of conformity with the settlement plan. The committee can and should be convened to settle disputes regarding a wide variety of technical issues that evolve in the management of the salmon fishery; if deemed appropriate by management entities.

We do not recommend that procedures for the operation of the Technical Committee be spelled out. However, a statement of principle that the Committee will be convened in a manner which assures reasonable and timely management decision-making in the event of disputes is necessary. This is particularly important where the Technical Committee is convened to deal with in-season management problems. Again, procedural emphasis on informal staff negotiations regarding harvest management problems, disputes over hatchery operations permits, and the like, is required.

H. State and Tribal Fishing Areas

It has already been indicated in the introduction that the State is willing to establish State Fishing Areas (SFA) and appropriate Tribal Fishing Areas (TFA). The State would have primary responsibility for all management activities in the SFA. The SFA would include those areas in the state in which purse seine, gill net, reef net, and troll fisheries have traditionally been conducted. The Tribal Commission would have responsibility for management of harvesting activities for salmon in the TFA. The TFA includes those areas in which set net, beach seine, and skiff fisheries have traditionally occurred. The State would have superceding management authority in all areas of the TFA, except on-reservation

(i.e. jurisdictional authority of State is not altered by this settlement). For a further discussion of State and tribal fishing areas, see Chapter 3 and Appendix A of this report.

The Tribal Commission would be required to immediately incorporate by reference conservation regulations issued by the State for the TFA. This could invoke jurisdiction of the tribal court over tribal violators where arrests by tribal enforcement officers pertaining to such closures would occur, and where State court jurisdiction over the tribal violator was waived by appropriate State officials. A cooperative enforcement plan for State-ordered closures in the TFA has been recommended by State and tribal negotiators. Also, the Tribal Commission should maintain a toll-free telephone system for regulations in the TFA which would reflect any State conservation closures in timely fashion. Again, the settlement must clearly delineate that a State closure in the TFA always supercedes any conflicting tribal regulation. For a further discussion of jurisdictional issues, see Chapter 2.

I. Hatchery Management System

The State is concerned that the hatchery management system developed in the context of a settlement not be one in which hatchery managers are able to make independent decisions regarding operation of hatcheries in a manner reflecting their own personal or regional interests rather than statewide resource interests. Disputes as to development of an annual statewide hatchery plan and conformity therewith must be resolved by an entity with the technical skills to do so. Hatchery managers must have the skills to operate their facilities properly and independent of local political pressures. The tribes may not have the skills in the early years of the long-term settlement to properly manage "tribal" hatcheries or meet a common set of hatchery management and employment qualification standards. The State now has the ability to manage a statewide enhancement program which properly takes into account the technical considerations involved in establishment of a reasonable resource plan.

A first priority of the State with regard to hatchery management is that a system be developed which assures that tribal, State, Federal, or private hatcheries will all be operated in conformity with an annual

statewide plan. The State is the only entity at this time developing such an annual statewide plan, it has done so historically, and it should have the lead responsibility to do so on an annual basis. Issues such as species selection, disease control, time of releases, planting fish eggs, fry and fingerlings, and the like, must be dealt with in the statewide plan. (NOTE: State development of the plan is not to preclude tribal involvement in decision-making, and provisions for that involvement are included in the preceding management system which has been outlined. In addition, a methodology for resolving disputes is also included.)

A second priority of the State is to assure that all hatchery projects in the state, including those proposed by the task force and the State legislature, be reviewed from the critical perspective of harvest management. A special committee of State, tribal (and limited Federal) officials should be formed to develop a 10-year comprehensive enhancement plan which would serve as a general guideline for achieving agreed-upon resource development and distribution objectives. (See agreement between State and tribal negotiators and task force plan.) All projects proposed for enhancement would be implemented to achieve such objectives. Additionally, the committee should be charged with development of a plan for centralized feed supply, equipment pooling, egg distribution, maintenance, etc. Annual statewide plans would be developed in accordance with this plan.

A third priority is to maximize the State's role, based on its technical abilities and experience, in assuring that the overall enhancement program for the State is properly implemented. A single permit system for the operation of hatcheries similar to that presently reflected in WAC 220-20-040 should be fully implemented pursuant to the settlement and the permit process should be clarified to assure conformity with settlement objectives. All jurisdictional entities would then be subject to a comprehensive hatchery system which would assure integration and compatibility. FRB review of disputes regarding the annual statewide plan on a one-time basis each year would be appropriate.

A fourth priority is to assure that all hatcheries in the state, including those operated by the tribes, should be required to employ persons with certain minimum qualifications to manage the hatchery, and that employment standards be established for other critical persons involved in the day-to-day operation of hatcheries. This would require a significant training program for the State and many of the tribes, and it would hopefully

involve upgrading the skills of all hatchery managers. We would expect that a single set of minimum qualification standards would be established pursuant to Federal, State, and tribal legislation. All manager grades should require a B.S. or B.A. degree in fishery biology, fishery management, or a related field. Special training programs for the tribes should be established, including university programs and on-the-job training programs.

A fifth priority is that the State be responsible for management of all hatcheries off-reservation. Moreover, the State would agree to provide managerial assistance to the tribes on-reservation so long as needed. The settlement must assure that all persons involved in the management of the hatcheries in the state have the requisite skills to do so at the outset of the settlement. Again, a number of the tribes do not have the present capability to manage their own hatcheries and the State should be assigned responsibility for interim management of tribal hatcheries, all of which would be on-reservation, perhaps on a contract basis. A good model for such an interim management plan may be as found in the recent tentative agreement between the WDF and the Nisqually Tribes.

Exhibit No. 7

PUGET SOUND GILLNETTERS

ASSOCIATION

RESPONSE TO TASK FORCE PROPOSED SETTLEMENT

FEBRUARY 1, 1978

Fisherman's Terminal
Building C-3, Room 103
Seattle, Washington 98119

P R E F A C E

As suggested on page 190 of the Task Force Proposed Settlement, "The new management system must provide a coherent body of law and areas of jurisdiction which can be easily understood by the fishermen." Our understanding and ready acceptance of any of these proposals must be contingent on the establishment of this "body of law." Address of our remarks is based on our conviction that U.S. Supreme Court attention must certainly be brought on all phases of this fishery issue, but most specifically to analyze what U.S. Citizenship means in terms of treaty validity in 1978.

Our remarks are presented corresponding to each section listed on page viii in the Task Force Document.

PROPOSED MANAGEMENT SYSTEM:

This system involves a complicated management scheme with over nine different management authorities, each with a complex system of checks and balances. In short, it creates an expensive new "Fisheries Bureaucracy" which, because of its size and diverse interests of its members, would be unable to effectively manage itself much less the fisheries resource of our State. Such a burdensome management approach has already proven itself unworkable.

As stated in the P.S.G.A. Plan (Part 2-Attached) submitted earlier to the Task Force, we believe that Washington's Fisheries can best be managed by a single, unified authority. The Washington Department of Fisheries at this time, is best qualified for that purpose.

While purporting to return management control to the State, in actuality under the proposed plan, it is the Federal Government in conjunction with the Tribal Commission which retains ultimate authority. It merely provides the structure for administering the Boldt allocation formula which has been repeatedly rejected by the Washington State Supreme Court and found unacceptable by the State Legislature.

STATE AND TRIBAL COMMISSION MANAGEMENT ZONES:

This further separates and weakens management authority. By creating some 26 additional management areas it will add considerable confusion among all fishermen.

The creation of in excess of 18 Tribal Management Zones establishes sole

Indian control over all uses of water within those zones. This amounts to implementation of Phase II of the Boldt Decision.

RESOURCE ENHANCEMENT:

We strongly oppose the Task Force proposal to turn over control of State hatcheries or enhancement projects to treaty Indian tribes. Their proposed control would include how the water of all estuaries, rivers and tributaries emptying into said hatchery sites could be utilized. As with management we believe that all enhancement programs should remain under the unified expertise of the Washington Department of Fisheries.

Again it is obvious that non-Indians are being asked to pay the bill for an enhancement program that would in our view mainly benefit Indians.

SALMON RESOURCE DISTRIBUTION PLAN:

This plan promotes increased harvest by treaty Indians in terminal areas and rivers where the quality of salmon is very poor. This has a depressing effect on the entire Industry and cheats consumers both at home and abroad of the opportunity of obtaining a high quality product.

It allows treaty Indians an exclusive ocean net fishery.

This plan pre-empts judicial appeal to the Boldt Decision which is presently pending.

STEELHEAD RESOURCE DISTRIBUTION PLAN:

We view trading off Steelhead for salmon as a deceptive expediency and continue to oppose any commercial fishery on Steelhead by any group. We

fully support its designation as a national game fish.

WASHINGTON STATE LICENSE AND GEAR REDUCTION PROGRAM:

This is not a voluntary program at all but rather one that is based upon economic coercion. Greatly reduced fishing time has resulted in many fishermen now having no choice but to liquidate their livelihoods or else face certain bankruptcy.

The plan quite clearly was never intended to accomplish gear reduction at all. It reduces the non-Indian fleet by 67%, but increases the Indian fleet. The "A, B, C," license classification system is arbitrary and further segregates the industry by denying equal individual opportunity.

In the preface to the Proposed Supplement the Task Force states that the non-Indian commercial fishing groups have evaluated their fleets to determine "when and to what extent fleet size could be reduced." They then suggest that the Fleet Adjustment Program is a response to our alleged "evaluation." This is totally false. Our Association voluntarily supported the 1973 license issuance moratorium plan but we would never support a forced plan of fleet reduction to accommodate racial quotas.

TRIBAL COMMISSION LICENSE AND FLEET ADJUSTMENT PROGRAM:

This program, simply stated, is a fleet expansion program for treaty Indians. We oppose fleet expansion on racial formula at tax-payer expense however it is phrased.

The so-called "moratorium levels" of the new treaty fleets do not numerically reflect their catch potential. The Indians will be allowed to operate in

river terminal areas which are off limits to the non-Indian fleets. In these areas of high fish concentration the treaty fishermen are also allowed to use types of gear illegal under State law.

It promotes the use of illegal gear and methods for the Indian fishery.

This program contains no moratorium limits for Indian skiff and river fisheries.

This is a gross omission considering the potential for harvest of salmon and Steelhead within the proposed tribal management zones.

PRELIMINARY ASSESSMENT OF ENFORCEMENT:

Credibility of management equates directly with minimizing the need for enforcement. Discriminatory regulations do not generate credibility but rather result in opposition by the group being discriminated against. Increasing Federal enforcement of discriminatory regulations will only serve to heighten hostility and increase the threat of further violence.

Records will show that before the Boldt Decision, enforcement was never a major problem in the Washington State Commercial Fishery. If returned to an equal individual opportunity fishery, enforcement problems would be solved automatically.

Proposed armed Indian police arresting non-Indians and subjecting them to Indian court jurisdiction would expose state citizens to application of apartheid laws.

CANADIAN INTERCEPTION:

We do not believe that intrusions into fishery problems between the U. S. and Canada are within the scope of the Task Force. We continue our support of the I. P. S. F. C. and believe that its track record for fairness and

management ability speaks for itself. The extremely low incidence of "enforcement problems" in the I. P. S. F. C. management area confirms its credibility among all American fishermen. We view the latest Federal intrusion into I. P. S. F. C. affairs as totally inappropriate and a very real threat to the continuance of U. S. - Canadian cooperation.

PHASE II:

We adamantly oppose the implementation of both parts of Phase II as laid out in the preceding 197 pages.

CONCLUSION:

This whole complex, Task Force edited set of proposals, as we view them, over-reacts to Washington's fisheries problems to the point of irrationality. The P.S.G.A. "in common with" proposal, which we have previously presented to the Task Force and herein alluded to, is a far simpler (and more workable) approach to the central problems of Government obligation, management, equal individual opportunity, and resource utilization. We appreciate the Government's consideration of our remarks contained herein and eagerly await Supreme Court establishment of a solid foundation or "body of law" on which to base our further input.

PUGET SOUND
GILLNETTERS PROPOSAL FOR RESOLUTION
OF TREATY INDIAN FISHING RIGHTS CONTROVERSY

SUBMITTED TO:

NORTHWEST REGIONAL FISHERIES TASK FORCE

PREPARED BY:

Puget Sound Gillnetters Association
Building C-3, Room 103
Fishermen's Terminal
Seattle, Washington 98119

PHILIP G. SUTHERLAND
PRESIDENT

Explanatory Note:

What is herein referred to as the "Gillnetter's Plan" was first presented to the International Pacific Salmon Fisheries Commission by Bob Christensen and Wally Green in June of 1977. Both men are active fishermen and official advisors to the I.P.S.F.C., Bob representing the Gillnetters and Wally, the Seiners.

Prior to that meeting, the basic plan was endorsed by the Puget Sound Gillnetters Association and since then has been re-submitted to various interested groups including the "Task Force".

This plan shall not be construed in any way to mean that the Puget Sound Gillnetters Association believe that the Indians are entitled to any special remuneration.

Far from it; fundamentally, we feel that no citizen has any more right (based on Ethnicity) to the natural resources of this State than any other citizen. We merely herein recognized an existing state of emergency, created by the Federal Government, at the behest of the Indian people and therefore, suggest that these two parties be responsible for the immediate alleviation of this intolerable situation.

The Gillnetters plan provides an expedient device for dealing effectively with the existing dilemma and allows time for a permanent solution to be worked out.

THE P.S.G.A. PLAN

Our solution to the existing fisheries dilemma consists of two main parts:

Part 1.

Starting the 1978 fishing season we return to the pre-Boldt conditions of management with the Department of Fisheries in sole control of State Fisheries. All management, regulations, enforcement, etc., to be handled by the Department the same as in 1973 prior to U.S. vs. Washington without Federal or Indian interference.

All fishermen regard less of ethnic background to have equal opportunity by the same regulations, with no preference given to any race. All fishermen to operate under the same type license, with no racial distinctions made in regard to catch reporting, enforcement, areas fished, or fishing time allowed. All fishermen to be treated equally in regard to limited entry or license moratorium.

Part 2.

If by this procedure, the Treaty Indians and the Federal Government feel that the Indians are being denied the special opportunities allowed them through the interpretation of the Boldt Court, they should then request the U.S. Congress to compensate the Indians for the difference.

This money would not be paid to the participating Treaty fishermen, but to the entire tribes. At the time of the Treaty signing, fishing was an overall tribal occupation. At the present time, only one out of thirty Indians fish, and those comparatively few members are enriching themselves while the remainder of the tribe are no better off than pre-Boldt. Furthermore, many Indians say they are worse off because of a growing resentment in the minds of the non-Indian public.

The Gillnetters plan at least suggests that if restitution is made, then it benefits the entire tribe. None of the other plans recognize this problem, and in fact generally tend to make the present rich Indians richer and the others poorer by comparison. Actual details concerning method of payment is beyond the scope of this presentation.

Justification for the P.S.G.A. Plan:

1. Single authority: Management will be under one qualified and legally responsible agency where it belongs. The Washington Department of Fisheries has the know-how and the staff to do the job and at this point they are the only ones thus qualified. The Boldt Court (which has now usurped the power of our Department of Fisheries) does not qualify as a proper manager of this State's salmon resource and the quicker they return the responsibility to the State the better it will be.

2. Solves enforcement problem: The entire industry lacks confidence in the Boldt Court's ability to manage this fishery resource, and questions his right to even attempt to do so. Federal interference has bred disgust and frustration among all fishermen and has created some intense enforcement problems as a result. This chaotic fishing enforcement problem will be self-correcting if the State Department of Fisheries is put back in charge of management on an impartial basis.

Part 3.

Assure Proper Escapement: During the past season we witnessed the spectacle of nearly 30 cooks trying to "stir the soup" at once: State Department of Fisheries, the Boldt court, twenty separate Indian tribes, the I.P.S.F.C., the U.S. Department of Interior, U.S. Department of Justice, U.S. Department of Commerce, U.S. Department of Transportation, National Marine Fisheries, and U.S. Department of State. All of these groups are attempting to have their say in the management of this Industry at the same time.

So long as this tragic situation continues, the salmon resource is in jeopardy. It is difficult under normal conditions to maintain a sustained yield fishery, but under the Boldt confusion, proper escapement levels are nearly impossible to achieve.

If the same groups mentioned above would lend support to the P.S.G.A plan, we could have a properly run season in 1978 with the Washington Department of Fisheries back in firm control.

Part 4.

Distributes the Load Evenly: Senator Warren G. Magnuson in a letter dated November 18, 1977 said, "I share your belief that one segment of the population should not be required to shoulder the entire responsibility for a treaty signed by the Federal Government over a Century ago."

Under the Gillnetters Plan the Congress of the U.S. may appropriate money to be paid to the tribes to alleviate a situation created by Federal attorneys, Federal courts, and Federal treaties. The responsibility, then, for carrying the load of the Boldt decision would be divided among all the taxpayers in the U.S. and not just dumped on one small segment of the population.

Part 5.

Requires no Controversial Legislation: The weakness inherent in other plans submitted to the Task Force is that they depend on some form of allocation. The very principal of allocation based on ethnicity is abhorrent to both the U.S. Constitution and the Washington State Constitution. Some plans which have been suggested depend on legislative approval of an allocation measure. But there is no guarantee that such a bill would be forthcoming. Even if such a bill did pass, it would certainly be challenged in our State Courts on constitutional grounds.

Some of the plans also seek to make changes in the Boldt Decision. They predicate a solution upon the idea that U.S. vs. Washington can easily be re-arranged. This could be wasting time on a false hope. Our plan leaves the Boldt Decision intact for the courts and Congress to wrestle with. Neither does our plan require legislation of doubtful constitutionality to be passed.

Part 6.

Cost Consideration: The amount of money required to compensate the tribes would be substantial. However, the adverse impact on the economy and the taxpayers due to the Boldt Decision is also substantial. For four years we have witnessed tremendous amounts of money spent by the State, the Federal Government, Indian and non-Indian in court battles over this controversy and the situation is getting worse.

Add to this the use of large Coast Guard cutters, patrol vessels, helicopters and U.S. Marshals, and then add the cost of such things as buy-back programs and we can see that this situation is costing the taxpayers a "bundle".

We must also take into account the depressing effect the controversy has had on the entire fishing industry and also recognize the serious damage to the resource itself caused by the lack of coordinated control.

Part 7.

Entry by Same Rules: In regard to Comparative Fleet sizes: Licensing as before-mentioned would be by the State and would be the same for all citizens. The present active Indian fleet would be under moratorium the same as the non-Indian fleet. If any fisherman chooses to sell out his boat and license, any person (Indian or non-Indian) buy that boat. This would be strictly a competitive, free enterprise transaction.

Part 8.

Conclusion:

Hopefully, the time is not too far distant when Congress will opt to deal with the broad overall problem of the status of Indians and their treaties in our society. In the meantime, we must depend on temporary solutions such as the one presented here, which preserve our resources, avoid violence, and allow an orderly continuation of business.

Settlement Plan for Washington State Salmon and Steelhead Fisheries

Proposed by the

Commercial-Recreational Fisheries Delegation

- Purse Seine Vessel Owners Association
- Washington State Sportsmen's Council
- Washington State Commercial Passenger Fishing Vessel Association
- Grays Harbor Gillnetters Association
- Northwest Steelhead and Salmon Council
- Washington State Blackmouth Association
- Pacific Seafood Processors Association
- Washington Trollers Association
- Washington Reefnet Owners Association.
- Washington Kelpers Association

August 1978

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PROPOSED SETTLEMENT PLAN BY THE
COMMERCIAL-RECREATIONAL FISHERIES DELEGATION

CHAPTER 1
INTRODUCTION

The overall goal of this proposed plan is to provide all treaty and non-treaty fishermen and recreational anglers with the opportunity to participate in a healthy salmon fishery. This plan, if implemented in a reasonable fashion together with proposals to increase numbers of harvestable salmon and adjust size of the commercial and charter boat fleets, will provide all fishermen who depend upon salmon fishing for their livelihood the opportunity to earn an adequate income.

While the bulk of this plan appears to concentrate on the long-term distribution of the salmon resource, it is important to note that the delegation also offers significant amendments to the settlement package offered by the Northwest Regional Fisheries Task Force. First, it is the position of the delegation that any settlement must include U.S. Supreme Court review of the Boldt interpretation of the Steven's Treaties. This can be achieved as part of an overall settlement, with Congress serving as the final interpreter of such treaties. Second, the delegation supports most of the principles contained in the alternative management plan developed by the state of Washington, although we are somewhat concerned with the cost of administration inherent even in that proposed State-tribal cooperative management system (the plan is a significant improvement over the Task Force system). We fully support all aspects of the plan which limit the role of the federal government and federal courts in the management of the resource. We will continue to review this

plan and offer recommended changes first to the state, then to the National Task Force and the Congress. Third, the delegation is most concerned with the inclusion of a large number of seemingly cost ineffective projects for enhancement in the Task Force plan. If Indian and non-Indian fisheries are to ultimately share in meeting a part of the cost for operation and maintenance of such projects, we are unwilling to support capital expenditures for enhancement projects which promise little in terms of production. Thus, we would support a reduction in the enhancement and research budgets along the lines described by the State in their response to the Task Force, unless proposed projects can be replaced with others promising greater production. Fourth, we support the Task Force plan for gear reduction in the commercial fleet, although those amendments proposed by the state of Washington in their response to the Task Force are consistent with the goals of our resource distribution plan, realistic in terms of what is likely acceptable to the State Legislature, and more equitable for all commercial fisheries. The State proposed amendments must be included in the settlement. Finally, we are in complete agreement with the state of Washington that all issues in "Phase I" and "Phase II" of U.S. v. Washington must be settled. We are interested in participating in policy deliberations involving the long-term protection of the salmon habitat, so long as discussions center on a realistic habitat plan which does not inhibit reasonable competing uses of the state's water resources or abrogate State jurisdiction over the control of its natural resources. This settlement must be an end to treaty Indian claims affecting Washington fisheries.

The Commercial-Recreational Fisheries Delegation has operated on the principle that all existing fisheries should be maintained as much as possible at levels which will assure that persons truly dependent upon such

fisheries for a livelihood or for recreation can continue to do so, while at the same time providing a reasonable opportunity for treaty Indian fishermen to do the same. It is the principle of this plan that the future must provide assurances of significantly expanded harvests for commercial and recreational fishermen, both Indian and non-Indian. Further, the plan must be implemented over the short-term in a manner which assures the economic well-being of treaty and non-treaty fisheries until such time as enhancement benefits are to be derived.

The Commercial-Recreational Fisheries Delegation proposal is based on the following principles and program elements:

1. That the primary goal of fisheries management continue to be conservation and enhancement of salmon resources to the maximum benefit of all citizens of the State.
2. That any settlement shall be phased-in to minimize any adverse economic impacts on existing commercial and recreational fisheries, while at the same time providing a fair and reasonable opportunity for increased harvests by treaty Indian fishermen.
3. That a settlement plan insure to the greatest extent practical "equal opportunity fisheries", with Indian and non-Indian fishermen operating in common areas under the same rules and regulations and with the same types of gear.
4. That Indian and non-Indian commercial fishing fleets in common marine fishing areas and ocean fisheries have identical flexibility to harvest salmon in terms of open "areas/days" allowed both groups.

5. That any resource distribution plan be plainly based on the concept of area and gear distribution, rather than allocation by any individual's race.
6. That any resource distribution plan not include unmanageable special exclusions or adjustments such as "on-reservation, ceremonial and subsistence" catches of treaty Indians.
7. That true "equal opportunity fisheries" be implemented primarily by gear reduction in the non-Indian commercial fleets through a largely voluntary buy-back program, with concomitant gearing-up of the treaty Indian fleet to levels consistent with the resource distribution plan.
8. That special tribal commercial fishing areas be established in certain freshwater, estuary and terminal marine areas to help fulfill cultural and economic needs of the various tribes and to assure commercial net fishery management by the State which will prevent surplus escapements of artificially produced runs and some stronger native stocks. This must occur where they have achieved some significant degree of physical separation from weaker runs. This is not to suggest that the State would in any way give up jurisdiction or management authority over such tribal fishing areas, or that such areas would constitute an expansion of tribal reservations. Non-Indian recreational fishing would not in any way be excluded from such areas. The Delegation supports establishment of tribal fishing areas as described in the State response to the Task Force proposal. Any further expansion is not justified from a management perspective.

9. That the resource distribution plan be based on a formula which does not directly include troll and recreational fishery harvests. Regardless of the starting point or what catches are "excluded" or "included", allocations must be expressed as portions of actual harvestable returns to the case area as determined by accurate in-season assessments of run strength followed by intense, day-by-day management of commercial net fisheries.
10. That the resource distribution plan must provide a structured phase-in. An equal opportunity fishery cannot occur immediately due to the relative imbalance in fishing gear among Indian and non-Indian commercial fishermen. Further, if the basic objective of minimizing adverse economic impact on all commercial and sports fishing groups is to be achieved, implementation of a long-term settlement plan must reflect tangible enhancement results. This would occur as follows in the various fisheries:

Short-Term

- a. Puget Sound Nets: Canadian Origin - 10% "opportunity" fishery for treaty Indians, plus a 2% additional increment per year for the first 5 years of the plan (actual percentage based on progress of gear up - gear down). Tribal cash compensation for failure to meet opportunity goals during interim period.
- b. Puget Sound Nets: Puget Sound Origin
- (1) Opportunity fishery: 10% "opportunity" fishery for treaty Indians, plus a 2% additional increment per year for the first 5 years of the plan (actual percentage based on progress of gear up - gear down).
 - (2) River and terminal area fisheries: 30% "opportunity by fish" for treaty Indians, less at least a 2% increment per year for first 5 years (again, based on actual gear up - gear down results).
- c. Grays Harbor - no interim plan necessary.

Long-Term

- a. Puget Sound Nets: Canadian Origin - 20% "opportunity by gear".
- b. Puget Sound Nets: Puget Sound Origin
 - (1) Opportunity fishery: 20% "opportunity by gear."
 - (2) River and terminal area fisheries: 20% "opportunity by fish".
- c. Grays Harbor - With a chain of exclusive river commercial net fisheries extending north from Grays Harbor (see Table 2), tribes already have available for harvest over 50% of the coastal region's salmon production without participating in the Grays Harbor net fishery. With projected enhancement, this share still exceeds 50%; therefore, no special Indian fishery is justified in Grays Harbor.

Washington Trollers - The Delegation recommends that a stabilized fishery be established based on average chinook and coho salmon harvest shares during the base years, 1970-73. Gear reduction would be the primary vehicle for achieving such harvest shares. Treaty Indians would participate in this fishery on an equal opportunity basis (see Table 3).

Washington Ocean Recreational (Catch Areas 1-4) - The ocean recreational fishery shall be deemed to be in compliance with terms of this plan if the following conditions are met:

- a. Charter boat fleet size is reduced in terms of carrying capacity by 20% from current levels through a voluntary buy-back program.
- b. A licensing system (formula) would be established which limits total angler capacity of the charter boat fleet.
- c. If number of angler trips exceeds, by 10% in any two consecutive years, that number recorded during the 1975 base year, adjustments in fishing effort would be made pursuant to a 2-year management plan.
- d. Once ocean fishing rates have been stabilized, number of salmon caught by the ocean recreational fishery shall be allowed to increase proportionate to other fisheries as the increased supply of salmon becomes available from the resource enhancement program.

11. That the complete de-commercialization of steelhead occur as provided in Chapter 5 of this plan, provided that any phase-in program for de-commercialization will not adversely impact commercial net fishery management.
12. That Canadian interceptions be stabilized.
13. That the following long-term goals for all fisheries are met:

Inside Commercial Net Fisheries

- a. 4-day-per-week fishing as a general goal for the average season;
- b. fishermen be able to harvest salmon in a manner which assures processors and consumers top quality fish and enables them to fish in areas where they have historically harvested salmon.

Trollers

- a. assure into the future that a viable troll fleet will be able to continue to harvest salmon at their historical fishing rate during the 1970-1973 base period, but assuming that reasonable stabilization of fishing effort will have to occur during early years of the program;
- b. assure that the benefits of settlement related enhancement will accrue to the troll fishery equally when compared with all other fisheries.

Ocean Recreational

- a. an assurance that present seasons and size limits will be maintained unless effort increases require mitigation;
- b. maintenance of the three salmon daily bag limit;
- c. daily trip limits for individual boat will not be established;
- d. assure that the benefits of settlement related enhancement will accrue to the ocean recreational fishery equally when compared with all other fisheries.

Puget Sound Marine and Freshwater Recreational

- a. de-commercialization of steelhead trout as per attached plan;

- b. maintain a three fish daily bag limit in marine waters;
- c. reduce the marine size limit on chinook salmon over time if excessive fishing rates can be avoided or if otherwise justified;
- d. recreational fishery regulations not tied to commercial net fishery management, except when absolutely necessary for strict conservation considerations, i.e. when the recreational fishery target species is one for which a conservation need exists.

All parties have agreed that operation of any resource distribution plan must be sufficiently flexible to assure Indians and non-Indians bear the successes or failures of enhancement in a manner consistent with terms of the resource distribution plan.

- 14. "Catch floors" or "guarantees" for specific inside fisheries which assure minimum levels of harvest for treaty Indians are not acceptable pursuant to any plan; nor are they technically feasible. The primary goal of achieving a reasonable level of harvest for all fishermen pursuant to an "equal opportunity fishery" cannot provide greater assurances for treaty Indian fishermen than exist for non-Indian fishermen, be they recreational or commercial fishermen.
- 15. Any settlement must involve a commitment to future production and return to Washington waters of at least twice as many salmon for harvest as exist today. If additional funding is necessary in the future to achieve this goal, the Federal Government's commitment must be clear.

The delegation proposal will provide a total treaty catch during the early years and implementation at a value in excess of 1977 harvest levels (and considerably higher than pre-Boldt years). In fact, with the considerable front-end gear reduction in the non-Indian fleet during the first year of the plan, the projected results of attaining long-term results at a rate

of 2% per year suggested herein appears conservative. Long-term results of the plan indicate that the tribes will harvest approximately 3.4 million salmon per year in the case area (see Table 1-3). This exceeds by 1 million fish per year the task force's projected treaty harvest if the Boldt decision were fully implemented without a settlement (see page 204 of task force plan). Clearly, this plan provides considerable long-term economic benefits for the tribes, while at the same time preserving and increasing at a reasonable rate the economic gain derived to date by virtue of implementation of the Federal District Court decision.

TABLE 1.

Puget Sound Commercial Net Fisheries
 Allowance of 20% Treaty Indian Gear in Equal Opportunity Fisheries
 Plus Distribution of 20% of Inside Runs to Treaty Indian Terminal Area Fisheries
 All Species - In Thousands of Fish

	Current Run Sizes (1974-77 Averages)		1989 Run Size Forecasts	
	Allowable Catches		Projected Allowable Catches	
<u>Canadian Origin stocks (equal opportunity)</u>				
Est. non-treaty catch	2,410	80%	3,166	80%
Est. treaty Indian catch	<u>602</u>	<u>20%</u>	<u>791</u>	<u>20%</u>
Subtotal - Canadian	3,012	100%	3,957	100%
<u>Puget Sound Origin stocks</u>				
<u>Marine Areas (equal opportunity)</u>				
Est. non-treaty catch	703	64%	3,322	64%
Est. treaty Indian catch	<u>175</u>	<u>16%</u>	<u>831</u>	<u>16%</u>
Subtotal - Marine areas	878	80%	4,153	80%
<u>River and Terminal Areas</u>				
Treaty Indian catch	<u>220</u>	<u>20%</u>	<u>1,038</u>	<u>20%</u>
Subtotal - Puget Sound	1,098	100%	5,191	100%
Total Canadian & Puget Sound	4,110		9,148	
Total non-treaty catch	3,113		6,488	
Percent		76%		71%
Total treaty catch	997		2,660	
Percent		24%		29%

BASIC DATA FOR FORMULAS IN TABLE 1

(NOTE: 1977 estimated catch information from WDF soft data system, 1974-76 data from final WDF statistics. Odd-year pink catches average over 4 years.)

1. 1974-1977 average Puget Sound net fishery catches of Canadian-origin salmon, in 1,000's of fish:

Sockeye	1,753
Pink	760
Coho	293
Chum	141
Chinook	65
	<u>3,012</u>

(NOTE: 1977 Puget Sound net fishery catches of Canadian-origin salmon, in 1,000's of fish, were as follows: 1,645 sockeye, 241 coho, 72 chinook, and 48 chum. With the 4-year average of 760 for pink salmon, the combined total for all species would be 2,766.)

2. 1974-1977 average Puget Sound net fishery catches of Puget Sound-origin salmon, in 1,000's of fish:

Coho	574
Chum	286
Chinook	146
Pink	59
Sockeye	33
	<u>1,098</u>

(NOTE: 1977 Puget Sound net fishery catches of Puget Sound-origin salmon, in 1,000's of fish, were as follows: 719 coho, 332 chum, 169 chinook, and 67 sockeye. With the 4-year average of 59 for pink salmon, the combined total for all species would be 1,346.)

3. Percentages of Puget Sound-origin salmon taken by the Puget Sound commercial net fishery in catch areas where co-mingling with Canadian-origin salmon occurs:

<u>Area</u>	<u>Chinook</u>	<u>Coho</u>	<u>Chum</u>	<u>Sockeye</u>	<u>Pink</u>
4B	65%	65%	20%	1%	4%
5	65	65	20	1	4
6	65	65	20	1	4
6A	60	75	70	1	4
6C	65	65	20	1	4
7	15	20	15	1	4
7A	5	10	5	0	4

BASIC DATA FOR FORMULAS IN TABLE 1 (Continued)

4. Interceptions by Puget Sound commercial net fisheries of salmon originating in British Columbia rivers, 1971-1974 averages, in 1,000's of fish, U.S. estimates:

Sockeye	2,237.4	
Pink	1,106.4	(2,212.8 odd-year average)
Coho	335.2	
Chum	194.4	
Chinook	85.6	
	<u>3,957.0</u>	

5. Projected increases for Puget Sound commercial net fisheries from enhancement programs listed in Settlement Plan for Washington State Salmon and Steelhead Fisheries, in 1,000's of fish, WDF estimates:

	<u>IPSFC Areas</u>	<u>Inner Puget Sound</u>	<u>Total</u>
Chum	105.8	2,396.8	2,502.7
Coho	128.0	773.1	901.1
Chinook	19.3	279.8	299.1
Sockeye	.2.3	268.8	281.2
Pink	12.8	95.6	108.5
	<u>278.3</u>	<u>3,814.2</u>	<u>4,092.5</u>

TABLE 2.

North Coastal Treaty Indian Commercial Net Fisheries
(expected catches in 1,000's of fish)

<u>Species</u>	<u>Current Run Sizes</u> (1974-77 Averages)	<u>1989 Run Size Forecasts</u>
	<u>Allowable Catches</u>	<u>Projected</u> <u>Allowable Catches</u>
Sockeye	40	248
Coho	30	93
Chinook	13	36
Chum	6	75
Total	<u>89</u>	<u>452</u>

(NOTE: 1989 run size forecasts represent current run sizes plus WDF estimated terminal net fishery harvests resulting from north coastal enhancement projects.)

TABLE 3.

Washington Commercial Troll Salmon Fishery Allowance of 10% Treaty Indian Gear on an Equal Opportunity Basis (expected catches in 1,000's of fish)

	<u>Current Run Sizes</u> (1974-77 averages) <u>Allowable Catches</u>	<u>1989 Run Size Forecasts</u> <u>Projected Allowance</u> <u>Catches</u>
<u>Coho Salmon</u>		
Estimated non-treaty catch	827 (90%)	1,599 (90%)
Estimated treaty catch	92 (10%)	178 (10%)
Subtotal	919 (100%)	1,777 (100%)
 <u>Chinook Salmon</u>		
Estimated non-treaty catch	247 (90%)	403 (90%)
Estimated treaty catch	27 (10%)	45 (10%)
Subtotal	274 (100%)	448 (100%)
 <u>Pink Salmon</u>		
Estimated non-treaty catch	78 (90%)	84 (90%)
Estimated treaty catch	9 (10%)	9 (10%)
Subtotal	87 (100%)	93 (100%)
 Total -- all species	 1,280	 2,318
Total -- non-treaty catch	1,152 (90%)	2,086 (90%)
Total -- treaty catch	128 (10%)	232 (10%)

(NOTE: 1989 run size forecasts represent current run sizes plus WDF estimated increased harvests resulting from enhancement projects.)

CHAPTER 2

DEFINITION OF TERMS

- A. Puget Sound origin - salmon resources dependent upon Puget Sound streams for their freshwater life history requirements.
- B. Canadian origin - Salmon resources dependent upon Canadian streams for their freshwater life history requirements.
- C. Returning harvestable runs - surplus fish over and above spawning escapement and artificial production requirements.
- D. Adult equivalents - computation of additional adult salmon returns that would have occurred in the absence of a particular fishery.
- E. Region of origin - a defined geographic region where certain salmon stocks originate; e.g., salmon originating in streams draining into Hood Canal.
- F. Harvest rate - rate of removal catch from a total salmon population (catch plus escapement) due to a particular fishery.
- G. Run - actual returns of adult salmon to the stream of origin.

CHAPTER 3
RESOURCE DISTRIBUTION PLAN - ADJUSTMENTS AND EXCLUSIONS

A. Introduction

In development of any practical resource distribution plan, it is essential that fisheries managers have the ability to pass salmon through many intercepting fisheries in a manner which assures adequate spawning escapement for all runs while still meeting terms of any plan. Additionally, in determining what a distribution plan is to entail, appropriate consideration must be given to relative contributions of various parties to the resource base in order to numerically quantify any division of respective opportunities to harvest the fish. To achieve a fair distribution of salmon resources, which is also feasible from a technical management standpoint, the following considerations are deemed essential by the Commercial-Recreational Fisheries Delegation.

B. Revisions to Boldt Formula

Like the Regional Team of the National Task Force, we strongly believe that a final settlement fairly entails something less than full implementation of the sharing formula originally mandated by Judge Boldt in U.S. v. Washington. Remembering our position that the Judge's interpretation of the Stevens Treaties must be reviewed by the U.S. Supreme Court in order to achieve a final settlement, it is also clear that any interim or long-term settlement plan must take into account certain factors which justify less than full implementation of the Judge's formula, regardless of the outcome of any final court decision. These factors are outlined below and must be reflected in any final resolution of this dispute in the Congress and the Washington Legislature.

First, contribution of unilateral, ongoing state artificial production programs, designed for the benefit of all citizens of the state, must be considered in quantifying any division of respective opportunities to harvest the resource. Further, HB-1188 was recently enacted by the Washington Legislature to provide for significant enhancement of salmon (up to 5 million additional salmon of the projected task force increase of 7.5 million to be available for harvest). It was the intent of that legislation that results of this \$33 million program accrue to the benefit of State-licensed commercial and recreational salmon fishermen, and that resultant salmon not be allocated pursuant to any treaty right.

We completely disagree with the Regional Task Force that injection of additional federal dollars to supplement this state program in any way justifies a conclusion that hatchery fish aspects of "Phase II" are therefore settled. Extending treaty fishing rights conferred in U.S. v. Washington to hatchery fish is not founded in law, nor has the Federal District Court determined that this is appropriate. Three judges of the United States Supreme Court in Puyallup II (414 U.S. 44(1973)), found that hatchery propagated steelhead trout are not subject to a special Indian treaty fishing right. Subsequently, in Puyallup III (433 U.S. 165 (1977)) the United States Supreme Court affirmed a judgment in which the State Supreme Court had totally excluded hatchery propagated steelhead trout in the Puyallup River from the Indian treaty fishing rights.

We believe it is appropriate and practical to consider the mixture of hatchery and natural fish in actual management of fishery resources.

The harvest in marine waters by various fishing groups should be on the basis of reasonable management principles which consider, but are not dictated by a distinction between hatchery and natural stocks. While these groups must often be managed as a "mixture", hatchery-origin fish can still be deducted from any overall allocation formula just as was done in Puyallup III. Certainly, this must be done with regard to State hatchery fish as a matter of federal and State law.

We believe that effective development and implementation of a substantial future enhancement program could well be imperiled by any artificial segregation, for the purpose of harvesting fish, between hatchery and natural stocks. Distinctions in harvest opportunity based upon factors such as the source of funding for hatcheries, who operates the facility, etc., will foster antagonisms and competition between proposed projects that will undoubtedly be inimical to development and implementation of an overall coordinated statewide enhancement program.

Again, these resource management problems dictate that a distinction between artificially-produced and natural stocks must not be made in the ultimate operation of a distribution plan. However, this is not to say that production of salmon by the State through existing and new hatcheries is not relevant in determining a fair sharing formula. It is generally acknowledged that the greatest benefits in terms of production to be derived from enhancement projects are likely to evolve from existing and new State hatchery projects, simply because these State hatcheries are located on most of the best available production sites. Most of the new projects now being proposed by the Federal Task Force were originally

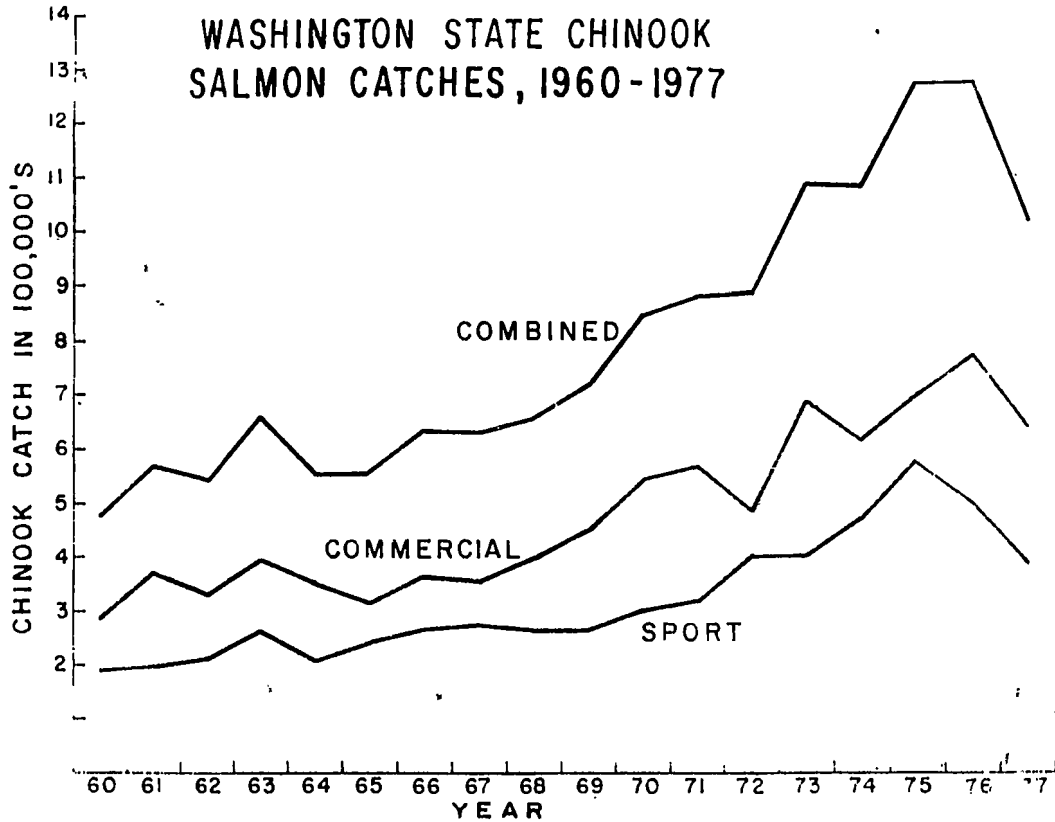
rejected by the State, since their benefit:cost projections were substantially poorer than sites already selected for approved State facilities. Thus, it is submitted that the Delegation's proposed alteration in the Boldt formula is clearly justified on the basis of the contribution being made to the resource by the State and licensed users. The State has a proven track record with respect to chinook and coho salmon enhancement (see Figures 1 and 2), and major new facilities for these and other species are now coming on-line.

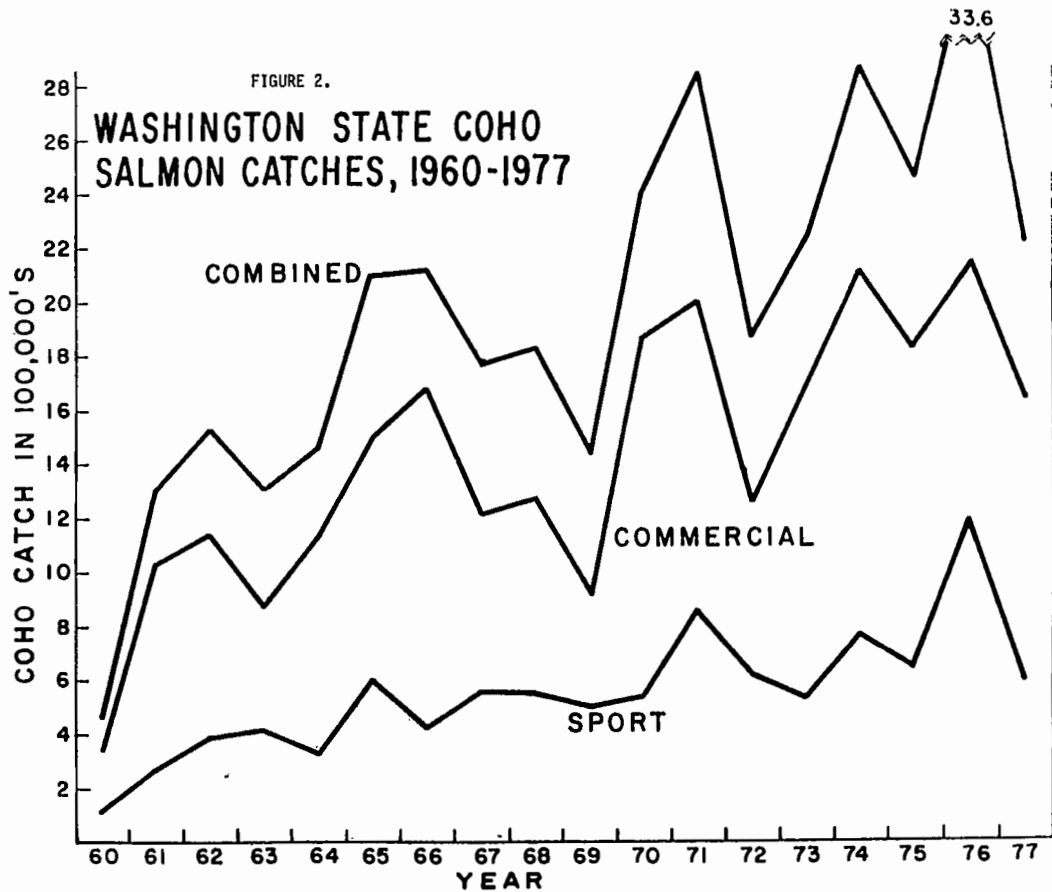
A second major reason for altering the Federal District Court sharing formula is the clear economic hardship which would result for non-Indian commercial and recreational fisheries if the court formula is fully implemented. Maintaining existing fisheries at even close to historic levels would be impossible without enhancement, and significant enhancement results will not be forthcoming for the next 5 to 10 years. Clearly, a reasonable phasing-in of any plan must occur to prevent serious economic and social disruption. This proposed plan preserves and increases quickly the present value of harvest levels by treaty Indians, while at the same time preserving existing viable commercial and sport fisheries in the case area.

With enhancement, there is little doubt that distribution of a larger resource base will ultimately mean greater economic stability for both Indians and non-Indians. However, the State has been committed to expansion of this resource for many years and has committed millions of dollars to stimulate growth of important industries dependent upon salmon. This commitment is discounted in the Task Force settlement, and

FIGURE 1.

WASHINGTON STATE CHINOOK SALMON CATCHES, 1960-1977





program benefits from Washington-origin salmon are to be shared equally by Indians and non-Indians. Yet, it is citizens of the State, as well as resource users, who have borne the bulk of the costs of these programs. Economic returns to these same citizens are not realized if passed on to a special class of people not participating directly in the State's economy, nor contributing significantly to the State investment in said resource.

A third major reason for less than full implementation of the Boldt formula is cast in terms of the comparative economic windfall to treaty tribes, which would be derived from a 50 percent plus (or even 40 percent plus when Canadian-fish are included as provided in the Task Force proposal) share of a significantly enhanced resource. We believe that the goal of any settlement is to provide viable fisheries for Indians and non-Indians alike. Results of our sharing plan in terms of numbers of fish promise far greater benefits to treaty Indian tribes than would be the case if they received a full share of a stable or diminishing resource (again, see Tables 1-3). In the case area, total treaty harvest could exceed by 1 million salmon annually, the level of harvest available with full implementation of the Boldt decision without settlement. This level of harvest is more than 3.5 times greater than at present. Thus, this plan is in fact more than full implementation of the Federal District Court decision, without utilization of the controversial court interpretations of the Steven's Treaties. Benefits to commercial and recreational user groups are as would have naturally evolved through existing and planned State efforts to build significant industry growth for coming years, based on real economic and food needs of U.S. citizens

and without intervention of the Federal Government. When one considers relative populations and potential economic impacts for State versus tribal citizens in reviewing this proposal, its inherent fairness is all the more clear.

A fourth point of consideration involves resolving the question, does a settlement involve "purchase" of some portion of a treaty right? In other words, is investment of considerable funds by citizens of the United States in expansion of a salmon resource in fact a purchase of part of a court decreed entitlement? If so, the general public would likely expect its dollar outlay to affect a considerably better reasoned and more logical sharing of the resource than is contained in U.S. v. Washington. We doubt that the Task Force proposed purchase of what is at most a few percentage points reduction in relative shares between Indian and non-Indians (or even their advertised 10% reduction in such shares) will be perceived as a "good buy" by the general public when stated cost of "purchase" exceeds 200 million dollars. Again, our plan provides significant assurances and opportunities for economic gain by treaty tribes, while at the same time indicating a reasonable alteration of Boldt's sharing formula in return for the high price of settlement.

Citizens of this State expect significant revision of the Boldt formula in any settlement, particularly if major Federal and State expenditures are involved. Remembering that the pre-Boldt tribal share of the resource through established means of competition was miniscule, our proposal goes well over half way toward the Court sharing formula. Most of the pre-1974 case area catch by treaty Indians was realized from special on-reservation fisheries. Moreover, purchase of a proportionate share of

the resource does not mean less harvestable salmon for treaty tribes over time than if the Boldt decision were fully implemented at current production levels. Finally, we would argue that the Boldt decision will never be fully implemented without a settlement because of a lack of legal authority by the Federal Government to guarantee tribes that the Federal District Court formula will ever be attained. A settlement necessarily assures considerably greater harvest of salmon by the tribes.

A fifth concern is one shared by 49 other states and the Federal government. Obviously, the Boldt decision is not the only significant Indian claims case in the United States. Tribes throughout the country are asserting their rights to water, land, minerals, timber, game and countless other resources by virtue of treaties or reservation doctrine. We wonder if the states of Maine and Arizona, for example, where major settlement discussions are in progress regarding land and water rights, will be pleased to see a settlement which is de facto much more than a full implementation plan. When compared with recommendations for settlement on the Maine dispute over land rights, which involves compensation considerably below market value of the property in question, the Task Force plan reveals little in the way of compromise. Can the Congress of the United States seriously consider any settlement proposal for treaty right claims which offers Indians more than full compensation at today's market or dollar values? In evaluating this settlement, Federal and State policy makers must realize that the final settlement may act as a precedent in other areas. The proposed Task Force plan establishes a potentially a dangerous precedent, while the Delegation proposal is fair, yet comparatively reasonable as to "spin-off" ramifications. (Note:

This plan is still more than full implementation in terms of numbers of salmon to be available--the purchase of a significant revision of the Boldt sharing formula is therefore all the more important).

A sixth major point involves technical feasibility of professionally managing the resource in accordance with terms of the settlement. As pointed out in the State's response to the Task Force report, many critical aspects of the plan suggested by the Task Force are technically impossible to implement from a management standpoint. It is much more than a mere "difference of opinion" over two viable approaches. Our plan is feasible and provides assurances that Indians and non-Indians will be able to share equitably in the distribution of harvestable salmon. To promise a settlement that cannot actually be implemented as per its own terms will never solve this or any other controversy.

C. Elimination of Special Exclusions or Adjustments for "On-Reservation, Ceremonial, and Subsistence" Catches

In 1977, the Boldt Court finally included in its allocation formula all catches by treaty Indians, whether actually made on- or off-reservation. This move was in part an acknowledgment that there is simply no way in practical fisheries management to accommodate both an "exclusion" and an "allocation" on the same group of fish. The Washington Department of Fisheries had long pointed out that special exclusions provided in the original Boldt decision must either be completely excluded, and therefore carried no management obligations, or they must be planned for and included in any allocation of the resource.

Further, on-reservation catch adjustments of any significant magnitude .. generally affect marine fishery management in the same manner as higher escapement goals and can present impossible management situations. For example, in the past tribes have proposed the following guideline: "When an on-reservation catch exceeds the run size to the area containing the reservation minus the (prior) net (fishery) interceptions, then the run size minus the net interceptions is set as the on-reservation catch." Wherever this standard is implemented, any non-treaty commercial net fishing on mixed stocks is automatically precluded if, in fact, the so-called "adjustment" could really be provided only to that specific tribe entitled to it.

Additional, but unwarranted "adjustments", are then automatically provided for every other salmon stock present. The alternative would be to "share" the on-reservation catch adjustment with one or more other tribes not entitled to it. Thus, the specificity of managing towards individual tribal adjustments for 19 different tribes renders any system of special catch adjustments as prescribed in the original Boldt decision as technically impossible.

Moreover, on-reservation catch projections submitted by tribes in the past have consisted of absolute numbers, percentages of harvestable numbers and percentages of tribal harvest. The latter would apply to quantities of harvestable salmon unknown in advance, and therefore has no practical applicability for fishery management. The first two approaches would be technically feasible in some instances, but only if either were applied as a single absolute number value or percentage increment on a regional rather than tribal area specific basis.

By suggesting elimination of the special adjustment or exclusion for "on-reservation, ceremonial, and subsistence" catches, we are not in any way indicating that such catches should not in fact still be made.

Because of the management problems presented, however, we must emphasize the need for inclusion of all tribal catches in any percentage to be available in the proposed terminal "opportunity" fisheries contained in our plan.

A further problem involves upgrading of quality in the reporting of tribal catches. In the past, adjustments or exclusions sought by tribes have recommended use of actual on- and off-reservation salmon catch reports to determine their overall share of salmon resources. This is not technically workable since individual treaty fishermen are then directly responsible for deciding their present or future shares of a valuable resource under this plan. Any system where a fisherman's future opportunity can be directly dependent upon his own catch reporting accuracy is useless. We know of no fishery management situation throughout the world in which prescribed divisions of a resource have been successfully accomplished by direct use of such fisherman reports. Costs of any special monitoring program to accurately determine on- and off-reservation catches would be prohibitive.

Finally, during the past four years, WDF and the tribes have spent an incredible amount of staff time and cost in unsuccessfully attempting to determine what appropriate adjustments for these special class allocations might be. Again, this is due in part to technical non-feasibility of this aspect of U.S. v Washington. One should also recognize that these special exclusions or adjustments, which may vary

by species and area from year to year, presents an opportunity for considerable disagreement among competing interests. If a major goal of settlement is to break down the level of animosity among various parties and participants in the salmon fishery, we would argue that elimination of such special allocations is absolutely essential.

D. Exclusion of Prior Ocean Interceptions from the Resource Distribution Plan

Again, the basic catch allocation procedures ordered by the Federal District Court in the case area during 1977 provided a practical method of accurately managing for a prescribed distribution of catch among treaty and non-treaty commercial net fisheries. An element of that plan was that it was based on percentage distributions of fish actually returning to Puget Sound subsequent to prior interception catches, and was not subject to changes in percentages as pre-season forecasts were replaced by more accurate in-season run size assessments. From a salmon management perspective, these basic elements must always be contained in a resource distribution plan, regardless of the extent of prior catches or how they are counted, before accurate commercial net fishery management can actually begin. The runs must still be managed to achieve the proper balance between catch and escapement regardless of how the harvestable portions are shared.

A resource distribution plan for the case area should apply only to those salmon stocks entering into its waters, where primary fishery management responsibility rests with treaty Indian tribes and the State of Washington. Notably, ocean interceptions off California, Oregon, and Washington are a primary responsibility of the Pacific Fisheries Management Council

(PFMC), and sockeye and pink salmon stocks of Canadian origin are managed primarily by the International Pacific Salmon Fisheries Commission. While our plan contemplates that these fisheries would be equal opportunity fisheries, with an opportunity for tribes to gear up to harvest greater numbers of salmon in such areas, it is submitted that these fisheries are not subject to jurisdiction of the State of Washington (which was the defendant in litigation in Federal District Court). They are and will continue to be managed separately and should not be included directly in any kind of allocation plan. This same logic also applies to Canadian and Alaskan interceptions of Washington-origin salmon stocks. The State has no more control over these fisheries than it does over PFMC fisheries. This is not to say, however, that harvest rates from ocean interceptions should not be subject of control in a manner which assures reasonable salmon escapements from the ocean to support viable inside fisheries.

Salmon run sizes should be determined by the number of adult fish entering Puget Sound (defined as waters east of a line from Bonilla Point to Tatoosh Island), excluding a normal recreational fishery, which are destined to migrate to each Puget Sound region specified in the plan. Spawning escapement goals should then be subtracted from total run sizes. Additional fish-over and above escapement needs will then be available for net fisheries to harvest in Puget Sound marine and terminal areas. Our plan provides for reasonable equitable adjustments to indirectly account for prior non-treaty interceptions, as well as for treaty Indian on-reservation, ceremonial, and subsistence catches. Additionally, it seeks to provide viable fisheries on all stocks for existing commercial net fisheries during a reasonable phase-in period until enhancement results are available for harvest.

To reiterate, we propose this procedure and exclusions from the sharing formula for the following reasons:

1. It is straight-forward and in a manner that the general public, as well as treaty and non-treaty fishermen, can readily understand.
2. It provides a feasible basis for practical application of professional fisheries management principles.
3. It follows methodology already approved and shown to be workable for a comparable legal and fishery management situation in the Columbia River system (endorsed by the Regional Task Force), as well as one recently adopted by the Federal District Court for the 1977 seasons in Puget Sound and Grays Harbor.
4. It guarantees viable non-treaty commercial net fisheries on a continuing basis, thus creating a favorable atmosphere for salmon resource enhancement in Puget Sound.
5. It does not penalize non-treaty fishermen for their past catches made under more liberal regulations, past runs not fully harvested by treaty Indians and past catches by both groups made in the absence of usable resource distribution guidelines.
6. It provides a workable solution to the question of on- versus off-reservation catches that has, after four seasons, proven to be a legal conclusion not translatable into practical application.
7. It includes exclusions responsive to the jurisdictional facts of lack of management authority by the State of Washington and treaty tribes with regard to management of interceptions off the coasts of Washington, Oregon, and California, in Canada and Alaska, and in areas where Fraser River sockeye and pink salmon runs are harvested.

8. Finally, as noted in the WDF response to the Regional Task Force report, the wide variation in rates of prior interception for certain species would pose impossible technical problems regarding management of an equal opportunity fishery in Puget Sound if such catches were directly included in any resource distribution formula.

E. Puget Sound Recreational Fishery Management

Direct inclusion of inside recreational fishery catches in any resource distribution plan also presents impossible management problems. Therefore, we also recommend that all inside recreational harvests not be directly included in a resource distribution formula. Again, our plan provides for reasonable adjustments which take into account such a direct exclusion, as well as for effective controls on future recreational fishing.

By the peak of the recreational fishing season in August and early September 1975, the WDF regulatory pattern since Boldt had gradually evolved into one of exactly matching inner Puget Sound sport fishing regulations with those for off-reservation treaty Indian salmon fisheries. When individual salmon runs needed protection in order to achieve adequate escapement to natural spawning grounds or artificial production facilities, recreational fisheries were closed on short notice by emergency regulation during the same times and at the same geographic locations as tribal fisheries. When each run had cleared the respective closed area, both fisheries were reopened simultaneously, again by emergency action on short notice. Many of the areas involved were difficult to describe in writing and very few matched established sport fishery management or "punch card" areas.

While the above overall regulatory pattern was generally successful in protecting spawning escapements, emergency sport fishery closures were generally not necessary for accomplishing this goal. Treaty and non-treaty commercial net fisheries can and must be successfully handled by this form of detailed fishery management; however, WDF attempts to regulate a major recreational fishery by the same procedures resulted in serious problems. It was impossible to successfully communicate the continuous series of complicated emergency regulation changes to thousands of recreational fishermen and their support services. The economic impact on this important state industry by virtue of the uncertainties evolving from a large number of emergency in-season changes was considerable. Often, closures occurred too quickly for the public to modify their recreational plans, and enforcement was quite difficult because of constant variations in areas. Economic losses were sustained by a number of persons and charitable groups by virtue of closures impacting planned salmon derbies. Many people refrained from fishing even after closures were lifted because the news media habitually gives much greater emphasis to "closures" than they do to "openings". Many other people fished in closed areas simply because they were unaware of emergency changes and followed a regulation pamphlet published by WDF which described the same areas as being open. Normal administrative operations of WDF came to a virtual standstill as a result of such regulation due to letters, phone calls, and other sources of public indignation. And again, and perhaps most importantly, in most cases the sport fishing closures had little effect on achieving spawning escapement goals. Sports fisheries near river mouths are generally very inefficient on mature adults and instead are targeted at immature "feeding" salmon, thus such fisheries do provide considerable recreational opportunity without affecting spawning escapement greatly.

Subsequent to this difficult period in 1975, professional managers in WDF fully recognized the need for effective pre-planing in upcoming recreational fishing seasons. Basic objectives were: (1) to predict in advance as many management problems as possible; (2) to minimize emergency in-season changes for recreational fishing (i.e., keep the regulation pamphlet accurate); (3) to depart from the pattern of exactly matching sport and treaty Indian commercial fishing regulations; and (4) to close sport fishing only at times and in areas where the fishery is directed at the species for which a strict conservation problem exists and a significant "savings" can be attained.

The particular nature of the recreational fishery and its economic viability necessitates reasonable management in accordance with the above-stated goals. Thus, to directly include such catches in any resource distribution formula, with ensuing mandatory in-season management, in no way meets the basic goal of maintainig existing fisheries at reasonable levels. This is not to suggest that reasonable balances between recreational and commercial fisheries catches should not be maintained, nor is it to suggest that effective, indirect controls should not be placed on the "inside" sport fishery.

Finally, as recreational fishing does not lend itself to the same kind of day-to-day in-season management that commercial fishing does, and because the resource distribution plan requires rather exact determinations regarding harvest levels which are not always available in-season with regards to recreational fishing, meeting terms of a plan where sport catches are included would be impossible.

CHAPTER 4
SALMON RESOURCE DISTRIBUTION PLAN

A. Introduction

The goal of the Commercial-Recreational Fisheries Delegation's salmon resource distribution plan is to provide all treaty Indian and non-Indian commercial and recreational fishermen with a suitable opportunity to share in the harvesting of productive salmon runs. A guiding principle of the Delegation in development of this plan has been that all existing fisheries should bear equally any burdens which might evolve from implementation of a settlement plan, while also sharing equally in any long-term benefits to be derived by virtue of settlement. All parties have agreed that a critical element of any settlement plan is a considerable expansion in the resource base. It is this enhancement of the resource which offers security and promise for traditional commercial and recreational Washington State fisheries, as well as for significantly expanded tribal fisheries. The plan also acknowledges a need for preservation of freshwater and tidal area fisheries (so-called "terminal" fisheries) to assure commercial net fishery management by the State which will prevent surplus escapement of artificially produced runs and some stronger native stocks. This final adjustment between catch and escapement must occur where major stocks have achieved some significant degree of physical separation. Treaty Indians, who have traditionally harvested salmon in such locations, will need assurances of reasonable levels of escapement to such "end of the line" areas in order to provide the economic justification necessary for establishing and maintaining such fisheries. Members of the Commercial-Recreational Fisheries Delegation have long indicated their opposition to

any resource distribution plan which provides for catch allocation primarily on the basis of race. This position has been affirmed on a number of occasions by the Washington State Supreme Court. However, the Delegation also acknowledges that continuation and expansion of viable commercial and recreational fisheries for all fishermen is possible through development of an area resource distribution plan.

This settlement plan assures to the greatest extent practicable an equal opportunity fishery with Indians and non-Indians fishing in common areas under the same rules and regulations and with the same types of gear. The plan provides for reasonable gear reduction in the non-Indian commercial fleet and an opportunity for treaty Indians to gear up to fish "in common with" non-Indians in traditional marine area fisheries. The plan provides reasonable levels of control over intercepting fisheries, both commercial and recreational, adequate assurances of reasonable levels of returning stocks to Puget Sound marine areas, and adequate guarantees for economically viable terminal fisheries. The plan requires that all Indian and non-Indian commercial fishing fleets be limited to use of traditional gear types by geographic area. It requires that Indian and non-Indian commercial fleets in common marine fishing areas and ocean fisheries have equal flexibility (i.e., identical open "area/days") to harvest salmon. Finally, the plan establishes a process for phasing-in the settlement in a manner which assures viable commercial, recreational, and treaty Indian fisheries for the present and long into the future. The basic objective of the phase-in program is minimizing the adverse economic and social impacts on all commercial and recreational fishing groups which necessarily have evolved from implementation of the Boldt decision.

B. Commercial Troll Fishery

In general terms, management of the ocean troll fishing industry shall be based on achieving a stabilized rate of ocean harvest coupled with resource enhancement and gear adjustment programs directed toward developing a healthy and economically viable ocean trolling industry.

1. Assured Salmon Harvesting Shares

- a. The most feasible means of effectively controlling the ocean troll fishery, while at the same time assuring its future economic viability, is to provide a firm assurance with respect to statewide harvest shares of chinook and coho salmon resources. Using the 4-year period immediately prior to the Boldt decision (1970-73), a "base" would be established consisting of statewide plus Columbia River commercial landings (including Indian), plus ocean recreational fishery catches (Areas 1-4). Columbia River commercial landings by both Oregon and Washington are included since it is a jointly-managed fishery and unpredictable shifts in future increments landed in each of the states could inadvertently alter intent of any settlement plan. The Puget Sound marine recreational fishery catch (Areas 5-13) is excluded from the base since this fishery relies heavily on small, immature "resident" fish that are often not available to ocean fishermen. In addition, the Puget Sound recreational fishery is still in the process of recovering from a long-term decline with much of this reversal due to new enhancement programs specifically targeted at this fishery. Establishment of the 1970-73 base year rate for the troll fishery without such exclusion would effectively negate the impact of recent programs targeted to enhance the Puget Sound recreational fishery due to this long-term decline.

Relatively small freshwater recreational catches are also excluded from the base since many of the fish taken are small jack salmon or result from specialized regulations such as "male only" fisheries.

Provision of the above exclusions is in no way to infer that settlement-related enhancement is to be targeted away from the troll fishery. It is the cornerstone of this plan that such enhancement benefit equally all treaty and non-treaty recreational and commercial fisheries.

No specific catch shares are provided for troll-caught pink salmon since this species is taken mainly on an incidental basis during fishing effort targeted toward chinook and coho salmon. Shares for these two species would be maintained in the future during each season to make sure that trollers shared in conservation burdens from poor runs, but also benefited fully when salmon abundance was high.

(1) Chinook Salmon

During the 1970-73 period, the average for a "base" catch as defined above was 988,000 chinook salmon, with trollers harvesting 256,000 of this total or 26%. Maintenance of this 26% share would be the objective of future management.

(2) Coho Salmon

During the same 1970-73 base period, trollers harvested an average of 840,000 coho salmon annually, or 36% of a base averaging 2,356,000 fish. Again, maintenance of this 36% share would be the objective of future management.

2. Application of Assured Harvest Share Concept in Practice

- a. In advance of each fishing season, assured troll fishery harvest shares shall be applied by the PFMC and WDF to expected total number of harvestable fish of each species to determine projected allowable troll catches. Such provisions will provide for sport catch exclusions consistent with those described above in determining "base" catch rates. Full and complete disclosure of all information used to determine projected allowable catches shall be made public. Before annual catch limits are finalized, the public shall have an opportunity to consult with and participate in administrative processes by the agencies concerning determination of allowable catches. Moreover, there shall be established a mechanism for in-season adjustment of catch limits based on actual numbers of fish found to be available as the fishing season progresses.
- b. The troll fleet shall be entitled to harvest its share of each species; although it recognized that if attaining the harvest share for one species is imminent, the troll fleet may be required to reduce its catch of that species while continuing to achieve a harvest share for the other species.
- c. If, as the result of erroneous in-season stock size estimates, the troll catch either exceeds or is reduced below these numbers which should have been taken, based on actual stock sizes, adjustments will be made within a 5-year period to compensate for these differences. Such adjustments will be made as quickly as possible based on an economic assessment of the proposed adjustment plan as it affects all fisheries.

3. Stabilization of the Troll Fishing Industry

- a. Enhancement of major chinook and coho salmon stocks throughout the state is basic to stabilization of the troll fishing industry. Stock enlargement programs must be fair and equitable and designed to increase numbers of fish available to all fisheries. Again, it is recognized that exclusion of Puget Sound recreational catch from total statewide harvest is a statistical adjustment that is necessary to assure a recovery of the fishery from historic declines which has resulted from recent enhancement and delayed coho and chinook programs. It is the position of the Delegation that the tangible results of such programs are maintained by this exclusion and that all settlement-related enhancement can and must be targeted to benefit equally all treaty and non-treaty recreational and commercial fisheries.

The Delegation and the troll industry supports a comprehensive program of fisheries resource enhancement and expects that through enhancement programs, all user groups in the State will benefit. However, until tangible enhancement benefits have occurred, the troll fishing industry recognizes the fact that it may be necessary to reduce total fishing power by eliminating some vessels through license reduction and voluntary buy-back programs. To this end the Delegation supports:

- (1) A State license reduction program which would withdraw all Washington troll licenses from the bottom 3% of producers among outstanding troll licenses over the 1973-77 base period. We also support a senior citizen exemption as outlined in the Task Force report.

- (2) A voluntary buy-back program available to all other Washington-licensed trollers. It is estimated by the Task Force that approximately 500 to 600 license holders will decide to sell their license and/or vessel, gear, and license to a buy-back program.
- (3) The State and the PFMC should establish a troll licensing system by length of vessel, or such other effort measures as may be directly correlated with fishing power, in order to provide a more effective overall effort limitation.

Within this licensing and effort reduction system, troll fishermen would be free to trade up or down within an authorized total fleet capacity limit. Thus, an open private market would be available for a fisherman who needs a larger vessel or who desires to sell a larger vessel for a smaller one.

The Federal Government, through the Pacific Council and other agencies, must assure control over Washington coastal effort by fishermen from other states and Canada. In addition, the potentially detrimental effects on Washington salmon stocks from high Canadian fishing effort levels in their own waters must be prevented.

The Delegation supports establishment of separate entry requirements for Washington coastal and California-Oregon ocean fisheries to the south based on past landings in each zone, so long as they do not unfairly impact U.S. harvest levels on Fraser River runs. With respect to Canadian fishing in U.S. waters, the

Delegation favors a total prohibition on entry. However, if satisfactory agreements be reached which establish reciprocal Canadian-American fishing areas on an equitable basis in terms of numbers of fish for troll fishermen of both countries, the Delegation would support any such agreement and would withdraw its objection to Canadian fishing in domestic waters. In any event, the concept that it is our fishermen who must benefit from U.S. and State enhancement efforts must be preserved.

Any benefits to Washington salmon fisheries derived from establishment of a reciprocal Canadian-American fishing zone or from reduction of Canadian fishing effort off Canada, and any benefits from new enhancement programs must be shared equitably among Washington fishermen and distributed as per the assured salmon harvest shares outline previously. Barring unusual and unforeseen circumstances, it is anticipated that the program of troll fishing stabilization outlined will satisfy troll industry goals. Hence, no further effort limitations or more restrictive adjustments in fishing regulations (i.e., season and size limits) should be required for at least 4 years following adoption of this settlement plan.

C. Ocean Sport Fishery

Achieving a stabilized rate of ocean harvest by recreational anglers, while also assuring that the fishery will benefit from resource enhancement and gear adjustment programs, leads the Delegation to recommend the following plan for charter and private boat anglers.

This proposal reflects nature of the charter boat fleet as essentially a people-oriented service industry which is in strong competition with other recreational activities and tourist attractions for the recreational or discretionary dollar of consumers. It also reflects a need for stability in an industry so necessary to provide consumers with the ability to plan for salmon fishing trips in advance. This plan acknowledges that present seasons and size limits, as well as maintenance of the three fish daily bag limit will be essential to long-term stability of the ocean sport fishery.

A first step towards gaining reasonable stabilization of ocean recreational harvest is to achieve a reduction in fishing effort capability of the present charter boat fleet. There are presently approximately 500 licensed charter boats and perhaps as many as an estimated 100 additional contracts for charter boats under the Washington State Moratorium. The capacity of these vessels is not fully known at the present time.

In order to stabilize the level of fishing effort for the ocean recreational fishery consistent with basic objectives of a settlement plan, it is proposed that:

1. The carrying capacity of charter boats be reduced by 20% from present levels (based on current WDF data) through a voluntary buy-back program.
2. The Washington State Legislature would institute a new licensing system for charter boats which would establish a formula limiting angler capacity to size of the vessel.

3. If the voluntary buy-back program has not achieved its goal within 2 years, then the State of Washington and charter boat representatives will develop a workable license limitation program for enactment by the Washington State Legislature which will achieve desired results.
4. The Pacific Council and WDF would monitor angler effort by the ocean recreational fishery and develop and maintain appropriate data. If number of angler trips for any two consecutive years exceeds the number of angler trips in Areas 1 through 4 for the base year 1975 by 10% or more, or if base year balances between charter and private boat effort were not approximated in each of the four areas, then management agencies would develop a plan for the next two seasons to make adjustments in fishing effort offsetting such excesses and/or imbalances.

It is the purpose of this plan to stabilize ocean recreational fishing effort by maintaining effort at 1975 effort levels. The Delegation believes that proposed gear reduction, together with limits on angler trips, will provide adequate assurances that stated goals for this recreational fishery will be met. It is anticipated that this program should result in no further effort limitations or more restrictive adjustments in fishing regulations for at least 4 years following adoption of the settlement program.

D. Grays Harbor

It is the position of the Delegation that a settlement with regard to Grays Harbor tributaries presents a number of special circumstances which

must be considered. It should first be noted that the "case area", as set forth in and defined by the Federal District Court in U.S. v Washington, specifically excludes Grays Harbor tributary streams. The finding of fact entered therein do not grant the Quinault Indian Nation any special rights or privileges to fish in Grays Harbor. The Federal District Court, by way of supplemental orders, has sought to include Grays Harbor within the originally defined case area, has sought to establish special rights and privileges for the Quinault Indian Nation with regard to fishing in Grays Harbor, and has subjected non-treaty fishermen licensed to commercially fish in Grays Harbor to the jurisdiction and resultant orders of the Court. It is the Delegation's position that the Quinault Indian Nation should have no special rights or privileges to fish in Grays Harbor, notwithstanding subsequent ex-parte orders issued by the Federal District Court in U.S. v. Washington. It is believed that the legal rationale for this position has been well articulated in pleadings presented to the Court and needs no elaboration. Perhaps more important is the economic rationale contained below, which clearly indicates a lack of justification for a special fishery in Grays Harbor.

The proposal of the Regional Task Force indicates that were the overall resource distribution objectives for the Washington coast to include that program suggested the Grays Harbor tributaries, distribution of salmon pursuant to that plan would be approximately 60% for treaty Indians, and 40% for non-Indian fishermen. The Task Force has proposed expenditure of more than \$12 million for enhancement projects on coastal streams located within boundaries of the Quinault Indian Reservation. At the present time, and prior to proposed expenditures for enhancement, exclusive

coastal river commercial fisheries enjoyed by the Quinault Indian Nation are much more substantial than that existing in Grays Harbor. There is no non-Indian commercial fishing in these north coastal streams. This plan recognizes that the Grays Harbor fisherman will not benefit in any way, direct or indirect, from enhancement expenditures on the Quinault Indian Reservation, and further recognizing the potential impact and result of the resource distribution plan as suggested by the Task Force.

Implementation of the Boldt decision in Grays Harbor has meant almost a complete closure of the non-Indian commercial fishery on local stocks. It is estimated that were the decision to be fully implemented, no non-Indian commercial fishery would be allowed on Grays Harbor stocks except during the chum salmon run. It is obvious that the Federal District Court has not taken into account the level of harvest and lack of competition therefore in north coastal streams when determining an allocation for Grays Harbor returning stocks.

This proposed plan endorses enhancement of four major coastal streams in a manner which will assure considerable additional returning stocks to the Quinault, Hoh, and Quileute Indian Tribes. (This is not necessarily an endorsement of specific enhancement projects, however, which must be reviewed as part of a comprehensive State enhancement plan.) Again, with such enhancement, no additional special tribal fisheries in Grays Harbor are justified.

Thus, the Delegation's Resource Distribution Plan for Grays Harbor provides for a State-licensed fishery only. An additional provision to this settlement is that treaty Indian fishermen will agree to an exclusion of

Grays Harbor tributaries from the case area and agree to take no further legal action to the contrary. This agreement regarding further legal action must also apply to Willapa Bay and the lower Columbia River.

The only additional provision to this settlement plan which will affect Grays Harbor commercial fishermen is their participation in license and fleet adjustment programs. The Delegation supports a plan which provides that the bottom 3% of all outstanding commercial gill net licenses in Grays Harbor, as can be determined by analysis of average catches over the 1973-77 base period, will be forfeited by the holders and purchased by the gear reduction program. The balance of license reduction in Grays Harbor would be achieved through participation in a voluntary buy-back program. It is expected that fishermen in Grays Harbor and Willapa Bay will benefit from the stabilized ocean harvesting rates and resource enhancement programs to a degree equal to those fisheries in the Puget Sound area.

E. Puget Sound

The Commercial-Recreational Fisheries Delegation proposes that the settlement plan provide for a State-licensed equal opportunity fishery in Puget Sound. It is the purpose of this plan to assure viable commercial net fisheries for treaty Indian and non-treaty fishermen on all Puget Sound-origin stocks. Viability of all such fisheries depends mainly upon means of implementation, thus we are suggesting both an interim and long-term plan for Puget Sound-origin salmon.

1. Long-Term Resource Distribution Plan for Puget Sound (see Table 1)

Twenty percent of the allowable commercial net fishery harvest on Puget Sound-origin returning runs shall be passed through the equal opportunity net fishery and be made available to treaty Indian fishermen in specially designated tribal fishing areas. (Those tribal fishing areas described in the State response to the Task Force are acceptable to the Delegation.) This commitment of 20% of returning harvestable runs is to assure an "opportunity by fish" to be made available in such areas. Such assurances do not mean that tribal fishermen are to be completely guaranteed 20% of the catch. Given the high efficiency of terminal area gear, however, catches should normally equate with opportunity for harvest. If, due to lack of effort or for other reasons, opportunity exists but is not utilized, terms of the settlement would still be fulfilled.

Unavoidable hatchery surpluses at State, tribal, or Federal artificial production facilities should be treated in the same way for resource distribution determinations. Therefore, the delegation proposes that such surpluses not be counted against the opportunity provided to either treaty or non-treaty fishermen.

The 20% "opportunity by fish" shall be for the Puget Sound region as a whole and on a species-by-species basis. However, if practical from a management standpoint, this "opportunity by fish" may be directed to smaller sub-regions (e.g., Hood Canal, Skagit Bay, South Puget Sound, Port Susan-Gardner and Bellingham Bay). Means of implementing this area management system shall be left to local management

agencies. However, alterations to the area management system shall in no event serve to expand the total opportunity by fish offered by this plan. Distribution among tribes in each region shall be left to the tribal governing agency so long as it is technically compatible with State harvest management plans. It is important to note that this 20% "opportunity by fish" can apply to all harvestable salmon now existing plus results from future artificial propagation projects so long as all Phase I and Phase II issues are resolved pursuant to this plan (see State response to Task Force plan). The opportunity to harvest 20% of the harvestable salmon returning to Puget Sound tribal fishing areas shall include all salmon taken on-reservation and for ceremonial or subsistence purposes.

To increase the potential harvest opportunity in tribal fishing areas beyond this plan will impact considerably the quality of salmon available for processing. As a major goal of the Delegation proposal is to significantly improve the economic condition of the fishery, any further expansion of the terminal area commercial fishery would be counterproductive to achieving this objective.

Treaty Indians fishing in the State-managed marine areas of Puget Sound, which includes those waters of northern Puget Sound after the IPSFC relinquishes jurisdiction and all waters inside or easterly of the Bonilla-Tatoosh line (exclusive of tribal fishing areas), will be provided with a realistic opportunity to take 16% of Puget Sound-origin salmon runs available for commercial net fishery harvest. This 16% is not a guaranteed opportunity, but is an "opportunity by gear"

It is the purpose of this interim plan to assure viable fisheries to the greatest extent practical for Indian and non-Indian commercial net fishermen on harvestable salmon stocks returning to Puget Sound waters. The plan provides for some transfer of treaty Indian gear to a common marine fishing fleet, and provides a realistic opportunity for all fishermen to harvest greater numbers of salmon pursuant to the same rules and regulations. Additionally, the plan provides for viable terminal fisheries in certain areas which will help fulfill cultural and economic needs of treaty tribes. This system of commercial net fishery management will also greatly assist in preventing surpluses of artificially produced salmon and some stronger native fish runs because efficient terminal fisheries can operate in those areas where major stocks are physically separated.

With enhancement, the overall long-term result of this program will be a realistic opportunity for treaty Indian fishermen to harvest 36% of the returning Puget Sound-origin salmon which become available for commercial net fishery harvest. During the interim period, treaty Indians will initially be assured of substantial terminal area harvests with year-to-year increases in their marine area capabilities based on results of the gear down programs for non-Indians.

F. International Pacific Salmon Fisheries Commission - Convention Waters

For harvestable salmon of Canadian-origin caught under jurisdiction of the IPSFC, the Commercial-Recreational Fisheries Delegation proposes the following resource distribution plan:

1. Long-Term Resource Distribution Plan - IPSFC

Treaty fishermen fishing in convention waters shall be provided with a realistic "opportunity by gear" to harvest 20% of salmon stocks taken under jurisdiction of the IPSFC. This 20% is not a guaranteed opportunity, but is based upon proposed adjustments in the number of treaty and non-treaty Puget Sound purse seine and gill net vessels to be licensed by the State of Washington.

Non-treaty fishermen fishing in convention waters under jurisdiction of the IPSFC shall be provided with a realistic opportunity to take 80% of harvestable Canadian-origin salmon stocks. This 80% opportunity by gear is not a guarantee, but is an estimate based upon proposed adjustments in number of treaty and non-treaty purse seine and gill net vessels licensed by the State of Washington.

2. Interim Resource Distribution Plan - IPSFC

It is recognized by the Delegation that the opportunity by gear percentages proposed for Canadian origin stocks subject to jurisdiction of the IPSFC will not occur immediately. However, because of the considerable controversy attached to provision of special fishing time or utilization of special fishing gear by treaty fishermen during any common fishery, with resultant continued animosity among Indian and non-Indian fishermen, the Delegation cannot recommend any further separate and additional fishing time for treaty Indians in convention waters. It is our view that to allow special seasons in any common fisheries is totally violating one of the basic objectives of any settlement (as clearly indicated by the Task Force), and would in no way resolve the present conflict. Moreover, benefits derived by provision of special seasons are limited to a few fishermen able to take

advantage of this special treatment, with very limited benefits to most tribes in the case area. In fact, a large number of the case area tribes do not even have fishing rights in convention waters. An economic windfall for a few individual fishermen and but a few tribes, at the expense of the citizens of the State of Washington and all other tribal members, should in no way be possible by virtue of any settlement terms. Further, the Federal District Court has indicated that treaties bestowed a tribal right, not an individual right.

The Delegation has proposed an expanded terminal fishing opportunity by fish for treaty Indians in Puget Sound as a partial means of offsetting the impact of the existing commercial net fishery imbalance in gear between non-Indians and Indians. It is further recommended by the Delegation that Federal monetary payments be made for actual losses in IPSFC salmon harvest due to elimination of special fishing seasons in the interim period when gear adjustments are being made. This Federal cash compensation should be made to the tribes in a manner consistent with the payment schedule attached as Table 4. Payments utilized for building up treaty Indian marine fishing fleets, for training treaty Indian fishermen to effectively harvest salmon in common fishing areas, or for such other purposes as deemed appropriate by the tribes and Federal funding agencies. Again, the Delegation believes that any atmosphere for settlement would be completely destroyed if special Indian fishing seasons in common marine fisheries were allowed to continue. The interim plan should in no way alter the basic goal of an equal opportunity fishery, nor should it jeopardize the positive atmosphere for settlement.

Table 4. Tribal payments for IPSFC harvest deficiency compensation plan.

Assumptions

Puget Sound net fishery catches of Canadian origin salmon are based on the average harvest for 1974-77 (4-year average of pinks is factored into total harvest), i.e., 2,766,000 salmon per year.

Average 1979 value of harvest will be \$7.50 per fish, with inflation factor of 10% per year.

Treaty Indian harvest capability without special seasons or gear as per plan would be 7% of catch in 1979.

Gear up - Gear down would affect a 3% per year increase in harvest opportunity for treaty Indians, with achievement of the proposed 20% opportunity by 1984.

Proposed Federal Compensation Schedule

	<u>Tribal Opportunity</u>	<u>Tribal Compensation</u>
1979	7%	\$ 2,700,000
1980	10%	2,280,000
1981	13%	2,000,000
1982	16%	1,080,000
1983	19%	291,000
	TOTAL	<u>\$ 8,351,000</u>

G. Treaty Marine and Tribal Area Fisheries

In order to provide an equal opportunity fishery for Indian and non-Indian gill net and purse seine fishermen who fish in marine areas, the State may license tribal fishermen to fish anywhere in Puget Sound and IPSFC convention waters irrespective of present Federal District Court determined "usual and accustomed fishing grounds". It is essential that both groups have an identical opportunity in terms of "area/days" open to fishing or the whole concept becomes unworkable.

Under the settlement plan, the state and the tribes can authorize a total tribal fleet size as follows:

- a. Puget Sound gill net - 20% of the total fleet.
- b. Puget Sound purse seine - 20% of the total fleet.
- c. Troll - 10% of the total fleet.

Permissible treaty Indian gear in tribal fishing areas shall include stake nets, set nets, drift gill nets fished from skiffs, beach seines, pole nets, and other hand-held gear. The skiff fishery shall include vessels up to 18 feet in length and may use nets up to 600 feet in length. Within two years after adoption of this settlement proposal, the tribal management agency shall develop an effort limitation plan for all tribal fishing areas. This plan shall be implemented no later than the third year following adoption of a settlement and shall be approved by the State of Washington. In no event shall tribal fishermen licensed to fish in common marine areas also be allowed to fish in terminal fishing

areas. To provide otherwise would negate economic goals expressed for treaty Indians, make the whole equal opportunity fishery concept unworkable, and effect special fishing seasons for such gear.

H. Coastal Rivers and Straits Fisheries

As indicated previously, the Delegation supports a plan for large-scale enhancement in north coastal rivers as part of any settlement. We are opposed, however, to the Task Force proposal for annual "minimum harvest goals" for the Quinault, Queets, Hoh, and Quileute Rivers as they may promise far more than can in fact be delivered, particularly without resolution of the U.S.-Canadian conflicts regarding ocean interceptions. While the Delegation strongly supports resolution of the Canadian interception problem, if this does not occur provision of minimum harvest guarantees to coastal tribes will mean undue hardships for other U.S. fishermen. In other words, to meet stated goals of such a plan, the only available means may be severe restriction or even closure of U.S. coastal fisheries. These would essentially become automatic if levels of enhancement projected for coastal rivers were not obtained. Again, ocean troll and recreational fishermen have agreed to reasonable limits on their fishing effort, and to significantly reduce their relative gear power. Coastal river "guarantees" along these lines proposed by the Task Force would be antithetical to any overall goal of balanced treatment for all fisheries.

The Delegation also opposes the Task Force's proposal for a special Indian troll fishery for immature coho and chinook salmon between December 1 and April 30. While such a troll fishery has been reluctantly

tolerated since 1970 for reasons other than the sound resource management, we believe that this settlement offers an opportunity for provision of reasonable alternatives. Certainly, this fishery is not justified on any long-term or absolute basis given the weakness in rationalization arguments for it in the past. The winter troll fishery proposed by the Task Force would probably rank at the very bottom in any listing of Pacific coastal commercial salmon fisheries ranked on the basis of the broader "wise use" connotation of conservation. Fish harvested average only about 1/4 to 1/3 of their final growth potential and are harvested with high hooking mortality losses to many fish smaller than size limits specified. Moreover, the chinook size limit would be even smaller than that allowed for recreational anglers in the same area (24 inches). This will create considerable enforcement problems, and an attitudinal problem between Indian and non-Indian fishermen because of special treatment of a treaty Indians in a major common fishing area. Again, because a large majority of the fish taken in this troll fishery are of Washington and Columbia River origin, economic validity of intercepting such stocks at a time of known immaturity is dubious at best.

Again, we believe that provision of a special troll fishery season for treaty Indians, as well as special set net and beach seine fisheries in the Strait of Juan de Fuca, is in direct conflict with the basic goal of an equal opportunity fishery.

Consistent with our basic objective of eliminating all special common area fisheries for treaty Indians, we recommend that in lieu of special troll fisheries, meaningful treaty Indian participation in an equal opportunity troll fishery (10% of the troll gear) be a part of this

settlement. Further, instead of establishing special intercepting Straits net fisheries which will present impossible management problems, new enhancement projects for north coastal and Straits tributary streams would provide a number of realistic freshwater harvest opportunities for tribes in this region. In addition, with the flexibility for these tribes to move outside their court-ordered usual and accustomed areas, participation in new common marine fisheries in Puget Sound is also possible. Finally, if any enhancement opportunities in these areas are not proven to be realistic from a benefit:cost standpoint, economic assistance to the tribes concerned could be made available by the Federal Government.

I. Marine Area and Freshwater Recreational Fishing

The Delegation believes that the relative balance between treaty and non-treaty commercial and all recreational fishing on Washington salmon stocks should be maintained at recent historic levels for purposes of this settlement. Again, all members of the Delegation agree that any burden or impact of settlement to be borne during early years of the plan should be shared equally among all interests. Additionally, benefits to be derived over the long-term from enhancement of the resource should also be equitably distributed.

The Delegation believes that the above goals can be achieved if recreational fishing in the Straits and Puget Sound (Areas 5 through 13) is stabilized at a harvest rate on major stocks approximating that of 1975. This harvest rate is consistent with that of the ocean sport fishery and

assures that marine recreational fishermen throughout the State are treated the same pursuant to a settlement.

As indicated previously, nature of the salmon recreational fishery is such that in-season adjustments of regulations on an emergency basis should be held to a minimum because of management problems and adverse economic impacts on this important State industry. Recreational fisheries cannot and should not be managed in the same manner as commercial net fisheries. The Task Force proposal can be interpreted to indicate that recreational fisheries should be closed whenever net fisheries are closed for conservation purposes. This would only be appropriate when net fishing has been closed for conservation throughout an entire run and only when a recreational fishing ban would actually yield a significant increase in adult escapements.

The Delegation is also concerned with the Task Force position on delayed-release chinook and tribal fishing for immatures or "blackmouth". WDF-marked fish experimental group results and the Task Force's own technical data indicate that delayed-release chinook and coho can provide better returns per pound released in many instances for both non-treaty and treaty fishermen. Types of rearing techniques utilized should be those producing best overall yields to all Washington fisheries (treaty and otherwise). A viable recreational fishery in Puget Sound must be based primarily upon an abundance of immature, feeding fish, not increased returning adult spawners which do not bite well and are available for only a brief period. We believe that with enhancement, it will be possible to increase numbers of delayed-released chinook and coho available

to sportsmen, while still meeting Indian opportunity goals of this plan. It is the Delegation's position that delayed-release chinook and coho programs should not be curtailed, as they in no way adversely impact objectives of this resource distribution plan. Moreover, target treaty fisheries, e.g., winter Puget Sound troll on net fisheries, on maturing stocks associated with the delayed release program must be precluded by settlement.

Enhancement programs must be geared to assure reasonable returns of coho and chinook salmon for harvest by ocean and inside recreational fisheries. With proposed controls over Indian and non-Indian troll fishing and minimized interceptions for these species in the Straits, any short-term burden and long-term benefits of this settlement on recreational anglers should be fair and equitable.

J. Resource Distribution Adjustments

If the availability of salmon for harvest by area consistent with the terms of this resource distribution plan is not met in any one year, deficiencies in numbers of fish shall be made up during the next succeeding run of the same species in the same region whenever practical. If necessary, any deficiency shall be distributed and made up over a series of years, but not exceeding five years. A reasonable margin of error should be tolerated in evaluating effectiveness of the management system, provided there are no chronic discrepancies consistently in favor of one fishery or one area. Continuing errors favorable to one group will ultimately require an adjustment.

If, after the first two years of a settlement plan, it is clear that provisions of interim plans are placing unexpected hardships on any single fishery, the management process shall provide for development of alternative means of achieving general goals of settlement, while at the same time resolving inequities to that specific group.

CHAPTER 5
STEELHEAD DE-COMMERCIALIZATION PLAN

A. Introduction

The goal of the Commercial-Recreational Fisheries Delegation settlement plan with regard to steelhead trout is to provide for de facto de-commercialization of this highly desirable game fish immediately. The Regional Task Force has indicated that the economic value of sport-caught steelhead far exceeds its commercial value, and it has therefore suggested a plan which would significantly limit the commercial harvest of steelhead trout. However, as indicated in the state's response to the Task Force proposal, the Task Force plan in no way provides for full de-commercialization of steelhead. The Task Force has failed to address the implications of maintaining commercial markets within the state of Washington as articulated in the state response. It is the position of the Delegation that full de-commercialization of steelhead must occur and now. This proposed plan will achieve that goal without economic detriment to treaty and non-treaty recreational and commercial salmon fisheries, and will provide considerable economic compensation to those tribes showing any current income dependence on the commercial harvest of steelhead.

B. Terms of the Steelhead De-Commercialization Plan

The Delegation strongly believes that de-commercialization must occur as quickly as possible, and that provision of any remaining outlets for the commercial sale of steelhead must be immediately closed. So long as any such outlets remain open within the boundaries of the state of Washington, incentives against commercial harvest of this important game fish will be

rendered ineffectual. Moreover, the prevention of the commercial sale of steelhead would present difficult management and enforcement problems at high cost for state and tribal management entities far beyond the worth of continued commercialization of the resource.

It is recognized that certain tribes currently have some economic dependency on steelhead, although most have expressed a willingness not to exercise rights to harvest the resource if alternative benefits of equal or greater value are available to them. As indicated in the Task Force settlement plan, only five tribes have indicated an unwillingness to "get off" steelhead in the future, although each of these tribes is provided considerable settlement benefits despite this position. Given the highly emotional character of discussion centered around steelhead, it is our view that no meaningful settlement can ever be derived if full de-commercialization is not to occur.

1. Annual Steelhead Income Replacement Grants

The Delegation recognizes that because significant salmon enhancement results are not likely to occur during the early years of settlement which will provide an economically viable replacement for steelhead, interim means must be established to offset any income losses to be derived from implementation from an immediate full de-commercialization plan. Therefore, we recommend that all tribes be provided with an annual steelhead income replacement grant in lieu of commercial harvest. (Note: This replacement grant concept is similar to that provided in the salmon resource distribution plan relating to harvest deficiencies on IPSFC salmon stocks.) Annual steelhead income replacement grants would be established for all tribes within the case area

showing income during a 1974-1977 base year period from the commercial harvest of steelhead. The grants would be provided by the federal government to the Tribal Commission, and disbursed in a manner which reflects individual tribal dependence on the commercial sale of this resource. Grants would be discontinued on a tribe-by-tribe basis at such time as the salmon enhancement program, or other alternative settlement-related economic assistance programs provide a resource base sufficient to offset any economic loss to the tribes. Payments would be made to individual tribes, rather than to individual fishermen, as consistent with court interpretations of the Steven's Treaties.

We point out that the settlement agreement proposed by this Delegation will provide the tribes considerable economic benefits in the form of a large number of capital construction projects for salmon hatcheries and rearing ponds. Construction of these projects, and long-term operations will assist in providing a number of employment opportunities to members of individual tribes. Moreover, we have endorsed a financial assistance plan which would provide individual tribal members federal assistance to replace existing vessels and fishing gear and for the purchase of new equipment with long-term loans at low interest rates. Finally, the Delegation endorses the Task Force proposal that vessels and gear purchased pursuant to the non-treaty gear reduction program be available for purchase by treaty Indians. These and other assistance programs more than offset the commercial value of steelhead trout to the case area tribes. This financial assistance coupled with the steelhead income replacement grants proposed in this plan far more than adequately compensate the tribes for not making available for commercial sale any steelhead trout.

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The Delgation proposes that the tribes be compensated for steelhead at the current value of \$1.50 per pound, with the payment to be based on an average steelhead weight of 8 pounds. (Note: This value does not include the cost of harvesting; therefore, the value to the tribes is actually greater than the stated current value.) While the cost figures discussed below are based on projections from this current value, we endorse the inclusion of a reasonable inflation factor each year in which replacement grants are appropriate. Again, annual payments would decline each year as the various tribes received economic assistance which adequately compensated them for the value of historic commercial harvest.

The average annual steelhead harvest by treaty Indians since the Boldt decision took effect (base years 1974-1977) has amounted to 50,193 fish per year (see Table 5). Projecting this historical average of steelhead based on current value, annual income replacement grants to the tribes would be approximately \$600,000 for the first year. It is assumed that this annual level of replacement grants would be maintained for up to four to five years, given the inclusion of an inflation factor and that salmon enhancement projects and other economic assistance programs will provide adequate economic offset for but a few tribes during the early years of the plan. Payments to individual tribes would continue until the Fisheries Review Board, at the motion of either party, determined that the results of the salmon enhancement program or other economic assistance plans provided adequate replacement and economic offset to alleviate losses from the commercial harvest of steelhead. At that time, all payments for steelhead income replacement grants would be discontinued.

2. Incidental Catch Policy

The Delegation recognizes that in a number of watersheds the incidental catch of steelhead is difficult to avoid (e.g., Nisqually River). However, as it is the purpose of this plan to stop the commercial sale of steelhead, this goal can be more easily attained if the steelhead trout caught during the commercial harvest of salmon by treaty Indians were to be documented and stored in a designated central facility, or strategically located facilities throughout the state, and ultimately issued to individual tribes to satisfy their ceremonial and subsistence needs. A ceiling on tribal incidental catch will be placed on each individual tribe to inhibit excessive harvest. This ceiling will not exceed the historic ceremonial and subsistence average per tribe established during the 1974-1977 base years (see Table 6). Incidental harvest over the established historic averages on a tribe-by-tribe basis will be deducted from the tribal steelhead income replacement grants.

The Delegation further recognizes that non-treaty fishermen unavoidably will harvest a small number of steelhead trout during legal salmon fisheries. As this plan provides for the complete de-commercialization of steelhead trout, it is a cornerstone of this plan that this goal be achieved in a manner which does not adversely impact the treaty and non-treaty commercial net salmon fisheries. Moreover, all enhancement projects will be reviewed prior to final approval pursuant to development of a comprehensive statewide hatchery plan (see State response to the Task Force report) so as to assure the

reduction of species conflicts by watershed into the future. The Delegation fully supports this principle, so long as existing commercial-fisheries are maintained in a manner consistent with the objectives of this plan. It is suggested by the Delegation that incidental catches of steelhead by non-treaty fishermen be documented and turned over to processors who would make them available to public institutions. The processors would be paid from a revolving fund established by the state with a general fund appropriation to the fund for the cost of handling and processing.

3. Economic Impact of Steelhead Plan

In comparing the Regional Task Force Budget for the steelhead resource with that contained herein, it is evident that this plan can mean savings of as much as \$9,000,000 to the federal government (see Table 7 for budgets. Note the reduced budgets for enhancement, research, enforcement, and the like, reflected in the proposed WDG budget). The federal government, if it were to invest this nine million dollars in savings at current rates, would generate enough income in interest alone to meet the annual cost of the steelhead income replacement grant program. In any event, the total funds needed for immediate de-commercialization of steelhead through a replacement grant program would not likely exceed \$4,000,000 over the next 10 years.

In addition to these savings, this plan would provide an additional fifty thousand steelhead for sportmen in the State of Washington each year. The economic benefit to the State from this income is estimated at \$5,700,000 annually (based on present dollar values). Thus,

not only is this plan the most economic in terms of utilization of this valuable resource, it also provides significant cost savings to the government and significantly expands the sport fishery without major enhancement projects. Finally, with income replacement grants and all other forms of economic assistance to the tribes, the plan provides a fair means of accomplishing full de-commercialization of steelhead, which is so essential to an improved atmosphere between treaty and non-treaty Indians as necessary to any settlement.

Table 5. Treaty Indian steelhead commercial catch - case area 1974-77
 Source: Fisheries Assistance Program, USFWS

Tribes	1974-75	1975-76	1976-77	Base years average
Lower Elwha/ Pt. Gamble	0	689	2,143	944
Duwamish	0	0	0	0
Hoh	2,560	3,538	4,670	3,589
Lummi	3,257	2,533	3,109	2,966
Makah	1,655	1,047	689	1,130
Muckleshoot	7,457	9,003	4,967	7,142
Nisqually	4,507	3,782	2,732	3,674
Nooksack	210	592	423	408
Puyallup	1,730	2,935	1,343	2,003
Quileute	8,810	8,829	7,057	8,232
Quinault	8,788	12,141	7,663	9,531
Samish	0	86	46	44
Sauk/Suiattle	5	0	95	33
Skokomish	94	464	538	365
Snohomish	0	8	1	3
Snoqualmie	0	295	163	153
Squaxin	14	138	3	52
Steilacoom	0	0	4	4
Stillaguamish	68	32	408	169
Suquamish	0	497	1,048	515
Swinomish	1,909	3,046	1,210	2,055
Tulalip	2,305	4,209	2,453	2,989
Upper Skagit	8,305	3,071	1,202	4,192
Total	51,675	56,935	41,941	50,193

(50,193 @ \$12.00 ea. = \$602,316)

Table 6. Treaty Indian steelhead ceremonial and subsistence catch*

Tribes	1974-75	1975-76	1976-77	Base years average
Hoh	52	100	110	87
Klallam-Lower Elwha	260	98	25	128
Klallam-Port Gamble	0	50	125	58
Lummi	0	0	0	—
Makah	230	308	100	213
Muckleshoot	25	0	235	87
Nisqually	24	50	158	78
Nooksack	0	280	220	167
Puyallup	250	26	0	92
Quileute	42	800	350	397
Quinault	767	552	103	443
Samish	0	0	0	—
Sauk/Suiattle	0	0	25	8
Skokomish	0	0	0	—
Snohomish	0	0	200	67
Snoqualmie	150	0	0	50
Squaxin	0	0	0	—
Steilacoom	0	51	714	255
Stillaguamish	6	10	0	5
Suquamish	0	100	100	67
Swinomish	0	109	109	69
Tulalip	0	790	142	311
Upper Skagit	1,400	200	200	600
Total	3,206	3,524	2,916	3,215

* Reported to USFWS - Fisheries Assistance Office as of 7/13/78.

Table 7. Cost comparison of regional task force proposal with the Department of Game alternative settlement plan

	Regional task force	Department of Game	Difference
Enhancement Capitol Const. & O&M	\$ 5,350,000 ^{1/}	\$2,250,000 ^{1/}	\$3,100,000
Research	3,030,000	2,000,000 ^{3/}	1,030,000
Date requirements & monitoring	2,030,000 ^{4/}	500,000 ^{5/}	1,530,000
O&M costs - Tribes steel- head enhancement proj.	2,100,000 ^{6/}	0	2,100,000
Steelhead income replace- ment grants (Muckleshoot, Upper Skagit, Lower Elwha)	1,300,000 ^{7/}	0	1,300,000
Total	\$13,810,000	\$4,750,000	\$9,060,000

^{1/} Does not include undetermined amount allocated to treaty Indians for hatchery construction costs for steelhead.

^{2/} Rearing facility (Project #2 in task force plan) to compensate to sportsmen for incidental catch of steelhead by treaty Indians and non-Indian fishermen.

^{3/} Research projects to determine effects of massive salmon enhancement on existing steelhead populations.

^{4/} Task force proposal for Department of Game to implement requirements of settlement plan.

^{5/} With total de-commercialization under the Delegation plan, to assure compliance with settlement plan.

^{6/} With total de-commercialization of steelhead, Department of Game will continue enhancement of steelhead in waters of the state. Tribes should have no reason for enhancement of steelhead (approx. 1,400,000 smolt capacity).

^{7/} Steelhead Income Replacement Grants for Muckleshoot, Upper Skagit, and Lower Elwha are included in the alternative settlement plan.

PURSE SEINE VESSEL OWNERS ASSOCIATION

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TESTIMONY AT CIVIL RIGHTS COMMISSION HEARING

August 25, 1978

I am Wallace K. Green, President of the Purse Seine Vessel Owners Association. The association represents 200 members who purse seine for salmon in Washington and Alaska. The membership of this association comprises the majority of the purse seine fishermen in the State of Washington. We have been asked to comment on civil rights as they pertain to treaty Indians in the State of Washington, especially relating to treaty Indian salmon fishermen.

I am sure that other testimony presented here today will describe the Boldt decision and its attempted implementation. Hence, I will not describe the specifics of the Boldt decision at this time. One point I would like to make, however, is that the Purse Seine Vessel Owners Association was not a party to the original Boldt litigation. Prior to the issuance of the February 12, 1974 final decision, we did not realize that his court proceedings could potentially affect our fishermen. We were, of course, remiss in this assumption and have since attempted to intervene as parties into the case. Immediately after the decision was issued in 1974, we requested intervention, but the Boldt court would not grant it.

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We do not object to or wish the elimination of the Stevens Treaties which were ratified with various Puget Sound area tribes in the mid-1850's. However, our association does not agree with Judge Boldt's interpretation of the treaty language "in common with". We have attempted, and are attempting every legal step possible to have the Boldt interpretation reviewed and, hopefully, modified. Nonetheless, for purposes of our discussion today, we must assume that the Boldt decision is presently in effect. Hence, I will relate its unfair, detrimental consequences.

Immediately prior to the Boldt decision, the salmon industry in the State of Washington experienced increasing difficulties in maintaining its high level of productiveness. One of the main problems confronting the industry was an increasing number of vessels participating in the fishery. This was partly due to a depressed economy in the Seattle area, due to the Boeing layoffs during the late 1960's. Many ex-Boeing employees began salmon fishing. Because of the increased numbers of fishing units, fishing time was becoming more restricted. Many fishermen could not harvest a profitable number of salmon. The salmon fishing industry, in a united effort, convinced the Washington State Legislature that there should be a moratorium placed on the issuance of salmon licenses. Hence, no new licenses

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were issued after the 1974 fishing season. The point of this discussion is that the industry realized its problems during that time period, and, through its own initiative, attempted to correct them. Since the Boldt decision, many statements have been made that the Boldt decision did not have a great impact on the industry since the industry was in a self-destruct pattern anyway. This assumption is not true. The industry was and is capable of correcting its own problems and the Boldt decision has spelled disaster to commercial salmon fishermen.

Prior to February 12, 1974, it was the position of the federal government, specifically the Department of Commerce, that the salmon industry in the State of Washington should be made as productive as possible. Fishermen were issued low interest and/or government guaranteed loans with which to purchase vessels and gear. Considerable research was being conducted to improve the efficiency of the salmon fishing and processing capabilities. Tax deferrals for equipment improvement were, and still are being allowed in the salmon fishing industry. Then, on February 12, 1974, the federal government shifted its attitude 180 degrees. It is now the federal view that non-Indian salmon fishery must be curtailed to provide for treaty rights of the Washington State treaty tribes. What does a salmon fisherman do who

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is caught in the middle of this schizoid federal government attitude? One day he is told that his efforts in harvesting Washington salmon should be rewarded because his fishery is productive. The next day he is told that because of an interpretation of three words, "in common with" he has no longer a right to productively harvest a resource.

As I stated previously, we believe in the existence of the Stevens Treaties between the tribes and the federal government in the mid-1850's. But, we also believe that the public costs of these treaties, while possibly neglected in the past, should now be shared by all people who benefit from the treaties. It should be pointed out that all citizens in Western Washington are now benefitting because of the Stevens Treaties. Yet a small group of citizens, the salmon and steelhead fishermen, are paying the price for all who benefit. It is not fair and is very frustrating and economically damaging for our association's members.

Our association has developed a proposal that we hope will resolve the dilemma that we are now in. This plan was developed in conjunction with nine other fisheries representative groups in the State of Washington. Our proposal realizes and provides for a viable

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treaty Indian salmon fishery. After full implementation of the plan, the treaty Indian fishermen would be able to harvest one million more salmon than they would if the Boldt decision was fully implemented. This would be possible because of the increased size of salmon runs due to vigorous salmon enhancement programs. At the same time non-Indian salmon fishermen would be able to exist, as opposed to the current trend under the Boldt mandate. The proposal will require Congressional and State legislative action for implementation. We would hope that the Civil Rights Commission could support our plan as a valid means of implementing the Stevens Treaties, yet allowing for a productive salmon industry.

In conclusion, I would like to reiterate that the implementation of the Boldt interpretation of the Stevens Treaties has severely impacted the lives of our association members. Our members, and their families, have civil rights, and they should be protected.

Respectfully submitted,

WALLACE K. GREEN
President

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Exhibit No. 10

Purse Seine Vessel Owners Association

response to

**Settlement Plan for Washington
State Salmon and Steelhead Fisheries**

Prepared by
Paul L. Anderson
Executive Manager

PURSE SEINE VESSEL OWNERS ASSOCIATION

P.O. BOX 5106 / 1111 N.W. 45TH ST. / SEATTLE, WASH. 98107 / TELEPHONE 783-7733

July 31, 1978

To The Federal Task Force on Washington State Fisheries:

The Purse Seine Vessel Owners Association (PSVOA) has reviewed the Northwest Fisheries Task Force settlement plan for Washington State salmon and steelhead fisheries. The PSVOA represents approximately 200 purse seine vessel owners and operators who earn their livelihoods by fishing for salmon in Washington and Alaska. The decision rendered by Judge George H. Boldt interpreting treaty Indian fishing rights jeopardizes the existence of the Washington purse seine fishery. Without a proper settlement of the fishing rights controversy, the continued existence of a non-Indian purse seine fishery in the State of Washington is very unlikely. Therefore, we are committed to the development and support of a fair settlement to the treaty Indian fishing rights conflict.

The most devastating and controversial aspect of Boldt's interpretation is the dictate of allowing one group of fishermen, treaty Indians, to fish when other citizens, non-Indians, cannot fish. This violates the principles of equal protection guaranteed by the United States Constitution. A settlement will never be accepted until all fishermen can fish, in common, pursuant to equal standards.

The report issued by the Regional Team of the Task Force entailed a considerable amount of research and constructive planning. We appreciate the endeavor

conducted and the efforts and interest of the participants. The resulting report is an excellent working document that can be used to coordinate a settlement of the salmon and steel-head fishing issue.

We do have objections to some proposals made by the Task Force. This is a result of the guidelines the Task Force was instructed to follow. One of the guidelines, "the utilization of the fishery consistent with recognized treaty fishing rights reserved under the Stevens Treaties of 1854 and 1855", leaves little latitude with which the Task Force could suggest alternatives significantly different than the Boldt decision. Consequently, the two major devastating factors of the Boldt decision, the theory of multi-management of the fishery and the unfair 50% allocation, are not properly resolved in the report. The management system proposed by the Regional Team may be a better system than what is currently in effect, but nonetheless, it is a far cry from a productive management entity. The allocation system proposed by the Regional Team, again because of its restrictive guidelines, does not present a "compromise". After careful review of the allocation system, the tribes will still retain rights to nearly the Boldt percentage of the available harvest. We could not classify this as a compromise solution.

We have previously commented to the Regional Team on the necessity of having the Boldt interpretation of the Stevens Treaties reviewed by the United States Supreme Court. While the Regional Team has stated that it is unfortunate that the Supreme Court, in the past, did not review the Boldt decision, it does not now propose and support a settlement which incorporates Supreme Court review. It does imply, somewhat detrimentally, that if a Supreme Court review is needed, then "this settlement plan will be dead". We feel that this is an unnecessarily uncompromising position. It is quite common to negotiate settlement

of a controversy while litigation is pending. Therefore, we believe that all parties should urge Supreme Court review, but continue pressing for a satisfactory settlement. PSVOA has adopted a resolution that if the Attorney General and the Solicitor General support Supreme Court review of the issues raised in the Boldt decision, the association will strive for a settlement to normalize the status of the Washington salmon fishery. The national level Task Force must recommend to the President that he instruct his Solicitor General to support review by the United States Supreme Court of all cases raising any Boldt decision issues, particularly the construction of the "in common with" language of the treaty provision.

Aside from our three major areas of disagreement, the remainder of the Task Force report, the vessel buy-back programs, enhancement proposals, and enforcement discussions, exhibits the dedicated, qualified effort that went into it. Again our disagreement does not arise due to the Regional Teams efforts, but the guidelines the team was required to follow.

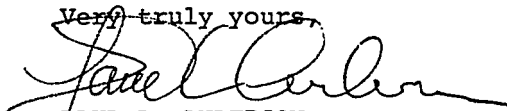
Our association has been working with the Commercial-Recreational Fisheries Delegation on a proposal for settlement of the controversy. The Regional Team's proposal has been very helpful to us in our drafting of what we feel would be an appropriate solution. The Commercial-Recreational Fisheries Delegation's proposal should be available in the near future.

Attached you will find our comments on the Regional Team's solution of the controversy. They are categorized by a summarization of a particular section, followed by a point-by-point review. In some instances, the point-by-point comments appear to be negative. However, we want to make it clear that such a settlement is imperative to the continuation of a valid purse seine fishery. Hence, we carefully scrutinized

the particular points in the Task Force proposal. We again want to emphasize, however, that we believe the proposal is a good document from which to begin searching for an overall solution to the Indian treaty fishing rights controversy.

We appreciate the opportunity of being able to work with the Regional Team of the Task Force to review different solutions. Again, we commend the effort necessary to research and propose such a solution to this unfair situation.

~~Very truly yours,~~

A handwritten signature in cursive script, appearing to read "Paul Anderson", written in dark ink.

PAUL L. ANDERSON
Executive Manager

PLA:ll
Att.

cc: Regional Task Force Team

Washington State Congressional Delegation

SPECIFIC COMMENTS ON TASK FORCE REPORTSALMON AND STEELHEAD MANAGEMENT

The Regional Team was given guidelines to follow for its drafting and composing a settlement of the Boldt decision. The Regional Team's proposal for salmon and steelhead management clearly shows that the Regional Team was not given adequate flexibility to properly address the problem. Hence, the management system proposed in the report is excessively cumbersome and most likely will not be able to operate effectively, if at all.

Apparently the tribes demand self-management authority because of past practices by the Departments of Fisheries and Game in the State of Washington. The tribes were not in their opinion, given an adequate fishery. The tribal members and their attorneys state that the two departments over the years abrogated the tribal treaty rights. This is a disputed question, but nonetheless there is and has been little trust afforded to the departments by the tribes. But, similarly, no one can state that there is a lot of trust between the departments and the non-Indian user groups.

Most people involved in the salmon and steelhead fisheries have become very aware of this lacking "trust" since the inception of the Boldt decision. But, nonetheless, the responsibilities of the two agencies should be unquestionably defined in enacting legislation so that the tribes or other user groups could not in the future claim that they had been deceived.

Fishery management doctrine dictates that the proper management of a fishery be conducted by one management authority. On a given fishery resource, multi-management is conducive to mismanagement. The State of Washington salmon and steelhead resources must be each managed by one regulatory agency. Any other system would prove detrimental to the resource. Furthermore, overlapping management systems resulting in duplication of effort and confusion would necessitate much higher costs. The funds wasted could more appropriately be used to enhance the fishery resource.

It seems apparent, once a settlement on the allocation of salmon and steelhead resources is achieved, the enacting legislation should dictate one management agency to enact the settlement. If the affected parties are guaranteed the settlement results, why does it matter who provides the parties the guaranteed fishing opportunity.

At this point we will direct our comments to more specific areas of the Regional Team's management proposal. Each comment will be referenced by page number of the Task Force report.

Page 13 - The previous discussion concerning wasted resources by duplication of effort is exemplified by the request in the report that informal staff-to-staff cooperation would be necessary for a smoothly functioning plan. This is an indication of the extra effort required to coordinate more than one management agency. It is not necessary.

Pages 15 and 16 - Our comments on the initial Task Force proposal in February stated that some tribal commercial fishing areas were too large. Specifically, we commented on the Hales Pass-Lummi Island area. Our comments have been prompted by the controversy in the roe herring fishery near Bellingham. Allowing the tribal commercial management zone to include Hales Pass near Lummi Island would not help to solve the herring fishery controversy and would more likely increase salmon fishery conflict. The commercial and recreational fisheries delegation would address this area as well as others in its future comments.

Page 22 - The term "emergency conservation power" is used in a number of places in the document. It conceivably could give the power to enact an "emergency opening" to avoid over-escapement. The term must be specifically defined such that it cannot be mis-interpreted.

Page 22 - One of the advantages the Departments of Fisheries and Game derived from the Boldt decision is, after following specific procedures, the authority to close down an on-reservation Indian fishery to provide for proper escapement, i.e., conservation. Prior to the Boldt decision, this power was not available. The Task Force suggests that the Departments would no longer have this authority; that only the tribes and the tribal fisheries commission could choose to institute a closure on a reservation.

Page 24 - The report states that the tribal commission and the State agencies could in the future modify the boundaries between the tribal fishing areas and the State commercial management zones. This would present a disastrous mode of conflict. Exactly described, unchallengeable boundaries of the zones should be specified in a final settlement and should not be changed.

Page 26 - The Task Force correctly implies that Federal and State legislation will be required to

institute the settlement of this controversy. They also state that tribal legislation would be necessary. It is conceivable, due to the diverse interests of the twenty-plus tribes involved in this issue, that if Federal and State legislation were enacted, that a particular tribe or tribes might not follow suit. It seems as though the tribes, by being given this option, would be granted enormous "blocking" power.

Page 27 - Why would it be desirable to include a mechanism for removing a FRB member prior to expiration of a term? Who would determine why that member should be removed involuntarily? If this concept was instituted, it would seem that the members of the FRB would be reluctant to take a firm stand on an issue for fear that they would be removed by political pressure from the board. This would hinder an already too complex management process.

Page 28 - The proposal states that the initial board members would serve one, two or three year

terms specified by lottery. It is conceivable and possible that the length of the terms could be weighted to either tribal members or state members. For example, two of the state members could draw three year terms, two tribal members two year terms, and the remaining two members would be given one year terms. The Secretary of Commerce should specify which member will receive a one, two or three year term.

Page 27 - It is possible, pursuant to the report, to have either the State or the tribes take political control of the FRB. For example, if the State foresaw the possibility that the three tribal members most likely to be appointed by the Secretary of Commerce were dangerously astute and therefore not desirable in the State's view to serve on the board, the State then could nominate three individuals who would purposely block the nomination of a seventh board member. Pursuant to the plan, the entire board would dissolve and new nominations of not previously selected board members would have to occur. At this point, the State could nominate its best personnel. The

tribes would have to select other members from its ranks, but not the three with the most expertise that were previously selected, and the State would have biological and political control of the board. The settlement should state that the original six appointees must appoint a seventh board member without the interim dissolution of the board.

Page 31 - One apparent goal of the settlement proposal is to return as much as possible salmon and steelhead management back to local entities, i.e., State and tribes. Experience has demonstrated that the Federal court system and the Federal Government are not properly equipped to handle the management of the fishery. Yet, pursuant to the substantial non-compliance section of rules for the FRB, the Federal Government can again gain control over management. A better functioning system to avoid federal takeover would deliver a particular management function to the State or tribal commission, if the other agency was found to be in substantial non-compliance. The management function could then

be returned, given proof the negligent party provided capability of settlement compliance.

Page 35 - All parties agree that the courts should refrain from becoming involved in the management of the fishery. As specified in the proposed settlement, a decision of the FRB could be appealed to the Federal District Court, and the court would determine if the board's decision was clearly erroneous. On what basis would the board's decision be erroneous? Assuming that the State of Washington should have some say in the settlement implementation process, it would seem expedient that any State action resulting in a FRB decision that was disputed should be appealed to State courts while any tribal action appealed from the FRB should be decided by a Federal District Court. Again, court interference will prove detrimental to the resource.

Page 44 - The Washington Department of Fisheries has the personnel and facilities capable of issuing fishing licenses for State and tribal fishermen. To follow the Task Force suggestion that the

tribes issue licenses to their own members would present a wasteful duplication of effort.

In summary, a settlement of the treaty Indian fishing rights controversy should be enacted by the Department of Fisheries. It does not make any economic or political sense to institute a new hierarchy of fisheries management that would necessitate costly duplication of resources and effort. Trust must be afforded to the Department of Fisheries so that it would treat Indian and non-Indian fishermen in a fair manner pursuant to the settlement.

SALMON RESOURCE DISTRIBUTION PLAN

The over-riding controversial factor in the Boldt interpretation of the treaty Indian fishing rights is the racially based allocation of a particular percentage of the harvest. The institution of this philosophy and the resultant implementation has caused the most controversial event that has faced Washington State salmon fishery in recent history. The fact that certain individuals within a gear class are free to operate in a fishery, while other fishermen within that same gear class cannot, is the root of the problem. Disparate fishing times between Indian and non-Indian fishermen in in-common fishing areas must cease if a settlement is to be successful.

The Task Force report defines steps by which to minimize special fishing time for treaty Indian fishermen. Given the guidelines the Task Force was instructed to follow, it is conceivable to understand why disparate fishing times are not completely eliminated pursuant to the report. It is extremely unfortunate

that the Federal Court instituted this disastrous philosophy such that the Task Force proposal must follow its guidelines. This, however, is by no means an excuse for a final settlement to include extra treaty Indian fishing time in the in-common fishing areas. While the Task Force proposal does provide disparate fishing times for treaty fishermen, we commend the Task Force in its philosophical statements that it realizes the destructiveness of extra fishing time and will attempt through the settlement to eliminate it. This, however, does contradict the specifics of the Task Force proposal.

There is considerable comment in the salmon resource distribution section of the Task Force report on the conflicting uses between user groups of the salmon resource. There has been, and most likely will continue to be, conflict between salmon fishery user groups just like there is conflict between the users of any public resource. Nonetheless, the non-Indian commercial and recreational fishermen are developing a proposal that will be presented to the national Task

Force and Congress. The groups involved in this proposal, which represent a majority of the resource users in the State, have committed that a settlement will insure a productive fishery for all user groups, including treaty Indians.

The purse seine fishermen need a Puget Sound coho fishery to provide economic stabilization of the fleet. Since the 1974 Boldt decision, purse seine fishermen have had their coho harvest severely curtailed. Aside from the 50% allocation, the on-reservation, ceremonial, and subsistence allocations ordered by Boldt, the Puget Sound net fishermen were required to share their percentage of harvest with the recreational and troll fishermen. Since the Puget Sound net fishermen are "last in line", many times the troll and sports fishery harvested the allowable non-Indian coho allocation prior to the inception of the purse seine fishery. Hence, purse seine and gillnet fishermen received little, if any, fishing time on coho stocks. (See fishing time chart).

ANNUAL NUMBER OF DAYS FISHING TIME ALLOWED BY GEAR
IN PUGET SOUND 1958 THROUGH 1973
FOR CHINOOK, COHO AND CHUM SALMON

<u>YEAR</u>	<u>PURSE SEINE*</u>	<u>GILLNET</u>
1958	24	100
1959	24	80
1960	16	68
1961	27	75
1962	21	80
1963	32	74
1964	31	92
1965	34	90
1966	38	91
1967	24	60
1968	32	100
1969	14	73
1970	15	54
1971	33	60
1972	22	42
1973	24	24

*Prior to 1973 no purse seining occurred in this
area prior to October 5 of each year.

ANNUAL NUMBER OF DAYS FISHING TIME FOR
 GILLNET AND PURSE SEINE ALLOWED BY SPECIE
 IN PUGET SOUND 1974-1977*

<u>YEAR</u>	<u>COHO</u>	<u>CHUM</u>
1974	4	0
1975	terminal areas only	1
1976	0	7
1977	3	4

*Legislative action in 1973 equalized purse
 seine and gillnet fishing days.

It is not entirely clear whether or not the Task Force proposed that the troll and off-shore recreational harvest of coho counts against the resource distribution formula. If the settlement proposal intends that the troll and recreational harvest counts against the overall non-Indian share, then this would insure little, if any, coho fishery for the inside net fishery for at least five years and most likely beyond. If this allocation procedure was practiced in implementation, it could hardly be classified as a "settlement" since there would be no improvement for the non-Indian coho net fishery.

The Task Force properly assesses one of the problems of the coho fishery in that many coho salmon produced by Puget Sound hatcheries are intercepted by the Canadian fishermen. This is a problem that all affected fishermen should be reviewing with State and Federal agencies. An examination and resultant action pertaining to the Canadian troll and net harvest of coho is

correctly recommended by the Task Force. Nonetheless, it is unfair that current or future Canadian harvest should in any way affect the resource distribution between tribal and non-tribal fishermen.

In conclusion, while the Task Force settlement proposes that by 1989, there will be a 60%-40% split between non-treaty and treaty fishermen in the Boldt case area, it should not be implied that this percentage applies to the Puget Sound treaty and non-treaty allocation. The actual Puget Sound percentage distribution, based on the assumption that hatchery production will improve the fishery for non-treaty fishermen, is that 47% of the harvest will be distributed to treaty fishermen, while the remainder will be shared by non-treaty fishermen. This, in our opinion, hardly constitutes a settlement.

At this point we will direct our comments to more specific areas in the Regional Team's

resource distribution plan. Each comment will be referenced by page number of the Task Force report.

Page 166 - The figure on this page is misleading, or at best unclear. The blackened boxes either suggest increased U. S. harvest because of reduced Canadian interceptions, or decreased U. S. harvest because of reduced U. S. interceptions of Canadian stocks. The figure is especially misleading by improperly equating salmon per fishermen with salmon per license. It would imply that by 1989, each purse seine vessel operator would receive the income derived from between 11,000 and 12,000 salmon. It must be pointed out that a purse seine vessel operator employs a crew of between 3 and 7 fishermen with which the revenue of the catch must be shared. Also, it is not appropriate to compare the "salmon per fishermen" purse seine catch with other gear types since purse seine vessels require much larger investment, operating, and upkeep costs.

Page 194 - We are adamantly opposed to establishing a special fishery in the Straits of Juan de Fuca. We realize the Task Force's concern of providing a fishery for the Makah and Klallam tribes. However, instituting a new fishery on stocks of fish that are better managed as they approach their terminal areas violates sound fishery management principles. The net fishermen, decades ago, were prohibited from fishing in the ocean because of this mixed stock management rationale. We realize the concern for providing a productive fishery for these two tribes. A more appropriate and beneficial method would be providing the tribal members expertise and necessary equipment to participate in the IPSFC fishery in the San Juan Islands and the fishery in Puget Sound.

Page 198 and 199 - The report properly describes the concept of "opportunity" versus "guarantee" in relation to a 33% harvest availability of salmon in the TCMZ areas by the statement,

"however, if, for some reason the opportunity exists but is not utilized, the terms of the guaranteed opportunity would be fulfilled." We fully support this concept. It is akin to our arguments against the Boldt decision by which we point out that the tribal members always did have the same opportunity as non-tribal members to share in the harvest. Indian fishermen were never denied the opportunity to participate in the pre-Boldt salmon fishery.

Page 199 - Salmon surpluses at State, tribal or Federal hatcheries should not be sold for human consumption. This is a source of conflict that currently exists in the State of Washington where poor quality salmon are placed on the fresh fish market and have the potential of downgrading the public's image of the normally fine salmon product. We have no opposition to surplus salmon being sold for inedible purposes and the resulting revenues to be placed either in the State of Washington's general fund or the Federal treasury.

Page 196 - The concept established in Paragraph G(1)(a) contradicts paragraph c on page 201. Paragraph a on page 196 implied, according to the definitions on page 215 and 216 that there will be no off-shore recreational or troll fishery. It states that 60% of Puget Sound origin harvestable salmon shall be caught by Puget Sound marine area fishermen (Washington State law prohibits trolling for salmon inside of Puget Sound. Therefore, the troll fishery would be eliminated). Paragraph c on page 201 implies that the troll and off-shore recreational catch shall be counted against the overall non-treaty allocation. Paragraph c on page 203 further contradicts paragraph G(1)(a) on page 196.

Page 200 - We fully support the Task Force proposition that special non-specified allocations for on-reservation, ceremonial, and subsistence catches be eliminated. As appropriately stated, these catches should be counted toward the treaty share. We are concerned about a possible Task Force oversight. The report states in the interim,

40%, and after implementation, 33% of the harvest will be available in the TCMZ areas. Paragraph 6 states that the opportunity to harvest 33% of the harvestable salmon shall include salmon taken on reservation and for ceremonial purposes. What about the instance of reservations which are outside of the proposed TCMZ areas, such as the Klallam Reservation? There is no provision for the management of the fishery to provide a return of a certain percentage to such a Reservation, yet that Reservation harvest purportedly would count in the TCMZ share. This is especially important in the Klallam tribe area since it proposes to construct a fish trap on the Reservation, outside the TCMZ area.

Page 208 - The Task Force proposes the concept of licensing by area for inside Puget Sound. This strikes a very sore spot with purse seine fishermen who have experienced the economic waste of an area licensing system in the State of Alaska. It severely limits the opportunity to effectively participate in a fishery and, as Alaska experienced,

it does not provide for ease of management. There are many other, more appropriate methods to deal with harvest management.

Page 214 - The Washington Department of Fisheries statistical area 9, is not included in one of the six regions of origin in Puget Sound.

In summary, any settlement must provide for all fishermen to operate under the same regulations in the in-common fishing areas. Also, the in-common fishery must be guaranteed enough of a harvest so that the participants are able to maintain a productive existence. The Task Force proposal does not adequately allow for these requirements.

WASHINGTON STATE LICENSE AND FLEET ADJUSTMENT PROGRAM

Our Association presented a settlement proposal to the Regional Team of the Task Force. The main thrust of this proposal was to reduce the size of the non-Indian fishing fleet with a commensurate increase of the treaty Indian fishing fleet. There would be no need for extra fishing time for treaty Indian fishermen. Yet, they would have an excellent opportunity to harvest the resource.

We are pleased that the Regional Team considered our proposal in their report. In our view, the fleet adjustment program is as equally important as the enhancement proposal for an effective settlement. As our association manager, I have discussed the proposed buy-back programs with the membership. I have learned that there is a substantial number of very productive fishermen who, mainly because of their age, would gladly get out of the turmoil of the salmon fishery given the opportunity. Some of the fishermen who have expressed interest are in the top ten percent

rating of purse seine fishermen. Needless to say, their absence from the fishery would have a great affect on the ultimate resource distribution. In our opinion, their removal would have far greater impact than attempting to eliminate voluntarily or involuntarily the marginal producers. The Regional Team's proposal provides a system for removal of both the top producers and the non-producers.

As we have commented in the past, a program that will remove productive fishermen from the fishery must include tax compensation provisions. A fisherman is not going to sell his business if he loses more than half of his compensation to federal taxes. The Regional Team appropriately handled this matter.

We are committed, given a settlement, to work with the State Legislature to support a proper fleet size adjustment program. Again, we believe that the fleet adjustment program is essential to the success of a settlement.

The Regional Team proposed that the buy-back program would be administered through the Washington State Department of Fisheries. We would propose that since the funds to be utilized in the program would be from a Federal source, that the regional office of the National Marine Fisheries Service assume responsibility for the operation of the buy-back program.

We do have comments on particular points of this section.

Page 240 - Consideration should be given to an applicant for voluntary military service, as well as involuntary military service.

Page 273 - We do not agree with the concept of transfers across gear types. Apparently the Regional Team proposed that by using fishing effort conversions, a purse seine fisherman could trade one purse seine license for the

equivalent catching power of a number of gillnet licenses, etc. Ten years ago, Canada instituted a limited entry system on its salmon fishery. The major mistake in their system was allowing across gear type transfers. It would be foolish for the Washington State fishery to become involved in a system that has been proven faulty in Canada.

We are not opposed, however, to the transfer of a tribal fisherman from the TCMZ to the in-common marine fishery, provided that a concurrent reduction in percentage of the TCMZ opportunity guarantee occurred.

SALMON ENHANCEMENT

Along with the fleet reduction scheme, enhancement of the salmon resource is a critical concept of the settlement. We certainly agree with the philosophy that a doubling of the size of the resource would help to offset the effects of implementation of treaty Indian fishing rights. Apart from this, Washington State has the potential of such an expanded resource. We are fortunate that on a Federal, as well as State

level, the dedication will be made to increase the size of salmon stocks.

Without appearing negative on the enhancement proposal, we do have some concerns we wish considered. We must be guaranteed that a reasonable harvest of salmon will continue during the time that increased egg supplies are necessary for enhancement implementation. Future enhancement would be of very little benefit if we are forced out of business during a "crash program" of egg take. The subject of egg supplies relates to the concept of private hatcheries. The Regional Team, in its report, appropriately addressed this issue. That is, enhancement sites, as well as egg requirements, must be prioritized for State, Federal and tribal hatchery programs. Private hatcheries must take a backseat, at least until the settlement enhancement is well underway. Also, as the Task Force points out, the impact of new enhancement programs on the available food and space resources, must be evaluated such that publicly owned salmon will derive the primary benefits.

A major concern of ours is the operation and maintenance funding for the proposed hatcheries. The Task Force has recommended that the Federal Government fund the operation and maintenance for a period from five to seven years. This is based on what we feel is an erroneous assumption that after that time period, the hatcheries will be self-sustaining and that user fees will be available to fund the facility. It has been our experience, through Washington State enhancement programs, that it takes much longer than five to seven years for the hatchery to become even marginally productive. This is especially so since there will be many new hatchery facilities instituted immediately after the settlement. Hence, the result would be that after seven years, the fishermen would be forced to pay the operation and maintenance of hatcheries based on a low harvest level. The harvest taxes necessary for such expenditures would make fishing operations unprofitable. We fully support the concept of paying for our share of the harvest,

but we cannot afford to be paying for the promise of "paper fish". Hence, the operation and maintenance for the new hatcheries should extend until the facilities have reached nearly full potential.

There is a considerable portion of the budget proposed for research relating to enhancement and other management activities. It would be foolish to conduct such massive programs without coordination and oversight. Therefore, we recommend that all research funding and resultant projects be directed through the regional office of the National Marine Fisheries Service. The Service would then have the responsibility to assure that the funds were most efficiently utilized.

ENFORCEMENT

There is no question that proper enforcement is critical to the institution of a successful settlement plan. The Regional Team has pointed out six key elements for effective

enforcement. We fully support the Team's assessment. It should be pointed out that prior to the implementation of the Boldt decision, enforcement of fishery regulations was a negligible problem in the State of Washington. It was a result of the theory that if citizens believe in the laws and believe the laws are necessary and fair, the laws will not be violated. After the implementation of a settlement, there will be some individuals and possibly groups of fishermen not satisfied with the conditions. Then it would be proper and necessary for the majority of the settlement supporters to publicly denounce activities that would damage the future of the salmon resource. We are confident that if a fair and equitable settlement is enacted, enforcement will cease to be the major problem that it is today.

Exhibit No. 11

STATEMENT FROM THE NATIVE AMERICAN SOLIDARITY COMMITTEE (SEATTLE CHAPTER)
TO THE U.S. CIVIL RIGHTS COMMISSION HEARING (AUGUST 25, 1978)

The Native American Solidarity Committee (NASC) is a national organization whose goal is to mobilize non-Indian support for the sovereign and human rights of Native Americans. NASC is composed of non-Indian people who are informing themselves and other non-Indians about these rights. Our organization does public education in schools, community organizations, churches and neighborhood groups. One focus of this education is to accurately inform the non-Indian public about the issues and facts involved in the fishing rights controversy. In doing this education we have found most non-Indians eager to learn and very favorable toward Indian fishing rights. In fact, a petition which we have been circulating, in opposition to anti-Indian legislation presented by Representatives Meeds and Cunningham of Washington, has gathered thousands of signatures.

Fishing to Indian people was and is more than a livelihood. It is part of their culture—a way of life that has existed since time immemorial. The right to fish was considered so important that at treaty times (1850's) it was specifically reserved and not transferred to the United States. Indian people knew then as now that without the right to fish their way of life, their identity and their physical and spiritual survival would be endangered.

The treaties, in which the Native people reserved their right to fish, were negotiated as nation to nation. According to Article VI of the U.S. Constitution they are the supreme law of the land and superior to any state's law. This point has been affirmed on several occasions by the U.S. Supreme Court.

The state of Washington however has systematically denied Native people their treaty right to fish while encouraging ever increasing exploitation of the fisheries and their environment. The Washington state Department of Fisheries has a reputation for basing its management policies on political and economic considerations to the detriment of the resource itself.

Under Native control, the fisheries flourished for hundreds of years. Under state management, the number of fish has declined drastically. The total salmon landings in Washington have decreased from 9,857,130 in 1935 to only 5,383,860 in 1975. At the same time the number of fishers licensed by the state has increased. The year before the US v Washington decision, Oregon and Alaska closed their licensing to any more fishers in order to prevent over-fishing. Not only did Washington not close licensing, but it actually doubled the number of licenses issued that year.

In addition to over-licensing the state Department of Fisheries has managed its fish planting and harvesting programs in such a way as to seriously jeopardize the survival of natural fish runs. The state relies more and more on artificial salmon and steelhead stocks, at a time when their stability is still a major question.

Because of Washington state's flagrant and persistent violation of their treaty rights, the Native people filed suit against the state in USv Washington. The decision in that case, while favorable to their fishing rights required that certain conditions be met by the various treaty tribes before they could exercise those rights. These conditions were not required by treaty as the

2)

treaties guaranteed the right to fish unconditionally. The various tribes complied with the requirements without protest even though they constituted a major compromise of their treaty rights.

But, the state of Washington has refused to comply with the federal court's ruling and has through its state courts determined enforcement of US v Washington unconstitutional. This leaves non-treaty fishers free to violate fishing regulations with little or no possibility of arrest or conviction. The result, apart from the endangerment of some fish runs, is a scene of lawlessness and confusion. The state and the non-treaty fishers are quick to lay the blame from this situation to the Native people and US v Washington, when it is in fact their own disregard for the law which has created it.

This is not to imply that non-Indian fishers are the enemy. Indian and non-Indian fishers share a common interest in the condition and management of the resource and environment. It is our belief that compliance and enforcement of US v Washington will not seriously damage the non-Indian fishers in general, but only marginal fishers, late-comers and those to whom fishing is a second income. Even so, we hold the state and federal governments responsible for any negative effects on non-Indian fishers. For they have allowed the fisheries to expand with improper management and without regard to Native treaty rights.

The fisheries management of the Indian tribes through the Northwest Indian Fisheries Commission has already had a significant positive effect. It would seem in the non-Indian interest to see this improvement continue. It is indeed unfortunate that the interests of these two groups of fishers have been pitted against each other by the machinations of state and federal governments.

The media in the Northwest has given the fishing issue extensive coverage. Unfortunately, the coverage has all too often been inaccurate and sensational. Articles in the local press are often written in such a way as to reinforce racist stereotypes. Headlines tend to incite non-Indians into an emotional reaction against Indians. This leaves the general public with little knowledge of the facts and real issues involved. In an attempt to make some of that information available to the public, NASC has written a short booklet, To Fish in Common, covering local history, background information and a discussion of US v Washington. We are submitting two copies of this booklet with our statement.

The Native American Solidarity Committee supports the Native people of the Northwest in their fight for their treaty rights and their search for justice. We join them in their opposition to the Presidential Task Force on fishing. We know that all of the tribes have acted in good faith and spent a great deal of time trying to work with the Task Force. But the findings of the Task Force do not honor the sovereign treaty rights of Native people, nor do they present a sound and workable solution to fisheries management in this state.

But what is more alarming is the fact that the Task Force proposal would alter or negate the treaties which are the supreme law of the land. The treaties define the rights and responsibilities of the Native peoples just as the US Constitution and Bill of Rights define the rights and responsibilities for non-Indians in this country.

The Task Force and any compromise of Native treaty rights it creates comes at a time when several pieces of legislation are before the US Congress which would totally dissolve Native nations, abrogate their treaties, steal their land

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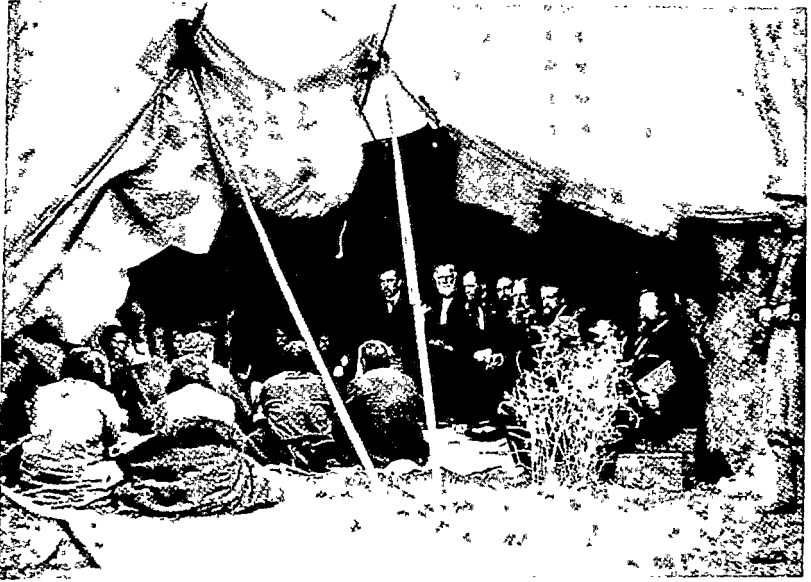
base and limit the amount of water they can use. The effect of this is much like having a gun at one's head. The message is clear, compromise or lose everything: your treaty rights, your land base, your water rights, your existence as a People.

If the Native peoples of this land can lose their rights in this way, if the law of the land, be it treaty or Bill of Rights can be so easily circumvented, then we all have much to fear.

#

BILLS IN CONGRESS ATTACK INDIAN SOVEREIGNTY

by the Native American Solidarity Committee



Representatives of the Great Sioux Nation meet with representatives of the United States to sign the Fort Laramie Treaty of 1868 which defined the boundaries and relations between these two nations.

Indian nations defended their homelands in countless battles and wars with the United States government. One result of these wars was treaties between separate sovereign nations—treaties which clearly define the boundaries of those nations. They guarantee Indian nations a land base on which to maintain their people's culture and government. Indian people fought and continue to fight for the rights guaranteed in these treaties—rights they want and need to survive. The policy of the US government has been to destroy or to subjugate the sovereign nations through whatever means possible. The relationship between the US and the Indian nations has always been one of a colonial force to colonized nations. The US colonial strategy has meant destroy the culture, destroy the people, and take the land—this is a continuing policy of genocide.

Legislation has historically been one of the ways the US has attacked the treaty rights of sovereign Indian nations. Presently more than 9 bills are before the 95th Congress in an attempt to create public sympathy for the "legal" theft of the remaining Indian land.

The most comprehensive bill is House Resolution 9054, authored by Representative Cunningham (R-Wash). This bill seeks to ignore all treaty rights relating to fishing, hunting, and water use, as well as ending all reservations. HR9054 attempts to divide Indian people by taking collectively held lands and assigning ownership of allotments to individuals according to age and amount of Indian blood. Previous legislation attempted such "allotment" and "termination" in the 1930's and 50's. Though eventually thwarted, some Indian land was lost then; taken by corporations, ranchers, and the US and state govern-

ments. If passed, HR9054 would spell the complete and final termination of the federal Indian reservation system — and end to the present land base, and thereby a legal end to the sovereign relationship between Indian nations and the Federal government. Robbing Indians of rights reserved by treaties and international law, the bill goes by the misleading and dishonest name "Indian Equal Opportunities Act."

Yet another congressional bill—HR9951 (Meeds-D, Washington) "Quantification of Federal Reserved Water Rights for Indian Reservations Act," states "all claims to aboriginal rights to the use of water are hereby extinguished." The bill elaborately defines "permissible uses" and outlines the need for Indians to file claims for use of water. Indian nations deliberately reserved the right to water because they understood the importance of water to their survival on the land. Instead of upholding their part of the agreement, the US has dammed, diverted and destroyed the water. Attempting to seize complete control over the water reserved by treaty, the US is directly aiding corporate interests. One example is the funneling of valuable water from Indian land in Central Arizona and the Colorado River area to exploitative Phoenix real estate and agricultural projects. Commercial interests in the Pacific Northwest are monopolizing the salmon and trout which are the basis of survival for many tribes. These attempts are being met by active Indian resistance.

HR9950 (also sponsored by Rep. Meeds), the "Omnibus Indian Jurisdiction Act of 1977" also seeks to limit hunting and fishing rights. In addition, it gives the States ultimate regulatory powers currently held by the Federal government. The main issue here is that Indian nations would be forced to deal with individual state governments, rather than with the nation of the United States. This bill would further limit tribal government's legal jurisdiction. Tribal governments would have no authority outside "Indian country" (for example, to extradite), and even limits jurisdiction within "Indian Country" to tribal members. This would mean that if a non-Indian committed a crime against an Indian on the reservation, the Tribe would have no authority to prosecute.

As well, SB1437, the "Criminal Code Reform Act of 1977," sponsored by Senator Kennedy, attacks the rights of all people, Indian and non-Indian. It is the old SB-1 under a new name with some cosmetic changes. Yet it remains a legal frame-work for a police-state with repressive measures which attack our right to demonstrate, to protest judicial proceedings, to remain silent in a grand jury.

In addition, sections have been proposed that would abolish Indian self-government and abolish any distinction between Federal enclaves (such as army posts) and Indian reservations. The bill would abolish all previous treaties between Indians and the United States. SB 1437 also retains the 1784 Logan Act which makes it a crime for an American citizen to deal directly with foreign governments, something which could easily be used to threaten Indian's international work in the United Nations.

These are only some of the many bills attacking treaties, sovereignty, and basic human rights, and there will be more—bills, amendments, and "riders" tacked on to totally unrelated bills—until the US government has complete control over Indian land. As Representative Cunningham, who authored HR9054, said, "If we can't get it in a bucket, we'll do it cup by cup."

What does all this anti-Indian legislation mean?

These bills are not something new. They are part of the continuing strategy of the United States to gain control over Indian nations' land and resources. Treaties by the US with Indian nations are the same as treaties by the US and any other nation, such as France or England. Treaties are subject to international law. Such bills are an attempt by the US government to renege on these international treaties, thus providing a legal veneer to stealing the remaining Indian land.

It is important to understand that legislation is only one tactic of many that the corporations and government find useful in swaying public opinion and paving the way for "legal" access to the land and its wealth. The US has historically used whatever means it found easiest and cheapest—treaty-making and-breaking often fulfilled that purpose. We find many continuing examples in US history of army massacres of Indian villages and other forms of terror. Today the government employs FBI programs to disrupt Indian resistance and to unjustly imprison Indian people.

Why are these attacks happening now?

Today we hear much about the energy crisis, about the sacrifices and increased costs we will all have to accept in order to get the energy that "we need." For most people our "energy needs" have been dictated by large corporations who design the automobiles, appliances, etc. that we use. We have even less to say about how these corporations get their energy or use it. For Indian people, however, the "energy crisis" is another in a series of attacks on their sovereignty. Since many of the remaining energy resources are on Indian land, the "crisis" is seen as another attempt to gain control over Indian land and resources.

In the 1970's, remaining reservation land has been "rediscovered" because it contains uranium, and other natural resources, gas, coal, water, fish and timber. Large corporations want these resources because cheaper resources mean higher profits. Throughout the world, countries are taking control of their own resources and the US government has not been able to keep access costs low enough for hungry multi-national corporations. Hence they are demanding access to the remaining energy resources within the US. Together with the Federal government they are pressuring Indian people to sell or leave their land. For example, there are huge deposits of coal on the Cheyenne Reservation in Northern Montana; oil is plentiful on Pine Ridge Reservation; and the Navajo Reservation has not only coal, but 90% of the uranium.

During the "energy crisis" the American people were told to tighten their belts, ration gas, accept higher bills—to sacrifice for the national interest. What we haven't been told is that while we sacrifice, the corporations have taken in record profits of 200%. Now as EXXON, Peabody Coal, PG&E and others continue to expand their profits, Indian land is being declared "national sacrifice land." Indian people are being told not only to accept the theft of their resources, but to allow stripmining which leaves the land barren and useless. The people of the United States are told nothing of this struggle. Instead, EXXON proclaims in full page ads how diligently it is working to produce "clean energy" with resources "From America For America."



Representatives of Native Americans from both North and South America display their determination to fight for their sovereign rights at the last session of the United Nations Conference on Indians held in September of 1977 in Geneva, Switzerland.

A very important part of the energy plan is the creation of an Energy Department. James Schlesinger, former director of the CIA, has been appointed head of the department. As the director, Schlesinger is empowered to call in military troops — an “energy army” — useful in attacking those who try to “stand in the way” of energy development. This army can be used against Indian people defending their land, against striking miners, and people opposing nuclear energy plants.

An economic system that perpetuates the theft of Indian land to exploit their natural resources does not serve the interests of the majority of the people in this country. The combined power of the US government and the energy corporations consolidates their control over our lives, and directly attacks the sovereign rights of Indian people to control their land and resources. It's not possible to deny the existence of a people with a piece of legislation. Indian people have chosen survival. They have proven their strength and endurance in 500 years of struggle for their land.

Indian land claims in the Court system

As this “energy plan” and other plans to exploit Indian resources have been developing, Indian nations have brought long-violated land claims to the courts. Indians of Maine took their case to court and after many years of court debate, continue to assert that their land was taken in violation of a Federal law of 1794. The courts are being forced to take the case seriously, even though it threatens the interests of big lumber corporations. Similar efforts made by the Mashpee tribe over part of the land in Cape Cod, Massachusetts, proved futile, as an all-white jury

“decided” that the Mashpee were “not a tribe” at critical moments in their history. Indians of the Northwest, however, have won affirmation of fishing rights guaranteed them by treaty.

The struggle of Indian people is now at a crucial stage. They cannot afford to wait years as the US wheels of “justice” grind, when multinational corporations have blueprints to move in on their land in 2, 3, 5 years. It is highly doubtful that Indian nations' sovereign rights will be recognized in US courts, since the history of the US has been consistently to deny Indian nations' rights to sovereignty and self-determination. The rights which remain today are the result of Indian nations' historical resistance. Now even these final rights are threatened.

Recognizing that relations between Indian nations and the United States are international relations, Indian people have gone to the United Nations seeking support from the peoples of the world in their struggle for liberation. This advance has been met with heightened repressive tactics by the US government and corporations. Even the possibility of modest gains within the US court system — as well as gains within the “world court” of the United Nations — fuels anti-Indian hysteria. Even supposedly progressive columnists as Nicholas Von Hoffman have joined the anti-Indian sentiment to write articles about these court cases entitled “We Can't Make It Up To The Indians.”

Who is behind the movement to pass these bills?

These bills are authored by Congresspeople and Senators, but they serve the interests of big corporations. A

good deal of support for these bills comes from extreme rightwing organizations. There are five main national organizations that vehemently oppose the rights of Indians today. Four of these are the Indian Affairs Task Force of the National Association of Counties [NAC]; the National Wildlife Federation [NWF]; Trout Unlimited [TU]; and the International Association of Fish and Wildlife Agencies [IAFWA]. The membership of these organizations is comprised of county officials in Indian country, individual sportspeople, who fear that Indian hunting and fishing leaves less for them, and members of state fish and game commissions.

The fifth organization, and most serious threat to Indian people, is the Interstate Congress of Equal Rights and Responsibilities [ICERR]. It asserts that "the constitutional rights of all Americans must supercede the treaty rights of some Americans." They operate on or near reservations, and claim affiliates in 26 states. ICERR has a budget of millions of dollars and a full time congressional lobbying staff.

These groups are not simply isolated ranchers, farmers and sportspeople merely protecting their own interests. They are big national organizations with large budgets that front for the multinational corporations.

This anti-Indian movement can also be understood in the context of other rising reactionary and racist trends, such as the Bakke decision. Alan Bakke claimed in California courts that he was rejected from University of California medical schools at Davis because he was white, challenging the existence of affirmative action admittance programs which admitted more minority and women students into the schools than previously. Bakke's case was upheld by California courts but it is presently on appeal before the US Supreme Court. By claiming "reverse discrimination" and "special privileges", the pro-Bakke movement attacks long fought-for rights of minorities and women to affirmative action programs. Bakke's "logic" is not so far away from the ICERR's notion that treaty rights are "special privileges for some Americans" and from Rep. Cunningham's sham notion of "Indian Equal Opportunity." Honoring of treaty rights is not a "special privilege" of Indian people. It is an obligation of the United States.

Ultimately, whether these bills pass or not, Indian people's rights will not be won in the courts or congress. Only sovereignty—Indian control of their land and lives—is the long-term guarantee for Indian rights. Through such organizations as the American Indian Movement, and the International Indian Treaty Council, and others, Indian people are taking their struggle for liberation of their land to the United Nations. On September 1977, Indian people from North and South America went to a UN conference in Geneva, Switzerland, to present to the

people of the world the conditions of their struggle for sovereignty today. Indian people are determined to win liberation and know that it will not come from congress, but from their own efforts supported by the peoples of the United States and the world.

What can non-Indians do?

In spite of what racist groups say, Indians do not enjoy special rights, but have yet to enjoy the rights reserved by them in international treaties. Nor do Indians seek all of North America back from those of us who have come since Columbus. Indian people seek a land base adequate to maintain themselves as sovereign people. What Indians want does not go against the interests of the majority of the people of the United States. Attacks on Indian people have continued right up to the present and are particularly severe today because they are aimed at finally and completely ending Indian national sovereignty and self-determination.

All people struggling for their rights need to support the Indian movement. We need to unlearn the lies about the history of this country. We can play an important role in, for the first time, building a movement in solidarity with Indian sovereignty that helps set the conditions for Indian people—and ourselves—to win. As part of this, the people of the US have an obligation to fight in Congress to counteract and stop these bills.

- Write your Congressperson and Senator protesting these bills.
- Sign petitions and pass them on to your friends
- Investigate and expose the organizations and corporations generating anti-Indian hatred in your area.
- Donate funds to organizations fighting these attacks.
- Contact speakers from Indian organizations in your area to speak to your group.
- Contact the Native American Solidarity Committee to speak to your group.
- Arrange to have NASC show its slide-show documenting Indian resistance to your group or friends.
- Subscribe to the National NASC Newsletter
- Contact NASC for more information on how you can participate in the struggle to defeat this legislation and defend the rights of Indian people.

N.A.S.C.
P.O. Box 3426
St. Paul, Minn. 55165

"A People's sovereignty cannot be legislated away."

—from the Red Paper, 2nd International Indian Treaty Council at Yankton, Sioux Nation, 1976.

Stop All Attacks On The Sovereignty Of Indian Nations

To Fish In Common

Fishing Rights In The Northwest



**Native
American
Solidarity
Committee**

DEDICATION

To all the fishing people of the Pacific Northwest.
 To the children who have yet to be born.
 May there be resources remaining for their survival.

**ACKNOWLEDGEMENTS**

To Fish in Common is the result of the cooperative effort of the members of the Seattle chapter of NASC. In addition, we thank the following people for their support and assistance: those who provided criticism of the initial draft of the booklet, especially John Clinebell, Sasha Harmon, and Alan Stay; Stev Sawn, Karen Rudolf and Kate Thompson for the graphics; Jane Hope, Toad and Susan Zani for typing; the American Friends Service Committee for use of equipment in reproduction for the first draft; the *Northwest passage* for aid in the final production; Norma Fried for her time in printing; and the Northwest Indian Fisheries Commission for support in providing documents and essential information.

Printed May 1978 by the Native American Solidarity Committee.

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Introduction

The following is a booklet on the fishing controversy in the Pacific Northwest. It was written particularly for non-Indian people, because good information that discusses the fishing rights struggle from the perspective of Native people is very hard to find. Generally, the media has perpetuated myths, racism and fear. We feel that it is time to take a closer look at what the real issues are, and to discover the connections between these issues and our daily lives as non-Indian people. Non-Indian people play a significant role in this struggle, whether our role is an active one or not.

The fishing situation in the Northwest is not particular to this area: the broader issues involved are being confronted all across the U.S. The issues that are behind the fishing struggle are the ones of sovereignty and self-determination for the indigenous population of this country. Sovereignty and self-determination mean that Indian people have the right to determine for themselves how they will live, how they will be governed and how they will conduct the affairs of their nations. Native people still maintain their sovereign nationhood, with rights preserved by the treaties. In order for there to be discussion and solutions, non-Indian people must begin to educate ourselves on the issues, facts and history of Indian and non-Indian relationships. This booklet is an attempt to do this.

GLOSSARY

sovereignty - the freedom of a people to act and conduct the affairs of their own nation;

self-determination - the right of a people to determine for themselves how they will live, how they will be governed, and how they will conduct the affairs of their own nations.

indigenous people - the original or native inhabitants of a region, especially in contrast to the invading or colonizing people.

colonialism - a system by which one nation takes control over another, including the land, resources, markets and labor of the people of that nation.

resistance - organized and individual acts in which the power of government and corporations is opposed.

trollers - fishers who use baited hooks and lines extended from large mast-like poles; mostly fishing the coastal
mast-like poles; mostly fishing the coastal waters catching salmon heading both to and from spawning grounds.

purse seiners - fishers with large boats who send out circles of heavy small mesh net that is drawn closed at the bottom like a purse, trapping the fish; the fish are scooped out by big winches on the boat; large numbers of fish are caught at a time; this method requires more expensive gear.

gillnetters - fishers with nets which snare the gills of a salmon as they try to pass through; corklines float to the top of the net on the surface and a leadline weights it below forming a shield of the net.

reefnet - consists of a net hung between two stationary boats at or near a reef where salmon are known to migrate; this method is unique to north Puget Sound near Bellingham.

Indian - the name given to Native peoples by Columbus who believed he had landed in India instead of the western hemisphere.

terminal areas - where fish return to spawn.



Northwest Native History

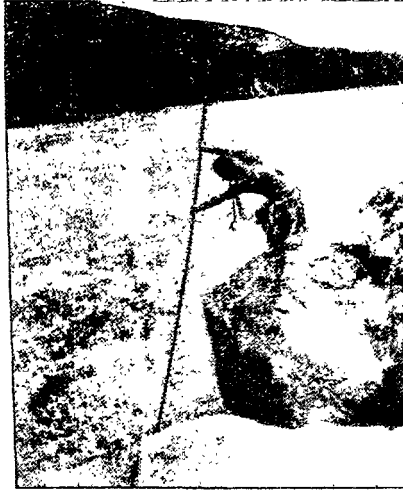
For several thousand years, the area of what is today western Washington state was inhabited by at least 75 distinct Indian nations. A history passed down through generations of Northwest Indian nations begins at a different time for each of them. Indians claim the recently unearthed bones of the Marmes Man, who lived in what is today southeastern Washington on the Snake River in 10,000 B.C. as their own. From the Marmes Man to the arrival of the Europeans in 1592, when Juan de Fuca sailed through the straits, there were dozens of Indian tribes fishing, gathering berries, digging the camas root, harvesting shellfish, whaling and hunting in the area that became western Washington state.

The tribes of the area took their names from the rivers they fished. For example, the nations that lived on the Amish river system were called: Swinomish, Stikwamish and Snohomish. Vine Deloria, Jr., an acclaimed historian, further describes the region as follows:

Mt. Baker, the largest of the far northern mountains, formed part of the eastern border of the area, and within sight of its large snow field lived the Lummi, Nooksack, Samish and Semiahmoo around the Bellingham area. To the south lived the Skagits, Swinomish and Snohomish, near Whidbey Island and the Skagit Valley flood plains. The Seattle area was settled by a number of small villages of Indians who fished the Green, White, Puyallup and Nisqually rivers, and from the multitude of villages have come the Duwamish, Nisqually, Puyallup, and other tribes of today. The Nisqually ranged around the southern end of Puget Sound, near present-day Tacoma and Olympia. Beside Puget Sound were the Squaxins and the Suquamish. On Cape Flattery lived the Makahs, and south of them along the coast were the Hohs, Quileutes, Queets, Quinalts, and finally, along the Oregon coasts, the Chinooks.¹

The area had valleys that were forested with trees over twenty feet thick at their base, and game was as plentiful as the berry bushes. The mild climate, abundant rain and fruitful waters nourished one of the few hunting and gathering societies of the world which produced wealth beyond that needed for subsistence.

The Northwest Coast Nations developed remarkably stable societies of splendor and complexity. One of the most unusual aspects of life in the Northwest was the development of both winter and summer houses. During the winter months, steelhead were caught and religious ceremonies were observed. The elaborate winter dwellings provided dry space to create household goods and fishing equipment. During the summer months, Native people had large gatherings for marriages, business transactions, trading fish and whale oil, and feasting.



*Washington Fisher - from Tough The Earth
Photo by Edward Curtis*

One feasting tradition was called the Potlatch. It was characterized by the presentation of valuable gifts by the hosts to their guests. The ritual had to be followed by another in which the major recipients had to outdo their benefactors in giving away valuables. Only a very rich and abundant culture, where there was time not required for insuring survival, could produce such a social custom and could develop the complex ceremonies, rich oral literature, elaborate wood carving and art of the coastal totem culture.

For the last 2000 years, the basis for the economy of the Indian nations of the Northwest coastal area was fish. The life-giving salmon ran thickly in natural abundance from almost every river and stream, emptying into the Pacific from the Sacramento River in California to the Bering Straits of Alaska. Essentially, fish formed the basis of nearly all aspects of tribal life. Because they were so plentiful, fish were used as a medium of trade.

Fishing to Indian people was and is more than a livelihood. It is part of their culture and their life – a way of life that has been theirs since time immemorial. The right to fish was considered so important, that at treaty times (1850's) it was specifically reserved, and not transferred to the United States. Indian people knew then, as now, that without the rights to fish, their way of life, their identity, and their physical, and spiritual survival would be endangered.



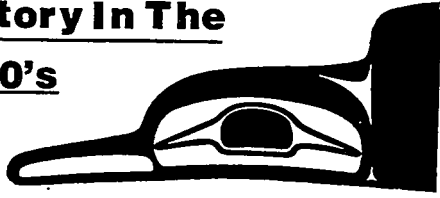
*WHEN YOU CAME TO OUR LANDS SEEKING "FREEDOM"
YOU WERE GIVEN THIS AND MORE AND YOU TOOK--
NEVER GIVING'*

*OUR LANDS WERE PURE AND STRONG WITH PLENTY FOR ALL
WHO LIVED IN HARMONY. TODAY WE SEE ALL THAT IS
AROUND US IS SUFFERING--OUR WATERS, OUR BLOOD
POLLUTED, OUR FISH, OUR STRENGTH WEAKENED, OUR AIR
BRINGING SICKNESS, OUR MOTHER EARTH AND OUR WOMEN
BECOMING BARREN.*

*AS THE NATURAL FISH BECAME OVERPOWERED BY THE
UNNATURAL FISH, SO IT IS WITH THE NATURAL PEOPLE,
WE ASK YOU TO STOP FOR THE SAKE OF ALL UNBORN.
WE ASK YOUR RESPECT.*



History In The 1800's



INVADING THE WEST

Until the early 1800's the only direct contact the indigenous people of the Puget Sound had with white people consisted of brief and infrequent encounters with explorers and traders. However, these experiences had devastating effects on the population. In 1792, a smallpox plague swept through the area, reducing the population drastically. By 1850, the plague struck on two other occasions, leaving over 80% of the population dead.

At the turn of the 19th century, the Hudson Bay Company formed the Northwest Company to facilitate the trade of salmon, whale oil, and other seafoods. This trade brought new wealth into the area. Curiously, the Northwest Company traded and lived with the native populations on an equal basis. There was no difference between non-Indian and Indian people under the law. The British, who had controlling interest in the company, the Indians of the Northwest, and the Indians from other areas (as far east as the Mohawks) worked together. Since trading was the sole interest, and not farming, the Natives of the Northwest were not forced off their land.

In 1848, the U.S. Congress established the Oregon territory as part of the United States, thus claiming unilateral sovereignty over it without consultation with the Indian people. The act provided that Indian personal and property rights were not to be endangered until '*extinguished through treaties*'. The Oregon Donation Act was passed soon after, allowing new settlers to claim a total of 640 acres for 'a man and a wife' in homesteading. The influx of white settlers began, and by 1852 there were over 2000 new settlers in the Northwest.

To make room for the settlers, more land was needed. The official U.S. policy demanded the removal of the Indians from their traditional grounds, placing many different nations together on a small tract of land. The U.S. hoped they would become farmers. The term used to justify the U.S. government's actions was Manifest Destiny. This meant that the U.S. had the 'divine' mission to take the whole of North America and thus expand its rapidly growing economy.

The new American settlers believed that the Indians were subhuman and did not really hold absolute title to the land. A 16th century belief called the Doctrine of Discovery supposedly gave the Europeans the right to control the land to the exclusion of the Native peoples, because they had the military power to do so.

The alarm of the Native people increased with the growing stream of settlers. News of the slaughter of Natives in California during the gold rush and the wars in the Midwest spread throughout the remaining villages. The newly arrived missionaries saw their role as easing the pain of the pre-ordained destruction. A missionary named Ellanah Walker stated that: 'It seems the only way they can be saved from being destroyed from the face of the earth is by yielding to the control of the whites, and nothing will induce them to do this but a cordial reception of the gospel.'²

In March, 1853, Washington became a territory of the United States -- again without consultation with the Indian nations. While the Indians still held the rights to the land, they had no voice in the decision supported by Congress and business interests to build a railroad through the Northwest, in order to complete the transcontinental system. To accomplish these goals, Isaac Stevens was appointed to three positions: Governor of the new Washington Territory, Indian agent, and railroad surveyor.

Stevens had little knowledge about the area and knew even less about the Native people who lived there. Stevens hoped the treaties could be signed quietly and quickly, in order to establish himself as a political figure. Also, his family had financial interests in the railroad. Stevens launched into his new career by signing ten treaties within the next few years.

With the removal of the Indians and the prospect of a railroad, land speculators came into the area to buy land and, if possible, to get rich. The necessities of the rising capitalist system bred certain attitudes in the white speculators. The land was not seen for what it was, but for the use they could put it to. The forest was seen as lumber, the deforested land as farm land, and salmon were not the basis of the culture and way of life of the inherently sovereign people, but instead as a profitable future industry.



ABOUT TREATY-MAKING

From the beginning, the U.S. government viewed the Indians as nations. The government knew very well what a treaty was: it was an agreement between two sovereign states binding under international law. The U.S. government signed and ratified treaties with the Indians in the same way that it did treaties with England and France. In these treaties there were clearly defined boundaries between Indian land and U.S. land.

In an 1831 decision, *Cherokee v. Georgia*, the U.S. Supreme Court ruled that a treaty with an Indian nation has the force and the effect of a treaty with any other nation. Chief Justice John Marshall's decision still stands. A portion of it reads:

The words 'treaty' and 'nation' are words of our own language... having each a definite and well-understood meaning. We have applied them to Indians as we have applied them to other nations of the earth. They are applied in the same sense.³

In a U.S. Supreme Court decision in 1905, *U.S. v. Winans*, two principles were stated that govern all interpretations of the treaties. These are that (1) the treaty must be construed not according to the technical meaning of its words by learned lawyers, but in the sense in which it would naturally be understood by the Indians, and (2) the treaty was not a grant of rights to the Indians, but a grant of rights from them – a reservation of those rights not granted. In *U.S. v. Winans* and again in *Tulee v. Washington* (1942), the U.S. Supreme Court rejected the argument made by non-Indians that the treaties reserved to Indians no special rights; that Indians have only the same rights which all other citizens have. The Court upheld the principle that the treaties reserve separate and distinct rights to the Indians. The treaties committed the U.S. government to preserving and protecting these reserved rights as part of the consideration for the Indian nations' transfer of their interest in their lands.

When Native Americans made treaties, they were making promises to be absolutely kept. In United States law, treaties are the supreme law of the land. As Article VI of the United States Constitution provides:

The Constitution and the laws of the United States and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding.

Ever since the making of the treaties, the Indian battle, in the courts and through more militant actions, has been to make the United States honor those treaties, to recognize the independence of Indian nations, and to respect the Native demand for sovereignty and self-determination.



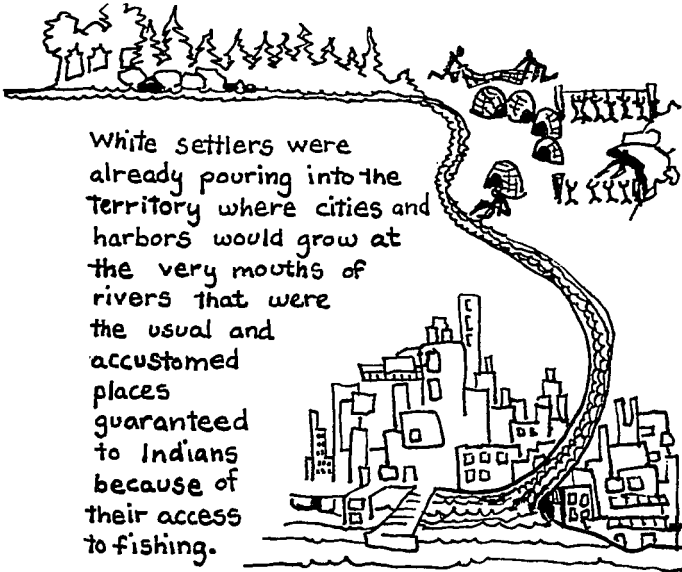
CA. treaty. being made.

SIGNING OF THE MEDICINE CREEK TREATY

On Christmas Eve, 1854, Stevens met with representatives of nine Indian nations of Lower Puget Sound⁴ on an island between the Nisqually Delta and a stream called She-na-ham, or Medicine Creek. The purpose of the meeting was to negotiate the Treaty of Medicine Creek, the first of ten treaties that Stevens eventually signed with the Indian nations of the Northwest. (See map, Northwest Indian Treaty Areas.) The treaties resulted in extinction of Indian title to more than 64 million acres of their land.

The Treaty ceded substantial land holdings to the United States, while the Indians reserved to themselves certain clearly defined rights and payments. The Indian nations (of which the Puyallup and the Nisqually were among the largest) were to retain approximately 4000 acres of reservation land, \$3250 to cover the expense of moving to the reservations, \$32,500 in payments over a 20-year period, a school, blacksmith and carpenter shop. The Indian nations also reserved to themselves 'the right of taking fish at all usual and accustomed grounds and stations ...in common with all the citizens of the territory.'⁵ The United States received for itself all of what is now Pierce and Thurston counties, as well as parts of King, Mason and Kitsap counties.

Stevens and his advisors considered the terms of the treaty to be a temporary solution to the Indian situation. Stevens wanted all Indian people moved to the Olympic Peninsula, and included a provision in the treaty that allowed for their removal by Presidential decree 'when in the opinion of the government the interests of the territory require' it. But speed was, in Stevens' mind, of the essence.



To further insure that no difficulties developed, Stevens and his advisors personally chose the 'chiefs, sub-chiefs and headsmen' with whom they would negotiate, presenting each with a certificate of leadership to empower them to sign for their people. One of those so empowered was a Nisqually Indian known as Leschi. After the second day of talks, which consisted of the proposed treaty being read in English, translated into Chinook jargon (a crude trade 'language' with a very limited vocabulary of about 400 words) and then translated into the respective languages of the nations present, Leschi reportedly sought out Stevens to tell him that he thought the treaty was unjust, and he came away feeling that the government was willing to use force to secure the Indians' signatures on the treaty.⁶

DOUBTS ABOUT THE TREATIES

It is unlikely that Leschi did in fact sign the treaty the next day. A mark said to be his is the third affixed to the document. In either case, the doubts Leschi felt were soon picked up by the other signers, (who numbered over sixty Native people). The nations covered by the Treaty of Medicine Creek were, like most in Puget Sound, heavily dependent on the salmon as a staple of their diet, a basis of trade, and a sacred ceremonial keystone of their society. As the terms of the treaty became clear to the Indian nations, they realized that their reservation lands were completely cut off from the rivers and streams that were necessary for their way of life.

The signers of later treaties with Stevens soon made similar discoveries. The Indians were dissatisfied not only with the treaties themselves, but also with the flagrant violations of their terms by white settlers whom the government permitted to pour into both the Washington territory and Indian land even before the treaties were ratified. The Indian attitude of peaceful relocation changed, and Native nations began to resist.

Leschi was concerned that the white settlers and their government would push all Indians into 'Polaky Illahe,' a reservation of eternal gloom. Here the white men would torture them and sully all the lands and waters of the Indians and they would die. Leschi advocated immediate war throughout Puget Sound. In January of 1855, the Medicine Creek Treaty Indians joined to wage the Northwest Indian War. The Puyallups and Nisqually led by Leschi attacked Seattle, but were driven off by cannon fire from a warship in the harbor. They fought bitterly, but were repelled, with heavy losses. Both regular troops and state militia, including units of the Oregon Mounted Volunteers and volunteers from Washington, moved against Indians all over the region. Various Indian nations continued to fight for the next-fifteen years, trying to protect their homelands from the invaders.

Under relentless pressure from settlers protected by state militia and supported by federal troops, the Indian nations finally yielded to a peace settlement in the middle of March, 1856. Renegotiation of the treaties commenced in August, 1856, on Fox Island. This resulted in a new arrangement where the combined reservation land was enlarged

to nearly 30,000 acres, and situated in locations more productive to fishing and farming.⁷

That the purpose of the changes was primarily to 'pacify' the Native peoples who had taken up arms is indicated by the changes made. However, the repression of Indian people on Puget Sound continued with the capture and conviction of Leschi for murdering a white man at the beginning of the war. Until 1855 Leschi had always been friendly to non-Indian people, and a number of his white friends worked feverishly to save him, and said that even if he had killed the man, it had been an act of war, not murder. But Leschi was a symbol of rebellion. He was hanged February 19, 1858.

Stevens' belated adjustment on Fox Island was much needed, but over the next one hundred years the problem of access to salmon that led the Medicine Creek Treaty Nations to go to war in 1855 again emerged. The twentieth century reasons are the large-scale destruction of the salmon runs and the state of Washington's calculated strategy to undermine the treaty fishing rights of Indian people and to exploit the resource for short-term profits.



GROWTH OF THE SALMON INDUSTRY

Salmon fishing began to expand greatly with the perfection of canning. On Puget Sound the first cannery was opened in 1877. By 1890, increased mechanization and rail access to national markets brought about a growth of canneries, a proliferation in the numbers of non-Indian fishers, and the dramatic expansion of the river fishery to such an extent that by 1904 regular fishing on many rivers had ceased. The fish were gone. There were only three canneries in 1894; by 1917, there were 45 canneries on Puget Sound.

The expansion of the fishery brought changes in fishing methods. The non-Indians built upon Indian fishing technology, constructing fish traps, set nets and fish wheels. All of these devices had to be located in places in the rivers where density of the runs was high — that is, in the most desirable locations. Once installed, these devices dominated a large area of water and could take most of a run of fish. This reduced the number of fish which could escape upstream to spawn. As non-Indians began to intercept larger numbers of fish before they could reach the rivers (where Indians fished), Indians found their food source dwindling.

By 1907, the state of Washington had determined that, except for the Columbia River, all salmon in the rivers would be reserved for spawning and river fishing for salmon with nets was outlawed. Fishing, guaranteed by treaty, at 'usual and accustomed grounds,' was prohibited by state law. Thus, the Indians had consented to share their traditional fishing grounds with non-Indians, and had, as a result, been excluded from these grounds. As Indian fishing became more restricted by state action, the Indians' economic position also changed. From a life of relative plenty, they moved to the position of poverty and want.

Crises That Led To Court

THE BATTLE FOR TREATY FISHING RIGHTS 1900 TO 1974

As early as 1913 when two Makah Indians were arrested for fishing on their reservation, the state of Washington has maintained an adversary, if not openly hostile, posture to the Indian nations and their separate rights. In his 1915 plea to the Washington state legislature to show some mercy to the Indians, Dr. Charles Buchanan, agent for the Tualip nation north of Everett, noted that even then the Indian: 'richer and remoter fishery locations have been stripped from him while the law (holds) him helpless and resourceless.'

Throughout the twenties, thirties and forties, Indian nations vigorously attempted to assert their treaty-preserved fishing rights in the courts, but it was not until the fifties that the conflict flared again into a major confrontation. The catalyst was Indian fishing on the Puyallup River, which the state attempted to limit. Indian people gained a legal victory when the State Supreme Court upheld their right to 'fish in their usual and accustomed places' in the 1957 *State v. Saticum* decision.

However, five years later, the same State Supreme Court ruled against a Swinomish Indian who was gillnetting off the mouth of the Skagit River. The fisherman claimed fishing rights under the Treaty of Point Elliott, but the court found that the state had the right to subject Indians to 'reasonable and necessary regulations' for conservation.

In November, 1963, the Washington Department of Fisheries and Game filed suit in state court to establish state authority to prohibit net fishing by Indians in off-reservation river fisheries. At the same time, the state stepped up its harassment of Indian fishers: the destruction and confiscation of nets was the most common tactic. The Washington State Game Department produced a movie shown widely around the state depicting the Indian as a predator who would wipe out the resource unless brought under control. Publicly the state adopted a policy that cooperation with the Indians on the issue of off-reservation fishing was impossible.

FISH-INS AT FRANK'S LANDING

In 1963, a number of Indians initiated 'fish-in' protests at Frank's landing on the Nisqually River. The protests were followed the next year by more mass demonstrations and a march on the Capitol in Olympia, Washington. Three months after the march, Superior Court Judge John D. Cochran ruled in *Department of Game v. Puyallup Tribe* that the Puyallups were no longer a nation. For what he called, 'the purpose of conservation,' he ordered a permanent injunction against their fishing on the Puyallup River.

Several months later (1965) violence was used against the Native people of Frank's Landing, which had become a focal point of Indian resistance. State fisheries officers harassed Indian fishers for days. On October 13, the state launched a battle when Indians attempted to lower one symbolic canoe into the water. State wardens descended on Frank's Landing in a full-scale 'anti-riot' operation which threatened the lives of many Indians. Thirty-five to forty state Game and Fisheries men carrying night sticks, long, seven-cell flashlights (unnecessary in the daylight) and at least one blackjack, attacked eight unarmed Indian men and nineteen women and children, using what one Republican state senator, Hal Wolfe, called 'Gestapo police-state tactics.'



Photographs taken from protest at Frank's Landing

Puyallup Indian Don Matheson said of the October 13th attack, 'This day will be long remembered by Indians. It lets you know exactly where Indians stand in our present society. If you had any illusions about it before, this should serve to dispel them.'

At this time, Survival of American Indians Association (SAIA) was formed to set up legal defense and to be the organizational arm of the Indian fishing rights movement.

The legal battle made its way to the U.S. Supreme Court which ruled on *Department of Game v. Puyallup Tribe* for the first of three times. In *Puyallup I* (February 1967) the Court said that the treaties negotiated

by Governor Stevens in the mid-1850's entitled the Indians to fish at their 'usual and accustomed' off-reservation sites, thereby upholding the previous Supreme Court decisions (*U.S. v. Winans*, *Tulee v. Washington*) that the treaties reserve separate and distinct fishing rights to Indians.⁸ At the same time, the Court held that the state had the right to regulate Indian fishing, provided it was not discriminatory, and necessary for conservation — and left it to the state courts to decide what was 'reasonable and fair' regulation. The state subsequently went to its own state courts and obtained an injunction against Indian fishing that was similar in many ways to the one handed down by Judge Cochran in 1963.

The U.S. Supreme Court had repeatedly ruled that treaty fishing rights are valid and enforceable. The state and the non-Indian fishers refused to respect those rights and denied the Indians the opportunity to exercise them.

On September 9, 1970, over 200 state and local police stormed an Indian fishing camp on the Puyallup River and teargassed the people, arrested dozens of Indians and their supporters, and bull-dozed the camp away, causing \$10,000 worth of damage. After the police raid on the camp, white vigilantes calling themselves 'sportsmen' began raiding one Indian camp after another. They sank Indian fishing boats, stole and destroyed Indian nets, took pot-shots at Indians, and harassed and threatened Indian families on their own land.



Erank's Landing protest.

The Puyallup people contend that there is a conspiracy between the state Game officials, who incite white vigilantes to acts of violence, and the Tacoma police, who refuse to protect the Indians. Together they conspire to violate legitimate treaties and their interpretation by the U.S. Supreme Court.

Indian treaty fishing rights were upheld by a U.S. federal court decision in Oregon in 1969, *Sohappy v. Smith*. Although the federal courts had consistently recognized treaty fishing rights, the U.S. government had been very lax in protecting and enforcing those rights.

On September 18, 1970, the case of *U.S. vs Washington* was filed in U.S. District Court, Tacoma. The suit was brought at the request of the Interior Department--because of pressure from Indian nations--for a court ruling which would carry the Sohappy decision into effect in the state of Washington. In filing the suit, the United States was finally fulfilling its duty to protect Indian fishing rights. A decision in the suit was rendered in February, 1974.

While the relationship between Indian nations and the federal government is characterized technically by treaty obligations and the trusteeship of Indian lands, the states relate differently to Indian people. Historically it was the state governments which were most aggressive in promoting the interests of white settlers and these governments have maintained such aggressive anti-Indian policies to this day. The federal government required the territorial governments to disclaim any jurisdiction over

Indian lands within their borders as a pre-requisite to admission to the Union. But the states are impatient to break down this restraint and to end the sovereign status of Indian nations. It has been the Washington state legislatures and state courts which have ignored Indian treaty rights and have tried to shamelessly crush Indian fishing.

Puyallup II (1973) - An appeal was made by the Puyallup Nation from a state Supreme Court decision that a total closure of treaty fishing on the Puyallup River was necessary for conservation. The U.S. Supreme Court ruled in the Indian's favor and held that it was discriminatory to allow non-treaty sportsfishers to totally pre-empt steel head fishing on the Puyallup River. Therefore, the regulation was not necessary for conservation and was void.

Puyallup III (1977) - An appeal by the Puyallup Nation again from a state Supreme Court decision that the state has jurisdiction over the fishery on the Puyallup reservation. The U.S. Supreme Court ruled against Indians stating that the state has power to apportion the fishery on the Puyallup reservation between Indian and non-Indian fishers.

Salmon And Steelhead Runs

To understand the effects of *U.S. vs Washington*, it is first essential to know the general condition of the salmon and steelhead fisheries up to the time of the decision.



For thousands of years the Northwest fisheries were managed by the Native People -- for hundreds of generations. Under Native management, the fish flourished and the people did not want for fish.

When the first white settlers came into the area, the rivers were choked with salmon. Yet, by the 1970's, after only 3 generations of state management, the salmon have been seriously depleted.

The management of the fisheries by the state of Washington is a key factor behind the depletion of the salmon and steelhead runs.

The Department of Fisheries and the Department of Game are the two state agencies that control the commercial and sports fishing respectively. The Department of Fisheries is directed by political appointees; consequently it is very susceptible to political pressures and lobbying. Its management policies are subject to change depending on competing economic and political considerations. The department, as a matter of fact, has a reputation among fisheries management agencies in other western states for ignoring scientific data or concern for the resource in favor of political pressures.⁹

One factor in the depletion of the salmon runs is overfishing. Table A shows how the number of salmon landed in Washington waters has been steadily decreasing over the past 40 years, while at the same time the number of licensed commercial fishers more than doubled. Issuing more and more commercial licenses, even though the overall salmon stocks are steadily decreasing is clearly negligence.

Sport fishing in Washington is regulated by the Department of Game, which has the sole responsibility for steelhead management. There are two categories of sport salmon fishing: freshwater and

marine. The marine catch accounts for the larger portion of the total: in 1975, the marine catch was 1,297,844 salmon, and the freshwater catch 101,531.¹⁰ The marine sport fisheries includes the ocean and the coastal waters such as Puget Sound. One example of the growth of the marine sport fishery is the charter boat business out of Westport, Washington. Charter operations began in 1952 with a fleet of 8 boats. By 1975, almost 700 vessels were available for charter from that port alone.¹¹

Both the Departments of Fisheries and Game have been remiss in gathering and keeping data on the fish resource. In the case of steelhead, the Department of Game has kept no accurate records on the condition or abundance of the runs. They felt that such management efforts were unnecessary, since the state has designated steelhead a sport fish, and only sport fishers harvested them. The Department of Fisheries kept better records, but over the years has ignored some river systems and never conducted the technical field studies that are needed to determine the size and condition of a particular salmon run. The absence of such essential data made efforts to predict run size and make realistic harvest plans impossible.¹²

DESTRUCTION OF NATURAL RUNS

The state's harvest program has been extremely destructive to the resource. The state allows a high rate of harvest in areas where several different salmon stocks intermix. This results in the weaker (fewer in number) natural stocks being over-harvested in the process of harvesting the more plentiful stocks.¹³

The state's hatchery practices are similarly destructive to the natural runs, "A large hatchery run is often planted in an area with a weak natural run, requiring overharvest of the natural run if the hatchery fish are to be fully harvested. The placement of hatcheries with the inevitable overharvest of returning hatchery fish results in the conscious sacrificing of the natural salmon. This process has seen the destruction or severe impairment of the Skokomish River coho and chinook, and the Puyallup River coho runs, to name but a few examples."¹⁴

INTERNATIONAL FISHERIES -- SALMON INTERCEPTION

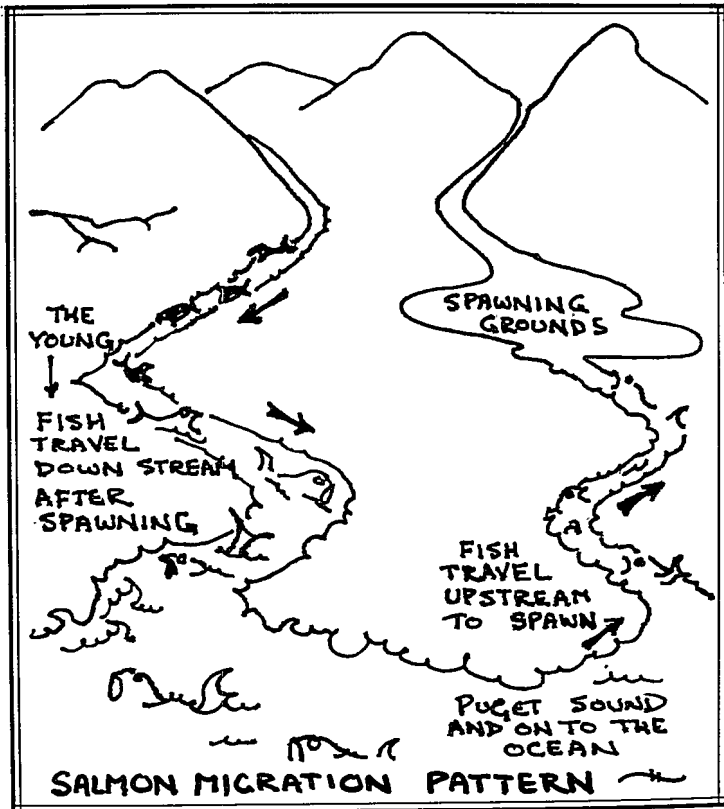
The interception of salmon returning to Washington rivers to spawn by international fishing vessels and fleets is another contributing factor to the decline of the fish population. It is estimated that the incidental catch of salmon by foreign fishing vessels, i.e. Soviet or Japanese, amounts to approximately 43,000 salmon a year off the coasts of the western states.¹⁵ Of primary importance to Washington fisheries, however, is the large Canadian fishing fleet.

ANOTHER TREATY

Many salmon which originate and spawn in Washington rivers and streams spend their adulthood in Canadian marine waters, and vice

versa. In order to regulate the interception of Canadian-spawning salmon by U.S. fishers, and the interception of U.S.-spawning fish by Canadians, a treaty was made between the two countries in 1937. This established the International Pacific Salmon Fisheries Commission to jointly manage the sockeye salmon run, and as of 1957, the pink salmon run also.

Under the agreement, each country is allocated half of the respective runs. This means that at least 50% of the sockeye and pink salmon returning to the Puget Sound area rivers are harvested by Canadians. Also, Canadian fishers account for 65% of the chinook catch, and 61% of the coho catch returning to Puget Sound.¹⁶ The remaining stocks are further harvested by U.S. sport and commercial fishers in Puget Sound before they reach the spawning rivers, which is where many Native Nations traditionally fish, along with the freshwater sport fishers.



SALMON/STEELHEAD ENVIRONMENT -- DESTROYED

The destruction of the environment where the fish spawn and migrate cannot be overlooked.

"Salmon and steelhead are the very fish with the most demanding and hard-to-satisfy environmental requirements. These are the fish that require cold, unpolluted waters, and stream banks that are shaded and protected from erosion."¹⁷

The increasing population and urbanization in Washington, and the accompanying pollution has had damaging effects on the fishery environment. Highway and other construction often totally alters the course of a river or stream. Additionally, improper construction practices cause silt erosion, destruction of spawning beds, the removal of shade cover, and an increase in water temperature. (Salmon cannot spawn if the temperature is too high. High temperature also decreases oxygen supply, disrupting the aquatic life cycle.)

ENERGY DEVELOPMENT THREATENS SURVIVAL

The demands for power have increased with the growth of population and industry in the area. Washington state's extensive hydroelectric development, and the building of dams (there are 22 dams on the Snake and Columbia Rivers alone) has been a major factor in the destruction of the fishery environment. Even when dams have ladders or fishways, the dams still have an adverse effect on the stocks. The Idaho Department of Fisheries estimates that each dam reduces runs by 10%.¹⁸

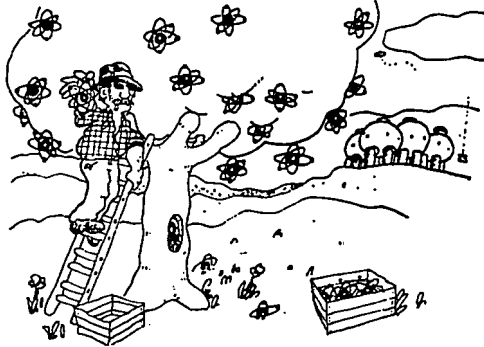
Dams also cause nitrogen supersaturation.¹⁹ The normal level of nitrogen is at 100% saturation. Water samples taken below dams show saturation levels as high as 140%. This has an effect on salmon similar to the bends suffered by divers who don't decompress properly. "The disease is not hard to detect: gas bubbles appear under the fish's skin, particularly around the tail, fins and head. Eyes can also balloon up or even be popped from their sockets."

"In 1971, more than 5 million fish in the Columbia-Snake system were killed by supersaturation, including more than 90% of the downstream-migrating chinook salmon and steelhead."²⁰

Many fish are also killed in the turbines, and fish that are not killed outright are severely injured or stunned. In 1973, 95% of chinook and steelhead were lost between the Salmon River in Idaho and the Dalles Dam on the Columbia River.²¹

Some dams have totally blocked upriver and runs: the Grand Coulee Dam destroyed over 1100 miles of salmon spawning rivers and streams.²²

The demand for more power has resulted in the construction or planning of several nuclear plants in Washington state. Nuclear plants, located on rivers, use the water for cooling. When the water is pumped back into the river, it is too warm and causes thermal pollution. In Washington, the "Hanford, Trojan, Satsop and Skagit nuclear plants all use or are projected to use river water for cooling."²³



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INDUSTRIAL DAMAGE, FARMING, FORESTRY

Faulty irrigation practices have also contributed to the destruction of salmon. Millions of fish have been killed because they were diverted into unscreened irrigation ditches as they migrated downstream.²⁴ There is also pollution from pesticides. Run-off from farms, orchards and forest spraying operations poison the fish. There is much concern about residual effects of pesticides on the fish that are not killed outright (and about the impact upon human consumers as well).

In the Northwest, there is a particular problem with pulp and paper mills. "Wood waste products containing chemicals used in the Kraft process of paper manufacturing at St. Regis of Tacoma were dumped in 1975, without permits, at the home of Phillip Olson... by George Apple, a private contractor. Since the dumping, the natural drainage route has been redirected to run north instead of south as it had previously run. This has caused the water to back into the property of the nearest neighbor, Gerald Sweeney, forming a lechate pond of black liquor containing a toxic chemical, sodium bisulphate. The polluted pond has killed all the vegetation in the vicinity and creates a serious odor problem. The contaminated water now flows into a tributary of the Hylebos Creek, endangering the juvenile coho salmon inhabiting the creek."²⁵

The logging industry is also a prime culprit in destroying the streams and spawning beds. Removal of trees and brush from stream banks result in erosion. Silt from that erosion smothers fish eggs, and blankets the gravel beds required for spawning. Removing the trees also destroys the natural shade cover, which in turn causes the temperature to rise beyond endurable limits for salmon and steelhead.²⁶

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 Poorly placed culverts block the migration of fish. Salmon beds have been ruined by having logs hauled directly into them.

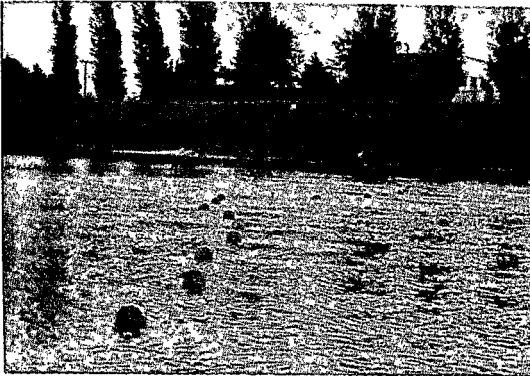
It's ironic, but research shows that money saved by careless logging practices doesn't begin to equal the damage done to the fish resource. "A study of clear-cutting on the South Fork of the Salmon River indicated that the fishery suffered \$100 million in damage caused by removal of \$15 million worth of timber." 27

WHAT DOES ALL THIS MEAN?

It is clear that the salmon and steelhead populations in Washington waters have been decimated. This has been happening steadily over the last century -- it is not a recent development. It is the state of Washington, through its Departments of Fisheries and Game, that has been responsible for the care and management of the salmon and steelhead. Further, the state and local governments determine land use regulations and the environmental codes, which affect fish habitats. It is also true that:

1. Native Peoples have had no voice or responsibility in fisheries management prior to *U.S. vs Washington*.
2. Washington state has systematically denied Native People their treaty right to fish.
3. It is because of this denial of their treaty rights, and the deterioration of the salmon and steelhead runs and habitat that the Native Nations brought suit against the state is *U.S. vs Washington*.

All species of salmon were fished by the indigenous peoples of the Northwest in the marine waters and in rivers, streams and lakes. Most commonly salmon were taken in the rivers and streams near the mouths and in the lower reaches. (As shown in the picture below.)



SOMETHING ABOUT SALMON

Born in fresh water streams, rivers and lakes, salmon migrate as fingerlings—a few inches long—to the ocean. Here they attain their full growth—as much as sixty pounds in the case of King salmon. Their ocean sojourn lasts from eighteen months to seven years, depending on the species. But all ultimately return to their natal streams, navigating through thousands of miles of ocean until they reach the river mouth.

Almost every river and stream emptying into the Pacific, great and small, from the Sacramento River in California to the Bering Straits of Alaska, produced salmon, though not all species. The five species vary considerably in size, appearance and habitat:

1. The CHINOOK, or KING salmon is the largest, averaging about twenty pounds (though 60 pounds is not unusual).
2. The PINK or HUMPBACK, returning to spawn every other year, average only four pounds.
3. The SILVER or COHO salmon return in three years, weighing an average of ten pounds, and in this respect are quite similar to :
4. The CHUM or DOG salmon.
5. The SOCKEYE, called RED salmon in Alaska and BLUE-BACK on the Columbia River, are distinctive from all other species. They require lakes either for spawning or for a food supply for the young. (They may vary from two to ten pounds and average about six pounds.)

Closely related to the Pacific salmon is another fish—the Steelhead Trout. These fish spend from one to three years in saltwater before returning to fresh water to spawn. Unlike salmon, steelhead often survive after spawning, and may attain an age of seven years. Their average weight varies between eight and ten pounds. Since steelhead continue to feed in fresh water, they can be taken by hook and line and have thus become the object of a popular sports fishery.

U.S.v. Washington

Current United States law recognizes the rights of Indian people to fish in their usual and accustomed places and Indian nations to regulate fishing by their citizens in much the same way as the state regulates fishing by non-Indians. U.S. law on Indian fishing rights is described in the opinions of the district and appellate courts in *United States vs Washington*.²⁸ The initial decision in this case was made by Judge George Boldt in 1974 after hearing more than three years of testimony and arguments. The decision was unanimously upheld in a lengthy opinion by the U.S. Court of Appeals for the 9th Circuit. The Court of Appeals and the U.S. Supreme Court have subsequently decided that the legal issues raised by Washington state do not merit reconsideration of the case.



LEGAL BACKGROUND

U.S. vs Washington is only one of the most recent court decisions recognizing treaty fishing rights. As early as 1887 the federal courts began to recognize that Indians had reserved in the treaties the right to fish in their usual and accustomed places.²⁹ By 1905 the U.S. Supreme Court had held that Indians could not be prevented from fishing in their usual and accustomed places. In *United States vs Winans*,³⁰ the court found that Indians had reserved fishing rights which were different from those of non-Indians and which could be enforced against the state and non-Indian landowners. And in 1942 in *Tulee vs Washington*,³¹ the U.S. Supreme Court recognized that the state could not restrict Indians in the exercise of their treaty fishing rights by requiring them to pay state license fees.

After World War II, the depletion of the salmon runs and state attempts to halt net fishing in various rivers intensified the legal battles over Indian fishing rights. (In the face of federal court decisions, the state Fisheries and Game Departments continued attempting to control Indian fishing.) The Makah Tribe brought suit against the Director of Fisheries to open the Hoko River to net fishing. In throwing out the state's ban on Indian fishing, the 1951 federal court decision said Washington could regulate Indian fishing only if it was necessary to do so to conserve the species.³² In 1954 Puyallup Indian fishers decided to test the legality of state bans on net fishing by setting their nets in the Puyallup River near downtown Tacoma. The Washington State Supreme Court dismissed the charges which were brought against them

three years later. The State Supreme Court concluded in *State vs Satiakum* "...The Treaty of Medicine Creek of 1855 is the supreme law of the land and, as such, is binding upon this court, notwithstanding any statute of this state to the contrary, and its provisions will continue to be superior to the exercise of the state's police power respecting the regulating of fishing..."³³ A similar court case was won in Oregon.³⁴

In 1964 the Department of Game brought suit against the Puyallup and Nisqually tribes, attempting to re-establish its right to control Indian fishing. The Game Department took the position that "Indians are less than human and their relation to their lands is not the human relation of ownership but rather something similar to the relation that animals bear to areas in which they may be temporarily confined." The state courts rejected this "menagerie" theory of Indian rights. On three occasions the case has been reviewed by the U.S. Supreme Court. By 1971, the Supreme Court has upheld the right of Indians to net steelhead in their usual and accustomed fishing places, required any state restrictions on Indian fishing to be non-discriminatory and demonstrably necessary for conservation, and authorized lower courts to fairly apportion the steelhead catch among Indian and non-Indian fishers.³⁵

THE COURT'S DECISION

In *U.S. vs Washington*, the courts followed the standards which had been set by the U.S. Supreme Court in *Department of Game vs Puyallup Tribe, United States vs Washington*:

1. recognized the treaty right of Indians to fish in their usual and accustomed places;
2. overturned state regulations which discriminated against Indian fishermen or were not reasonable and essential for conservation; and
3. apportioned the salmon catch among Indian and non-Indian fishers.

The court also:

4. established the locations of the tribes' accustomed fishing sites;
5. permitted the tribes to participate in the regulation of Indian fishing;³⁶
6. ordered the state and tribes to work together to protect and replenish the salmon runs; and
7. retained jurisdiction to examine the effects of environmental mismanagement on the salmon and steelhead resources.

Prior to and to some degree following the district court's decision in *U.S. vs Washington*, the state permitted non-treaty fishers to decimate the fish runs before they reached the Indian fishing sites, leaving no harvestable fish for the Native fishers. The court decided that the state could not permit non-Natives to catch all of the harvestable salmon in Puget Sound and the ocean before they reached the primary Indian fishing sites.

Following the Supreme Court's instructions, the court found it necessary to apportion among the Indian and non-Indian fisheries the fish which would normally come back to Indian fishing sites. Apportionment was needed to provide Indians an opportunity to fish and force non-Indians to share the responsibility for conservation. To arrive at an allocation formula the court returned to the original language of the treaties.



In the treaties Native Nations reserved exclusive on-reservation fishing rights and the right to fish off their reservations "in common with" the non-Indian citizens of the United States. The words "in common with" have a well known legal definition. To hold a right "in common" means to share it equally. Thus the treaties gave the United States and its citizens a right to fish which was equal to the off reservation fishing rights of Indian Nations and their citizens. Just as tenants in common to a piece of land have a legal right to the opportunity to share equally in the use of that land, the court ruled that treaty fishers have the right to an opportunity to catch 50% of the fish which could return to their traditional fishing sites. To arrive at the 50% allocation formula, the court followed the controlling law, the treaties which gave non-Indians the right to catch fish. The court also observed an established principle of United States law that, given the relative strength of the parties, "treaties must be construed ... in the sense in which they would be naturally understood by the Indians."³⁷ This principle, first established in the 1800's, has been cited with approval in recent Supreme Court decisions such as *Antoine vs Washington* (1975)³⁸ which precluded the application of state game laws to Colville Indians.

The treaties were written in English, a language which Native people did not know, and translated for them by representatives of the United States. Since the tribes were forced to rely on these interpretations, the court construed the treaties to accord with the understanding of the tribes that they had been treated as sovereigns on an equal footing with the United States.³⁹

The court also ordered the state and the tribes to share information and work together to replenish the fish runs. A University of Washington professor was appointed special advisor to the court and an advisory board was established to help solve management problems. The district court retained jurisdiction in case to oversee the apportionment of the catch and hear the second phase of the suit. Phase II of *U.S. vs Washington*⁴⁰ will examine the effects of state environmental mismanagement on the salmon and steelhead resource.

The 9th Circuit Court of Appeals noted in 1975 that "The record in this case and the history set forth in the *Puyallup* and *Antoine* cases, among others, make it crystal clear that it has been recalcitrance of Washington State officials (and their vocal non-Indian commercial and sports fishing allies) which produced the denial of Indian rights requiring intervention by the district court. This responsibility should neither escape notice nor be forgotten."⁴¹ State officials have repeatedly attempted to undermine or circumvent the courts' decision. For example, state officials have consistently overpredicted the size of salmon runs, permitting non-Indian fishers to deplete the runs and forcing closures of fishing at the upstream Indian fishing sites. Some non-Indian fishers have openly ignored the court's orders and state regulations. They have responded to enforcement efforts with boat ramming and threats of violence. The state courts have also attempted to undermine the federal courts' authority. The result has been conflicting court orders and an increasing reliance on intervention by federal agencies to police the fisheries.⁴²

Fishing After 1974

The decision rendered in *U.S. v. Washington* has had a profound effect on the people—all of the people—in the Northwest. The effects are many. They are complex. But this is to be expected, for *U.S. v. Washington* deals with issues which bear on all of us: Will we uphold the supreme law of the land and honor the treaties? Will we respect Native sovereignty? And what of the fisheries? Who will control them? Who will profit? Will the profits be food (fish), clean air and water, or dollars?



Indian Fishers

INCREASED OPPORTUNITY TO FISH

The most obvious effect that *U.S. v. Washington* has had on Native people, has been an increase in their opportunity to fish. This is a significant victory for Native Nations. Prior to *U.S. v. Washington* the state had not recognized the treaty fishing rights of Native people, and had effectively blocked any attempt by Natives to exercise those rights.

Since Native fishers traditionally fish on or near the rivers they are at the end of the salmon's migratory route. The Native fishery was constantly being shut down because there were not enough fish left to escape upriver to spawn and support the Native fishery, too. The reason for this was overfishing in Puget Sound and marine waters by the international fishing fleet, state regulated commercial fleet and the marine sport fishery. Canadians alone account for 65% of the Chinook catch and 61% of the Coho catch for those runs returning to Puget Sound waters.⁴³

U.S. v. Washington affirmed Native treaty fishing rights. It interpreted the treaty language to mean that Native Peoples would have the opportunity to catch up to 50% of the available fish, as well as any subsistence or ceremonial catch made on the reservations.

The increased opportunity to fish has resulted in higher catch percentages for treaty fishers. The treaty share of all the total salmon catch (all species combined) has increased from an average of 5.3% for the years 1970-73 prior to *U.S. v. Washington* to 11.9% in 1974, 12.3% in 1975, 14.3% in 1976⁴⁴ and 9.8% in 1977⁴⁵ since the decision.

"It is important to realize that Indians are not taking and never will take 50% of the harvestable fish which would return to their fishing areas absent prior interceptions. First, a large block of the fish (harvested by non-treaty fishers) are not included in the allocation because they are caught by foreign (fishers) or by Americans who do not sell them in Washington.The United States agrees to regulations which allow Canadians to catch over 50% of the harvestable Chinook and Coho which are bound for Puget Sound. These are two of the most important runs to treaty fishers. In return the U.S. fishers are permitted more fish from runs originating in the Fraser River in Canada, 85% of which are harvested primarily by non-treaty fishers.

"Treaty fishers do not take 50% even of those fish which are counted in allocation. There are two primary reasons for that. First, treaty fishers bear the brunt of in-season run revisions. It often happens that the estimated size of a run is revised downward during a fishing season, and fishing must be closed for conservation earlier than first planned. Because the non-Indians have taken their share first, it is treaty fishers who get less than their share when such a closure is enacted. An upward revision of a run size estimate does not however, result in treaty fishers getting more than their share, because if there are more harvestable fish than expected the State can simply open extra fishing time to non-treaty fishers in southern Puget Sound. Secondly, illegal fishing continues to take fish from (treaty fishers)."⁴⁶

SELF-REGULATION

U.S. v. Washington also affirmed the right of Native Nations to regulate their own members in the harvesting of fish both on and off the reservation. "Therefore, the treaty right to fish takes on a character greater than economic, as it provides the support for an extra-territorial administration of justice by the (treaty Nations) over their own members."⁴⁷ This element of *U.S. v. Washington* has a political meaning. By recognizing the right of Native Nations to regulate their own activities in this way, *U.S. v. Washington* is affirming their right to self-determination and recognizing the inherent sovereignty of Native Peoples.

CO-MANAGEMENT RESPONSIBILITY

As a result of *U.S. v. Washington*, Native Nations are full co-managers of the fisheries. This co-management primarily involves the various Native Nations and Washington State Dept. of Fish and Game. But other management entities are involved as well, namely: the International Pacific Salmon Fisheries Commission (IPSFC) which was formed by a treaty between the U.S. and Canada in 1937 and the Pacific Regional Fisheries Management Council which came into being with the advent of the 200 mile U.S. territorial limit in 1977.

INTERNATIONAL CO-OPERATION

There are many sovereign and independent Native Nations in the five Western Washington treaty areas. They must coordinate their fisheries



Indian fisher from Washington

management with each other, as well as with State, regional and international management regions. In order that co-management be as effective as possible, the treaty Nations have developed regulations and cooperative efforts to administer the fisheries. Nations have joined, with-in their respective treaty areas, to form treaty area management cooperatives.

The Point No Point Treaty Council has employed a biometrician, biologists, and law enforcement officers to insure adequate management of their joint fisheries. There is an administrative staff which advises the member Nations on various aspects of fish management.

The Northwest Indian Fisheries Commission, created in 1974, unites all of the five Western Washington treaty area Nations "to aid in establishing policies and procedures for an orderly, just, and biologically sound treaty fishery."

"The Commission is composed of one representative from each of the five treaty areas. The treaty Nations formed Treaty Councils (treaty cooperatives) which in turn elected a single representative from their treaty area to serve as a commissioner on the Northwest Indian Fisheries Commission. Each treaty area is also served by a NWIFC coordinator, and paid staff member who assists. . . .in developing and coordinating fisheries programs."⁴⁸

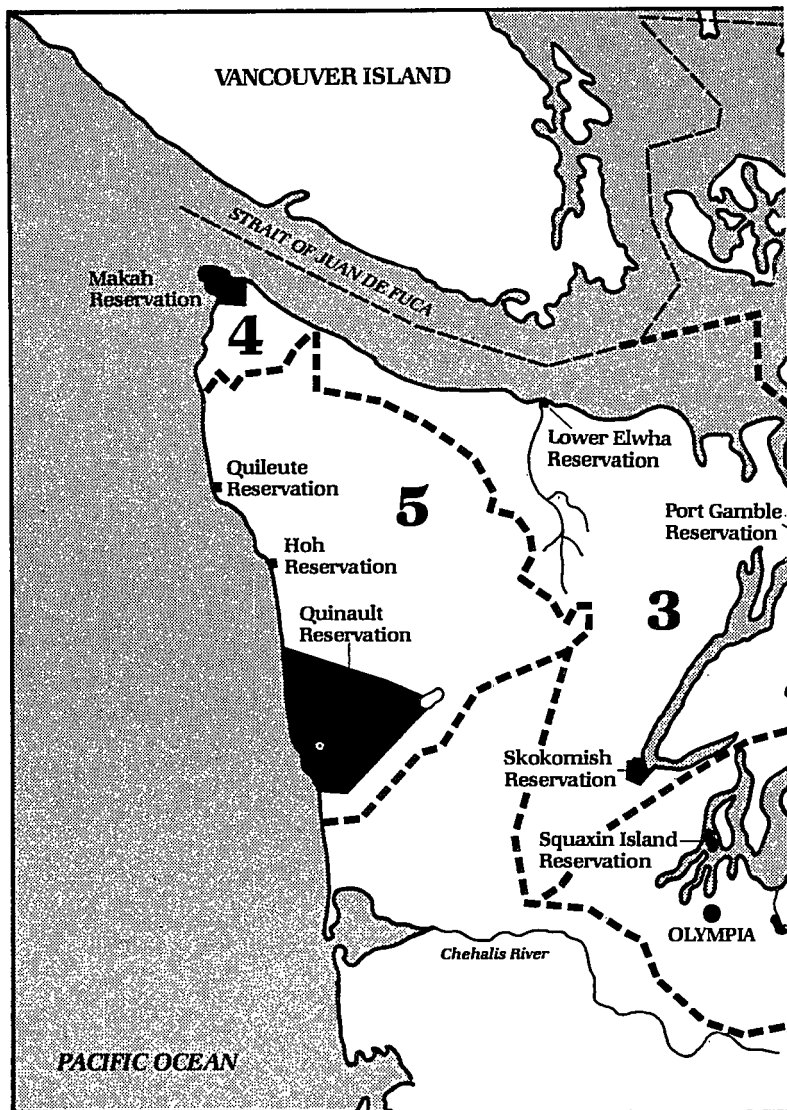
In addition, fishery biologists were hired in 1976 to assist in NWIFC's advisory and coordinating efforts.

Native Nations have appropriated funds for biological assistance, law enforcement, and to aid in implementing the international cooperation mentioned above. Many of the Nations have committed a large part of their money and energy to developing reservation hatcheries, rearing ponds, outplanting programs, and stream clearing projects. Some of these programs are conducted in cooperation with the State Dept. of Fish/Game. Most are conceived, planned and implemented through the determination, money and effort of the Native Nations.⁴⁹

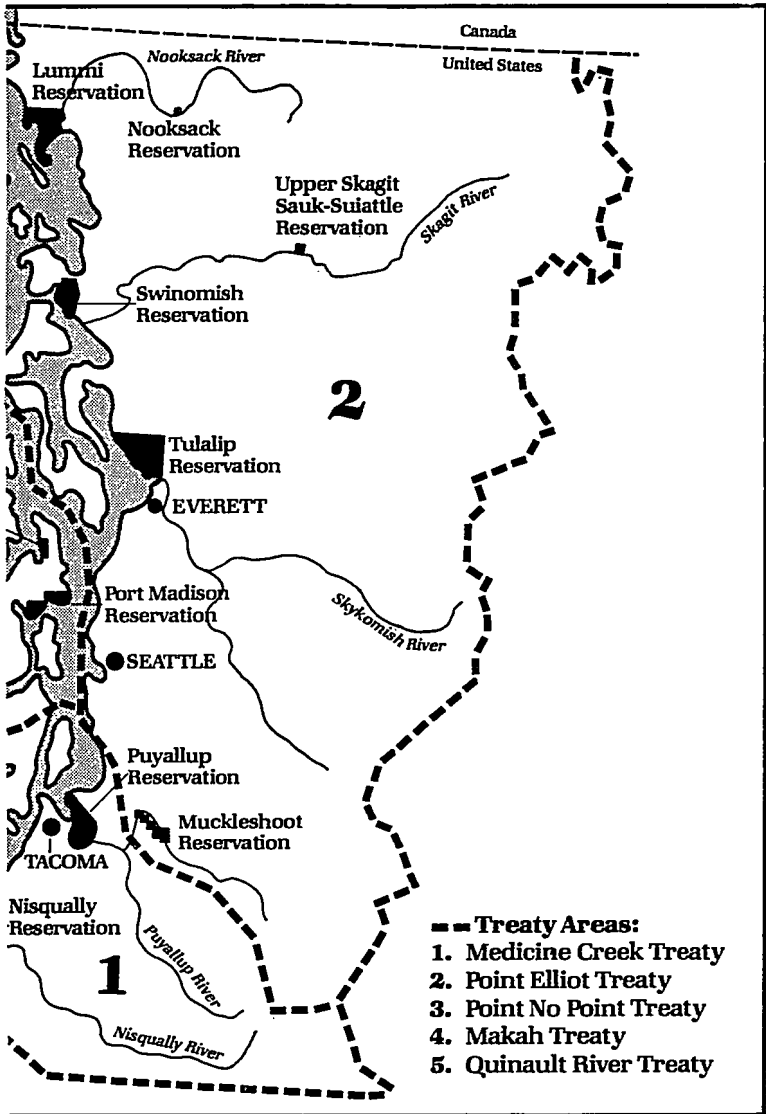
The various Nations have also committed a good deal of their time, energy and money to data gathering. For example: specific surveys have been taken by the Stillaguamish, Upper Skagit, Sauk-Suiattle, and Nooksack Nations on their respective rivers. The Suquamish have conducted extensive tagging in central Puget Sound to determine terminal migration areas. Considering the poor management and data gathering prior to *U.S. v. Washington* it is clear that "the management capability of the State has been increased through the availability of data gathered by tribal professionals."⁵⁰

ENHANCEMENT

Though not required by the treaties or set forth as a stipulation in *U.S. v. Washington*, fisheries enhancement has become a major priority of Native Nations in the Northwest.



Northwestern Indian Treaty Areas
Western Washington



"In 1976, eighteen of the twenty-three western Washington Treaty Nations were actively engaged in fish hatching and/or rearing projects. In 1976, over 17 million salmon and steelhead fingerlings were planted in Washington streams by treaty Nations. In 1977, they expect to plant over 30 million salmon and steelhead."⁵¹ The following list ⁵² gives the plant statistics for 12 of the Northwest Treaty Nations in 1976.

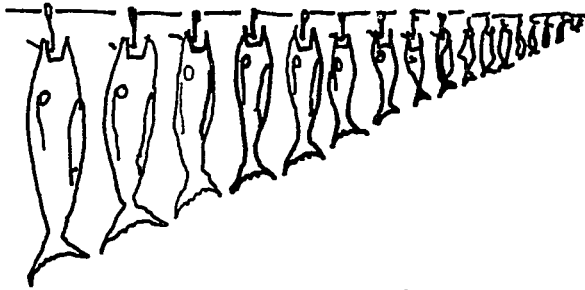
FISH PLANTED IN 1976 BY INDIANS

Quinault	5,620,000 Coho, Chinook, Chum salmon 150,000 Steelhead 1,000 Rainbow trout
Lummi	3,000,000 salmon 250,000 Steelhead
Makah	1,500,000 Salmon 2,500 Rainbow trout
Tulalip	1,500,000 Salmon 30,000 Steelhead 10,500 Rainbow trout
Squaxin Is.	470,000 Salmon
Hoh	150,000 Salmon
Muckleshoot	900,000 Salmon 1,500 Rainbow trout
Upper Skagit	1,150,000 Coho salmon
Puyallup	250,000 Salmon
Suquamish	50,000 Salmon
Nisqually	535,000 Salmon
Steilacoom	50,000 Salmon

These statistics speak for themselves. Native people are making a very real contribution to the fish resource. A contribution which would not be possible without the affirmation of their treaty rights by *U.S. v. Washington*.

Native management had been the catalyst for significant improvement in the overall management of the salmon resource....."Treaty fisheries are often centered in terminal areas. This fact has allowed treaty Nations to provide detailed and specific studies of the regions of origin and adjacent streams. Thus, the store of knowledge on which to base prudent regulation has been greatly increased. Further, Native involvement has provided a mechanism for reviewing action by State agencies holding them accountable for their deeds and misdeeds which were largely hidden from public scrutiny before (*U.S. v. Washington*). The exposure has made state practices more visible to all (fishers)."⁵³

"Treaty Nations are now energetically involved in the whole range of resource protection and development activities, including identifying causes of environmental damage and opposing their continuation; raising and planting hatchery-bred fish; tagging studies, preparing and other research and study tools; conducting detailed stream surveys and documenting the conditions and needs of the rivers and streams; stream clean-up and rehabilitation; data collection and education of (their) children to the importance and methods of protecting the resource."⁵⁴



EFFECTS ON NATIVE ECONOMICS

U.S. v. Washington stimulated Native economies in a number of ways. More people are fishing due to increased fishing opportunities. For example since the decision came down the number of licensed fishers in the Muckleshoot Nation increased from about 50 to 114.⁵⁵ Considering the fact that the culture and economy of the Native peoples of the Northwest are based upon fish, this increase in fishing is a good sign.

In the past, Native people have had difficulty in getting loans or financial assistance to buy the expensive gear needed to fish commercially. Since *U.S. v. Washington*, that situation has eased a bit, though a problem still exists. Canneries are now willing to give some backing to Native people to enable them to secure bank loans to purchase fishing equipment. The federal government also makes some money available, especially for enhancement and fisheries management programs and facilities.

Not only are there more fishers, but there are more Native people in fishery-related jobs. There are people working in hatcheries, planting programs, stream clearing, data gathering, fisheries enforcement, as well as in administrative and clerical capacities, and education. Some Nations such as the Lummi have their own processing plants. And of course the capital generated from fishing and fishing - related activities can be re-invested in other ventures within the Nation.

SOCIAL—CULTURAL EFFECTS

U.S. v. Washington has been the instrumental factor in the growth of Native economies. There are more jobs and money on the reservations than before. But more importantly, by affirming the right of the Native people to take fish the decision has enabled them to exercise their culture and some degree of self-determination. Native people are reaffirming their culture and even re-learning it. Ceremonies are being held, languages taught to the children, songs, dances, and traditional ways are growing strong. However *U.S. v. Washington* is not the cause of the resurgence of Native pride and culture. It is the resurgence of Native pride and culture which caused the Native people to come together and stand up for their treaty rights by filing the case. The *U.S. v. Washington* decision is a tool enabling Native peoples to exercise their rights and their ways, as sovereign and free Nations.

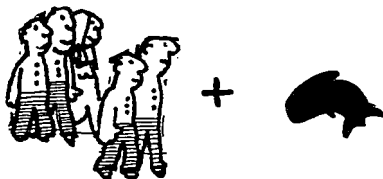
SUMMARY

U.S. v. Washington has had many positive effects for Native peoples, but there have been negative effects as well. The decision affirmed treaty rights—but with strings attached. In the treaties Native people reserved for themselves certain rights to be exercised freely, including the right to take fish. The state systematically denied them these rights so Native people brought suit to attain recognition of the treaties, their rights and their sovereignty. Despite the recognition given to treaty rights, the court has required Native people "to mold themselves and their governing structures to the white man's system as a precondition for exercising those rights. Another important point is that there are a number of protections which the Native Nations need in order to realize their treaty rights which were not considered in the court decision and which non-Native governments have been unwilling to afford. A prime example is the need for limitation on harvests by foreign fishers on stocks returning to Native fishing areas."⁵⁶

Another factor which has been a detriment to the people are the court battles. Initiated by the state and anti-Native groups, these suits seek to block implementation of *U.S. v. Washington*. Anti-Native legislation is presently pending in the Congress. Opposing this legislation and the recent suits has required a great deal of time, energy and money.

Non-Indian Fishers

There are two categories of non-treaty fishers in Washington: commercial, and sport. The commercial group includes corporate, private, full-time and part-time operators. All non-treaty commercial fishing in the state is marine, and is regulated by the State Department of Fisheries [as well as, in some areas, by the International Pacific Salmon Fisheries Commission (IPSFC) and by the Pacific Regional Management Council (PRMC)]. Sport fishing is both freshwater and marine, and is regulated by the State Department of Game (freshwater) and the State Department of Fisheries (marine).



NOT ENOUGH FISH — TOO MANY FISHERS

Non-treaty fishers say that *U.S. v. Washington* and the subsequent increase in treaty fishing has caused the decline of the fisheries. They claim that the decision has ruined their livelihood and caused them financial hardship.

The number of non-treaty commercial fishers has increased steadily in the last forty years (see Table A), as has the number of sport fishers. Despite the general decline of the fisheries, Washington state continued to issue more and more commercial licenses, and allow ever higher fish catches by recreational fishers. Overlicensing, coupled with poor practices in other areas of fisheries management resulted in increased competition for an ever-decreasing number of fish. This meant 'that the fishing industry was having serious difficulty and would have reached a crisis stage wholly apart from *U.S. v. Washington*. The trial of that case simply focused attention on the problem.'⁵⁷

STATUS OF THE COMMERCIAL FISHERY

The economic status of the salmon fishing industry is clearly tied to the condition of the salmon resource. The total salmon landings in Washington have decreased from 9,851,130 in 1935 to only 5,833,860 in 1975.⁵⁸ (Both of these are 'pink salmon years.' Pink salmon only run in odd numbered years, so they have a significant effect on run size.) Even so, the number of licensed fishers increased. As noted above, this results in more fishers competing for fewer fish.

At the same time, the state of Washington has tried to conserve the salmon by facing non-Native commercial fishers with cutbacks in the time that they are allowed to fish. The commercial fishers blame this on Native people.

TABLE A

*Statistics taken from
1975 Fisheries Statistical Report*

Year	License By Gear			Total Salmon Landings (all species)	
	Purse Seine	Gillnet	Reefnet		
1935		215	1,014	20	9,651,130
1936		172	991	34	2,318,100
1937		213	1,111	49	8,791,966
1938		230	1,147	74	3,877,946
1939		191	1,137	78	6,794,816
1940		158	1,044	76	3,416,577
1941		154	978	89	7,266,935
1942		178	843	70	5,500,482
1943		178	977	58	3,183,698
1944		88	903	46	1,979,921
1945		121	1,014	47	8,820,923
1946		167	1,138	64	6,391,803
1947		210	1,225	56	12,360,183
1948		255	1,323	92	4,113,285
1949		322	1,435	137	11,215,153
1950		317	1,173	126	4,344,404
1951		325	1,176	122	9,850,359
1952		278	1,095	101	4,628,734
1953		334	1,214	171	10,526,206
1954		310	1,230	102	6,973,399
1955		375	1,360	116	8,395,051
1956		211	1,333	86	3,221,862
1957		421	1,426	93	6,842,628
1958		447	1,508	107	7,384,716
1959		425	1,386	104	6,388,755
1960		338	1,287	80	2,101,826
1961		452	1,296	100	3,761,544
1962		386	1,218	75	2,498,157
1963		431	1,272	83	9,310,920
1964		293	1,216	63	2,314,279
1965		400	1,392	76	3,801,317
1966		317	1,240	52	3,906,385
1967		340	1,397	63	8,099,205
1968		301	1,321	54	3,144,313
1969		384	1,466	63	4,241,219
1970		319	1,598	54	4,065,294
1971		298	2,221	69	8,377,572
1972		275	1,729	61	3,864,639
1973		320	1,863	74	8,091,881
1974		437	2,605	81	5,705,095
1975		385	2,361		5,833,860

A group of non-treaty fishers also claim that they are suffering financial hardship because they can't fish on Puget Sound. 'It might well be true that because of the State's inability to regulate its ocean fishers, most of the non-treaty share of the fish runs are harvested before they reach Puget Sound, so that non-treaty fishing in the Sound must be severely limited. The State has elected to allocate fish between ocean fishers and Sound fishers with the ocean fishers receiving the lion's share. While the unfairness of the State's action is clear, it cannot be remedied by the Treaty Nations. How the State allocates its share is within State control. The State of Washington could remedy the situation by limiting the harvest which takes place in the ocean and the Strait so that there would be fish left in the non-treaty share in Puget Sound.'

'It is interesting to note that among the complaints of financial hardship we find no documentation supporting the claim. In fact, the actual financial impact might actually be quite small.'⁵⁹

Another pressure on the commercial fishers is that the fishing business, like everything else, has been hit by higher prices. Moorage rates have gone up. Fuel prices have more than doubled. Boat and equipment prices have skyrocketed. A boat costing \$30,000 in 1970 would now cost about \$90,000 to replace. A gillnet now costs about \$4,000, up from \$2,800 a couple of years ago.

The combination of all these pressures of increased competition for fewer fish, rising prices and expenses, etc. has resulted in the tactic of illegal fishing. State Fisheries Department and/or Federal Court orders which curtail non-treaty fishing for any purpose (conservation, as well as for the purpose of allocating fish to treaty fishers) have been ignored. The refusal and inability of the state to enforce these regulations has added fuel to the fire. The president of the Puget Sound Gillnetters Association is quoted as saying, 'I don't know any that are legal. I personally haven't fished a legal night since mid-August.'⁶⁰

By 1977 the illegal activities of the non-treaty fishers had reached such a high level that the Federal District Court severely limited the state's power to regulate, and Federal Court regulations followed. However, there is still no adequate enforcement — federal agents from the National Maritime Fisheries Service, using Coast Guard vessels, carried much of the enforcement burden. With as many as one-quarter of the non-treaty fishers refusing to comply with the court orders, their efforts were token at best.

Illegal fishing not only limited the fishing time and catches of treaty fishers, but nearly wiped out some natural runs, because so few salmon escaped to spawn.

In an effort to relieve the economic problems caused by the over-crowding of the commercial fishing fleet, a \$3.5 million federal grant was awarded to the state to buy boats from those people wishing to sell. 'Under the program, the State buys commercial boats at appraised values, then sells the boat at a loss with the provision that it cannot be relicensed to fish commercially in Washington waters.'⁶¹ This was a reasonable attempt to thin out the number of fishers competing for the fish, but to many, fishing is a way of life, one that they love, and do not want to give up, and they are not willing to sell their boats to the state.

Another factor that should be considered, is that 'the majority of non-treaty fishers who fish in Puget Sound are able to fish in other areas as well. Some of the larger boats go as far as Alaska to participate in harvests there. Others travel to Northern Puget Sound to fish the Fraser River runs. Finally, the smallest and least mobile boats are often owned by people who have other full time employment and fish only part-time. Therefore, legal requirements aside, it is unjustified to reduce the treaty opportunity in favor of non-treaty fishers in Puget Sound, since they are able to fish in other areas, something treaty fishers cannot do because of limitations placed upon them by *U.S. v. Washington*.'⁶²

'It should be understood that those people who engage in fishing as a full-time occupation and for whom fishing is a 'way of life,' will still be able to fish after *U.S. v. Washington*. The effect will be on those part-time fishers and newly arrived fishers who have attempted to cash in on the fishery resource. ... Non-natives are not uniformly being denied their livelihood, but there will have to be some adjustment caused basically by the inability of the state to regulate its own license system.'⁶³

PRELIMINARY SALMON CATCH DATA WASHINGTON 1977-1978		
VARIETY OF SALMON	NON-TREATY	TREATY
SOCKEYE	79%	24%
PINK	93%	7%
CHINOOK	87%	13%
COHO	81%	19%
CHUM	61%	39%
AVERAGE PERCENT	80%	20%
*(FROM U.S. FISH & WILDLIFE SERVICE) APRIL 21-1978		

TABLE B

THE STATUS OF SPORT-FISHING

Fishing is a very popular sport in Washington. It is big business. Charter boat operations, equipment sales, hotels, motels, resorts, restaurants, and so forth all profit from recreational fishing, both fresh-water and marine.

In the freshwater areas, the principle sport catch is steelhead trout. Sport fishing groups are particularly angry and bitter over commercial netting of steelhead by Native fishers.

Steelhead were plentiful before white people came. Some Native Peoples relied heavily on steelhead for subsistence and livelihood during the wintertime. But, like salmon, the steelhead have been drastically reduced in number and some runs totally wiped out.

Because of their depleted state, steelhead have been classified as a game fish in Washington for many years. Of course, when the treaties were negotiated, the reserved right of fishing did not differentiate between species of fish, or between game and commercial fish. Subsequently, *U.S. v. Washington* affirmed the right of treaty fishers to catch up to 50% of the harvestable steelhead, as well as salmon (and other fish.) This does not include any fish caught on the reservation, or for ceremonial purposes.

Many Native people fish traditionally in or near the river mouths, while sports fishers fish upstream for steelhead. This causes consternation among sport fishers who feel this limits their chances of catching as many fish, and they also bitterly resent the Native People's traditional use of nets (sport fishers use a hook and line).

Almost every day, the media carries news on the 'Fish War,' as it has come to be called. It is impossible to live in Washington and escape knowledge of the controversy — although escaping knowledge of the facts is very simple.

HEADLINES FROM SEATTLE NEWSPAPERS, 1976 - 1978

Andrus asks cutback in Indian fishing

Fishing War:
FBI Steps In

A Bill to Kill Treaties
7 G.O.P. lawmakers ask
Boldt to quit fishing case

Cunningham:
Kill Treaties

State Court Rules Against
on Fishing ... Again

Indian found
guilty of
illegal fishing

'Indians Have
Gone Too
Far'—Meeds

Sport fishers also maintain that state hatchery and enhancement projects are financed by the sale of fishing licenses and steelhead punchcards, and for this reason sport fishers feel they have a special claim to the fish. This view is not supported in fact. 'Licenses from other Department of Game activities, federal money, private money and mitigation money all play a part in the planting of steelhead by the state.'⁶⁴

Native People view the money paid out by citizens to the state for fishing licenses and punchcards as payment due. That money will enable the state, which bears the prime responsibility for the depressed state of the steelhead, try to fulfill its obligation to replace the lost fish. Yet, in an effort to reduce the hostility between themselves and sport fishers, some Treaty Nations have offered a compromise which would reduce or eliminate treaty steelhead fishing in return for an increased allotment of salmon.



NON-TREATY FISHERS ORGANIZE

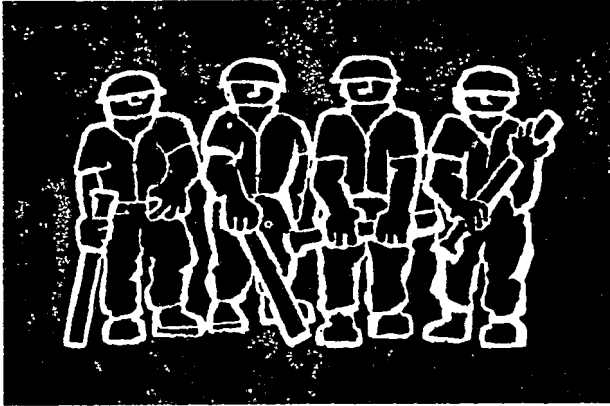
The reasons for the controversy over *U.S. v. Washington* vary. Greed, jealousy of the Native Peoples' right to fish, and racism, are all contributing factors. There is bitterness and a sense of frustration on the part of non-treaty fishers, who find themselves being limited in their fishing, and numbers, after a history nearly free of restraint. Failing to recognize, and/or accept the economic, environmental and managerial factors which are at the root of their dilemma, they latch onto *U.S. v. Washington* as the rallying point in a battle to defend their livelihood.

The campaign against Native fishers and the Native Nations is generally based upon major misconceptions, ignorance or willful twisting of: (1) the Constitutional status of treaties between the U.S. and Native Nations, (2) the nature of the reserved rights of Native peoples, and (3) the fact that Native peoples are sovereign and not simply an ethnic group.

The Puget Sound Gillnetters, Purse Seine Vessel Owners, and West Coast Trollers Associations and the Northwest Steelheaders Council are examples of local groups that have taken an active anti-Native stance on the fishing issue. They term *U.S. v. Washington* discriminatory, repressive and unconstitutional.

Since the decision came down, the local fishing groups have staged protests, defied court orders, lobbied and campaigned to curtail the treaty fishing rights of Native peoples. They have been well-organized, and have had good media exposure. It was largely a result of their visibility and lobbying that in 1976 the fishing issue became a major campaign issue in Washington.

Government Actions



MANIPULATION OF PEOPLE/VIOLATION OF U.S. CONSTITUTION

The State of Washington has played a major role in perpetuating the battle over Native treaty rights. 'Historically, it was the local whites who were the most immediate threat to the Indians and their lands. It was the territorial government which was most aggressive in promoting the interests of the white settlers, and the successor state governments have generally maintained such aggressive policies ever since.'⁶⁶ Today such 'aggressive policies' are maintained for the corporation, lobbying group, or individual with the most money, and along color lines.

The state is very adept at playing the interests of one group of people against another group of people, to the detriment of most of the people and the benefit of a very few. If this can be done along racial lines, of course, the state's job becomes easier and the effect of the strategy intensified.

Washington has persisted to this day in ignoring the superior status of treaties between the United States and Native peoples to state laws. Legislators, agencies and courts willfully violate the supreme law of the land by making laws, issuing regulations, and rendering decisions which are in direct conflict with treaties, laws, and court rulings on the federal level. This creates an atmosphere of ignorance and confusion among the citizens as to what the law is, and gives the faulty impression that rights are being taken away from the state, when in fact those rights never did belong to the state of Washington or to any other state.

Supreme Court has ruled that the state and its agencies cannot make or enforce regulations or laws which discriminate between different races of people. This is interpreted to mean that the Departments of Fish and Game cannot make and enforce regulations, or enforce Federal Court regulations for the purpose of allocating fish between Indian and non-Indian people, implying that Native people have treaty rights only because of the color of their skin and not because they have the original claim and history upon this land. This strategy of the state ignores the law and plays upon the racial fears and prejudices of non-Indian people.

Washington state has refused to enforce the law as set forth in *U.S. v Washington* or subsequent Federal Court-ordered regulations.



The state continues to harass and convict Indian fishers in violation of state law, but even when federal enforcement officers took over in 1977, the state failed to convict non-Indians. By failing to enforce regulations upon non-treaty fishers, a picture of chaos and conflict is created, in the hope that if enough lawlessness and discord occurs over the treaty fishing issue, Congress or the Federal Courts will act to alleviate the situation.

It has been established that Washington state has been grossly irresponsible in its management and care of the fisheries and environment. During the trial of *U.S. v. Washington*, much of this information came before public scrutiny.



INDIAN FISHING

CO-MANAGEMENT WITH TREATY NATIONS

'The power of the state to regulate treaty fishing is often used as a lightning rod to attract attention to the proposition that the salmon resource is somehow on the verge of destruction because the state cannot fully regulate treaty fishing.'⁶⁷ In reality, however, it was the state's own mismanagement which was destroying the salmon, to the detriment of all fishers and people.

Subsequent to *U.S. v. Washington*, the Treaty Nations became full co-managers of the fisheries with the state. The management of the Treaty Nations has served as a catalyst in the improvement of state management. Treaty management has provided the state with detailed studies of the rivers and streams and management plans coordinated throughout the treaty areas.

Native managers have also introduced some new concepts to the state. Restoration and care of the fishery environment and the importance of preserving the natural runs are two major examples. ('The science of fisheries genetics is relatively new and there is still much to be learned about the long term stability of artificial stocks.'⁶⁸)

Despite the positive effect that Native management has had on the fish resource, the state claims that co-management is an unworkable situation. Their main argument is that there are too many entities already involved in fisheries management and that Treaty management would complicate the situation further. The other management entities are: (1) the Pacific Regional Management Council (created by an act of Congress in 1976 as part of the 200-mile territorial limit legislation), which is an interstate body, and (2) the International Pacific Salmon Fisheries Commission (created by a U.S./Canada treaty in 1937 to jointly administer certain fish runs.)

Who's Who in Fishing

International:

International Pacific
Salmon Fisheries Comm.
3 members from Canada
3 members from U.S.A.
(Saletick, Donald Johnson,
& Sandison)

Tribal:

N.W. Indian
Fisheries Comm.
TREATY AREA
COMMISSIONERS
1. Medicine Creek
2. Point Elliot
3. Point No Point
4. Makah
5. Quinault River

Federal:

Federal Judges - i.e. Boldt & Belloni
Dept. of Interior - Cecil Andrus
Fish and Wildlife Service
Dept. of Commerce
National Oceanic & Atmospheric Admin. (NOAA)
National Marine Fisheries Service
PRESIDENTIAL TASKFORCE on TREATY
FISHING RIGHTS in the NORTHWEST

Interstate:

(8 Councils within the U.S.A.)
1. Pacific Regional Fisheries Management Council.
(WASHINGTON, IDAHO, OREGON, CALIFORNIA)
2. NORTH PACIFIC REGIONAL FISHERIES
MANAGEMENT COUNCIL
(ALASKA, WASHINGTON)
SANDISON IS A DELEGATE TO BOTH

State:

Dept. of Fisheries - Director: Sandison (Appt. by Gov.)
(Commercial & Sport Fish in Saltwater)
Dept. of Game - Director: Larson (Appt. by Gov.)
(game & fresh water fish)
STATE ATTORNEY GENERAL: SLADE GORTON
(elected)
JIM JOHNSON: STATE ATTORNEY
STATE SUPREME COURT

Community:

YOU

The state sits on both of these commissions. It is particularly strong on the Pacific Regional Management Council, since this group depends to a great extent on Washington Department of Fisheries advisors and researchers for its information. On the international commission, the Washington Department of Fisheries representative is one of the three United States commissioners. (Canada also has three.) In both commissions the state representative is the Director of the Fisheries Department or his designee. (The director of this department is a political appointee.)

The state's Department of Fisheries is not isolated from these other management regions. It is, in fact, a major voice in each. Arguments that the addition of Treaty management would make coordination impossible seem unfounded. Several cooperative management programs were developed by Native managers which would have coordinated the responsibilities and authorities of state and Native management programs. These were rendered inoperative by a State Supreme Court ruling.⁶⁹

Aside from the battle which has been going on continuously in the state and federal courts since the decision was rendered in 1974, there are several governmental developments relating directly to the decision.



CONGRESSIONAL LEGISLATION

In 1976, the fishing dispute was a major campaign issue. A veteran U.S. Congressman from the state, Lloyd Meeds, retained his previously secure Congressional seat by a very slim margin. Meeds' opponent used the fishing dispute and Meeds' historically pro-Native stance heavily in the campaign.

Since the narrow victory, Meeds has done a complete turn-around on his position concerning Native peoples. In May, 1977, Meeds issued a Minority Report for the American Indian Policy Review Commission (AIRPC). His report condemned the Majority Report (which was favorable to sovereignty, self-determination and treaty rights) as 'undemocratic, unrealistic, very divisive and not good legal doctrine.'

Meeds has introduced several pieces of legislation unfavorable to Native peoples since his re-election. He introduced one bill, HR 9951, which would severely limit Native people's right to water on their own lands, and another bill, the Indian Jurisdiction Act of 1977 (HR 9950), which covers jurisdiction over non-Indians on reservations, Native courts, powers of taxation, and even defines who is an Indian.

In a special Congressional election in May, 1977, Jack Cunningham was elected, a man who relied on the fishing controversy and 'discrimination against whites' in his campaign. He has introduced the Native American Equal Opportunities Act, which calls for the termination of all Native Nations, the transfer of tribally owned land into individual allotments

(eliminating common trust title). The bill is aimed at 'any Indian tribe, band, nation, or other organized group or community, including Alaska Native villages or regional corporations.'⁷⁰ It also eliminates all treaty hunting and fishing rights.

This and other anti-Indian legislation imposes the law of the U.S. on the sovereign Native Peoples (even U.S. courts have long upheld Native sovereignty) without their consent or approval.

TASK FORCE: A COMPROMISE

In the spring of 1977, President Carter appointed a special task force to investigate the fishing rights dispute between Washington state and the Native peoples. The Presidential Task Force on Treaty Fishing Rights in the Northwest was charged with the job of negotiating a compromise between the concerned parties and also to propose federal legislation to alleviate the conflict.

For over six months the task force collected information from the state and Native nations, and held several meetings. In early 1978 they issued their report and a proposed compromise - which was not received well by either the state or Indian people. At this time there is no indication of what, if anything, has been achieved by the Presidential Task Force.

Community



CIVIL RIGHTS HEARING ON BACKLASH

Because of repeated and ever-increasing reports of anti-Indian activity, throughout the country, the U.S. Civil Rights Commission, in fall of 1977, held hearings in areas where there was a particular problem with backlash and/or a large Indian population. The term 'backlash' refers to anti-Indian activity and sentiments which are resultant or aggravated by recent victories and activities of Native people.

The first of these hearings took place in Seattle, Washington. The hearings did not focus solely on fishing, but included all aspects of Indian and non-Indian relations.

Indian people from around the state came to testify at the hearing. This included tribal officials, fisheries personnel and Native individuals who held no office but who had plenty to say.

Non-Indians also testified. Some were there to present anti-Indian testimony. But a number of non-Indian people testified in support of Native peoples and to report specific cases of anti-Indian activities.

Final reports on the hearings are not available at the time of this writing. They should be published and available from the U.S. Civil Rights Commission by the summer of 1978.

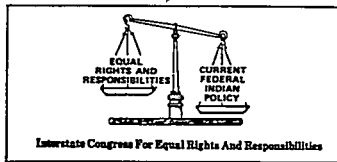
NATIONAL ANTI-INDIAN GROUPS ORGANIZING IN WASHINGTON

As a result of extensive media exposure and effective lobbying by sport and commercial fishers, people were elected to Congress because of their stand on this topic and little else.

Because of all of this exposure, many groups and organizations have taken up the fight against Native fishing rights. Regionally and nationally based organizations have involved themselves in the fishing issue as part of a larger campaign aimed at wiping out Native peoples' treaty rights and sovereignty.

These national groups would strip Indians of their treaty rights and reservation lands by pretending 'concern for all citizens.' *U.S. v. Washington* angers these groups because it represents a victory for Native people in their struggle to protect their treaty rights. Among these anti-Indian organizations are: the National Wildlife Federation, Trout Unlimited, National Association of Counties—Indian Task Force, and the foremost national anti-Indian organization, the Interstate Congress for Equal Rights and Responsibilities, (ICERR).

ICERR has now rented an entire floor of a Washington D.C. office building just blocks from the Capitol. It is retaining lawyers, pressing for appointments in the White House, the Justice and Interior Departments, and keeps tight rein over disclosure of its financial contributors. ICERR . . . is making its view felt with the congressional delegations from member states. Majority public opinion is the wellspring for re-election of Congressmen, and ICERR's impact through Capitol Hill is being felt in the home districts of Congressmen from Oregon, Montana, Maine, Utah, Arizona, and virtually all states with large Indian populations.⁷¹



ENVIRONMENTAL QUALITY

U.S. v. Washington effectively focussed attention on the need for ecologically sound management of the fisheries. The establishment of Treaty Nations as co-managers has been a very positive development. It has resulted in better management by the state, and given time, it should have visible effects on the quality and quantity of the salmon and steelhead runs, as well as on the quality of the rivers and streams and the surrounding environment.

Native management has been instrumental in pointing out the importance of preserving the natural runs and the questionable stability of artificial stocks over the long haul.

Subsequent to *U.S. v. Washington* the state tried to exclude hatchery fish from the treaty-fishers' share, because those fish 'belonged to the state.' This is an important test. For if ownership can be established for fish in the rivers, it brings up some interesting possibilities.

Among these possibilities, is corporate fish farming. Weyerhaeuser is very interested in it. Puget Power is also interested in going into hatchery production by using the warm water from its nuclear power plant as rearing ponds for young salmon. What becomes of the fishing industry or the private operator if this materializes, is something to consider. (It should be noted that Native peoples have never claimed ownership of the millions of fish that they release into Washington waters each year.)

If non-Indian people would stop to consider the facts surrounding Indian fishing rights, they might realize that there is a common interest between themselves and Indian people. They might discover that *U.S. v. Washington* brought to light practices and activities of the state which were harmful for all people. They might also see that the exercise of sovereignty and treaty rights by Indian people can have beneficial, tangible effects on the quality of their own lives and living environment, and that of their children.



Phase II

BACK TO THE COURTS

Phase II of *U.S. v. Washington* was scheduled to be heard August 1, 1978. Due to illness Judge Boldt will not be presiding. Instead Federal District Court Judge Belloni is presently considering hearing the second phase. Known as the 'environmental Phase', it seeks to assign responsibility for the destruction of the environment that has depleted the fish runs over time. It also will deal with the question of whether artificially propagated fish are to be excluded from the Indian treaty right.

SUMMARY OF INDIAN ARGUMENTS

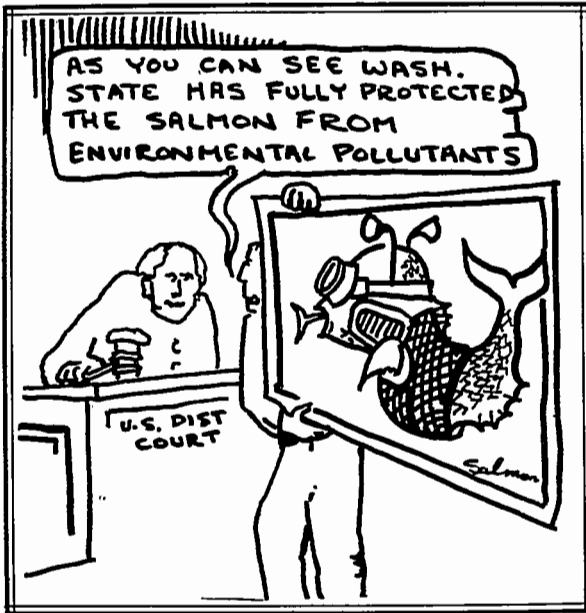
'Prior to non-Indian encroachment, preservation of fish stocks had long been successfully accomplished by the customs and practices of the tribes. Whole watersheds have been rearranged and destroyed to make room for development; fresh and saltwater systems have been polluted and subjected to changes in flow, level, velocity, and temperature; migration routes have been restricted and blocked; artificially introduced fish populations have displaced native populations; predator and disease problems have been aggravated, and generally the ecological basis necessary to maintain the Indian fishery has been seriously tampered with. This destruction or alteration of habitats could have been controlled or prevented in part (by the state) but was not. Much of it actually occurred through explicit administrative authorization contained in state-issued permits and approvals.'

The Puyallup River system is an example of this. State-authorized gravel removal projects and pollution have destroyed many of the spawning beds in the river. The Dept. of Ecology has been slow to set discharge standards for and to enforce regulations against major corporations which are referred to within the Dept. as 'priority polluters'. So spawning grounds in the upper one-third of the Puyallup River are inaccessible because of the electron power project developed by Puget Sound Power and Light Co. Although state law requires dam operators to maintain fish ladders, the law has not been enforced. On the White River, the Puyallup River's major tributary, another Puget Sound Power and Light project diverts water out of the 17 mile loop of the river. Although a previous director of the Dept. of Fisheries noted that fish require a flow in the river of at least 400 cubic feet per second, the Dept. has permitted the Power Company to divert all but 25 cubic feet per second.

Because of these environmental factors, the treaty fishing right established in Phase I of *U.S. v. Washington* is in danger of becoming meaningless and without substance. Indian Nations seek an order from the federal court that Indian fishing rights 'may not be impaired by actions undertaken or authorized by the state which significantly and adversely affect the fish habitat and which reduce the number and quality of fish available to treaty Indians.'

This point, if won, would allow Indian Nations to have say in any action authorized by the state that could be shown to be damaging to fisheries habitats. This could include many things from dam building to logging operations to highway construction along spawning streams and even construction of nuclear power sites. It could also mean restrictions on commercial fishing licenses issued, since overfishing by non-Indian fishers is cited as a danger to the resource. It would apply, by extension, to local governments and could affect issuance of shoreline management permits for real estate development on rivers and streams.

In Phase II, Indian Nations will also seek a determination that protects their right to catch 50% of the hatchery salmon, as well as the natural runs returning to Puget Sound. As William Smith of the Northwest Indian Fisheries Commission stated, "If we're allowed only 50% of the native fish, that's a very limited number. We want the sharing formula applied to hatchery stock, too. We feel those aren't enhancement fish. They're replacement fish....."



All fishing people, both treaty and non-treaty, should join in demanding that the fishery habitat be protected from further degradation and that depleted stock be built up and revitalized. Only through cooperative and positive efforts of all parties can the fisheries be protected from further damage so that they may remain a vital part of the economy of the Northwest for future generations.

SUCCESSFUL CONCLUSION WOULD MEAN:

- 1) the declaration that the treaty right includes protection of the fish from degradation and destruction;
- 2) the recognition that fish hatcheries were planned to offset the effects of overfishing, poor management and industrialization which destroy natural runs; that natural runs as they existed at treaty times have been destroyed and that hatchery fish must now take their place; that treaty rights extend to all fish, whether hatchery or natural; and
- 3) that as treaty includes the protection of fish, some control over state action must be developed as a remedy to stop further degradation of the resource (e.g. tribal government approval of state actions affecting the resource).

If a decision favorable to the Indians is rendered in Phase II, there will be a commitment to protect the salmon and steelhead, and restrain industrial development which has been a major cause of depletion of this resource.

Misconceptions

THE TREATIES GAVE INDIANS THE RIGHT TO FISH AND LIVE ON RESERVATIONS

Native people who have lived and established themselves on this land have been here for thousands of years. The European settlers have only been here for a little over a hundred years. The treaties were a contract between sovereign and separate nations. In these treaties, Indian nations retained some land areas and certain rights (i.e., fishing) and the Indian people gave to the Americans the rights to other land. The United States didn't give the Indian nations land or fishing rights, simply because those items were not owned by the U.S. to give away.

TREATIES CAN BE CHANGED BY A CONGRESSIONAL ACT

Over 371 treaties were made between the governments of the various Indian nations and the U.S. government. Each of these treaties was approved both by the U.S. Congress and the government of the Indian people themselves.

In order to amend a treaty, both sides must consent to any changes. According to federal law, if a treaty is changed without mutual consent it is, in fact, an illegal act. The U.S. has broken every treaty made with Indian people, and in so doing has broken its own law.

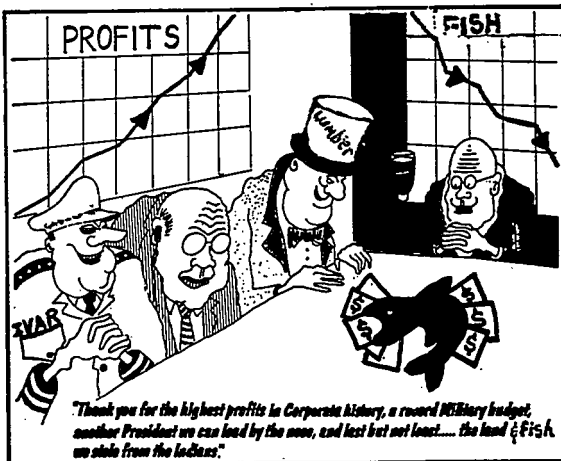
UPHOLDING INDIAN TREATY RIGHTS HURTS NON-INDIAN PEOPLE FINANCIALLY

Certain state offices and members of the press have pointed to the economic situation of some non-Indian fishers or the fact that reservation Indians do not pay state taxes to argue that treaty rights should not be upheld. Those facts are taken out of context. Native Americans are not "Supercitizens". The following statistics give an idea of what the lives of Native People are really like:

- Average income is \$2500 (Below poverty level)
- Unemployment on reservations is 50-85%
- Infant mortality rate is 3 times the national average
- Tuberculosis rate is 8 times the national average
- 24% of Native women are sterilized

Indian people living on reservations, do not pay certain state sales or property taxes, they do not receive many state government services. Most of the services the tribes provide to their citizens are paid for by tribal taxes or revenue from the federal government. Many of the federal grants to Native nations are in direct recognition of treaty provisions. Indians also do pay federal taxes. The tax and revenue status of Indian nations is similar to that of state and county governments.

It is primarily a few large corporations who would be benefiting by the abrogation of Indian treaties. For example, Native people have focused attention on the destruction of the fishery by utility companies, dams, industrial pollution, and large scale commercial development. Limitations on Indian fishing would open the market to corporate interest. Weyerhaeuser, for example, recently established a huge salmon farm on the Oregon coast in direct competition with the fishing industry.



THE STATE IS AN EFFECTIVE MANAGER OF THE FISH RESOURCE

Washington state is known throughout the U.S. for its careless management of the Fisheries. Under the States mis management , the number of fish has declined. The states main concern has been to make sure that non-Indian commercial and sports fishers get all the fish they want.

The state legislature must share the blame for mis-management. They have never questioned the Fisheries Department's activities. Their salaries are controlled by the legislature. In the salary scale of fish biologist throughout the country, Washington ranks 35th out of 50 states.

The year before the *U.S. v Washington* decision, Oregon and Alaska had closed their licensing to any more fishers, in order to prevent over-fishing. They state of Washington did not close, but instead doubled the number of licenses it issued in one year. It is no wonder that the runs were in a crisis stage when this case came to court. The real casue of the depletion fo the runs has been hidden, and the Indians have been blamed.

JUDGE IS AN INDIAN LOVER' BECAUSE HE GAVE THE INDIANS THE RIGHT TO FISH

Judge Boldt, who ruled in the case, *U.S. v Washington* in 1974, did not give the right to fish to non-Indian people. In the treaties, Indian people consented to share this precious resource with non-Indian people.

Judge Belloni, in a simialr case, also ruled that the treaties should be upheld and that Indian nations retained the right to fish within the treaty terms itself.

The treaty states: that Indian people reserved the right to fish in all usual and acc ustomed places, in common with the citizens of the territory. Judge Boldt interpreted that to mean that Indians must have the opportunity to catch 50% of the catch. What this means practically is that as the salmon enter the streams to go back to their spawning grounds, a minimum of half the run must be left, so that the Indians could have the opportunity to catch these fish.

Non-Indian people do not have to give the Indians the fish that they have caught. This ruling only gave the opportunity to the Indian fishers.

The Indian fish catch has never been close to the 50% mark before or after the case. The Indian fish catch was the highest it has ever been this year. It was 19%.

A vast majority of Indian people fish for a living and choose to do this because this has been their way of life for thousands of years. Indians make-up almost 1% of the Washington population, and should get 50% of the fish. Non-Indian people who fish for a living, also, make-up alittle less then 15 of the population, while they get over 80% of the fish.

THE METHODS THAT INDIANS USE TO FISH HAVE BEEN A MAJOR FACTOR IN THE DEPLETION OF THE RUNS

Indian fishers have maintained the runs for centuries without ruining the runs. The destruction has occurred within the last 60 years. The reasons for this devastation are: pollution, industry, population expansion, dams and lumber. Since 1913-16, the number of salmon caught in the Sound area has decreased from 16 million to 3.5 million.

During the 3 years of litigation in *U.S. v Washington*, the state attempted to show the court that Indian fishing methods were destroying the runs. However, they were unable to give any concrete evidence to this effect. Judge Boldt who heard this case stated that:

'neither the Game nor the Fisheries Department produced any credible evidence showing any instance remote or recent when a definitely identifiable member of any plaintiff tribe exercised his off reservation treaty rights or by any conduct or means detrimental to the perpetuation of any species of fish' 72

In fact, Indians are developing this resource. They have formed a coalition called the Northwest Indian Fisheries Commission to help coordinate the regulations and runs. Treaty tribes operate over 19 hatchery facilities. During 1978, the tribes are planting 53 million salmon and steelhead. These fish are available to both Indian and non-Indians.

THE FISHING CONFLICT DOES NOT EFFECT ME: I DO NOT FISH FOR A LIVING

All people in Washington are effected by the fishing controversy. It has both environmental and economic effects.

The fundamental issue is the right of Native and all people to exercise control over their lives. Indian people have the right of sovereignty and self-determination, because they are nations.

Indian people have shown that they can and should manage their own fish resource. But, the state tells us that there is really only one option and that is for Indian people to give up their treaty rights.

Indian people are not willing to give up their treaty rights. Indian management provides another option; the resources and the environment can be developed to benefit the resource itself, the Indians and non-Indian fishers.

As non-Indian people we have much to learn from the Native struggle for self-determination. Indian people are resisting the efforts of the government and the corporations to control their lives. The same powers that are affecting them are affecting all of us. Corporate power is not limited to Washington, it is happening all over the world. U.S. multinational corporations have controlling interest in many Third World

countries. They move in either, militarily or economically and gain power by taking over resources, developing industry, manipulating agriculture and or creating and controlling a cheap labour force. The U.S. often is able to buy off governments and create puppets that serve the U.S. corporate interest. This is a colonial relationship.

Many people are challenging this colonial relationship. Resistance movements have been successful in some third world countries; such as Viet Nam, Angola and Zimbabwe. When independence movements are victorious, the U.S. corporations lose access to cheap labour and resources.

Consequently the corporations are turning inward. Some of the cheap resources they need are on Indian treaty lands. Treaty lands contain 60% of the known coal, and 90% of the known uranium. The rest of the working people in the U.S. will supply the cheap labour.

Everyone can feel the crunch. Wages are not increasing as fast as the cost of living. Prices are going up faster than salaries. The prices that seem to go up the fastest are the utilities and gas prices.



Indian and non-Indian people will be affected by the needs of the corporations. Even the environment is being threatened. If oil tankers have the right to use Puget Sound, the fishing rights question would become totally academic.

The Trident Nuclear Submarines and the Satsop and Skagit Valley proposed nuclear sites bring nuclear power and its possible deadly effects far too near home. As citizens we have no control over these decisions. And the future doesn't hold any promise that we will be able to control these, or other issues, that affect the quality of our lives.

Control over our lives can not be gained in isolation. Supporting Third World people, women, labor unions, gay and older people can move us forward. Also, participating in the struggle of Indian people for self-determination and sovereignty is one way of beginning to control our own lives. It is an act of solidarity when we understand that we will be able to have full control over our own lives, only when Indian Nations are recognized and respected.

WHAT YOU CAN DO

The fishing rights struggle presented here is not an isolated problem. In order to come to a solution, Indian and non-Indian people must create it together. Working together means that for non-Indian people some homework must be done. Racist images and misconceptions should be examined and replaced by accurate information. Unfortunately non-Indian people haven't been prepared through our educational system or our media to answer these questions. However it is up to us to begin to change some of this.

The following is a list of ways to continue to educate yourself and also ways to act on this information:

1. Self-Education

- *Read about Indian history and related issues (NASC has an excellent annotated bibliography)
- *See the 30 minute NASC slide show, "The Question That You Ask". Request that we show it to your neighbors, church group or community organization.
- *Find out what neighboring reservation areas you live by.....
- *Subscribe to journals that carry information about Indian issues:

Northwest Indian News (local radio and newspaper)
2nd & Cherry, Seattle, WA 98104

Tacoma Indian News 519 East 28th Street Tacoma
Yakima Nation Review P.O. Box 386, Toppenish, WA 98948
Akwesasho Notes Mohawk Nation, via Rooseveltown, N.Y.
NASC Quarterly P.O. Box 3426, St. Paul, Minn.

2. Pass this information on to your friends, children and parents

3. Watch the legislation

Anti-Indian legislation is currently before Congress concerning fishing, water and treaty rights. Write your Congressperson and find out where they stand. Become familiar and outspoken against this legislation and sign the petitions circulated against them.

4. Environmental Issues

Beware of the environmental issues that affect all of us.

5. Watch the Media

Write the newspaper, t.v. and radio stations to express your viewpoints.

6. Financial Support

Send money to support NASC's public education program

7. Join Us

Consider working with us. Everyone's help is welcome

8. Respond when there is a call to action

Native American Solidarity Committee - NASC

NASC is an organization of people who have joined together to work in solidarity with the struggle of native people for self-determination, sovereignty and independence. The Seattle chapter, which is part of a national organization, does public education within the non-Indian community. Our goal is to create a non-Indian community that will actively support sovereignty for Native People. We are in solidarity, because the struggle of Native Americans is part of the same fight we wage everyday to survive and build a meaningful life. The focus of our work is:

Anti-genocide — to stop forced sterilization, foster care abuse and the destruction of Native culture.

Anti-Repression — support prisoners, organize around current legal cases and to expose the FBI's illegal activity.

Land and Resources — to allow Native Nations the right to determine what and how their land and resources should be developed and managed.



NATIVE AMERICAN SOLIDARITY COMMITTEE
 c/o NATIONAL LAWYERS GUILD
 1205 SMITH TOWER
 SEATTLE, WASHINGTON 98104

RESOURCE BIBLIOGRAPHY

Sources used in writing this booklet and for additional information

Indians of the Pacific Northwest - From the Coming of the White Man to the Present Day, Vine De Loria, Doubleday, 1977.

Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, Nisqually Indians. A book prepared for the American Friends Service Committee, University of Washington Press, Seattle & London, 1970.

Indian Fishing Rights: A Resume of their Orignis. Unpublished paper. Available from Northwest Indian Fisheries Commission.

A Survey of Indian Hunting and Fishing Law. Unpublished paper prepared by Douglas R. Nash, Attorney for Umatilla Nation; member Nez Perce, 1971.

Background Document on Northwest Salmon Fisheries, by Kenneth A. Henry. U.S. Department of Commerce, August 1977.

Annual Report. Department of Fisheries, 1975.

U.S. vs Washington, 384F Supp 312 (1974); 520 F2d 676 (1975); cert.denied 96 SCR877(1976)

Are You Listening, Neighbor? Report of the Indian Affairs Task Force, State of Washington, 1971.

The Salmon, the Indians and the Boldt Decision by Fred Brack, Seattle Post-Intelligencer Living Textbook Supplement, January 16, 1977.

A Times Report on the Fisheries, Seattle Times, 1976.

A Long Look at the Boldt Decision by Bruce Brown, Argus Magazine, Dec. 3, 1976.

Presentation to the American Indian Policy Review Commission. Unpublished paper by Alan Stay, Attorney for the Small Tribes of Western Washington.



International NGO Conference on Discrimination Against Indigenous Populations - 1977 - in the Americas, September 20-23, 1977.
 Intl. Indian Treaty Council News, October 1977, Vol. 7, No. 7.
 Available from American Indian Treaty Council Information Center, 870 Market Street, San Francisco, CA 94102.

Yakima Nation Review, Autumn special edition, 1977. Available from PO Box 151, Toppenish, WA 98948.

Law Student Indian Summer Project, National Lawyers Guild, Seattle, Wa, 1973.

Hearings of the U.S. Civil Rights Commission in Washington State, October 1977.

Renegade (newspaper) by people of Frank's Landing. No longer publishing. Available from Seattle NASC.

Media

NASC Slide Show - the 400 year history of Native American resistance to government and corporate oppression. 35 minutes. Available from Seattle NASC.

As Long as the Rivers Run (film). Available from Seattle Public Library or Newsreel 630 Natona, San Francisco, CA 94103.

Potlatch: A Strict Law that Bids Us Dance (film) 1975. Available from Pacificque Cinematheque, 1616 West 3rd, Vancouver, B.C. Canada.

ORGANIZATIONS

Northwest Indian Fisheries Commission. PO Box 2445, Olympia, Washington 98507. Monthly newsletter available upon request.

Small Tribes of Western Washington (STOWW) PO Box 578, Sumner, Washington 98390.

United Indians of All Tribes Foundation
 Educational/Cultural—Discovery Park
 Administration—Dextor Horton Bldg.,
 2nd & Cherry, Seattle, WA 98104

FOOTNOTES

- ¹ Vine Deloria, *Indians of the Pacific Northwest* (Garden City, N.Y. Doubleday Co. Inc.) 1977 pp. 10-11.
 - ² Vine Deloria, pp. 49.
 - ³ Nisqually, Puyallup, Steilacoom, S'homanish, Stehclass, T'Peeksin, Squi-aitl, Sa-hewamish.
 - ⁴ Hearing Marshall's decision, President Andrew Jackson replied that Marshall had made his decision, now let's see him enforce it; and proceeded to order the U.S. Army to drive the Cherokee Nation to Oklahoma, killing thousands on the infamous 'Trail of Tears'.
 - ⁵ The phrase 'in common with all the citizens of the territory' would later become the subject of debate by lawyers and judges. But it is well established that it meant white people might also fish at the Indians' usual and accustomed places.
 - ⁶ In 1893, Colonel B.F. Shaw, the interpreter of the Medicine Creek Treaty negotiation had a conversation with Isaac Stevens. Stevens asked Shaw 'Can you get the Indians to sign this treaty?' Shaw answered, 'Yes, I can get the Indians to sign their death warrant.' In this question and answer we have the whole injustice of the treaty laid bare: It was a contract based on fraud in that the U.S. took from the Indians much more than it gave to them. Shaw continues: 'Stevens' idea was that in a few years the Indians would die out...'
- Following the signing of the Treaty of Medicine Creek, there were in quick succession, the Treaty of Point Elliot, the Treaty of Point No Point, the Treaty of Neah Bay, and the Quinault River Treaty, all within the first 6 months of 1855.
- ⁸ A letter from the Commissioner of Indian Affairs to the Secretary of Interior dated January 19, 1857, detailed the changes with no reference to the war.
 - ⁹ Tribal Report to the Presidential Task Force on Treaty Fishing Rights in the Northwest, Vol. II; presented by the Northwest Indian Fisheries Commission, November 14, 1977 pp. 1,5,6.
 - ¹⁰ 1975 Fisheries Statistical Report; Department of Fisheries, State of Washington, p. 115.
 - ¹¹ Background Document on Northwest Salmon Fisheries for the U.S. Dept. of Commerce; by Kenneth A. Henry, Aug. 1977, p. 7.
 - ¹² Presentation to the American Indian Policy Review Commission (unpublished) by Alan Stay, attorney for the Small Tribes of Western Washington, p. 20.
 - ¹³ Tribal Report to the Presidential Task Force on Treaty Fishing Rights in the Northwest, Vol. II; presented by the Northwest Indian Fisheries Commission, Nov. 14, 1977, p.6.

- ¹⁴ *Ibid.*, p. 7.
- ¹⁵ Background Document on Northwest Salmon Fisheries for the U.S. Dept. of Commerce, by Kenneth A. Henry, Aug. 1977, p. 22.
- ¹⁶ *Ibid.*, p. 20.
- ¹⁷ A Times Report on the Fisheries, by the Seattle Times, p. 11.
- ¹⁸ A Long Look at the Boldt Decision, Argus, Vol. 83, no. 49, Dec.3, 1976, p. 69.
- ¹⁹ Nitrogen supersaturation occurs 'when water plunging over spillways into basins at the foot of the dams absorbs greater than normal amounts of gases than from the air.' The Seattle Times, Oct. 3, 1976.
- ²⁰ A Times Report on the Indian Fisheries prepared by the Seattle Times, pp. 8-9.
- ²¹ *Ibid.*, p. 8.
- ²² A Long Look at the Boldt Decision', Argus, Vol
- ²² Argus, Vol 83, no. 49, p. 69.
- ²³ Seattle Times Report, p. 12.
- ²⁴ Kenneth A. Henry, p. 18
- ²⁵ Tacoma Indian News. Aug. 4, 1977.
- ²⁶ Seattle Times Report, p. 11.
- ²⁷ *Ibid.*, p. 20.
- ²⁸ United States v. Washington, 384 F Supp 312 (1974); 520 F 2d 676 (9th Cir, 1975); cert. denied 96 S Ct. 877 (1976).
See also Sohappay v. Smith, 302 F Supp 899 (or. 1969) 529 F 2d 570 (1976), Kimball v. Callahan 493 F 2d 564 (9th Cir, 1974) and Confederated Tribes of the Colville Reservation v. Washington, 412 F Supp 651 (E.D. Wa., 1976)
- ²⁹ United States v. Taylor, 3 Wa Terr 88 (1887)
- ³⁰ United States v. Winans, 198 US 371, 25 S Ct 662, 49 L Ed 108 (1905)
- ³¹ Tulee v. Washington, 315 US 681, 62 S Ct 862, 86 L Ed 115 (1942)
- ³² Makah Indian Tribe v. Schoettler, 192 F 2d 224 (9th Cir, 1951)
- ³³ State v. Satiacum, 314 P 2d 400 (Wa, 1957)

- ³⁴State v. Arthur, 74 Idaho 251, 261 P 2d 135 (1953), *Maison v. Confederated Tribes of the Umatilla Reservation*, 314 F 2d 169 (9th Cir, 1963).
391 US 392, 88 S Ct 1725, 202 L Ed 2d 689 (1968); 414 US 44, 94 S Ct 330
38 L Ed 2d 254 (1973); and 45 Law Week 4837 (1978).
- ³⁵Department of Game v. Puyallup Tribe, and Department of Game v. Kautz,
- ³⁶See also *Settler V. Lameer*, 507 F 2d 231 (9th Cir, 1976).
- ³⁷*Johnson v. Meehan*, 175 US 10, 20 S Ct 1, 44 L Ed (1899).
- ³⁸*Antoine v. Washington*, 420 US 194, 43 L Ed 2d 129, (5 S Ct 944 (1975).
- ³⁹Based on Natives people's understanding of the treaties, the court found that Native Nations had also reserved an additional right to fish which are actually used for tribal ceremonies and personal subsistence.
- ⁴⁰Phase II of *United States v. Washington* is scheduled to go to trial in Aug, 1978.
- ⁴¹*United States v. Washington*, 520 F 2d 676, 693 (9th Cir. 1975)
- ⁴²The Court of Appeals for the 9th Circuit in a Decision which has not yet been officially reported has approved use of direct injunctions against non-Indian fishers violating federal court orders.
- ⁴³Kennath A. Henry,
- ⁴⁴Memorandum: by Northwest Indian Fisheries Commission, P.O. Box 2445, Olympia, WA 98507, Oct, 27, 1976.
- ⁴⁵US Fish and Wildlife Service; April 21, 1978; quoted by Northwest Indian Fisheries Commission.
- ⁴⁶Task Force Report, p. 8-9.
- ⁴⁷Stay, p. 6.
- ⁴⁸Overview of Northwest Indian Fisheries Commission Activities, 1976, p. 1.
- ⁴⁹Stay, p. 16.
- ⁵⁰*Ibid*, p. 21.
- ⁵¹Overview, p. 4.
- ⁵²*Ibid*, p. 5.
- ⁵³Task Force Report, pp.2-3.

Exhibit No. 12

- 54 *ibid.* pp4-5.
- 55 Times Report.
- 56 John Clinebell, Puyallup Tribe attorney, Jan 4, 1978.
- 57 Task Force Report, p. 2.
- 58 1975 Fisheries Statistical Report; Dept. of Fisheries, State of Washington, p.26
- 59 Task Force Report
- 60 Rights in the Northwest, Vol. II, Northwest Indian Fisheries Commission, Nov. 14, 1977 pp.9-10.
- 61 The Seattle Times, Sept. 27, 1976 p. D - 6.
- 62 Task Force Report, p. 10.
- 63 Alan Stay, attorney for Small Tribes of Western Washington Jan. 11, 1978.
- 64 *ibid.*
- 65 The Seattle Times, Dec. 10, 1977.
- 66 New Consciousness: The Indian Uprising; from Civil Liberties, Alvin J. Ziontz, Dec. 1972.
- 67 Stay
- 68 Northwest Indian Fisheries Commission Newsletter, Vol. IV, no 1. Feb. 8. 1978 p.6.
- 69 Task Force Report, p. 3.
- 70 Yakima Nation Review, Special Edition, Fall 1977, p. 1.
- 71 Yakima Nation Review
- 72 U.S. v Washington 520 F.R.D 676 693 (9th Cir. 1975) p. 38

AMERICAN GOVERNMENT

A CONSIDERATION OF THE PROBLEMS OF DEMOCRACY

WITH THREE NEW CHAPTERS
ADMINISTRATIONS AIDING AGRICULTURALISTS
COMMISSIONS AIDING INVESTORS
AGENCIES PROVIDING AND PROTECTING EMPLOYMENT

1937

BY

FRANK ABBOTT MAGRUDER, PH.D.

PROFESSOR OF POLITICAL SCIENCE

OREGON STATE COLLEGE

FORMERLY INSTRUCTOR IN POLITICS

PRINCETON UNIVERSITY

*"It is the duty of the government to make it
easy for the people to do right, and difficult
for the people to do wrong." — W. E. Gladstone.*

ALLYN AND BACON

BOSTON NEW YORK CHICAGO
ATLANTA SAN FRANCISCO DALLAS

Authority of State Constitutions. — The constitution with its amendments constitutes the supreme law of the State, and it overrides any laws enacted by the legislature which conflict therewith. Whenever a legislature passes a law which conflicts with some provision of the constitution, the first person who is in any way inconvenienced by the law may refuse to abide by it, and permit some one to sue him because he knows that the court will declare the law null and void, that is, of no force.

For example, some years ago the legislature of New York State enacted a law providing that any employer whose workmen are injured in certain enumerated dangerous pursuits, such as stone quarrying, must compensate the workmen by a money payment, whether the employer was at fault or not. The first employee who was injured demanded his money. The employer refused to pay him, claiming that the law was contrary to the constitution of the State. The workman sued the employer, but the highest court of the State (Court of Appeals) decided that the law did conflict with the constitution, was thus null and void, and could not be enforced.

The legislature still thought that there should be such a law; therefore two successive sessions proposed an amendment to the constitution and submitted it to the people. The majority of voters cast their ballots in favor of it, and thus changed the constitution so that the next legislature could enact the same workmen's compensation law, for it would no longer conflict with the constitution. The next legislature did pass the law, and to-day the courts enforce it.

Relative Rank of Laws in the United States.

United States Constitution.

United States statutes and treaties.

State constitutions.

State statutes.

County, town, or city statutes, called county "regulations" or "by-laws" and town or city "ordinances" or "by-laws."

The Constitution of the United States is the supreme law of the land, and every other law is subordinate to it. If Congress passes any statute which conflicts with the Constitution of the United States or if the President and Senate make any treaty which conflicts with the Constitution of the United States, such statute or treaty will not be enforced by the courts.

Likewise, if a State constitution contains any provision which is contrary to the Constitution of the United States or to a statute of Congress, it cannot be enforced. Furthermore, if a State legislature enacts a statute contrary to the Constitution of the United States, a statute of Congress, or a provision of the State constitution, it cannot be enforced. Or if a county board or town or city council passes a by-law contrary to any of these laws, it is void and the courts will not enforce it. ~~_____~~

It is impracticable to write definite laws regulating in detail all possible human actions; so in addition to the written laws we have a set of rules and principles which are not written in any definite form but are enforced by the government. These rules and principles grew out of custom and court decisions in England during a number of centuries, and because they were uniform throughout all England they were called *common law*.¹

When the American States became independent of England they retained the English common law to supplement their definite written laws.

As each American State has a distinct system of courts the common law rules and principles have become different in some details in the various States; but as decisions of the courts of each State are known to the judges of the courts of each of the other States these rules and principles remain very much the same throughout the country.²

If there is a case in court for which there is no definite written

¹ Equity is similar to common law. See page 478.

² Louisiana, which State obtained its system of laws from France, is the only one that did not adopt the common law. But even there common law rules are gaining ascendancy.

Exhibit No. 13

820 Cherry Apt F
Seattle, Wash. 98104

April 3, 1978

Editor
The Seattle, Times
Seattle, Washington

Sir: .

The 'Times' coverage on April 1, 1978 regarding conditions that exist between Indian and Non-Indian Fisherman over The Honorable Judge Boldt's Ruling in U.S. vs Washington is commendable. However, the Public should be aware that other serious conditions exist in relationship to these conditions.

Federal Regulations were published in the Federal Register on April 26, 1977 pursuant to Senator Magnuson's 200-mile limit Bill, P.L. 94-265. No publication was made at that time regarding Indian Treaty Fishing even though Federal Court decisions were to be acknowledged as Law. Eight Regional Councils were established with the Pacific Regional Council composing California, Oregon, Washington, Idaho and Alaska. A Washington Law Review Publication discloses that 80 % of the representatives composing the Councils are fishing Industry Representatives with very little Consumer Representation. The Regulations on page 21425 of section 2.1.5 states that Canadians catch over 50% of the Chinook Run to Puget Sound, 40% of the Coho Run, and 30% of the Fall Chinook Run on Columbia River.

Numerous Tribes in Western Washington are being denied the Right to fish as provided in their Ratified Treatys and Agreements. All of whom were fish-eating Indians. For example, the Duwamish Tribe, Treaty Signatory to the Ratified Treaty at Point Elliott, are being denied even subsistence fishing. This condition existed long before U.S. vs Washington. The Act of February 12, 1925 named the Duwamish Tribe as a Treaty Tribe and expedited the famous Case, Duwamish Et Als, 79 Ct Cls.

The Duwamish Tribe sued for the loss of a Reservation, Allotments, and Just Compensation for the loss of their 56 Longhouses, which were their Permanent Homes. The Courts have consistently held that an Indian Tribe cannot recover for Just Compensation on lands taken under the Fifth Amendment. The Duwamish Tribe received no recovery after 10 years of litigation. They were eventually allowed \$1.35 an acre for 54,000 acres in Indian Claims Commission Findings after 18 years of litigation. The Township Maps of this area discloses that there is closer to 80,000 acres which should have been paid for.

Is it not time that Non-Indians quit making the Indians scapegoats of their inhuman propensities?

Don Bellinger

717

Exhibit No. 14

(FACSIMILE)

22106-28th South
Seattle, WA 98031
Aug/25/1978

To/The United States Commission
on Civil Rights

For the Record Please on Pacific North
West--Recent Fishing Hearings.

Regarding the Public Hearing on Indian
Fishing Rights and related results.

Due to the Five minute time allotment at
the end of the hearing permitted to Individuals
as testimony, "I wish to respectfully submit this
information for consideration before any final
decisions are made."

Please/ Since the Washington State Fisheries
Note / department receives both State and Federal
Funds--"Public Taxpayers money" from the
Public Treasury --To operate the agency and
for the propagation and management of Fish
in the state of Washington--Therefore the
fish belong to the public--They are public
property until caught--then they belong to
the person that catches them and to limit
commercial fish licenses to a certain few
people where public Funds are involved--is
DISCRIMINATION. "Discrimination is against
the law."

Please/ Not only is the commercial fisherman
 Note / being hurt but also the Boat Builders--Gas
 & Diesel Engine Companys--Propellor Com-
 panys--Radio Marine Electronics--Marine
 suppliers for boats.

There

There are designs--Manufacturing--sales
 --Transportation--storage--clerical work--
 Buildings--Tax's--of equipment.

Many--Many young people cannot get work
 due to the discriminatory fish license limita-
 tion program in Washington State.

Please/ President Carter the President of the
 Note / United States has repeatedly said this is
 a "Free enterprize system"

How can it be free enterprize? When
 these people promote a commercial fish license
 limitation program and agency that is supported
with public funds/

Many people or representatives try to
 claim the fish runs are dying out.

How is it our fisheries dept can have
 plenty of salmon eggs for other countries
 like Chili and France--Japan--so they can
 start their own fish runs. Besides the thou-
 sands and thousands of pounds of eggs sold
 for "Cavier" by our Fisheries Dept.

"Why doesn't the United States Commission thourly investigate all the Washington State Fisheries dept records or books"? for several years back?

"If they can build up fisheries in other countries they can build up ours and keep our people working."

They talk about our fish runs expiring-- Why don't they get some salmon eggs from the countrys they helped start fish runs and start them up again here?--if they were to expire--

Fish runs return heavy about every four years. I notice a lot of these figures on declining runs are compared to heavier years/

Between Cape Flatley and the Columbia River their are about 80 or 100 rivers & creeks that could be stocked with fish. They may not all produce but its better than eating up all these eggs for Cavier.

Also has the Fisheries dept been running all the hatcheries at full capacity?? If not--why not??

Its their job to supply all the fish they can to keep people working. Not drive people out of business. I believe it was stated at the hearing the Fisheries dept can control the size of the runs--

Due to the high cost of living if a fisherman can't make a living at it. He usually sells his boat--another person buys it. He buys equipment and supplies. It's all a part of the economy.

The United States Constitution and Washington state constitution is supposed to guarantee every law abiding citizen equal rights--How then is this discriminating practice being allowed? Especially since public taxpayer Funds are Involved?

There was not all this trouble originally until Judge Boldt--Interpretation of "Fishing In Common" Gave 50% Plus ceremonial fish ect. ect. to one group of citizens--and what was left wrecking havoc of the West Coast fishing plot--Economically denying young people a chance at it and Denyung Free enterprize--

I'm quite certain that all people are asking for their equal rights. If they can't make it fishing--They will sell their boat and somebody try it. "That is under the Free Enterprize system"--and the Discrimination is Discontinued.

"President Carter--The President of the United States has repeatedly stated This is a Free enterprize system"

[James K. Steen]

721

Exhibit No. 15

THE Sportsman

NEWS LETTER

P. O. Box 1201
SEATTLE, WAshington 98111
Tel. (206) 364 3884

NEW ADDRESS: 10630 17th Ave. N.E.
Seattle, Washington 98125

September 1, 1978

Mr. Arthur Flemming, Commissioner
U. S. Civil Rights Commission
1121 Vermont Avenue N.W.
Washington, D.C. 20425

Illness, Commissioner Flemming, precluded my attending your Seattle hearing on fisheries and other matters this month past.

I ask you to include this letter, these letter copies of my letters to members of the Congress, and this November 1977 No. 15 of the Sportsman News Letter as a portion of your hearing proceedings when here--with special attention to pages 24, 25, 29, 30 and 31.



JACK JETT, Publisher

THE **Sportsman**

NEWS LETTER

P. O. Box 1201
SEATTLE, WASHINGTON 98111
Tel. (206) 364 3884

NEW ADDRESS: 10630 17th Ave. N.E.
Seattle, Washington 98125

September 1, 1978

Senator Warren G. Magnuson
United States Senate
Old Senate Office Building
Washington, D.C. 20510

I am told by staff members of the U.S. Civil Rights Commission, Senator Magnuson, that the Congress will either approve continuance or end the commission's life this year.

I ask you to vote and do all else necessary to terminate it. It is self serving, apartheid advocating and unnecessary..and that it's work or originally intended work be assumed by our courts and agencies as for all other citizens.

I ask you, also, to act to end the life of the Bureau of Indian Affairs as another costly agency dedicated to maintaining its own jobs and perpetuating the poverty and problems of Indian ancestry citizens to that end.



- JACK J. PITT

THE **Sportsman**

NEWS LETTER

P. O. Box 1201
SEATTLE, WAshington 98111
Tel. (206) 364 3884

NEW ADDRESS: 10630 17th Ave. N.E.
Seattle, Washington 98125

September 1, 1978

Senator Henry M. Jackson
United States Senate
Old Senate Office Building
Washington, D.C. 20510

Staff members of the U. S. Civil Rights Commission, Senator Jackson, tell me the Congress will either approve continuance or end the commission's life this year.

I ask you to vote and to all else necessary to terminate it as self serving, apartheid advocating and unnecessary..and that its work or originally intended work be assumed by our courts and agencies as for other citizens.

I ask you, too, to act to end the life of the Bureau of Indian Affairs as another costly agency dedicated to maintaining its own jobs and perpetuating the poverty and problems of Indian ancestry citizens to that end.



JACK JETT

THE **Sportsman**

NEWS LETTER

P. O. Box 1201
SEATTLE, WASHINGTON 98111
Tel. (206) 364 3884

NEW ADDRESS: 10630 17th Ave. N.E.
Seattle, Washington 98125

September 1, 1978

Congressman Joel Pritchard
House of Representatives
Congress of the United States
House Office Buildings
Washington, D.C. 20510

Staff members of the U.S. Civil Rights Commission, Congressman Pritchard, tell me the Congress this year will either approve continuance of or end the Commission's life this year.

I ask you to vote and do all else necessary to terminate it. It is self serving, apartheid advocating and unnecessary. I also ask its work or originally intended work be assumed by our courts and agencies as for all other citizens.

I ask you, too, to act to end the life of the Bureau of Indian Affairs as another costly agency dedicated to maintaining its own jobs and perpetuating the poverty and problems of Indian ancestry citizens to that end.



JACK JETT

50¢

SAMPLE COPY

THE Sportsman
NEWS LETTER

No. 15 Seattle, Wash. NOVEMBER 1977

check at 6/17/78



LLOYD MEEDS:- No way is he anti tribal

WASHINGTON, D.C.—Washington's Congressman Lloyd Meeds in a letter to the Washington Post newspaper warned that "we all run the risk of playing out another tragic story of injustice to the native Americans".

Meeds said American policy as to citizens of tribal ancestry is a product of ignorance and "over simplification of the problem by government and the press".

Meeds wrote to the paper, which employed writers Robert Woodward and Carl Bernstein who wrote the stories which became "the Water-gate story" and all it led to.

Meeds wrote he since 1965 has supported tribal rights to tribal self-determination and economic independence.

"I still support those goals," he added.

Meeds wrote to the Post with emphasis that the paper's report he had voted against a Sioux Indian claim was wrong.

"I spoke and voted for the claim," he wrote.

The citizen equal rights question, Meeds continued to the

big daily, must not be oversimplified into a confrontation between Indian-Demands-Gone-Wild with The-Racist-Backlash.

He then referred to the treaty abrogation bill offered by Washington's newest Congressman, John E. "Jack" Cunningham.

"This is more severe than the detested and quite unsuccessful termination policy that was finally abandoned by the Nixon administration," he wrote.

"Some people buy this (the Cunningham) new bill," he added. "They think it is a grand plan to push the Indians fully into our society, let our culture wash over theirs, and leach out a unique heritage like water leaches minerals from the soil."

Meeds termed equal citizenship advocacy "cultural genocide" proposed more out of ignorance than meanness "but it is an ignorance with brutal implications".

A month ago in the national capitol Meeds told United Press International "Indians have gone

too far" and that he planned to introduce an omnibus bill covering everything from "who is an Indian" to claims for land in several states".

As for land claims, he told the worldwide news service, "Indians have gone too far, they've asked for too much".

"Where tribal aspirations collide with constitutional values the tribe's interests must yield, he said then. "Doing justice by Indians does not require doing injustices to non-Indians."

Meeds told the wire service his bill would be introduced either late this year or in the next congressional session.

Letters have been written to Meeds asking him his thinking as to Indian citizen violent occupation of national capitol offices here, state capitol offices in Olympia in Washington State and armed capture and holding of a Cascadia state institution in Tacoma, Washington.

Everett show Nov. 18-19

EVERETT—The annual steelhead clinic of Everett's chapter of the Northwest Steelhead-Salmon Council will be November 18-19 in the Everett Mall on South Broadway, Jim Leo announced.

Friday hours 6 to 9, Saturday noon to 5.

"Bring a youngster along," he advocated.

The free show will include everything for bank, boat and bottom-deep wading angling and many prizes including \$100 or a graphite fly rod as first.

JUST BECAUSE nobody disagrees with you doesn't mean you are extremely brilliant...It may be you are the boss.

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save!
save!



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A COMMON PURPOSE Organization ..

The INTERSTATE CONGRESS for EQUAL RIGHTS and RESPONSIBILITIES

was created to insure that all citizens of our United States shall achieve Equal Rights and bear equal Responsibility under the law.

These organizations and individuals in them have joined with full knowledge there are differences in philosophy and approach to fulfilling the rights of all. .. However...this can never be achieved without a single common purpose. Either we work together or we fall apart.

*STEELHEAD TROUT CLUB OF WASHINGTON

*GREENRIVER STEELHEAD TROUT CLUB

*GRAYS HARBOR POGGIE CLUB

*SKAGIT RIVER GUIDES ASSOCIATION

*WILDCAT STEELHEAD TROUT CLUB

*WASHINGTON GILLNETTERS ASSOCIATION

*WOMEN'S AUXILIARY, GILLNETTERS ASSOCIATION

*CITIZENS CONCERNED FOR CONSERVATION AND CONSTITUTION

*GLENWOOD WASHINGTON COMMUNITY CLUB

*ASSOCIATION OF PROPERTY OWNERS AND RESIDENTS OF PORT MADISON AREA

*LUMMI PROPERTY OWNERS ASSOCIATION

*CIVIL AND EQUAL RIGHTS FOR ALL



Learn about Phase II of the Boldt Decision and how it affects the life of every citizen in Washington.

Only the continued support and concerted efforts by citizen groups such as the ICERR can halt the trend of inverse discrimination.

SECOND ANNUAL MEETING of the Washington State ICERR Chapter will be SATURDAY, Nov. 26 at 7:30 p.m. in the Seattle Center Snoqualmie room. EVERYONE IS INVITED. THERE IS NO CHARGE.

Speakers Include:

Congressman JOHN E. CUNNINGHAM

Assistant State Attorney General LAWRENCE CONIFF

ROBERT BOGENSBERGER,

Washington Political Action Committee

40TH YEAR, \$40,000 --

D.U. big dinner draws big names

SEATTLE—The 40th anniversary banquet of Ducks Unlimited raised \$1,000 for each year—\$40,000—to provide ducks and habitat as 700 of the Seattle chapter's 1,500 members gathered for their famous dinner and auction.

Dick Parks, four-striper of the dinner and program, noted the D.U. achievements and goals at the hotel-jamming show, dinner and auction.

"This all is to provide money to support the D.U. continuing effort to provide adequate water fowl nesting grounds for the North American continent," he said. "In four decades hunters, conservationists and other dedicated persons have given more than \$60,000,000 to develop wetlands in Canada. This is 1,300 projects throughout the provinces—more than 1,300,000 acres there. The projects also are irrigation and flood control aids to farmers and ranchers and enhance the aesthetic quality of the land itself."

During-and-after highlight of the dinner was the escape of a splendid golden pheasant cock which flew from its cage up onto a big glittering Olympic chandelier.

"Stan Nelson, our Ballard Chevy dealer, went up a ladder and got it down after the dinner," Parks said.

"D.U. is unique because of the people," Parks emphasized. "We must grow 20 per cent a year to provide waterfowl habitat in the future. We can do this if only each present member will sign up just one new one this winter and next year."

Banquet committeemen included: Publicity-Programs-Printing — Ken Jacobson, Iim Bullard, Dave Cooks, Jack Soltys, W. J. "Red" Dahl, Steve Younger.

Prizes—Carol Haney and Gary Hamilton co-chairmen, Woody White, Ken Gorsuch, Fred Warren,

Dave Koopmans, W. G. "Swede" Olson, Van Strom, Randy Radock, Denny Dahlgard.

Administration—Dan Goodwin, Mary Ann Miller, Jean Bloom, Norma Bonney, Dick Parks.

Ticket Sales—Cliff Walker, Frank Waterworth, John Wheeler, Ace Feek, Ned Flohr.

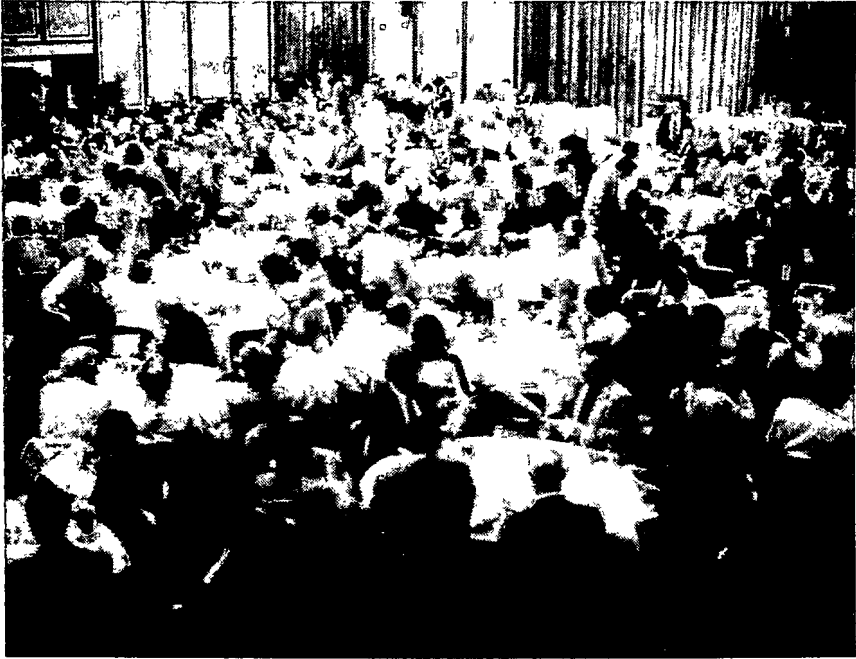
Banquet—Eric Jensen and Sonja Myklebust co-chairmen, Ron Jones, Phil Lang, John Keeper, Mike McKernan, Jim Norman, Andy Yurkanin.

Finance-Accounting—Frank Abersteller, Jack Waterworth, Ed Wolfe, Katha Jo Kern, Judy Rasmussen, Bill Donley, Dick Koopmans.

"You simply see and meet a lot of people here you would never see at any other time or place—and they're all great," one member said.



WES HARRIS was highly praised for Eddie Bauer Company support of the celebration. Why does he? "I like it and them and their keep-'em-flying," he said.



PART OF THE D.U. dinner crowd is shown at auction time. Just above—left to right—are Dick Parks, Howard S. Wright and "Red" Dahl.

STATE FISHERY Tulalip salmon trade explained

LYNNWOOD—Strong assertions by Ralph Rideout of the State Department of Fisheries that the Department is not negotiating to provide a multi-million-dollar chum salmon raising project as a trade for some form of limited Snohomish steelhead system fishing was questioned by information from Everett and North Seattle steelheaders this week.

Rideout in Snohomish told news writers the Department is not negotiating with the Tulalips.

He spoke when asked about his own word and that of Director Gordon Sandison that any such Department-tribe dealings would be made known statewide to all media 30 days before any agreements.

A bulletin from the North Seattle chapter to members and published 10 days before Rideout spoke, set forth this:

"Protection of steelhead from Indian net fishing in two major Puget Sound tributaries will soon become a reality, according to negotiations now underway between the Tulalip tribes and Department of Fisheries, reports Jim Leo, Everett Newsletter editor.

"Under the terms of the agreement, the Tulalip tribes will discontinue commercial net fishing for steelhead in the Snohomish and Stillaguamish river basins from now through 1980.

"The Department of Fisheries has agreed to provide the Tulalips with chum salmon eggs and fry, beginning with one million young chum this spring and increasing to ten million by 1980.

"In addition the Department will provide the Tulalips with feed and technical assistance. The salmon will be hatched and reared in the chum salmon facility to be developed at a site selected by the Tulalip tribes, with the aim of developing sufficient brood stock by 1980 to

enable the tribes to discontinue steelhead fishing permanently and substitute an increased chum salmon harvest instead. While the chum stock is being built up, the tribal steelhead fishermen would be working on development of the Tribes chum salmon facility, instead of fishing for steelhead. The Tulalip tribes and the Fisheries department will work together to offset economic impact on these fishermen. Chum salmon raised in the program


would be harvested equally by Indians and non-Indians in off-reservation waters."

BACK JACK!

LYNNWOOD—letters, ~~are~~ many are the most effective weapon the sportsman has, President Pete Priepeke told his North Seattle Chapter of the Northwest Steelhead-Salmon Council.

He noted 27 protests and demonstrations but "the best thing we can do is letters," he said.


"Write supporting Congressman John Cunningham's stand on the Indian treaties," he said. "I think everyone now is familiar with Cunningham. He wants to abrogate the treaties."



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LYNNWOOD—Northwest Steelhead-Salmon Council chapter members are making a valiant effort to pay a \$16,000 legal bill to Portland lawyer Don Wilner. Walt Rose, area director, told members of the North Seattle chapter.

At the Whistling Jack presidents' council meeting Gary Ellis again advocated a raffle. The idea was put down. He did not like this and left early, Rose said.

"We've lost 1,000 members through the state this past year," Rose said. "Trout Unlimited has pledged \$24,000 to us and has given us \$14,000."

The chapter urged all support for Joe Carlson, new membership chairman.

Rose reviewed the Whistling Jack statement of U.S. Attorney Jim Waldo that sportsmen were not interested in Task Force inputting. Vice President Cliff Durbin displayed letters contra.

"The Task Force plans to have its decision in December," Rose said. "It wants us to recognize the Boldt decision."

The problem began before Judge George Boldt in 1975 with a "pathetically weak" state case for sportsmen and state agencies, said Al Rogers. Rose and Rogers praised work of James Johnson since.

Game Commissioner and Northwest Steelhead-Salmon strong man Larry Cassidy went to D.C. Washington to see why the Game Department is not getting \$1,500,000 congressionally approved to fund Game fish counts and enforcement, Rose said.

"The money is being held up by Senator Henry Jackson, he found," Rose said. "Magnuson and Meads were for it."

Jackson has some deal going with coast tribesmen he wants put through first.

"Jackson told Cassidy it was because the money was needed somewhere else," Rose added. "Something should be done to get that turkey out of office."



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DR. RICHARD WHITNEY: State lawyers 'too' late' for Supreme Court

SEATTLE—Inability of the Washington state attorney general to deal in the Emily Post of the law before the U.S. Supreme Court is why no more Indian-white Boldt decision fish questions were answered when the "Puyallup 3" case was heard in the national capitol with so many questions and so few answers.

Dr. Richard Whitney told the Steelhead Trout Club of Washington, "The State was late getting its papers in on Puyallup 3. So not all the questions were considered by the Supreme Court."

Doctor Whitney is technical advisor to Federal District Court Judge George Boldt. He works full time, even time and a half. The judge can do anything he wants with an employee. He is a University of Washington Fisheries school unit leader for the Washington Cooperative Fisheries unit.

He termed "chickie" and "Philadelphia lawyer tactic" the filing of the Indian citizen case by attorney John Klinebill.

"Instead of appealing whether they (tribesmen) should share wild or hatchery fish they did not even bring that up," Whitney explained. "They made it an on-reservation matter—and that surprised the State. The tribes said the State did not have jurisdiction on the reservation."

The U.S. Court did not go for it, Whitney continued. It said the state could regulate for the reservation. So the tribe lost but it also won—in that the Court "did not get to the questions the State would like to have had answered."

Competition for fish and its impact on all other land, air and water resources began long before "the Boldt decision," Whitney began. He reviewed Oregon and other litigation.

"The Boldt decision is not going to go away period," he went on.

He noted the State Supreme Court decision saying State Fisheries can not allocate, can not divide, fish among fishermen on a race basis—that all are equal under the state constitution. To

this Judge Boldt said do so. The tribesmen get half.

State Fisheries, he said, did not take part in the State Game-public-steelheader trip to the U.S. Supreme Court.

If Indians were required to sort out hatchery fish and take only wild stock then commercial fishermen—salmon and for steelhead taking—might be required to do the same.

Where—he was asked—does the Boldt basis Medicine Creek treaty say anything about 50 per cent for tribal citizens?

"The race, ethnic aspect, has nothing to do with this," he replied. "This was a treaty. A deal is a deal."



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Dr. RICHARD WHITNEY

His appearance was one of several including by Dr. Lee Alverson as a forum for "authoritative insight and input."

"Judge Boldt has been very reluctant to get involved in conflict with the State Court," he said. Goal is to deal in something other than "short-term victories". Federal courts running a school in Montana. Acting in Boston Schools. A state's fisheries.

"I don't happen to think that is the way things should work," he said. "What we must do is to start negotiating. Start getting along. That is where we can hold out hope the Federal Task force can really pull off something."

"It is," he continued, "a pain in the ass."

He asked he be spared legal questions as query enthusiasm rose to basic English.

Responding to fish biology questions as an ichthyologist and court employee, he said that the truth is introduction of hatchery fish diminishes native fish runs in itself—the Skagit and other rivers, in South Puget Sound.

"Montana has abandoned hatchery stocking," he said. "You can catch 90 per cent of hatchery fish and you only need 10 per

cent to provide eggs for another generation. "For wild stock you must leave 50 per cent uncaught for successful run-reproducing spawning."

State Game Department use of too-high steelhead catch figures based on counting a few punch cards and multiplying provided a steelhead figure for Indian negotiation far higher than actual fish. Scaling down run counts then became a headache with the Department biologists seeking to save face and jubilant tribesmen glad to accept the figures.

Whitney urged the club to ask tribal and Game biologists to appear, speak as he had.

Asked if the U.S.C. Puyallup three state-can-regulate decision will be applied to the Skagit or other rivers by Judge Boldt, Whitney doubted so.

DUTIES ARE things we look forward to with distaste, perform with reluctance and brag about afterwards.

Wolf puts Big Ernie into river

EDMONDS—Steelheader Ernie Hurt is a man big enough to fight an Alaskan brown bear with a willow switch but he was run into a river by a Washington wolf, he told fellow steelheaders of North Seattle chapter, N.W. Steelhead-Salmon Council.

"I was fishing the Cascade river near the Concrete bridge," he said. "This was a wolf and he was following me. I got into the river and I stayed there."

Hurt went downstream in the stream a mile and a half before the big gaunt animal left him.

Several sportsmen have believed dog-wolf mixtures have been bred and freed as uncontrollable, only to become starvation-stimulated hunters.

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SENATOR Asks audit

WALTHILL, Neb.—Federal questioning of billion-dollar expenditures by the Bureau of Indian Affairs without accounting is now being conducted by Wisconsin's U.S. Senator Gaylord Nelson.

The effort to learn how public money is spent was reported here by Blair Richendifer, national board chairman of the Interstate Congress for Equal Rights and Responsibilities.

ICERR members seeking the same citizenship rights for all American citizens regardless of ancestry have drawn constantly increasing Congressional interest in the rights restoration problem now existent in 30 states.

ICERR members are now asking congressmen to get information they've not had when appropriating millions for the BIA, including how much money is spent to hire attorneys for Indian ancestry groups to pursue against the general public claims they say are theirs as sovereign nations.

Senator Nelson questioned the financial records initially of Wisconsin's Lac Courte Oreilles band of Chippewa Indians and has asked investigation of possible violations of federal regulations and unauthorized payments, he said.

The U.S. General Accounting Office has advised him similar financial irregularities have been found in audits of other reservations, he continued.

One question is why \$8,200 in addition to his \$15,200 tribal salary was paid to Odric Baker, chairman of the Oreilles' governing board—"for tribal administration of an Indian Action program," he said.

Richendifer and the national ICERR are a national communications and coordination group for land owners, sportsmen, outdoor organizations to make themselves nationally effective.



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President

sheet of (1977)

MUST BE DEALT WITH: 'Boldt decision unfair' -- Jackson

SEATTLE—A striking story of how sportsmen letters DO count and the difficulty of getting public attention from newspapers, radio and television came to the Steelhead Trout Club of Washington with a letter from U.S. Senator Henry Jackson.

"Senator Jackson tells us he now sees this Boldt-tribal-equal resource rights problem as a national one," President Al Blankenship said. "He agrees it involves claims of tribal people to land, water, minerals and other resources."

Club members and others reading the Jackson response to a club letter copy protesting U.S. Task Force secrecy, sloughing off sportsman opinion while working closely with tribesmen and commercial fishermen said they felt Jackson has changed his attitude greatly, significantly.

"Thank you," Jackson wrote in his October 17 letter, "for sending me your letter to President Carter concerning the Boldt decision and its impact on the fishery of Washington State.

"I agree that Judge Boldt's decision is unfair and must be dealt with. It is for this reason that I and others of the State Delegation pushed to establish the Presidential Task Force."

He hoped the Task Force report in early December will have some agreement.

"I continue," he wrote, "to believe that while the fishing issue in our area is an extremely important one which touches the lives of thousands of people it is part of a much larger national problem involving Indian claims to land, water, minerals and other resources all across the country.

"As a result, during the next few months I will be working with other members of Congress and the President in an effort to come up with some kind of mechanism for

consolidating these claims on a nation-wide basis and to reach once and for all a final adjudication of them...with best regards..."

Awed by the letter club member queries centered around the buck-passing of Senators Jackson and Magnuson with Congressman Lloyd Meeds via then-Senator Walter Mondale to set up the Task Force to take heat off congressmen.

Sportsmen must bow brace for a four-front ram-through by the federal government—a Task Force report saying the Boldt decision is good. Second will be a Pacific Marine Fishery sports fish cut back this month with a view to supporting the Boldt decision and maintaining fish for tribesmen and commercial fishermen.

Third will be a return to Seattle by the U.S. Civil Rights Commission working closely with the others as Presidential-administrative and senatorial direction to say the Boldt decision and all the others recommend is essential to civil, human and other rights.

"Add these four together and our senators and the Bureau of Indian Affairs think it will be too much for any sports or other group to withstand," one said.

The story of the Jackson letter was taken the next morning to the Seattle Times, Seattle Post-Intelligencer, Associated Press, United Press International, KIRO television, KIRO radio, KOMO radio, KOMO television, KING television and KING radio.

The story apparently was regarded as un-newsworthy since none aired or published it.

"The club is writing to Senator Jackson to thank him for his great encouragement—and to ask how we can help him," said Tom Weston. "We will send copies to every Senator and member of the Congress."

He noted that sportsmen the following morning who got a hand-off from Jackson Seattle office people were told by them that the letter was a thing unknown to them.

"It's possible that one of the media called the Jackson office here and was told there was no such letter," Weston said. "In that case, the media would kill the story."

Received by the club with the Jackson letter was one from Senator Magnuson.

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CLUBS CAN Sell salmon licenses

OLYMPIA—Sportsmen's clubs can buy state salmon licenses for \$3 each and resell them at \$3.25 to members just as commercial sporting goods dealers do, State Fisheries officials told a license hearing group here.

Licenses bought by such groups and not sold may be returned for refund, said Bruce Gruett as head of the licensing program.

He and Assistant Director Al Lasater explained the new fee system to 32 sportsmen, charter boat operators and others and seven state officials.

"Anyone 16 to 69 must have a license," Gruett said. "All who fish for salmon need them."

Those who fish only for bottom fish do not.

Annual resident fresh and salt water license is \$3.00. A one-day resident fresh and salt and one-day non-resident both are \$1.00.

A three-day non-resident fresh water fee is \$5 and an annual non-resident fresh water is \$10.

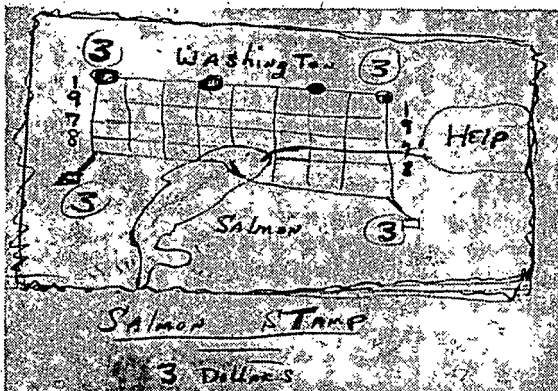
The dealer or club who handles the buy-and-sell gets \$0.25 per license, Gruett added.

Ed Manary, charter boat representative, thanked Department men for providing the licensing program. Charter skippers are concerned about validity of one-day stamps where customers buy them for a day on which they are weathered off the water.

Lasater and Gruett stressed charter skippers have none and State Fisheries men all responsibility for enforcing license possession and use.

Stewart Thorton of Dogfish Charters questioned the "fish for aspect" of bottom fish anglers who hang a salmon.

Gruett said the new law is vague as to defining "fishing for."



THIS CARTOON OF THE NEW SALMON license was drawn by Bill Kede of Espanola when he was at the State Sportsmen's Council at Ellensburg.

Such a definition would fill a book, Lasater, added. The State does not want officers making "bum pinches". Reason will be exercised to avoid agonies in enforcement.

Fred Tereski, Tereski's Tackle at Salkum, protested he could lose a \$5 or \$6 sports sale to make a \$0.25 earning for selling a license. He advocated more to the seller. He said fishermen would come to him with fish and then buy punch cards.

"It is not the dealer's obligation to enforce this law," he was told by Gruett, "neither the validity of the information provided or use of the license."

Louie Van Hoy and Claude B. Elruding attended the hearing for the Seattle Poggie Club and Earl Engman for the State Sportsmen's Council.

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THE **Sportsman**
NEWS LETTER

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Five, not 15, talk salmon

OLYMPIA—The chairman for the day and nine others of Governor Dixy Lee Ray's salmon advisory committee did not show for the group's meeting here—leaving five to hear reports of fisheries matters.

Forest Kinley of the Lummi Indians who had requested the meeting as a must-now and who was to have been chairman did not attend.

State Fisheries Director Gordon Sandison, Archie Graham for the Washington State Sportsmen's Council, Larry Cassidy of the State Game Commission and Northwest Steelhead-Salmon Council and two Columbia river gillnetters plus one tribal representative were the conference.

James Mundt, Federal Task Force employee, and Gary Garrison, Game Department Indians affairs liaison officers, reported.

Indian American citizens are required by federal Judge George Boldt to furnish state agencies with their salmon seasons before fish arrive. Few have done so and communications with the tribes are termed "bad".

The quintet were told that if tribal citizens do not furnish the regulations and net fish off their reservations state agencies will act to enforce state laws as applicable.

Fisheries, Game now talking stream sharing

SNOWMISH—State Departments of Fisheries and Game are now talking about joint use of Washington waters both for steelhead and other trout and millions of chum salmon to be raised under the state's new fish raising program.

Cliff Millenbach, State Game fisheries management chief, said information- and plan-sharing group was set up from each agency and is meeting regularly.

HOW TO Get, keep big game

SEATTLE—Some hunting how-to's from men who know it, do it, enforce it and have taken everything from elephants to squirrels were offered along with the Game Department report big game hunting now, and the next months may be the best in a decade.

Larry Kerr, Bill Davis and Chris Klineburger spoke to a full house at the Klineburger hunting seminar.

November weather is key, Kerr said for the Department. This is a third low-harvest year. Snow now can put elk and deer down in hunter road rifles range in record numbers.

Snoqualmie and Skykomish blacktail deer populations are excellent. Heavy and effective dog hunting has cut Snoqualmie area bear population.

If weather is no snow then animals may stay high, healthy—and die of starvation later if winter buries their food.

A motion picture showed how to cut head and cape from big game for best mounting. Free printed brochures with diagrams are available at the Klineburger store.

Asked what big game rifles each would use to hunt elk in Washington Klineburger said a .375, Kerr and Davis 30.06s. (A moment later they told a young woman a 30.30 is "plenty of gun" for bear at 150 yards.)

If the hunter's bullet breaks up the animals inner organs a throat cutting is not needed, Klineburger said. A dead animal will not bleed anyway. If life remains, stick the animals jugular vein as cattle and sheep are dressed. In any event, drain and dress the animal quickly.

Beware of car hoods or other warmth. Get the game up. A deer lying on the ground heats and holds heat where hair is warmth-holding insulation against the earth.

Kerr noted floors of vans over exhausts can be meat-spoiling heat.

"I'd say don't skin your game unless you must," he said. "The hide helps keep it clean. If you do, use a game bag when it's cool and if you can, wash it with water while the meat still is warm. It will glaze as it cools. If it is cold, then water will soften it."

If meat can be chilled and temperatures are 35 or below the hunter can put his meat in a plastic bag and then use a sleeping bag or other insulation to bar air or other warmth.

"Plain table pepper is a good fly deterrent," Klineburger said. Hatchets or handsaws are worth having to cut pelvic and other bones for dressing a carcass or making it in pack or load size segments.

Klineburger noted a deer can be cut in two and packed out as halves, front section as one load, back as another. He warned—cover the front quarters and head-horns with a yellow or red

tarp, or coat or blanket so it will not be shot at again as it is moved toward camp on the rifleman's back.

Game men will not charge waste if the hunter bones out a carcass but has the law-required head-hide with it, Kerr said.

As hunting how-to Klineburger said—you're not hunting when you're hiking. Stop, use binoculars, scan, move. Deer move in early morning, late evening. You wait. Let them move.

"Listen for other hunters," he said. "They often will drive the game to you."

Kerr remembered the Methow Valley's above-Winthrop and 30-Mile areas. Deer go into brush and rock pockets. Hunters may take easy routes around these—and miss big bucks.

Coyotes are an increasing predator problem, Kerr said.

"One of our retired Game men made close to \$8,000 in two months trapping," Kerr said.

The King county coyote population is highest ever and is rough both on young deer and on grouse.



COLLEEN KLINEBURGER displays a record big brown bear in the firm's Seattle taxidermy facility.

TRAPPER TRAINING: State Rendezvous attracts 500-plus

GRAND COULEE—Only miles from where history's famous trappers pioneered the Pacific Northwest in the early 1800s, more than 500 space age trappers gathered for the Washington State Trappers Association Rendezvous in Spring Canyon National Park.

Their session was a remarkable how-to-trap education session conducted by themselves and the Washington State Game department.

Trappers included men, women, all ages—hundreds who trap as a part-time skill.

Almost without exception all felt themselves not understood or misunderstood by the non-trapping world.

The two-day instruction sessions were the first of a kind. State law in Washington requires that all younger than age 17 or who did not have a valid license must attend such a course.

Requests for how to teach trapping have come from all over the United States to Mike Thornlily, Game Department Wildlife Control chief. The program is in many respects, thus, a "first" and a model.

Rocketing fur prices the past few years and decreasing wildlife lands have brought the need for instruction in trapping skills. This is to regulate and insure harvest of fur bearing animals who might otherwise die of starvation or disease from overcrowding, not to mention becoming a problem to people—as bears now have become in parks and raccoons and squirrels in well-populated city places.

Another need for instruction for beginners is to protect new trappers from 'instant-kill traps which act as swiftly as an arrow or a rifle bullet.

The Rendezvous instruction was conducted to hundreds of totally attentive watchers and note takers—some with cameras, some with tape recorders.



DOODLE STEWART, Colville Confederated Tribes fur expert, demonstrated beaver skinning to a crowd.



GORDON REED



MIKE THORNILY



TRAPPERS IN STORIES AND REAL life often are out in wintery weather, but their Rendezvous was in shirtsleeve weather as they gathered on the grass to see a skinning show.

Speakers urged every-day trap checks for some animals, perfect placing of traps to end life as quickly as possible, setting many in water where dogs and pets do not stray.

Washington's fur bearing animals vary from beaver (almost 10,000 a year taken today) to muskrat (\$4,000 a year) to the sea otter—wiped out by excessive harvest and last seen in 1911 and the wolverine and fur seal—the latter trio completely protected now. Coyotes have be-

come both a trapping and a hunting animal—and stockmen welcome both pursuits.

Trappers with hunters have provided almost \$3,000,000,000 in the past half century for wildlife conservation.

Trapping history was given by Everett Simpson—past state president and statesman of the business-pleasure-sport—back to 1805 when the Lewis and Clark expedition came up the Missouri river, crossed the Rocky mountains and wintered on the Pacific coast.

Ten years earlier trapper-traders had established posts on the Okanogan and Spokane rivers, the now flooded Fort Okanogan and others.

Here a mile from Grand Coulee dam the trappers were told as a first precept—always—always respect the rights of others. This includes hound hunters and others with valuable dogs, those who use recreational vehicles and others who hunt marshy areas which are trappable.

CONTINUED on Page 18

Sportsman NEWS LETTER Page 17

CONTINUED from Page 17

Always get permission to enter others' lands when necessary.

Be a respectable citizen.

Abide by all rules and regulations. Never trap where non-target animals would commonly be taken or where conflict could develop with others.

Scouting trips for fur animal signs long before the trapping season opens is essential. Get your license before the last-minute rush.

Trapping is not just "a method" of controlling predators and harvesting wildlife—many believe it is the most efficient means.

"What would happen if we suddenly turned cattle, sheep and hogs into the wild and stopped converting them to food?" one asked.

Trappers were urged to check traps daily in the early morning, to record trap locations carefully and accurately, to dispose of animal carcasses properly.

Seek areas where there are too many animals for the habitat. Tell authorities of any diseased animals.

Help farmers and other land owners who have predator problems and help train new trappers.

Support strict enforcement of trapping regulations.



GEORGE CLAWSON
Trapper President



ALLAN WORRELL
Trapper Treasurer



R. B. REEVES
Seattle Fur Exchange

DICK HAINES shows how to remove a coat from a coyote (above, left) and Burley Lawrence shows a bear ready for the den at home. Lawrence snares bears for the Washington Forest Protective Association, timber company combine, which encourages bear harvesting to cut damage to young trees.

GEORGE FRIEDLANDER Kamiakin kin dies



MESELEM—Long-time leader of the Colville Confederated Tribes was George Friedlander who died this year.

Friedlander was a kin of Kamiakin, the "voice of thunder", and had been both a tribal leader and explainer of those on the Colville reservation.

Mespelem is the grave site of Chief Joseph. A suggestion that the body of Joseph be removed and entombed in the Chief Joseph dam in the Columbia river at Bridgeport was refused by tribesmen a decade ago though Friedlander, John Cleveland and others appeared in tribal regalia at the dam's dedication.

IF WE COULD only forget our troubles as easily as we forget our blessings.

PUBLISHER WILFRED RUFUS WOODS of the Wenatchee Daily World stood with George Friedlander and John Cleveland at the dedication of Chief Joseph dam at Bridgeport in central Washington. The two tribal leaders wore historic regalia for the day.

Right—Friedlander stood at an Omak Stampede teepee.



CHUCK VOSS: Sport salmon worth most, 4-1

EDWARDS—Sports-caught salmon mean from four to six times as many dollars to the state's economy as do commercially caught fish, Charles Voss, trout Unlimited official and member of the new state salmon enhancement advisory committee told Laugbuen Steelhead—Salmon Council chapter members here.

Voss cited a report for State Fisheries and advisors prepared by Robert Haig, University of Washington economist.

"It shows a sportsman-caught chinook is worth \$48.88," Voss said. "The same fish taken by a gillnetter contributes \$14.59 to the state's economy—and one by a troller \$14.59."

Voss told President Chuck Hickey and his club a sports-taken coho is worth \$25.65, gillnet \$7.65 and troll \$4.74.

For chum, Voss continued, the figures are—sports \$24.66, troll \$5.58 and gillnet \$7.36.

"We found a few years ago," he said, "a steelhead worth \$75 as a sports fish was worth \$3 or \$4 as an Indian-netted fish."

"I am the statistical guy for Washington, Oregon, California and Idaho," Voss said of his Trout Unlimited executive vice presidency. "My specialty is anodorous fish."

Reporting on the first meeting of the salmon advisory group which includes two sports anglers and 20 commercial fishermen, processors and state men.

He noted a sockeye disease problem on the Cedar river now. The advisors are studying Japanese salmon raising and Canadian and other box and gravel bed fish propagation measures long used by Washington sports clubs.

"We must realize," Voss said, "that everyone is not a sports fisherman. The state is in the business of fisheries."

Because they pay in a lot of

"the green" and a lot of taxes it is necessary that salmon be produced for commercial fishermen, he said of the state's 2,000 commercial salmon fishermen and 600,000 sports anglers.

"Most of the new salmon program fish will be produced for the gillnetter and troll fisheries," Voss continued. That is how it's decided. It produces money. Nothing else we can do is as clean, makes as much money. We have the water. The object is to tap as much of that as we can get our hands on."

"If the salmon program can tap these waters, these springs it can have the program. If it does not "there is a possibility we won't have them", he said.

Asked what kind of fish he is pushing for as a sportsman man on the advisory group, Voss said coho and chinook.

"The cost-benefit ratio of fish production," though, is in favor of chum, not coho, because the most chum can be produced for the fewest dollars, he explained.

"There are some things you just have to swallow," Voss told the salmon club. "You can't get away from it that salmon are a food fish and the state production of salmon is primarily for the commercials. "Even though we want it, we can't have it differently. There isn't that much left for us."

Louie Van Hoy, chapter member, said: "We have eaten crow for many years because of the domination of sports fishermen by the commercials."

Sportsmen face a federal cutting of the sports limit from two fish down to three, he said.

Van Hoy noted the need for some sports fishermen representation in Olympia.

Commercial fishing is a vocation, Voss responded. Sports is

an avocation.

Stan Kaufman reviewed an agreement with Fisheries Director Don Moss that commercials would not work the sports area between Possession Bar and the mainland. This is violated by everyone.

"The gillnetters are out there tonight—when the season is closed," he said.

Sportsmen—group and individual—who want information or input—can write to him—

Charles Voss
P. O. Box Q
Woodland, WA. 98674

Smallcraft need potty tanks by '80

SEATTLE—After 1980 boaters can not dump potty into Puget Sound with ease and abandon. They must have holding tanks for such sewage.

Coast Guardsman boating specialist Dan Stack told the Seattle Pogue club this and that in the nation (population 215,000,000) 47,000,000 are involved in boating in one way or another.

Stack provided clubmen with excellent pocket-sized brochures how to stay alive in cold water plus an explanation of the Coast Guard Auxiliary and another listing regulations how to own, license, outfit and operate a boat with safety and sanitation.

Fritz Sistig urged boats be equipped with transom outboard motor brackets in addition to built-on or built-in power.

Such a bracket to permit the auxiliary motor use can pay for itself many times over, he said.

IF THE WORLD is getting smaller, why do they keep raising postal rates?

AUTOMATION is man's effort to make work so easy that woman can do it all.

RIDEOUT :- Fisheries opposes Puyallup 3

SNOHOMISH—An eloquent plea by State Fisheries community relations man Ralph Rideout urging the Snohomish County Sportsmen's Council to endorse a Tulalip tribal salmon hatchery in return for the possibility that the tribesmen will limit steelhead fishing on the Snohomish brought a unanimous council approval of the plan here.

Rideout who said he was an ordained minister said tribal leader Bernie Gobin is an "outstanding Christian" and Rideout was sure his word would be kept.

Later Rideout said he had no figures on what the public-provided hatchery would cost nor for what State Fisheries would be asked to pay and provide in manpower, fish feed and hatchery help annually.

Questions of whether other Indian groups will demand state and federal money or help as a cut of claims against the Tulalip coalition Rideout said he was sure could be adjusted.

The sportsmen endorsement is essential to the agreement which State Fisheries hopes to use as model for dealing with Muckleshoot and other tribes, he added.

Congressman Lloyd Meeds says a federal appropriation giving the Tulalip chum salmon project a \$1,260,000 start needs only the signature of President Jimmy Carter, President Bob Heirman told the Council.

Rideout told the Council that Fisheries would prefer not to see the U.S. Supreme Court's Puyallup Three decision applied to salmon because it would make difficult the fish counting and allocation and this would threaten both the sports and commercial fishing at Westport and elsewhere.

As to tribal treaties, the Congress can abrogate them at any time, Rideout added.

Rideout said he would like to

see the State Supreme Court enforce mandamus against Fisheries Director Gordon Sandison.

Such action might result in jailing the director, caught in a damned-if-do-don't court conflict unique in state history.

Rideout was critical of a news writer for the Snohomish Tribune who reported County Council action a month ago.

"The reporter who called me obviously didn't know a salmon from a steelhead," he said.

An Everett Herald account of the Council's refusal to endorse the Tulalip federal-state funded salmon hatchery was criticized by Heirman. Heirman said he broke a 3-3 Council tie vote with a "no" on whether to send a letter to legislators endorsing the hatchery. He understood the news to say the Council opposed the hatchery.

The resolution adopted to clarify previous actions was moved by Bud Waise and seconded by Dr. Richard Van Driel and passed unanimously.

To set the record straight, letters will be written to media and state fish managing agencies that the organization's stand is in favor of any fish enhancement program, that they have never opposed the Tulalip chum salmon enhancement program although they still oppose a trade-off of salmon for steelhead.

Mike Shockman, Game department regional supervisor, said the Seattle office has a new enforcement patrol boat and crew to stop illegal Sound netting of steelhead but can not use it until the Boldt decision and state-federal court conflict is settled.

Cliff Millenbach, Game state fisheries management chief, said the department hopes the U.S. Supreme Court Puyallup-3 decision saying Indians have privileges, not rights, to steelhead in tribal streams and that they can take 45 per cent including fish for food and worship can be applied to the Skagit and other Washington waters.

Tulalips, angered by sportsmen their failure to endorse the multi-million-dollar federally

funded hatchery, announced they would "go fishing" for 10,000 steelhead from the Snohomish system this year, three times their estimated take a year ago which largely was sold to commercial fish markets.

Sports salmon cut

EDMONDS—The Pacific Marine Fisheries Council, the 200-Mile Limit federal authority, will meet in Seattle November 19 to consider and adopt if it can new salmon sports fishing regulations to make drastic changes in the sports fishing picture.

Charles Voss, executive vice president of Trout Unlimited, broke the news to Laebugten Steelhead-Salmon Council chapter members here.

The federal agency is working in close cooperation with the federal Task Force and U.S. Commission on Civil Rights to make a massive three-front push to force continuation of Boldt decision pro-Indian regulations with the sportsmen bearing the cutback rather than tribesmen or commercial fishermen.

Voss said he and Ed Manary, charter boat owner representative, are aware that proposed regulations include a two-fish limit for sportsmen, closing a five-mile area around the Columbia river mouth to sports and commercial fishing, and closing all coastal river stream mouth areas for three-mile-radius half circles.

Commercial fishermen and Indian ancestry citizens are pressing the federal group to cut the sportsmen back, Voss said.

If sportsmen do not make a case November 19 with the Marine group and national cabinet and congressional powers they may well get the two-fish limit, he added.

ICERR public meeting Nov. 26

SEATTLE—A year-old and nation spanning, the Interstate Congress for Equal Rights and Responsibilities will conduct a public meeting November 26, Saturday, in the Seattle Center's Snoqualmie room at 7:30 p.m.

Last year's first such meeting called with little notice drew 700-plus persons as public awareness of supercitizenship asserted by Indian ancestry citizens became nationally known.

Howard Gray of Seattle, member of Washington's ICERR chapter and national board member, plans seating for twice as many this month.

Speakers include Congressman John E. Cunningham who has introduced congressional legislation to abrogate all citizen-with-citizen treaties. Others he has offered would make steelhead a national game fish and establish one set of fishing-hunting-game laws for every off-reservation citizen regardless of ancestry.

Others include Lawrence Coniff, assistant state attorney general, and Robert Bogensberger, leader of the Washington Political Action Committee plus Gray himself and Betty Morris, eloquent land owner.

ICERR is something every individual and group interested in equal citizenship for all—not supercitizenship, not second class, can come, hear, take part in, Gray emphasized.

He listed sports, fishing, agricultural groups.

Blair Richendifer of Nebraska is national ICERR board chairman.

The meeting a year ago featured James Johnson, assistant Washington State attorney general, Johnson urged public communication with Congress.

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"Don't you believe there is no congressional solution to the problem," Johnson said. "Congress does have the authority to rewrite the treaty to give equal treatment. Don't believe it can't be done."

Gray said everyone who camps or fishes or hikes or hunts as well as industry and agriculture are now discovering what Indian "professionals" and their lawyers as well as U.S. civil rights employees and the Bureau of Indian affairs assert to perpetuate federal jobs—that tribal claims do affect every U.S. citizen, and that "something can be done about it if we will join, unite on this one thing our Constitution set forth but which has been eroded".

WPAC has 700 now as members

SEATTLE—Money the Washington State Political Action Committee receives as \$1,000 bank savings pass book pledges for candidates is turned over only to the candidate, not to the Committee, said Robert Bogensberger.

"This money never comes to us," he emphasized. "We are like a marriage broker—bringing the pass book owner and candidates for public office together."

Such books are handed to Accountant James F. McAucliffe, an original founding member of the Association for Constitutional Government, for safekeeping, he added.

The WPAC has 700 members who have paid \$100 each to support the Committee and receive its news letter, integrity, Bogensberger said.

Seattle attorney Ron Erickson has been retained as Committee counsel.

Congressional district managers already named are Jeff Ogard at Edmonds, Dan Johnson at Tacoma and Leo Frare at Chehalis.

Bogensberger will speak at the November 26 public meeting of the ICERR in the Seattle Center.

Either-or elk hunt talk Jan. 9

SEATTLE—The State Game Commission will meet Monday, January 9, in Yakima to continue discussion of new mandate-law elk seasons, Commissioner Tom Nelson said here.

East-or-west hunting, one or the other but not both, were discussed by commissioners at their Walla Walla session.

Commissioners voted opening Snake river steelheading to a one-fish daily limit and three-fish season total, half the new Idaho limit.

Sportsmen, Nelson emphasized, are welcome to attend commission meetings.

"Nothing is more important to the commission than that the best interests of the public be served by the department," Nelson said.

STCW raffle 50 prizes

SEATTLE—More than 50 prizes have been gathered for winners of the Steelhead Trout Club of Washington raffle and tickets may be purchased from the 50-Year-Old club's members up to meeting night and the drawing November 22.

Chairman Elmer Smith, President Al Blankenship and Maurice Miller gathered the splendid loot last week.

The club substituted its raffle to fund its conservation and fish provision and political action rather than conduct its historic steelhead seminar-show.

TWO CUB SCOUTS, whose younger brother had fallen into the lake, rushed home to mother with tears in their eyes. "We're trying to give him artificial respiration," one sobbed, "but he keeps getting up and running away."

LACK OF PEP is sometimes taken as patience.

TREATIES.. Spur Scoop, Maggie

TUKWILA—Three major bills by Congressman John E. Cunningham of Washington's Seventh District are now in congressional committees—one to abrogate all citizen-with-citizen Indian and other treaties and others to make steelhead a national game fish and to specify all citizens off tribal reservations hunt and fish under identical state law.

William Johnson, congressional coordinator here, said HB9054 to abrogate treaties, HB9175 as the everyone-same-law for fishing and hunting off reservations, and HB9736 making steelhead trout a national game fish have gone into a House Interior subcommittee on Indian Affairs. The latter two have been referred, too, to a house subcommittee on merchant marine and fisheries affairs.

Cunningham stressed that his treaty abrogation bill will not—as late-comer senators and others in the congress publicize—cost billions to buy out rights. The treaty abrogations settle the supercitizenship question period.

"My bill," Cunningham said of the steelhead bill, "will overcome the Indian treaty interpretation problems by ensuring state enforcement applies equally to Indians and Indian tribes along with sports fishermen. It will stop taking or sale of steelhead trout for commercial purposes in states that have designated it as a game fish, as Washington State has."

Congressman Cunningham read the HB9736 Section 3:

"Notwithstanding any Indian treaty, laws and regulations of a state prohibiting or restricting the taking or sale of steelhead trout (*salmo gairdnerii*) for commercial purposes shall apply to Indians and Indian tribes fishing at places within such State in

the same manner and to the same extent as such laws and regulations apply to other persons."

His bill also will amend the Black Bass Act to delete a section which excludes the Columbia river from its provisions.

In Seattle state and county sports officials emphasized the need now—letters to Senators Warren Magnuson and Henry Jackson and congressmen—Joel Pritchard, Don Bobker, Mike McCormack, Norman Dicks and Tom Foley, All of whom have criticized and opposed equal resource rights efforts and criticized the Cunningham proposals.

200-Mile law new threat

RENTON—The Presidential Task Force primarily is a device to enforce the Boldt decision on sportsmen and after 90 days it still refuses to recognize sportsmen, Larry Moe told the Renton Fish and Game club.

Moe from the South King County Steelhead-Salmon Council chapter said U.S. Senator Henry Jackson is holding up funds for state fisheries agencies "until they meet the demands of coastal Indian tribes".

They want increased fishing and hunting rights.

"Jackson wants that before he will permit the money to come here," Moe said. "The Steelheaders sent Larry Cassidy (Council leader, state game commissioner) back there. We demanded the federal government restore salmon and steelhead runs, and we want state management."

Moe quoted Chuck Voss, Trout Unlimited staff member, that the federal government is going to take over fisheries completely.

"The federal government wants to close sports and commercial fishing in a five-mile radius around the Columbia river mouth and a three-mile radius in every

other river," he said. "You can imagine—this will close most of Puget Sound."

The Pacific Marine Fisheries Council (200-Mile Limit law) now plans to reserve Puget Sound for Indian ancestry citizens and for sportsmen, Moe continued.

"A task force man told us this was an easy way out for the federal government," Moe added. "The federal government is saying we have to have to give them something. They say if we as sportsmen don't go along with it we'll look back and say, damn, why didn't we?"

Federal government fisheries management means a trip to the national capitol for effective voice every time a regulation change is offered.

Speaking of the then-planned sportsmen demonstration at the Seattle Federal Courthouse, he said: "Blacks, Chicanos get what they want this way. Steelhead make up three per cent of our fish. One a sportsman catches is worth \$113. At a commercial fish landing they bring \$1.25 a pound. Every sacrifice in all this is to be made by sportsmen."

Moe reviewed two years ago when sportsmen asked commercial fishermen to join, fight the Boldt decision.

"Phil Sutherland of the gillnetters told us then all this was a sports fishermen's problem, not commercial," Moe said.

Steelhead show Nov. 12-13

BOTHELL—A hefty hundred-dollar first prize will go to the raffle winner at the Northshore Chapter steelhead-salmon clinic-show November 12-13 at Totem Lake mall.

President Chris Bedwell said second prize will be a driftboat trip for two and third a steelhead rod and reel, not to mention at least 19 other prizes.

Saturday show will be 10 to 5, Sunday 11 to 5.

The chapter of the Northwest Steelhead-Salmon Council will instruct in all phases of fishing for the big searun rainbow trout.

ENFORCING BOLDT CASE LAW, U.S. 'Rights' force is TF-Boldt device

SEATTLE—The U.S. Civil Rights Commission will re-convene its hearing here in December to accept and endorse "the Boldt decision" and a Federal Task Force report which—as now blocked out—will make drastic rights decreases in fishing and other resource rights of all U.S. citizens not of Indian ancestry.

The Commission began a hearing here with its conclusions in a printed book prepared before the hearing opened.

The Commission's "hearing" is rated by sportsmen as part of a massive squash-sportsmen and overpower—all-others effort by the federal government. It will be a Commission that—all she wrote to put in one package the Boldt decision, the Task Force report, the 200-Mile Limit law, decisions to come this month and the Commission's pro-Indian citizen decisions in a way so strong that opposition can not be effective.

At the two-day hearing the group headed by Arthur S. Fleming by witness selection and staff lawyer questioning did all possible to strengthen tribal spokesmen and to weaken or put into the record without hearing the actual words so news reporters could not hear the full actual information or thought.

The Commission's life and continuance must be renewed at regular intervals. This will be deliberated by the Congress, next year, a staff member said. The public can then through its senators and others ask changes to incorporate fairness in its efforts.

The hearing ended with a Task Force statement by John Hough, U.S. Department of Interior Seattle top man.

Task Force purpose, Hough

read, is to provide for fisheries use consistent with the tribal treaties of 1854-55.

The Task Force, he said, will provide its findings to the U.S. Civil Rights Commission before November 1. The public and president will get it in December.

The hearing opened with fireworks as State Attorney General Slade Gorton asked: "I have two questions—why are you here, and why are we here?"

He noted that two major resource using groups—sports and commercial fishermen—had not been invited—and the State does not today speak for them.

Gorton pointed to the already published Commission conclusions—printed, bound and given to newsmen before the hearing opened.

Many of the topics the Commission inquires into are already in state and federal courts for settlement, Gorton continued.

He noted Washington's national leadership in affirmative action programs—and that efforts to bypass courts now perpetuates the

"supercitizenship" of tribal members.

His remarks drew fire both from Fleming and Ms. Frankie M. Freeman, attorney and professional Civil Rights member for 13 years.

Gorton told them—their effort in Seattle is to substitute a new form of racial discrimination for the deplorable past one.

"This present question bears no relationship to past situations," he said.

Indian citizens are state and U.S. citizens and they are using the Commission to make permanent very special sovereignty, tax and resource use claims.

Asked about state employment of Indian ancestry citizens, Gorton and Fisheries Director Gordon Sandison pointed out that the federal government pays higher wages than the state can.

Both said they get workers with black and brown epidermal coverings—and they promptly leave for federal government jobs elsewhere.

Commission lawyer Paul Alexander asked Sandison about salmon catches.

"Sports fishermen are very different from others," Sandison said. "A sports angler goes out once or a few times a year in many cases. He averages 1.5 fish per trip. The commercial fisherman trolling uses multiple gear lines, hooks."



COMMISSIONER FRANKIE Freeman agreed with State Attorney General Slade Gorton's concept of super-citizenship. With her is Chairman Arthur Fleming.

Sportsmen take four out of 10 Coho and chinook salmon, Sandison continued. Commercials and Indians take the massive majority of chum, sockeye and other fish.

Both Alexander and Freeman grilled witnesses for information both had on their desks in written form from state agencies.

Second-day witness trio featured Ramona Bennett, Puyallup tribe.

"We want to maintain our sovereignty while keeping our hand out," she told Fleming, Freeman and two later witnesses who sat at the Commission table.

Tribal spokesman during the day asked for more federal funds without state or other, than tribal direction, or accounting for more money for a public explanation effort to sell their wants and greater public school programs to expand their apartheid efforts.

The audience varied from seven to one to nine to one as pro-Indian or Indian-ancestry people.

Twenty-three tribal spokesmen were called as witnesses and 18 to provide all-citizen information. Fleming, Freeman and Alexander directed questioning to strengthen tribal positions and weaken presentation of other information.

Howard Gray of the H.C.L.P. and Washington Assistant Attorney General James Johnson were given short shrift in a brief appearance re-scheduled for the very end of the hearing.



RAMONA

RAMONA BENNETT, tribal spokeswoman, appeared as a witness with other citizens of Indian American ancestry. Other spectators were photographed.



LEFT—A camera person photographs spectators. Above are spectators, one of native American ancestry, another robust blond woman who wore a wounded knao button.

EAT AN ELEPHANT -- A bite at a time does it!

SEATTLE—"We can eat an elephant—if we do it a bite at a time—and we will be back if we are not heard now," Cliff Durbin told 150 sign-carrying duck call-sounding net-stringing sportsmen at a Federal Courthouse demonstration here.

He spoke as the two-hour march before the federal building wound down and sportsmen went upstairs past first-protesting federal marshals.

The demonstration was a reunion of men and women with sports leadership courage to do that two said was "personally distasteful" to themselves. A majority sacrificed work and wages, some vacation time.

Television crews came in a body. Radio stations taped the sportsmen aims.

A fish net with one red-black spawner lay on part of the Court-house steps.

Sportsmen a day later rated best newspaper news story that in the Seattle Post-Intelligencer published by William Randolph Hearst Jr. and Seattle publisher Robert Thompson as written by newsmen Jack Hopkins.

The Seattle Times ignored the story.

Television stations gave the story "a ride" in every case that night. KCTS-TV television producers shot footage to be part of a documentary.

Demonstration goals were to make steelhead trout a national game fish, apply the Puyallup 3 decision to all rivers and all steelhead and salmon runs, assure state agency funding and restore fish runs and habitat.

Other aims are to assure an equitable sharing of such fish among all citizens—noting the tribal 95 per cent catches in some reservation waters, and continued state, not federal, fisheries management.

From offices of Senators Henry Jackson and Warren Magnuson the delegates got the best insult a senator can provide—they got to see receptionists, not even low-grade staff legislative or office telephone answering staffers.

U.S. Attorney John Merkel, Task Force front man, let his attorney aide James Waldo hear sportsmen.

"We were told that the Task Force now plans three meetings with sportsmen—one on salmon," said Arch Graham, past president of the Washington State Sportsmen's Council.

Senior marcher was Dean Draper nearing 90 of the Seattle Poggie club.

Louie Van Hoy, Gary Ellis and others told the Magnuson girl sportsmen have half a million votes.

"We may need awhile to do this—but look at Lloyd Meeds, we told her to tell him," Ellis said later.

Graham and Durbin saw Waldo. "We told him the Task Force is letting political considerations become its judgements," Graham said. "We outlined our concerns and told him we would not be ignored."

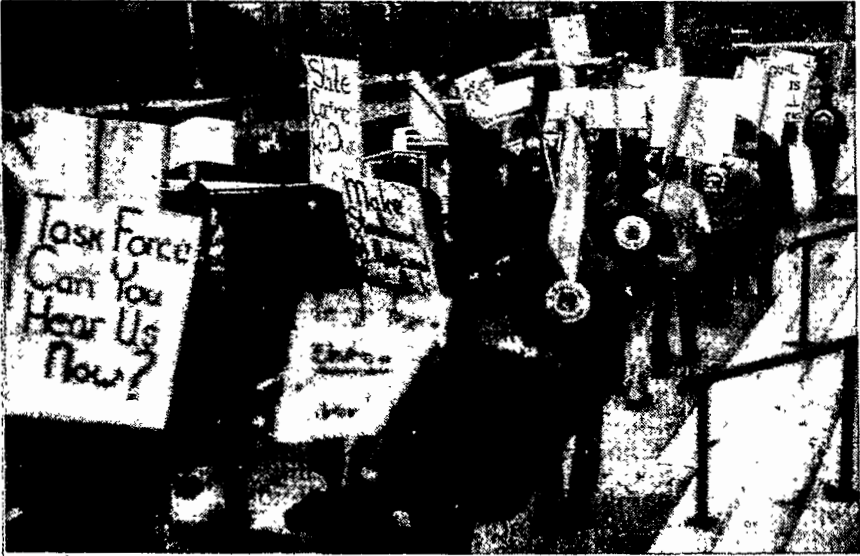
"We told the Jackson girl we wanted our information to get past Danny Miller (staff) and to Senator Jackson," said Larry Moe. He, Chuck Voss and Buzz Chevera stood together. "We invited the Senator to attend the next Steelhead Council and next State Sportsmen's Council meetings."

Moe said the trio told the Jackson receptionist "we do NOT want Jack Tanner as a federal judge".

"I don't think these staff-shielded senators know what is going on," Chevera said.



CLIFF DURBIN, key man of the Northwest Steelhead-Salmon Council of Washington, Trout Unlimited, talked to one of two dozen newspaper, radio, television and other newsmen who covered the demonstration.



NONE COULD SPARE time from work, school or hours, he might have slept after a night shift and several took vacation hours to march for 600,000 state sportsmen.



LEFT—Newsman Jack Hoffman of the Seattle Post-Intelligencer. Above are Yakima Steelheader Tom Stillwater and encourager. Right is one of many signs, "I Was Born in This Country, Too" and "We all should have equal rights" to name a few.



SQUAXIN ..

Chehalis-tested Squawfish killer

RENTON—Cleansing big Lake Washington with a potent new nonchlorinated hydrocarbon chemical which kills squawfish may not be practical—but Squaxin is a wonder killer in rivers and smaller waters, the Renton Fish and Game club was told here.

Robert Watson, University of Washington fish biologist, explained Chehalis river, Lake Ozette and other squawfish experimental kills in an appearance with Blaine Freer, outdoor writer for the Seattle Post-Intelligencer.

Squawfish are slow-growing and long-lived. They become trout and small salmon predators at their sixth or seventh year.

"Does anyone eat squawfish?" a club member asked.

"It depends on how long Boeing is on strike," someone responded.

Vice President Gary Kentner acting for absent President Dick Hilzer asked if Squaxin could be used in the highly localized territorial areas squawfish frequent. Watson thought so.

Answering questions he said the massive Chehalis kill drifted to the ocean. In Lake Washington they presumably would go to the bottom.

Cedar river mouth might be a Squaxin use site when squawfish wait for smolt downbound but the squawfish spawning areas are a better bet.

"We don't know whether the Squaxin itself kills the fish or it causes a breakdown of something else which is the toxic agent," he said.

Freer said the chemical had been used in the Great Lakes to kill lamprey eels. He noted many state and federal fish and environmental agencies would have to approve more tests and use.

Watson said he had tested some left-over chemical in another

lake with a good scarpfish kill and no harm to trout.

So far as is now known, the toxic agent is non-harmful to man or molluscs and small invertebrates, he said. It has killed a few small dace and shiners—and can be a problem with other fish if overdosed.

"In no test has it harmed the salmonids—trout, any of these," he said.

Four parts per billion are enough to kill squawfish, a test on the Chehalis river's lower 30 miles showed, he said.

"If you can imagine turning a water faucet on—and the amount of liquid that would come out from the first drop to when an instant later drops form a thin stream you know how much Squaxin is needed to kill squawfish in a five-mile river stretch," he explained.

A check of 1,000 squawfish taken in the lower Columbia showed 87 per cent had salmonids in them.

Dynamite, gillnets tried in Idaho by biologist Craig McPhee lacked effectiveness.

"When Squaxin kills the squawfish we find a tremendous increase in suckers—but these are not competitive to trout and salmon," he said.

An aerial inspection of the Chehalis after Squaxin use showed "tens of thousands of dead squawfish," he added.

"The chemical hasn't yet been accepted for federal use," he explained. "Testing costs are horrendous—on fish, monkeys, dogs, cats. Until now there has been no demand for it to justify the required testing cost."

He was able to use the Idaho permit as an authorization base to try the Chehalis river.

Leon Woodworth said he understood State Game men had tested Squaxin in Mervin and that lake chain but cost was prohibitive.

Kentner named Steve Schroeder, Bob Emerson and Fred Borst as a committee to study the potential.

IEBGC red alert

SPokane—Lung worm study of the Big Horn Sheep at Hall Mountain and Joseph Creek will be the subject at the Inland Empire Big Game Council board special meeting November 14 at 7:30 p.m. in Ziegler Auditorium.

All members and guests are encouraged to attend according to Bob Christenson, Big Game chairman.

There will be a question and answer period with Rolf Johnson, research biologist Washington State Game department; Wm. J. Forey, WSU veterinarian and Stuart R. Bennett, WSU field representative.

On the agenda of the regular meeting November 8 is the 1978 Sportsmen show, recommendations for 1978 season openings and a discussion of the Washington State Sportsmen's Council.

Arc (her) light?

OLYMPIA—Two archers hunting at night with a spotlight were arrested by Robert Zak, state wildlife agent, and Al Scgreiber, Clark county sheriff's reserve officer on Livingston Mountain north of Camas.

Karl W. Pringle, Vancouver and Jerry M. Jenkins, Salem, Oregon were fined \$200 and Jenkins was also charged by the sheriff's office for possession of marijuana.

The two spotlighters had a yearling doe in their pickup with the arrow still in its head.

This is the first time in this state archers have been arrested for spotlighting according to the State Game department.

SOME PEOPLE read just enough to keep thoroughly misinformed.

WHY COMPLAIN about the time it takes to find a parking place—It took Noah five months.

-EDITORIAL-

DON MCGAFFIN .. ANCIL PAYNE--

KING-size freedom of the press..

I, JACK JETT, age 61—and surprised to hear myself television-termed "polite" and "soft spoken" write this to credit those who are too big to do it for themselves, KING, National Broadcasting Company, and their people.

Attending of all things the U.S. Civil Rights Commission hearing, I was threatened by spectators. A U. S. marshal acting on advice of the U.S. Attorney's office in Seattle told me 1) to stop photography or 2) he, per the U.S. attorney, would "confiscate my camera." I asked him to tell me his authority for



this. While the marshal was telephoning I telephoned KING and Don McGaffin.

Twenty-three minutes later McGaffin arrived with a camera person, Mary McCormick. She seems too small for that hardware and she is lovely enough to pull three sets of shock waves in any Boeing wind tunnel test.

McGaffin talked to the marshal and U.S. attorney and C.R.C. lawyers. Miracle—photography was now all right—for Ms. McCormick, even me.

But for McGaffin, McCormick and a man like Ancil Payne who is The Man at KING I could not have had this freedom of the press—and this newspaper would not have the Rights Commission story on other pages.

This station—McGaffin, McCormick, Payne—and all who do all this station does—WERE this freedom of the press strength.

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-EDITORIAL-

The biggest .. BIGOTS, the United STATES CIVIL RIGHTS COMMISSION

SPORTSMEN, users of the outdoors, hikers, campers and bird watchers—were one of two great groups not invited to attend the Seattle meeting just past of the U. S. Civil Rights Commission.

(I can well include anyone who uses or enjoys air, water, timber or minerals, too...)

This was pointed out to the group I rate as the most biased, the most bigoted, I have seen—bar nothing. These professionals came to Seattle ostensibly to study "civil rights".

A transcript of the words spoken through two days will show they had printed in a book their conclusions BEFORE they ever saw our city.

This group which includes Arthur Fleming, Stephen Horn, Frankie M. Freeman, Manuel Ruiz Jr., Murray Saltzman makes me believe this group like those of the Bureau of Indian Affairs look on persons with other than white skins as a farmer his cattle—a group of living things to be publicly—and profitably—protected as livelihood for themselves. Thus, in this case, they watch out for citizens of American Indian ancestry.

This commission in a performance like a well-rehearsed television program did that a story of their meeting recites elsewhere in this paper.

This commission is a spokesman for itself—and the small group of professional Indian Americans and their lawyers, lobbyists and federal employees who want the 200,000,000 Americans not lucky enough to be born with brown,

black, red, purple, magenta, or orange skins to PAY THE BILLS, assume second class citizenship, so a few—whose wronged ancestors lived decades ago—can be super-citizens—without taxes, accounting for federal funds given gratis to them—and above all, these 200,000,000 should feel guilty about not giving them more.

What would we do if Russians or Chinese tried to get away with this ridiculous crap Indian ancestry pros demand? This commission says their red-skinned cattle-quality (to them) clients are not bound by the agreements of their fathers or fellows.

Why, then, should anyone else be?

I did not hear Fleming or his mouthpiece, Paul Alexander, speak of tribesmen at Cascadia and the armed take-over at Tacoma—nor of them violently and forcibly taking over, national capitol offices—nor the State Capitol in Olympia.

This Commission and the tribes-serving weaklings like U.S. Attorney John Merkel, J. Ronald Sim and James Waldo will delight me if they show me their enforcement-law records—against either tribal citizens or commercial fishermen citizens of any color.

We can demand that the tribal ancestry pros share with their fellows. When a minority race person needs money, necessity, luxury, special privilege—to whom does he go? One of his ancestors? Brother....! He heads for a haoli, a white—!

And to back what we ask our law makers for we can tell them:

It will be your political posterior, your ass, if you do not do something for US.

I tell you—look at Lloyd Meeds—his statements to the Washington Post, his frantic bill introduction today.

Look at Senator Henry Jackson and his letter—NOW this equal rights IS a national problem, and he WILL act—with the President and the Congress.

Look at Congressman John E. Cunningham—a then-nonentity who trounced Marvin Durning after both Maggie and Scoop had stood with their hand on his shoulder.

Look at ICERR and the state-after-states men like Blair Richendifer and Howard Gray have mobilized simply BY INFORMING THEM, only by TELLING them—they ARE part of a great growing awareness this IS the U.S.A. and our Constitution IS VALID and DOES provide equal citizenship if we demand it.

This Civil Rights Commission comes back to town in December. It is part of a fourplex putsch by this U.S. Task Force, by our buck-passing senators, by the Pacific Marine Fisheries Commission, to have this "rights" commission say pontifically, "why it is CIVIL RIGHTS!" to give Indian ancestry citizens all they ask—as if that is the word down from a deity that precludes any honest or valid questioning.

Whether this grand slam as now planned is so great it can not be opposed by we who must take time from work, learn despite Task Force and other secrecy, remains to be seen.

We can try. Our damndest.

These federal people have shown us that unless we act the great majority is the minority as to any federal justice. That force will not be punished and IS all they will respond to.

I—at this point—urge every sportsman to continue this perfect, this exemplary record—that ONLY sportsmen have been non-violent. Have been lawful. Have stuck with political and legal representation.

We as the lawful-still minority-majority can do several things—and we can see, if we will look, reason for HIGH HOPE!

THE Sportsman

NEWS LETTER

Published by

JACK and GENEVIEVE JETT

Post Office Box 1201

SEATTLE, WASHINGTON

98111

A JETT Press publication.

We can write to our congressmen to revise, limit, direct this apartheid-advocating U.S. Civil Rights group.

We can ask our members of the Congress to abrogate all citizen-with-citizen treaties.

We can ask our members of the Congress to abolish the Bureau of Indian Affairs—so gross it gets enough money for its employees to provide \$10,000 for every Indian ancestry family in America.

And it may well achieve a triumph in this hour when our own State Supreme Court has been our sole hope, voice—doing that which we will see in a decade is as great, courageous as that done by Washington, Jefferson, Franklin, Lincoln—and the question of any state power remaining before this federal power play is as great as in any Civil War days.

YOU CAN speak, write, give money, vote—list the do-nothings and pay raises and public health and Watergate and arms wastage do-nothings of our men in the Congress—and of President Jimmy Carter. And you CAN campaign and talk to your neighbors and lodges and churches—to get a change and hopefully more responsive men in public offices.

I doubt that this bigoted commission will quarrel that I did not approve of Richard Nixon, Spiro Agnew, John Mitchell.

One may think back in 1776 when a few farmers were involved in an incident down by the Concord bridge that a lot of people didn't see it as much but some radicals with rifles. And they didn't want to get involved in

anything so unimportant. Oh?

"A person obstinately and unreasonably wedded to..." and "a person blindly attached to any opinion, system or party", the dictionary says. There it is, Commission—you qualify. Bigots.

As Slade Gorton told you, you in your own self interest and vanity are trying to substitute a discrimination on All worse than the regrettable discriminations of time past—back to the scalp-lime-stake burning days.

A great mass of Indian American citizens exist and as hopelessly and helplessly see this Commission, BIA and the pros and lawyers operate as we so long watched the pre-Watergaters.

What is done now is for EVERYONE—every color, church. It is long overdue.

I urge anyone who can to attend the Commission show when it returns to town and watch it endorse the federal Task Force's "findings" which say—behave as Boldt bids you.

I want for every other person what I want for myself—and I want for myself what I want for any and all others.

How does that grab you, Fleming, Franklin, etux etal?

LETTERS ..

Sportsman News Letter
Jack & Genevieve
Seattle, WA.

Jack & Genevieve:

Once again I wish to thank you for making the public more aware of the state of emergency this state is in!

Your last publication was wonderful as always, and full of information that the people in the state would not know if not for you folks!

I have just written the Congressman Cunningham and praised him for his legislation and support, a copy of which I have added to this letter to you folks.

I feel every sportsman and citizen in this state is indebted to John E. Cunningham and wish we could get them all to write him.

He is the only Congressman in

this fine state that has the respect for his people to try his best to uphold the oath he took as a Congressman.

Again, I praise Congressman Cunningham's courage in the face of his colleagues lack of support in fighting for the rights of the citizens of this state!

Genevieve - Jack, keep up the wonderful work, we love you!

Conserationally,
Cal Hollingsworth
Wildcat Steelhead Club
Sedro - Woolley, WA.

Dear Jack:

I'd like to renew my subscription to the Sportsman News Letter. You are doing a great job Jack.

I've been encouraging all the sportsmen I meet to write to their Congressmen and Senators. It seems that apathy is our biggest problem. I'm sure if sportsmen applied the right kind of political pressure our clout would be great.

Thank you,
Tom Stilwater
Yakima, WA.

Mr. & Mrs. Jett:

Please send me another year of your great, great news letter. I have enjoyed each and every one. The information is great.

I really get a kick out of the way you call a king a king and a jerk a jerk with no punches pulled.

Keep up the great work.

F.D. Warner
Seattle, WA.

AN AMICABLE AGREEMENT is much more amicably arrived at when a forced settlement is inevitable.

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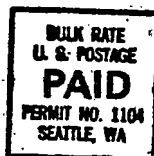
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JACK and GENEVIEVE JETT

THE **Sportsman**

NEWS LETTER

P. O. Box 1201
SEATTLE, WASHINGTON 98111**Meeds reacts**

From D.C. Washington as we go to press comes word. Congressman Lloyd Meeds has responded to Congressman John Cunningham. He has introduced his bill originally announced for next year to keep tribes from taxing non Indians or placing zoning restrictions on property owned by them. Tribesmen regard their revenue as the absolute key issue of all they hope for. Now, Lloyd, do the right thing—support Cunningham. We can bet that Meeds has been able to get some of the growing equal resource rights sentiment growing fast in OTHER states.

*** ** *

Ask FIRST

TACOMA—"Do not hunt in Franklin county unless you have a permit from a farmer or hunt on areas that are posted 'free to Hunt Areas'. The farmers mean business." This is the warning given to members of the Tacoma Sportsmen's club in their news letter, edited by Bob Archer.

Chairman Bob Ervin reported a successful Skeet League summer program and said plans are being considered for similar activity in trap shooting after the first of 1978.

Still secret

Not even State Sports Council leaders knew of a Task Force press conference called in Seattle to hand out a 31-page what-is-happening report, they say.

A receptionist at the U.S. Attorney's office conferrd with attorneys at 3:30 p.m., November 3 at 3:28 p.m. and said then that every attorney was in court and not available for comment. John Merkel was gone for the day. She could not give me the telephone number of U.S. Attorney General Griffin Bell. Later after other guidance she said if the Seattle Times reported the Task Force would meet in Seattle November 9 it was an erroneous story if it said the meeting would be open to press or the public.

Hall the heroism of our public "defenders" small enough to hide behind a receptionist's skirts or slacks.

At an evening secret session two Task Force members, Dr. Lee Alverson and James Waldo heard five sportsmen insist that sports fishermen be continued with at least present three-fish limits and open waters and seasons. At the meeting were Arch Graham and Earl Engman of the Washington State Sportsmen's Council, Louis Van Hoy of the Seattle Poggie

Club, Garland Morrison of the Steelhead Trout Club of Washington and Cliff Durbin and Chuck Hickey of the Northwest Steelhead-Salmon Council.

Sportsmen have been promised three more Task Force hearings before its final recommendations go to the capitol. One will be a steelhead session, the other two general what-we-do-updates.

Sportsmen told Doctor Alverson and Waldo there is neither economic nor social justification for cutting sports fishing in an area with 600,000 sports fishermen and 2,000 commercials.

Sportsmen noted the need for some bonified enforcement—and a uniform all-state penalty policy.

Constitutional provision for resource public ownership was emphasized. Why, it was asked, spend millions for a salmon hatchery if tribesmen take the fish?

Chief SEATTLE today?

OUR COVER is Chief Seattle—the impressive statue out on the Denny Regrade, near the Space Needle. What would he say today—seeing his descendants and the other tribesmen? Who would he name as leaders—to provide for all, not a few? Who would qualify?